

IN THE MAGISTRATES' COURT OF FIJI AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 282 - 2015

STATE

-v-

NIRMAL SINGH

For Prosecution : WPC Chand [Police Prosecution]
For the Defendant : In Person, Waived Right to Counsel
Date of Hearing : 25th September, 2018
Date of Judgement : 27th November, 2018

Date of Sentence : 14th day of January, 2019

SENTENCE

BACKGROUND

1. After trial, I found the defendant **NIRMAL SINGH** guilty of the following charge (amended on the 17th of May 2016) :

Statement of Offence

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

Particulars of Offence

NIRMAL SINGH on the 28th day of November, 2015 at Vutu Place, Tavua in the Western Division, assaulted **SURESH CHAND** thereby causing him actual bodily harm.

2. The victim here was around 40 years old when the defendant hit him. They are neighbours. The defendant was upset with the victim for spreading rumours about a lady that the defendant liked. The defendant too didn't like the victim for other reasons claiming that the defendant steals his breadfruit and the victim's son comes unannounced to the defendant's house. A day before hitting the victim, the defendant had challenged the victim to a fight. The victim did not oblige. The following day when the victim arrived home, the defendant was at it again

challenging the victim to a fight. The defendant was calling out the victim from the defendant's own compound. The victim foolishly came over to the defendant's home in answer. The defendant then brought a pinch bar and hit the victim over the head, amongst other things causing laceration to the victim's scalp and making the victim dizzy. The victim had to bite the defendant on the ear so that the victim could escape.

3. The defendant has no previous conviction.
4. The defendant has been in remand for approximately 42 days or 1 month and 2 weeks, that is for the period 30th November 2015 until the 11th of January 2016.
5. In the defendant's oral and written mitigation, it is submitted that he is 54 years old, regularly experience chest pains which is related to a heart problem and a letter from hospital was provided to support that. The defendant also submits that he has behaved the past 3 years ever since the case was pending.

LAW

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

TARIFF

7. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [see for example **Randipni Singh v The State** HAA 13 of 2016 (17th June 2016).

STARTING POINT

8. Considering the circumstance of your case, a 5 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

9. This was pre-mediated.
10. You used a pinch bar or a potentially deadly weapon.
11. You hit the victim on the head.

12. Your sentence is increased to 10 months imprisonment because of these.

MITIGATION

13. This case has been looming over you since 2015.
14. I accept that you have a potentially serious medical condition which is in relation to your heart.
15. Some consideration must also be taken for your past good character as well.
16. During the trial, I observed that you feel vindicated for doing what you did. You don't realize that it is still unlawful but you feel that the victim deserved it. I don't accept that you are remorseful.
17. Your sentence is reduced to 6 months imprisonment.

SUSPENSION

18. 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**.
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 is aimed at deterrence and to punish you adequately.

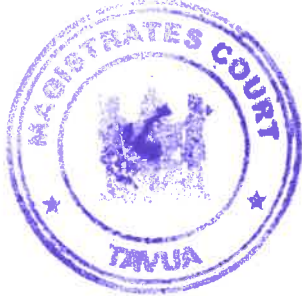
FINAL SENTENCE

21. You are sentenced 6 months imprisonment.
22. You have already spent 1 month and 2 weeks in remand and I will consider this as time served.
23. You have 4 months and 2 weeks remaining.
24. Largely because of your health, I will suspend this remaining term and it will be held in suspense for the next 3 years.

25. Commit any other offence in the next 3 years and this suspended term may be activated.

[suspended term explained to the defendant]

26. The DVRO with section 27 standard non-molestation conditions which was imposed on you and explained to you on the 7th of August 2018 for the protection of the victim is made final.
27. Breach any condition of this DVRO and you may be charged with a separate offence of breaching a DVRO.
28. 28 days to appeal.



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

Dated at Tavua this 14th day of January, 2019.