

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 292 - 2019

STATE

-v-

JOSEFA BACA

Before : RM Lisiate Fotofili
For Prosecution : W/CPL Chand A. [Police Prosecution]
Accused : In Person, Waived Right To Counsel
Date of Sentence : 17th November 2020

SENTENCE

BACKGROUND

1. **JOSEFA BACA** , I transferred your case to the High Court on my own motion pursuant to section 191 and 193 (1) and (2) of the **Criminal Procedure Act 2009** for the High Court to determine whether you should be declared and sentenced as a habitual offender.
2. The High Court of Lautoka has declined to make that declaration and has given its written reason on the 23rd of June 2020 in **State v Josefa Baca** HAC 035 of 2020. The High Court has remitted your case to the Magistrates' Court in-order that you be dealt with in the usual manner.
3. You have pleaded guilty to the following charge:

First Count

Statement of Offence

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

Particulars of Offence

JOSEVA BACA on the 3rd day of December, 2019 at Tavua in the Western Division assaulted **VENIANA ADI LOLOMA** thereby causing her actual bodily harm.

Second Count
Statement of Offence

DAMAGING PROPERTY: Contrary to section 369 (1) of the *Crimes Act of 2009*.

Particulars of Offence

JOSEVA BACA on the 3rd day of December, 2019 at Tavua in the Western Division wilfully and unlawfully damaged a mobile phone coloured brown with touch screen branded 'HUAWEI' valued at \$500 the property of **VENIANA ADI LOLOMA**.

4. I am satisfied that your guilty plea to the charge or both counts is voluntary and that you understand the consequence of your plea.
5. Your guilty plea and admission in court and the evidence tendered in support of your plea and admission, supports a finding of guilt.
6. I find you guilty of both counts and convict you accordingly of both counts.
7. The victim is your 23 year old wife. You were at home with the children when your wife returned. You asked her why she did not take the children with her to Rakiraki where she was earlier in the day. You got angry. You punched and kicked your wife's head and hands while she was sitting down on the floor in the sitting room. You injured her as a result. You picked up two plastic bottles containing salt and sugar and you threw it at your wife hitting her on the arms as she was trying to save herself. You went inside the bedroom, picked up your wife's phone and threw it on the floor damaging it.
8. Your wife was medically examined about 3 hours later after your violence. The medical officer amongst other things, observed that there was bruising and swelling to her upper and lower lips, the left side of her head was swollen, both her arms were swollen and there were multiple bruises to her arm.
9. The matter was reported and you were later arrested and interviewed by police. You admitted that you returned home from farming. Your father and your two children were at home with you. Your wife then came home. She was away from home since the morning of that day. You admitted being rude to her, you punched and kicked her head and hands. You picked up her phone and threw it. You threw a bottle of

sugar and salt at her. You were not happy that she had been away from home and had gone to Rakiraki and was not answering your question about her whereabouts.

Previous Conviction and Or Good Character

10. You are not a first offender. I also do not accept that you are a person of good character.
11. I am aware and I am familiar with your past cases before me. I have taken judicial notice of these cases and the records in those files.
12. I have sentenced you in Tavua CF 273 – 18 and CF 348 – 18 after you pleaded guilty in those cases to assault and causing injuries to the victim. The victim in those cases too was your wife. The offences were committed in September and November of 2018.
13. In CF 273 – 18 you received a 3 month imprisonment term. 1 month was deducted for the time you spent in remand. The remaining 2 months imprisonment was suspended for the next 2 years and 2 months. A domestic violence restraining order [DVRO] with section 27 standard non-molestation conditions was imposed and finalised on you. You were sentenced on the 29th of October 2018.
14. You received an aggregate sentence in CF 348 – 18 which was an aggregate 4 month imprisonment term which was partly suspended. You served 2 months imprisonment and the remaining 2 months imprisonment was suspended for 3 years. A DVRO with section 27 standard non-molestation conditions was finalised on you too. You were sentenced on the 18th of June 2019.

Time In Remand

15. In this case before me for which you are to be sentenced Tavua CF 292 - 19, you have been in remand since appearing for the first time on the 19th of December 2019.
16. After the High Court gave its decision on the 23rd of June 2020, you were granted bail with conditions and you were required to provide two suitable sureties.
17. You were unable to provide two sureties and you were remanded further.
18. Your case was delayed further because of the COVID-19 restrictions which inevitably resulted in you being remanded longer than usual.
19. I released you on bail on the 13th of October 2020.

20. Without question, you had to be remanded primarily because you were charged with a domestic violence offence against the same victim and your previous convictions involving the same victim which indicated that you were unlikely to honour bail terms. You also have a pending case of indecent assault and theft before me [Tavua CF 90 -19].
21. I calculate that you have spent approximately 10 months in remand.
22. I will only consider 6 months of your time in remand as time served as not all the delay is attributable to you.
23. You are 26 years old. You have children to look after. One is aged 3 and the other is 2 years old. You have sought forgiveness from your wife. You seek forgiveness from the court.
24. Your wife was present in court on the 28th of January 2020 and she verifies that you have apologised to her. You two are still together. You have replaced her phone which you damaged.

AGGREGATE SENTENCE

25. The offences or both counts were committed in the course of the same transaction or founded on the same facts.
26. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on you for both the assault occasioning actual bodily harm and damaging property counts.
27. Since the first count of assault occasioning actual bodily harm is the more serious of the two counts, I will use that as the foundation when passing your aggregate sentence.

LAW

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

TARIFF

29. 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

30. Considering the circumstance of your case, a 5 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

31. There was a domestic relationship in existence. This was your wife.
32. You punched and kicked her head when she was sitting on the floor.
33. You threw the plastic bottles containing salt and sugar at her.
34. You damaged her phone.
35. Your sentence is increased to 10 months imprisonment.

MITIGATION

36. You will not get any reduction for having a past good history or having good character.
37. I accept that you are remorseful.
38. You have cooperated with police when interviewed.
39. I accept that passion and emotion must have been high at the time.
40. You have a family to support.

41. Your sentence is reduced to 7 months imprisonment which is equivalent to 196 days imprisonment.

GUILTY PLEA

42. I accept that your guilty plea is early and I will reduce your sentence 130 days imprisonment.

SUSPENSION

43. 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**.
44. 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.
45. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

46. **JOSEFA BACA**, you will receive an aggregate sentence for both the counts.
47. You are sentenced to an aggregate sentence of 130 days imprisonment which is equivalent to 4 months and 10 days imprisonment.
48. I refuse to suspend this in part or in whole.
49. As I have explained earlier, your 6 months in remand will be considered as time served.
50. I do not require that you serve your 4 months and 10 days imprisonment and I deem that you have served your punishment in this case.
51. There is no need for another DVRO [with section 27 standard non-molestation conditions] as I have already finalised that on you in your earlier cases Tavua CF 273 – 18 and Tavua CF 348 - 18.
52. I cancel the interim DVRO with section 27 standard non-molestations which I imposed on you and explained to you in this case Tavua CF 292 – 19 on the 19th of December 2019.

53. 28 days to appeal.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 17th day of November, 2020