

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

Criminal Case No: 131 - 2015

STATE

-v-

SUNITA DEVI

Before : RM Fotofili L.
For Prosecution : IP Lenaitasi S. [Police Prosecution]
Accused : Ms Henao G. [Legal Aid Commission]
Trial Date : 10th December 2019
Date of Judgment : 11th February 2020
Date of Sentence : 9th June 2020

SENTENCE

BACKGROUND

1. **SUNITA DEVI**, you denied the charge but after your trial, I have found you guilty and convicted you of the following:

Statement of Offence

BREACHING DOMESTIC VIOLENCE RESTRAINING ORDER: Contrary to section 77 (1) of the Domestic Violence Act of 2009.

Particulars of Offence

SUNITA DEVI, on the 25th day of May, 2015 at Tavua in the Western Division having been served a notice of Domestic Violence Restraint Order No: 09/14 issued by Tavua Magistrate Court by which she was bound without reasonable excuse contravenes the order by swearing [at] **PARVIN KUMAR** the protected person.

2. The protected person or victim is the defendant's brother in law. The defendant and the victim reside approximately 30 meters apart. The victim had filed a domestic violence restraining order [DVRO] application in 2014 against the defendant. When the defendant appeared with her counsel for that DVRO application on the 27th of

January 2015, the defendant agreed to having a DVRO with section 27 standard non-molestation conditions and an additional condition that the defendant not loiter around the victim's compound imposed on and finalised on the defendant. The standard non-molestation conditions required the defendant not to threaten, intimidate, harass the victim. The DVRO was in force at the time the defendant committed the offence on the 25th of May 2015 at around 3am. The defendant was shouting from her home obviously for the victim to hear. The parties were obscured or did not have direct line of sight. The defendant could be heard saying the name of the victim and saying 'Maichod' [motherfucker] and also said 'you want something, come here'. There have been differences with the defendant, as the defendant is not respectful of the victim's family.

3. The defendant is a first offender.
4. The defendant spent 6 days in remand but that was because she failed to reappear on the 9th of October 2018 and she did not pay her bail bond as a result of not complying with her bail condition to reappear on each court date. That was not the first time the defendant failed to appear on her court date. I will not consider any time spent in remand as time served.
5. The defendant is 45 years old. She has 3 adult children. She is unemployed and does domestic duties. She seeks forgiveness. She spent 6 months away from the family because of the case. She promises not to reoffend. She seeks leniency.

LAW

6. The maximum sentence that is imposable by law for a first time breach can be a fine of up to \$1,000 and or imprisonment up to 12 months.

TARIFF

7. There is no sentencing tariff for this offence.
8. However, violence on a spouse with the use of a stick and cane knife causing injuries can attract a 3 month imprisonment term [State v Kailoma [2018] FJHC 763; HAC46.207 & HAC63.2017 (21 August 2018)].
9. I recently sentenced a 34 year old man after he pleaded guilty, to an immediate 18 days imprisonment for threatening to kill his wife and throwing out her clothes [State v Akariva Seru Rakiraki CF 220 – 19 (Sentenced on 3rd of June 2020)].

STARTING POINT

10. Considering the objective seriousness of your case, a 28 day imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

11. You committed the breach in the early morning at 3am and this no doubt inconvenienced the victim.
12. You have a deep resentment for the victim and his family and you must learn to control your emotions. I find your actions calculated and vile. When you gave evidence during your trial, you denied you did not know about the DVRO being in place. You harass him indirectly by shouting from your house without being seen and you say things phrased in a way that make it appear it is not aimed at the victim but it is.
13. I increase your sentence to 40 days imprisonment.

MITIGATION

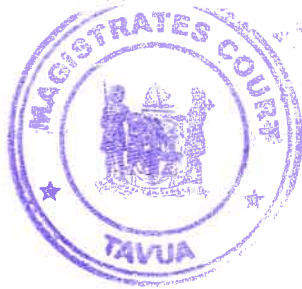
14. I am not convinced that you are remorseful. For example, you denied during your trial that you knew that there was a DVRO in place even though you and your counsel were present on the day it was imposed and finalised on you.
15. However, you are a first offender.
16. This case has been looming over you for about 5 years and that you had to leave your family for some time because of the complaint against you.
17. Your sentence is reduced to 21 days imprisonment.

SUSPENSION

18. I can suspend your 21 days imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.
19. 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.
20. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

21. You are sentenced to 21 days imprisonment.
22. As I have explained, no time spent in remand will be considered as time served and so no further time will be deducted from your sentence.
23. I refuse to suspend your imprisonment term either in part or in whole.
24. You are to serve your 21 days imprisonment immediately.
25. 28 days to appeal.



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Lisiata T.V. Fotofili
Resident Magistrate

Dated at TAVUA this 9th day of June, 2020