

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 297 of 2017

STATE

Vs.

KALAM AZAAD KHAN

Counsel: Ms S. Sharma for the State
Mr. A. Chand with Mr. K. Cheng for Accused

Date of Hearing: 06th to 08th August 2018

Date of Summing Up: 10th August 2018

Date of Judgment: 13th August 2018

Date of Sentence: 14th August 2018

SENTENCE

1. Mr. Kalam Azaad Khan, you have been found guilty and convicted for one count of Assault Causing Actual Bodily Harm, contrary to Section 275 of the Crimes Act, which carries maximum punishment of five (5) years of imprisonment.
2. Having taken into consideration the guidelines and factors stipulated under Section 4 of the Sentencing and Penalties Act, the evidence adduced in the hearing, and the sentencing and mitigation submissions filed by the parties, I now proceed to pronounce your sentence as follows.

3. It was proved at the conclusion of the hearing, that you have assaulted the complainant on the left side of her face, when she informed you that she had lost her feeling of having sexual intercourse, while you were having sexual intercourse with her on the 23rd of September 2017 at your house. The said assault had caused injuries at the left side of her face, which have been recorded in the medical report.
4. The tariff for the offence of Assault Occasioning Actual Bodily Harm ranges from a suspended sentence where there is a degree of provocation and no weapon used to 9 months imprisonment for the more serious cases of assault. (**Goundar J in Jonetani Sereka v The State 2008, FJHC 88, HAA027,2008**), (**State v Anjula Devi, Crim Case No. 04 of 1998**). Justice Madigan held in **State v Sikitora [2010] FJHC 466; HAC067.2010L (22 October 2010)** that:

“The cases of Elizabeth Joseph v State [2004] HAA 03 of 2004 and State v Tevita Alati [2004] HAA 73 of 2004 establish a tariff of 9 months to 12 months imprisonment, the severity of the wound being the determining factor in the starting point. However, sentences of 18 months imprisonment have been upheld in domestic violence cases (Amasi Korovata v State [2006] HA 115 of 2006).”

5. In **State v. McPherson [2017] FJHC 890; HAC 42 of 2016 (22 November 2017)**; the High Court has held that the tariff for the offence of Assault Causing Actual Bodily Harm should range from 3 months to 12 months imprisonment. This tariff has been adopted in **Tuni v State [2017] FJHC 915; HAA41.2016 (5 December 2017)**.
6. This is a case of domestic violence as the complainant was in a *de facto* relationship with you at the time of this offence took place. Violence on women at domestic environment by their partners or spouses are prevalent in Fiji. Therefore, the purpose of this sentence is founded on the principle of deterrence.

7. You had assaulted the complainant, when she expressed her unwillingness to continue the sexual intercourse with you. However, the evidence confirmed that you had promptly assisted her by getting her some ice from the neighbours.
8. You are not a first offender; therefore, you are not entitled for any discount for your previous good character. I find that your personal and family circumstances have no much mitigatory value.
9. Having taken into consideration the above discussed factors, I impose eight (8) months imprisonment period for this offence. I do not find any appropriate circumstances to suspend your sentence.
10. I accordingly sentence you for a period of **eight (8) months** imprisonment for the offence of Assault Causing Actual Bodily Harm, contrary to Section 275 of the Crimes Act.
11. I do not fix any parole period for this sentence.
12. You have been in remand in custody for this case for a period of seventy (70) days 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 **three (3) months** as a period of imprisonment that have already been served by you.
13. Accordingly, the actual sentencing period is **five (5) months** imprisonment.
14. 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.

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




R.D.R.T. Rajasinghe
Judge

At Suva
14th August 2018

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