

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 236 - 2020

STATE

-v-

RAMEND KUMAR

Before : RM Fotofili L.
For Prosecution : A/CPL Chand A. [Police Prosecution]
Accused : Mr. Samy A. [LAC]
Date of Sentence : 23rd November 2021

SENTENCE

BACKGROUND

1. **RAMEND KUMAR**, you have pleaded guilty to the following charge:

Statement of Offence

COMMON ASSAULT: Contrary to section 274 of the *Crimes Act No. 44 of 2009*.

Particulars of Offence

RAMEND KUMAR on the 6th day of July 2020 at Balata, Tavua in the Western Division unlawfully assaulted **IRENE KUMAR**.

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 are found guilty and I convict you of the charge.

4. The victim is your 57 old wife. You were 'drinking' at home with your son in law. Your wife was cooking with other family members. You accused your wife of infidelity and during the argument, you pushed her. Your brother in law had to intervene to stop you from any further violence. The matter was reported to police and you were arrested and then interviewed under caution by police. You chose to remain silent in most parts of your interview.
5. You have previous convictions particularly for assault occasioning actual bodily harm but these are over two decades ago. I will treat you as a first offender.
6. You have not spent any time in remand.
7. You are 70 years old. You reside in Suva. You are diabetic and you get your medical check-up or review every three months. You are a social welfare recipient. You seek forgiveness. You have spent 2 days in police custody. You promise not to reoffend.

LAW

8. The maximum sentence that is imposable by law for the offence of common assault is up to 12 months imprisonment.

TARIFF

9. Suspended sentences even fines or terms of imprisonment may be appropriate [State v Sokiveta [2013] FJHC 407; HAC 12.2013 (8th August 2013) and Kumar v State [2017] FJHC 360; HAA28.2017 (17 May 2017)].
10. Ultimately, each case will determine its own sentence within the maximum punishment imposable.

INSTINCTIVE SYNTHESIS APPROACH

11. Primarily because there is no established sentencing tariff for this offence, I will adopt an instinctive synthesis approach when sentencing you.
12. It is important that I highlight some important features I find present in your case and which I will outline below.

AGGRAVATING FEATURES

13. I am sure that your actions were witnessed by other family members with your brother in law having to intervene for example.
14. The victim is your wife.

MITIGATION

15. You are elderly and I am sure, you have health impediments you have to deal with.
16. The two days you have spent in police custody must have been punishing for you in your state.
17. You are a first offender.
18. You are remorseful.

GUILTY PLEA

19. You have pleaded guilty early.

TIME IN REMAND

20. You have not spent any time in remand and so your sentence will not be reduced because of this factor.

SUMMARY

21. **RAMEND KUMAR**, your sentence will be aimed at deterrence and is to punish you adequately.
22. I have considered section 16 of the **Sentencing and Penalties Act 2009** amongst other provisions.
23. Primarily because of your advanced age and health, you are a social welfare recipient, that you have spent two days in police custody and the offending action in this case was a push, I will not impose any sentence of imprisonment on you

whether it be suspended or not and I decline imposing any fine on you or imposing any other punishment.

24. However, you are still convicted and I finalise the interim domestic violence restraining order [DVRO] with section 27 standard non-molestation conditions which was imposed on you and explained to you on the 8th of July 2020. You are to continue behaving towards the victim. Do not misbehave towards her or do not breach any condition of the DVRO as you may be charged for another offence.

25. 28 days to appeal.



At TAVUA this 23rd day of November, 2021

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Lisiata T.V. Fotofili
Resident Magistrate