

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

Criminal Case No: 55 - 2015

**STATE**

-v-

**LEVENI TUI DRODROLAGI**

Before : RM Fotofili L.  
For Prosecution : WPC Chand A. [ Police Prosecution ]  
Accused : Mr. Samy A. [ Legal Aid Commission ]  
Date of Sentence : 13<sup>th</sup> January 2020

**SENTENCE**

**BACKGROUND**

1. **LEVENI TUI DRODROLAGI**, you have pleaded guilty to the following charge:

**Statement of Offence**

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

**Particulars of Offence**

**LEVENI TUI DRODROLAGI** on the 5<sup>th</sup> day of March, 2015 at Nadala, Nadarivatu in the Western Division assaulted **JOANA WATI** thereby causing 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 also supports your guilty plea.
3. I find you guilty and convict you of the charge.
4. The victim here is your 41 year old wife. You two argued about the taking of food to the children who were in school. During the argument, you punched her head several times and hit her with a chair.

5. The victim was medically examined about a day later after your violence. The medical officer amongst other things, observed tenderness to the base of her neck, 2cm x 1cm bruise to the right side of her head, her left arm was bruised and slightly swollen.
6. The matter was reported and you were arrested and interviewed by police. You admitted punching her on the head 3 times. You do not know where you kicked her 3 times. You admit hitting her with a chair. You said that you two had argued about lunch for the children and something about land.
7. You were a first offender at the time of this offence.
8. You were remanded when you were first produced before the then Magistrate. You were released on bail about 3 weeks later.
9. I will only consider 3 weeks of your time spent in remand as time served.
10. I will not consider any other time spent in remand as time served because you attracted other offences of assault against the same victim while out on bail [ see for example Tavua CF 146 – 18 and Tavua 97 -17 ]. You are fortunate to have been bailed at all after being charged with other offences.
11. You are 40 years old. You have 4 children. The youngest is 11 years old. You are a farmer and the sole breadwinner. The victim, your wife still resides with you. You seek a non-custodial sentence.
12. Your wife was present in court on more than 1 occasion during the course of the proceedings.
13. She says that you have changed when she visited you while you were in remand. She is still afraid of you though.

#### **LAW**

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

#### **TARIFF**

15. 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**

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

### **AGGRAVATING FEATURES**

17. There was a domestic relationship in existence. This was your wife.
18. You punched her several times. You kicked her several times. You also used a chair.
19. I increase your sentence to 10 months imprisonment.

### **MITIGATION**

20. You are a first offender.
21. I accept that you are remorseful.
22. You have cooperated with police.
23. You have a family to support.
24. I understand that emotions must have been high at the time.
25. Your sentence is reduced to 5 months imprisonment.

### **GUILTY PLEA**

26. You have not pleaded guilty early. You initially pleaded not guilty on the 20<sup>th</sup> of June 2016.
27. No reason or satisfactory explanation has been provided to explain why you have pleaded guilty belatedly.

28. However, some discount will still be made for pleading guilty eventually.
29. I reduce your sentence to 4 months imprisonment.

### **SUSPENSION**

30. 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**.
31. 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.
32. Your sentence will be aimed at deterrence and to punish you adequately.

### **SENTENCE**

33. You are sentenced to 4 months imprisonment.
34. As I have explained earlier, I will consider 3 weeks of your time spent in remand as time served and I will deduct this from your sentence.
35. You have 3 months and 7 days imprisonment remaining.
36. I am inclined to suspend your imprisonment term but only in part.
37. 2 months and 14 days imprisonment is suspended for the next 1 year.
38. Do not commit any other offence punishable with imprisonment in the next 1 year or you risk this 2 months and 14 days imprisonment held in waiting being activated.
39. You will serve 21 days imprisonment, immediately.
40. There is no need for another section 27 standard non-molestation conditions or DVRO to be imposed against you. One was imposed on you on the 19<sup>th</sup> of December 2017 in Tavua CF 199 - 17 for the protection of your wife. That order continues.
41. 28 days to appeal.



Dated at Tavua this 13<sup>th</sup> day of January, 2020

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Lisiata T.V. Fotofili  
**Resident Magistrate**