

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 295- 2019

STATE

-v-

TOMASI NACAGILABA

Before : RM Fotofili L.  
For Prosecution : A/WCPL Chand A. [ Police Prosecution ]  
Accused : Ms Tavaiqia L. [ Legal Aid Commission ]  
Date of Sentence : 17<sup>th</sup> November 2020

**SENTENCE**

**BACKGROUND**

1. **TOMASI NACAGILABA**, you have pleaded guilty to the following charge:

**Statement of Offence**

**ASSAULT OCCASIONING ACTUAL BODILY HARM:** Contrary to section 275 of the *Crimes Act of 2009*.

**Particulars of Offence**

**TOMASI NACAGILABA** on the 22<sup>nd</sup> day of December, 2019 at Lomalagi, Vatukoula in the Western Division, assaulted **TIRISA VASUITOGA** whereby occasioning her actual bodily harm.

2. I am satisfied that your guilty plea and admission in court is voluntary and that you understand the consequences. The evidence tendered in support of your admission also supports your guilty plea.
3. I find you guilty and convict you of the charge.
4. The victim here is your 40 year old wife. She was drinking alcohol at Lomalagi along the pipeline. Around 3am she went home to rest. You followed her. When you two were in the room, you punched her face, back and ribs several times. She begged

you to stop but you continued punching her until she passed out unconscious on the floor.

5. Your wife, the victim was medically examined about 9 hours later after your violence. Amongst other things, the medical officer observed that there was swelling to the left side of her face or jaw, bruising to her left eye, a 2 cm cut was on her forehead and a bruise was on the left side of her chest.
6. The matter was reported and you were arrested and then interviewed under caution by police. You voluntarily admitted that you and your wife were drinking alcohol with others. You admitted punching your wife. You admit punching her once on her forehead, you punched her once on the jaw and you punched her ribs four times. You said that you punched her because you were angry that she was drinking. You admit causing her the injuries as reflected in the medical report.
7. You are a first offender.
8. You have not spent any time in remand.
9. You are 45 years old. You are a farmer and you earn \$70 weekly. You are the sole breadwinner. You have five children. The eldest is 16 years and the youngest is 3 years old. You also have your 85 year old father in law to look after. You have entered an early guilty plea and you are remorseful.
10. Your wife was present in court on the day you pleaded guilty. She accepts that you have sought forgiveness from her and that you two are still together.

#### LAW

11. The maximum sentence that is imposable by law for the offence of assault occasioning actual bodily harm is up to 5 years imprisonment.

#### TARIFF

12. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence and for more serious cases to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [ see for example State v Kalouteretere - Sentence [ 2018 ] FJHC 845; HAC 270. 2018 ( 12 September 2018 ).

### **STARTING POINT**

13. Considering the objective seriousness of the offence, a 4 month imprisonment term is selected as a starting point.

### **AGGRAVATING FEATURES**

14. The victim is your wife or a domestic relationship existed.
15. You punched her several times. You punched her until she became unconscious even though she pleaded with you to stop.
16. I increase your sentence to 9 months imprisonment.

### **MITIGATION**

17. You are a first offender.
18. You have a family to support.
19. You are remorseful.
20. Your sentence is reduced to 5 months imprisonment which is equivalent to 140 days imprisonment.

### **GUILTY PLEA**

21. You have pleaded guilty early and I will reduce your sentence to 93 days imprisonment.

### **SUSPENSION**

22. I can suspend your imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the Sentencing and Penalties Act 2009.
23. I also take into account the factors outlined in section 4 of the Sentencing and Penalties Act 2009 when deciding whether or not to suspend your sentence.

24. Your sentence will be aimed at deterrence and is to punish you adequately.

**SUMMARY**

25. **TOMASI NACAGILABA** you are sentenced to 93 days imprisonment.
26. No further time will be deducted as you did not spend any time in remand.
27. Your imprisonment term will be suspended but only in part.
28. 60 days imprisonment will be suspended for the next 18 months.
29. Do not commit any other serious offence or offence punishable imprisonment in the next 18 months because you risk this 60 days imprisonment that is held in waiting being activated.
30. You will serve 33 days imprisonment immediately.
31. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation which was imposed on you and explained to you on the 23<sup>rd</sup> of December 2019 is made final. This is to protect the victim, your wife forever unless the order is cancelled or varied.
32. Do not misbehave towards your wife or do not breach any condition of this DVRO because you may be charged with another offence.
33. 28 days to appeal.



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**Lisiate T.V. Fotofili**  
**Resident Magistrate**

Dated at TAVUA this 17<sup>th</sup> day of November, 2020