

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 149 - 2019

STATE

-v-

NANISE TUWAI DELA

Before : RM Fotofili L.
For Prosecution : A/CPL Chand A. [Police Prosecution]
Accused : Ms. Henao G. [LAC]
Date of Sentence : 2nd February 2021

SENTENCE

BACKGROUND

1. **NANISE TUWAI DELA**, 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

NANISE TUWAI DELA on the 6th day of July, 2019 at Tavua in the Western Division assaulted **AKISI RAVUAKA** 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 tendered in support of your admission also supports your guilty plea.
3. You accept punching the victim first. Then she punched you.
4. I find you guilty and convict you of the charge. You did not act in self-defence.
5. The victim here is your 22 year old niece. Around 1pm, she was conversing with others about the claim that you were spreading rumours in the village. You were

called to where the discussion was going on. The victim confronted you and that is when you punched her face and head.

6. The victim was medically examined about a day later after your violence. Amongst other things, the medical officer observed that her lower lip was slightly swollen there was a mild cut to her neck.
7. The matter was reported and you were arrested and interviewed under caution by police. You admitted punching the victim on the face 4 times. After that the victim punched you and swore at you.
8. This is your first offence.
9. You have not spent any time in remand.
10. You are 26 years old. You are married and you have a 4 year old son. You do domestic duties. You got upset as the victim told you to look after your mother who is suffering from a stroke. You have reconciled with the victim. You seek forgiveness. You promise not to re-offend.

LAW

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

TARIFF

12. 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

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

AGGRAVATING FEATURES

14. The victim is your niece. A domestic relationship exists.
15. I am sure you punched her in front of others.
16. You punched her 4 times.
17. I increase your sentence to 8 months imprisonment.

MITIGATION

18. You are a first offender.
19. You cooperated with police during your interview.
20. I accept that you are remorseful.
21. Some passion and emotion must have existed at the time.
22. You have a family to support.
23. Your sentence is reduced to 3 months imprisonment.

GUILTY PLEA

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

SUSPENSION

25. 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**.
26. 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.
27. Your sentence will be aimed at deterrence and is to punish you adequately.

SENTENCE

28. **NANISE TUWAI DELA**, you are sentenced to 2 months imprisonment.
29. No time was spent in remand and so your sentence will not be reduced any further.
30. Particularly because this is your first offence and that you are remorseful, I am inclined to wholly suspend your imprisonment term.
31. Your 2 months imprisonment will be wholly suspended for the next 18 months.
32. Do not commit any other offence punishable with imprisonment or do not commit any other serious offence in the next 18 months because if you do, you risk this 2 months imprisonment that is held in waiting being activated.
33. You are also fined \$120 to be paid in 28 days.
34. You default in paying this fine within that timeline and you risk up to 4 days imprisonment.
35. Your bail will be extended until your fine is paid.
36. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation which was imposed on you and explained to you on the 9th of July 2019 is made final. This is to protect your niece forever unless the DVRO is cancelled or varied.
37. Do not breach any condition of this DVRO or you may be charged with another offence.
38. 28 days to appeal.



.....
Lisiate T.V. Fotofili
Resident Magistrate

Dated at TAVUA this 2nd day of February, 2021