

**IN THE MAGISTRATES COURT OF FIJI AT SUVA
CRIMINAL JURISDICTION**

Criminal Case No. 1861 of 2018

STATE

-v-

ROMULESE SENILEBA

Prosecution: Inspector J. Shaw

Accused: Present with Mr Kumar of the Legal Aid Commission

SENTENCE

1. You were convicted after trial of committing the following crimes:

Count 1

Statement of Offence

Assault Causing Actual Bodily Harm: contrary to section 275 of the **Crimes Act 2009**

Particulars of Offence

Romuluse Senileba on the 18th day of September 2018, at Samabula, in the Central Division, assaulted **Merewalesi Lutubula** thereby causing her actual bodily harm.

Count 2

Statement of Offence

Damaging Property: contrary to section 369 (1) of the **Crimes Act 2009**

Particulars of Offence

Romuluse Senileba on the 18th day of September 2018, at Samubula in the Central Division, wilfully and unlawfully damaged 1 x White vest valued at \$2.00, the property of **Merewalesi Lutubula**.

Count 3

Statement of Offence

Assault Causing Actual Bodily Harm: contrary to section 275 of the **Crimes Act 2009**

Particulars of Offence

Romuluse Senileba on the 18th day of September 2018, at Samabula, in the Central Division, assaulted **Luisa Volau** thereby causing her actual bodily harm.

2. The evidence showed that **Luisa Volau** was your wife and **Merewalesi Lutubula**, your daughter. You all lived under the one roof. On the 18th day of September 2018, you and **Ms. Volau** had gotten into a verbal dispute. **Ms. Lutubula** verbally intervened whereupon you became angry. You punched her on the forehead and caused her injuries. She fled from you and fell into a drain. You rained blows on her. You had grabbed her by the vest and caused her vest to tear. **Ms. Volau** tried to stop the attacks. You had grabbed a stone with the intention of hitting **Ms. Lutubula**. **Ms. Volau** picked up a piece of timber and tried to tap the stone out of your hand. You grabbed that piece of timber and hit **Ms. Volau** on the head and hand with it.
3. **Ms. Lutubula** received bruises to the left forehead, and left jaw, swelling to her scalp and an abrasion to the right knee as a result of your assault on her. **Ms. Volau** suffered swelling to the left temporal region of scalp and abrasion on her right hand as a result of your assault on her.

Aggravating Factors

4. This was a crime of domestic violence. In short, it was a sustained, hateful attack on **Ms. Lutubula** and in addition, you used a weapon on **Ms. Volau**.

Mitigating Factors

5. You are 43 years old. You are married to **Ms. Volau** and have two children who you say you love very much. You are a first offender. You say that you were very remorseful for your actions. You say that you will try to do your best by your family. You miss them very much. Your time at Suva Remand has taught you much you said.

Let me be clear. You were only remanded for 14 days in respect of this case. Indeed you were bailed here on 4 October 2018 and the remaining times you were produced from prison, you were produced because you were remanded by the High Court for a separate case entirely.

Maximum Penalty & Tariff

7. The maximum penalty for **Assault Causing Actual Bodily Harm** is a suspended sentence to 18 months imprisonment: **State v. Vocevoce** [2017] FJHC 15; HAA27.2016 (23 January 2017).

Sentencing

Count 1 & Count 3

8. In **State v. Vocevoce**, supra, Rajasinghe J. observed:

“Marriage is not a union of a master and subordinate. It is a union of two individuals with mutual respect, trust and affection. Hence, none of the parties of a marriage has authority to assault or to punish the other partner on the ground of disobedience or breaching of respect and trust.”

9. The same hold equally true for the relationship between parent and child.
10. I pick a starting point of imprisonment for 10 months for Count 1 & Count 3. I increase this by 1 year for the breach of trust, and the sustained attack on **Ms. Lutubula**. Your sentence on Count 1 is now imprisonment for 1 year and 10 months. I increase your sentence by 1 year for the breach of trust and the fact that you attacked **Ms. Volau** with a weapon. Your sentence on Count 3 is now also imprisonment for 1 year and 10 months.
11. The only mitigating factor worth noting is that you were a first offender at the time of the commission of this offence. I reduce your sentence by 9 months for that fact in respect of Count 1 and Count 3. Your sentence in respect of Count 1 and Count 3 is now imprisonment for 1 year and 1 month.

I declare the 14 days you spent in remand in this case time already served. Your sentence in respect of Count 1 and Count 3 is now imprisonment for 1 year and 2 weeks.

13. I see no compelling reason why I should suspend your sentence. The sooner Fijians, of all ethnicities realise that assaulting and hurting family members will lead to immediate prison terms, the better. If you will not protect your own family members from harm, we will.

Count 2

14. For your crime of damaging property, I adopt an instinctive synthesis approach and sentence you to imprisonment for 1 day and I make this concurrent to your sentences in respect of Count 1 and Count 3.

Result

15. In the result and for the reasons set out above, you are sentenced as follows:


- Count 1:** Imprisonment for 1 year and 2 weeks.
- Count 2:** Imprisonment for 1 day
- Count 3:** Imprisonment for 1 year and 2 weeks.

16. The sentences at Counts 1 – 3 are to be served concurrently to each other and concurrently to any other term of imprisonment the Defendant is serving.

17. Any party not satisfied with either the judgment or the sentence of this Court is at liberty to appeal to the High Court within 28 days from today.

18. More, I issue permanent standard non-molestation orders against you pursuant to section 27 of the **Domestic Violence Act 2009** for the protection of both **Merewalesi Lutubula** and **Luisa Volau**. You are warned that to breach these protective orders is a crime.




Seini K Puamau
Resident Magistrate

Dated at Suva this 9th day of March 2020.