

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Crim. Case No: HAC 060 of 2018

BETWEEN: STATE

PROSECUTION

A N D: PENAIA SALAKUBOU

ACCUSED PERSON

Counsel : Ms. A. Vavadakua for the State
: Ms. K. Boseiwaqa for Accused

Date of Sentence : 2nd November 2018

SENTENCE

1. Mr. Penaia Salakubou, you have been charged with one count of Act with Intent to Cause Grievous Harm, contrary to Section 255 (a) of the Crimes Act, which carries a maximum penalty of life imprisonment. The particulars of the offence are that:

COUNT ONE

Statement of Offence (a)

ACT WITH INTENT TO CAUSE GRIEVOUS HARM: *Contrary to Section 255 (a) of the Crimes Act 2009.*

Particulars of Offence (b)

PENAIA SALAKUBOU on the 3rd day of August 2018, at Labasa, in the Northern Division, with intent to do some grievous harm to **MONIKA TINAIRAVONU** unlawfully wounded the said **MONIKA TINAIRAVONU**.

2. You pleaded guilty to this offence on the 11th of October 2018 before Justice Hamza. Having perused the record of the proceedings pertaining to the 11th of October 2018 and the re-confirmation of the plea of guilty, I then proceeded to provide the summary of facts to the accused, which he admitted in open court. Satisfied by the fact that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I now convict you to this offence.
3. It was revealed in the summary of facts, which you admitted in the court that you have asked the complainant to go into the bedroom. The complainant is your *de-facto* wife. Once she entered into the bedroom you have closed the door and the windows of the room. You have then started to throw punches at the complainant on her head and the eyes. You have then held her neck to choke her. Subsequently, you had stuck her with an object. Having repeatedly assaulted her, you have walked out of the room, leaving the complainant unattended with her wounds.
4. This is a case of domestic violence where the *de-facto* husband had used physical violence on the *de-facto* wife. There is no excuse for causing physical harm and violence on family members. The law and also the society have denounced such crimes on the family members without any reservations. Such acts of violence undoubtedly attract immediate custodial sentences, unless there is an exceptional circumstances to do otherwise. Therefore, I find this is a very serious crime.
5. In view of the seriousness of this offence, the purpose of this sentence is founded on the principle of deterrence and protection of community.

6. The sentencing tariff for the offence of Act with Intent to Cause Grievous Harm is between six (6) months to five (5) years imprisonment period.
7. You have taken the complainant into the room and locked her inside by closing the door and windows before you have unleashed your brutal assault on her. Neither she had any prospect of protecting herself nor escaping from the room. It is clear that this was a premeditated act. Therefore, I find the level of harm and the culpability in this offending is significantly high.
8. In view of the seriousness of the offence, the level of capability and harm, I select two (2) years as the starting point for this sentence.
9. You have breached the trust that the complainant had for you as her *de-facto* husband. You had walked out of the room, leaving the wounded complainant unattended in the room. Due to this incident, the complainant had to leave her house. I consider these factors as aggravating grounds.
10. In view of these aggravating factors, I increase two (2) years to reach four (4) years of interim imprisonment.
11. You are a first offender. You have three young children. Having taken into consideration your previous character and family backgrounds, I deduct one (1) year and reach to three (3) years imprisonment.
12. You pleaded guilty for this offence at the first available opportunity, which demonstrates your remorse and repent in committing this crime. Hence, I give you a substantive discount for your early plea of guilty and remorse. Therefore I reduce further one (1) year. Accordingly, your final sentence is two (2) years imprisonment.
13. In view of the serious nature of this offence, I do not find any appropriate reasons to suspend your sentence.

14. Taking into consideration your age, opportunities for rehabilitation and the seriousness of this offence, I find one (1) year of non-parole period would serve the purpose of this sentence.

Head Sentence

15. Accordingly, I sentence you to a period of **two (2) years** for this offence of Act with Intent to Cause Grievous Harm, contrary to Section 255 (a) of the Crimes Act. I further order that you are not eligible for any parole for a period of **one (1) year**.

Actual Period of the Sentence

16. You have been in remand custody for this case for a period of nearly two (2) months as you were not granted bail by the Court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of two months (2) as the period of imprisonment that have already been served by you.
17. Accordingly, your actual sentencing period is **one (1) year and ten (10) months** of imprisonment period with non-parole period of **ten (10) months**.

Domestic Violence Restraining Order

18. Since this incident involves with Domestic Violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to section 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until this court or any other competence court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant of Section 77 of the Domestic Violence Act.

19. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
2nd November 2018

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Defence.