

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 15 - 2018

STATE

-v-

JOPE TUIVAGA

Before : RM Fotofili L.
For Prosecution : Inspector Lenaitasi S. [Police Prosecution]
Accused : Ms Henao G. [Legal Aid Commission]
Date of Sentence : 10th January 2020

SENTENCE

BACKGROUND

1. **JOPE TUIVAGA**, 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

JOPE TUIVAGA on the 7th day of November, 2017 at Tavualevu Village, Tavua in the Western Division assaulted **ISEI MATAI** thereby causing him 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 a relative of yours from the same village and is a 14 year old male. He was invited by your mother to have tea at home. You came in and punched the victim seemingly without any reason.

5. The victim was medically examined about 4 hours later after your violence. Amongst other things, the medical officer observed that there was swelling to the left side of his face and he was experiencing pain on his left arm.
6. The matter was reported and you were interviewed under caution by police. You accept that the victim is a distant relative. He resides in the same village. The victim was at home and that is when you punched him twice on the face.
7. You are a first offender.
8. You have not spent any time in remand.
9. You are 22 years old. You are single. You are employed as an invoice checker. You say that the victim swore at you saying 'Boci' or uncircumcised and that is why you punched him. You seek forgiveness.

LAW

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

TARIFF

11. 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

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

AGGRAVATING FEATURES

13. The victim was a relative or a domestic relationship existed.

14. He was young or 14 years old
15. You punched his face twice.
16. I increase your sentence to 9 months imprisonment.

MITIGATION

17. You are a first offender.
18. You are working and need to maintain your employment.
19. You have cooperated with police when you were interviewed.
20. I am inclined to accept that some words must have been exchanged prior to you punching the victim. It comfortably explains why you punched him. I accept that some passion must have existed at the time.
21. Your sentence is reduced to 3 months imprisonment.

GUILTY PLEA

22. You have pleaded guilty early and I will reduce your sentence to 2 months imprisonment.

SUSPENSION

23. 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**.
24. 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.
25. Your sentence will be aimed at deterrence and is to punish you adequately.

SENTENCE

26. You have not spent any time in remand and so your sentence will not be reduced any further.
27. You are sentenced to 2 months imprisonment or 56 days imprisonment.
28. I am inclined to suspend your imprisonment term but only in part.
29. 1 month and 7 days imprisonment or 35 days imprisonment is suspended for the next 18 months.
30. Do not commit any other offence punishable with imprisonment in the next 18 months or you risk this 35 days imprisonment held in waiting being activated.
31. You will serve 21 days imprisonment, immediately.
32. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation imposed and explained to you on the 15th of January 2018 is finalised against you. This is to protect the victim.
33. Do not breach any condition of this DVRO or you may be charged with another offence.
34. 28 days to appeal.



Dated at Tavua this 10th day of January, 2020

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Lisiata T.V. Fotofili
Resident Magistrate