

**IN THE MAGISTRATES' COURT OF FIJI AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 173 - 2017

STATE

-v-

FILOMENA TURAGA

For Prosecution : WPC Chand [Police Prosecution]

For the Defendant : Mr Samy [Legal Aid Commission]

Date of Sentence : 17th day of December, 2018

SENTENCE

BACKGROUND

1. 1. **FILOMENA TURAGA**, you are here to be sentenced upon pleading guilty to the following charge:

Statement of Offence

ASSAULT OCCASIONING ACTUAL BODILY HARM: Contrary to section 275 of the *Crimes Act* No: 44 of 2009.

Particulars of Offence

FILOMENA TURAGA on the 19th day of May, 2018 at Tavua Town, Tavua in the Western Division assaulted **RUCI VAKATALESAU** thereby causing her actual bodily harm.

1. 2. I am satisfied that your guilty plea to the charge is voluntary and that you understand the consequence of your plea.
1. 3. After having admitted the facts proposed by the prosecution and having heard you, I have found you guilty accordingly.
1. 4. The victim here is a 43 year old female victim. The victim was sitting in town with other women. You came behind her and punched the victim on the left side of her face. You punched her head too. You threw more punches causing dizziness to the victim and bleeding from the victim's eye.
1. 5. You were arrested and interviewed by police. You admitted punching the victim several times. You said that you punched her 4 times. You said that you asked her why she was calling your husband and when she did not reply, you punched her. You were angry with her blaming her for causing problems in your family.
1. 6. The victim was medically examined 3 hours later after you hit her. Amongst other things, it was observed that there was a deep cut to her right eyebrow and swelling to that area.
1. 7. You have no previous conviction.
1. 8. You have not spent any time in remand.

1. 9. In your mitigation, you submit that you are 37 years old. You are married with 2 children. The eldest is 18 years old and the other is 1 year 1 month. You say that the victim was having an affair with your husband. You say that the victim spreads rumours about you. You have cooperated with police. You seek leniency.

LAW

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

TARIFF

1. 11. 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

1. 12. Considering the circumstance of your case, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURE

1. 13. You punched the victim several times on the head.
1. 14. This was in public.
1. 15. Your motivation was revenge.
1. 16. Your sentence is increased to 9 months imprisonment because of these.

MITIGATION

1. 17. You have cooperated with police.
1. 18. I accept that you must have been upset at the time. This does not give you the license to go and do what you did. However, I will take into account the passion that must have existed.
1. 19. Some consideration must also be taken for your past good character as well.

1. 20. I don't accept that you are remorseful. You appear to me to think that you had a righteous purpose in committing violence on the victim.
1. 21. Your family circumstance such as having children is not compelling to me. You should have thought of your children and the consequence your actions will have, before committing this violence. Your children will not be used only when it is convenient.
1. 22. Your sentence is reduced to 5 months imprisonment.

GUILTY PLEA

1. 23. I will reduce your sentence further for pleading guilty early.
1. 24. Your sentence is reduced to 3 months and 2 weeks imprisonment.

SUSPENSION

1. 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**.
1. 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.
1. 27. I am inclined to suspend your sentence in part only.
1. 28. Those who commit violence on others in retaliation or on the suspicion that a member of their family is committing infidelity, risk immediate custodial sentence.
1. 29. Your sentence is aimed at deterrence and to punish you adequately.

FINAL SENTENCE

1. 30. You are sentenced to 3 months and 2 weeks imprisonment.
1. 31. From this, you are to serve 1 month and 2 weeks imprisonment immediately.
1. 32. The remaining 2 months will be suspended for the next 1 year.

1. 33. Commit any other offence in the next 1 year and this suspended term may be activated.

[suspended term explained to the defendant]

1. 34. I order a Domestic Violence Restraining Order [DVRO] with standard non-molestation against you [section 27] and this will be to protect the victim in this case.

1. 35. Breach any condition of this DVRO and you may be charged with a separate offence of breaching a DVRO.

[explained to the defendant]

1. 36. 28 days to appeal.

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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 17th day of December, 2018.