

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

Criminal Case No: 260 - 2017

**STATE**

-v-

**JITEND KUMAR**

For Prosecution: Sgt Kumar [ Police Prosecution ]

Accused: Ms Pratap [ Legal Aid Commission ]

Date of Sentence: 24<sup>th</sup> day of August 2018

**SENTENCE**

**BACKGROUND**

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

*Statement of Offence*

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

*Particulars of Offence*

**JITEND KUMAR** on the 21<sup>st</sup> day of October, 2017 at Tavua in the Western Division assaulted **SURYA NARAYAN** thereby causing him actual bodily harm.

1. 2. You are presumed to be sane at the time of the offence and you are presumed that you are fit to plead. There is no evidence even after psychiatric evaluation to rebut this presumption. I have observed you in court and you appear to me to understand the proceedings and what had transpired in your case.
1. 3. Having been satisfied that your guilty plea was voluntary and after you admitted the facts, the court found you guilty.
1. 4. The victim here is your 76 year old father. He was sleeping or trying to sleep at around 5am but you were singing and shouting at the top of your voice. He asked you to stop as you were disturbing him. You went and punched him on his back.
1. 5. When the victim was medically examined later in the morning on that same day, there was no visible injury noticed but he was experiencing pain, according to his medical report.
1. 6. You have been in remand for approximately 4 months. This is principally due to you being committed for a psychiatric assessment.
1. 7. You are a first offender.
1. 8. Your counsel has filed written mitigation in your support.

1. 9. You are 47 years old, you have a child. You promise not to reoffend. You have pleaded guilty early.

#### **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 ( 17<sup>th</sup> June 2016 ).

#### **STARTING POINT**

1. 12. Considering the circumstance of your case, a 2 month imprisonment term is selected as a starting point.

#### **AGGRAVATING FEATURE**

1. 13. This was your elderly father.
1. 14. Your assault was unprovoked.
1. 15. Your sentence is increased by 2 months because of these.
1. 16. Your interim sentence is 4 months imprisonment.

#### **MITIGATION**

1. 17. Some consideration must be taken for your past good character.
1. 18. I accept that you are remorseful.

1. 19. I accept that you have reconciled with the victim.

1. 20. Altogether, your sentence is reduced by 3 months imprisonment.

1. 21. Your current sentence is 6 months imprisonment.

#### **TIME IN CUSTODY**

1. 22. The main reason why you were not bailed was both for your own good and the safety of others as there was information that you were a psychiatric patient and there was this case alleging that you committed violence.

1. 23. I will therefore not deduct the 4 months you have already spent in remand from your sentence.

1. 24. Your sentence remains at 6 months imprisonment.

#### **GUILTY PLEA**

1. 25. Your sentence is further reduced by 2 months for your guilty plea.

1. 26. Your interim sentence stands at 4 months imprisonment.

#### **SUSPENSION**

1. 27. I can suspend your 4 months imprisonment term either in whole or in part pursuant to section 26 ( 2 ) ( b ) of the **Sentencing and Penalties Act 2009**.

1. 28. I'm inclined to suspend your sentence in whole.

#### **FINAL SENTENCE**

1. 29. Your 4 months imprisonment term is suspended for the next 2 years.

1. 30. If you commit any other offence within the next 2 years, your imprisonment term held in suspense may be activated.

[suspended term explained to the defendant]

1. 31. In addition, I will order that the interim Domestic Violence Restraining Order [DVRO] with standard non-molestation which was imposed on you earlier on the 20<sup>th</sup> day of February 2018 in this case will be made final. This is to protect your father or the victim.

1. 32. If you breach any condition of this order, you may be charged for breach of DVRO.

[ Final DVRO explained to the defendant ]

1. 33. 28 days to appeal.

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Lisiate T.V. Fotofili  
**Resident Magistrate**

Dated at Tavua this 24<sup>th</sup> day of August, 2018.