

IN THE MAGISTRATES' COURT OF FIJI
AT NAUSORI

Criminal Case No: - 24/2019

STATE

V

PENI RABECA

For the prosecution: WPC Siteri

The accused: In person

Date of Hearing: 02nd of April 2019

Date of Sentence : 02nd of April 2019

SENTENCE

1. **PENI RABECA**, you pleaded guilty in this court to 2 counts of Assault Occasioning Actual Bodily Harm contrary to section 275 of the Crimes Act No 44 of 2009("Crimes Act") .
2. For the 1st count, you admitted on 24th March 2019 when your wife informed that there was nothing for dinner, you got annoyed and punched her. Later the victim took the children and left the home.
3. The second incident happened in 26th March 2019 when you were having breakfast with your wife and the children. When she informed that she would spend one week with children away from home, you got angry and struck her head with a broom stick. When she was about to fled you assaulted her head again with the broom causing her unconscious. She reported the matter to the police and medically examined on 28th March 2019.
4. The medical report noted that multiple injuries which could have caused 48 hours previously. This is consistent with the assault that happened in 26th March 2019.

5. But there is no evidence to confirm about injuries from the 1st incident (24th March 2019) and hence I convict you for the lesser offence of Common Assault for the 1st count.
6. For the second count I convict you for the offence of Assault causing actual bodily harm contrary to section 275 of the Crimes Act.
7. Before convicting I was also satisfied that you pleaded guilty on your free will.
8. The maximum penalty for Assault Occasioning Actual Bodily Harm under the Crimes Act is 05 years imprisonment.
9. In Matai v State [2018] FJHC 25; Criminal Appeal 108.2017Ltk (26 January 2018) his Lordship Justice Madigan said that the tariff for a domestic violence assault causing actual bodily harm is now from 6 to 18 months imprisonment.
10. In Kumar v State [2018] FJHC 583; HAA05.2018 (10 July 2018) his Lordship Justice Aluthge held that the tariff in a domestic violence case is 9- 12 months' imprisonment and if the assault is serious the decision in State v Prasad [2015] 493 justifies a sentence up to 18 months' imprisonment.
11. The prescribed penalty for Common Assault is 01 year imprisonment.
12. In Kumar v State [2017] FJHC 360; HAA28.2017 (17 May 2017) his Lordship Justice Sharma said that the accepted tariff for the offence of Common Assault is between a fine to a term of imprisonment (see Rajnil Kumar vs The State, Criminal Appeal No. HAA 010 of 2012 (25 July, 2012) and The State vs Kissun Sami Krishna, Criminal Appeal No. HAA 040 of 2007 (10 September 2007).
13. Since these are domestic violence offences, I am mindful about the section 4(3) of the Sentencing and Penalties Act which the sentencing court must consider in sentencing an accused.

14. Section 17 of the Sentencing and Penalties Act, provides:

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."

15. The offences that you convicted are found on same facts and hence I am going to impose an aggregate sentence of imprisonment for these two counts pursuant to section 17 of the Sentencing and Penalties Act.

16. In Laisiasa Koroivuki v the State (Criminal Appeal AAU 0018 of 2010) his Lordship Justice Goundar discussed the guiding principles for determining the starting point in sentencing and observed :

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".

17. Considering the objective seriousness of the offences, I select 06 months as the starting point for your sentence.

18. The aggravating factors are using a broom stick, assaulting the head of the victim, continues violence, the victim had to leave the home and the children were present when the assaults were committed. For these I add 12 months to reach 18 months imprisonment.


19. In mitigation you submitted that you are 49 years old, married with 5 children, sole bread winner of the family and seeking forgiveness. You are a first offender. For these mitigating factors I deduct 04 months to reach 14 months imprisonment.

20. For pleading guilty early finally I deduct 1/3 to reach 10 months imprisonment.

21. Now I would consider whether to suspend your sentence pursuant to section 24 (2) (b) of the Sentencing and Penalties Act.

22. PENI RABECA, the violence against your wife were not an isolated incidents. These led her even to leave the home and when she returned back you subjected to her further misery. Even disregarding the danger, you assaulted her head with a broom. These assaults finally compelled her to report to the police about you. Hence I find a deterrence sentence is warranted in this case to punish you and stop you from behaving in this manner in future.
23. PENI RABECA, accordingly you are sentenced to 10 months imprisonment for this charge.
24. For the safety of the victim, I also grant permanent domestic violence restraining order with standard non-molestation conditions.
25. 28 days to appeal.




Shageeth Somaratne
Resident Magistrate