

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

Criminal Case No: 255 - 2016

STATE

-v-

KALIVATI ERANAVULA

For Prosecution : WPC Chand [Police Prosecution]

Accused : Ms Henao [Legal Aid Commission]

Date of Sentence: 29th day of October 2018

SENTENCE

BACKGROUND

1. 1. **KALIVATI ERANAVULA**, you are here to be sentenced upon changing your plea to that of 'guilty'. You pleaded guilty to the following charge:

Statement of Offence

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

Particulars of Offence

KALIVATI ERANAVULA on the 12th day of November, 2016 at Waikubukubu Village, Tavua in the Western Division assaulted NANISE ROTA 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 your 26 year old wife. Both of you were at home at the time with your 7 month old son. You told your wife to change your son's napkin as he was crying. You swore at your wife and slapped her forehead.
1. 5. The matter was reported and 2 days later you were arrested and interviewed by the police.
1. 6. In your interview with police, you admitted being at home at the material time with the victim. You suspected that your son had fallen and your wife didn't tell you. You questioned her and at first she denied it and then she admitted it. You denied punching, slapping or kicking her. You denied causing her any injury and you said that you are not aware how she received any injury.
1. 7. I asked you in court why you denied hitting your wife when you were questioned by the police. You remained silent and did not give me any reason.

1. 8. When your wife was medically examined on the same day on which you hit her, the medical officer noted that there was tenderness to your wife's forehead and also to the back of her head.
1. 9. Your wife was also present in court on the day you pleaded guilty. She blames herself for what happened. She sought forgiveness from the court and you. She tells me that she was also 2 months pregnant at the time but according to her, you didn't know about it.
1. 10. You were bailed by the court upon your first appearance on the 15th of November 2016 and you have been on bail ever since.
1. 11. You have no previous conviction.
1. 12. In your mitigation, it is submitted on your behalf that you are 37 years old, married with 2 children. You still stay with the your wife, the victim. You are the sole breadwinner.
1. 13. Your counsel explains to me that you had initially pleaded not guilty in 2017 because you did not accept all of the acts of assault alleged by prosecution.

LAW

1. 14. 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. 15. 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. 16. Considering the circumstance of your case, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURE

1. 17. Your 7 month old son I would think would not have understood what was happening at the time so I will not increase your sentence.

1. 18. I am not sure too whether you knew your wife was 2 months pregnant at the time. However, you will have to take the victim as you find them when you choose to commit violence.
1. 19. This was your wife or a domestic relationship was present.
1. 20. You hit her on the head.
1. 21. Your sentence is increased to 7 months imprisonment because of these.

MITIGATION

1. 22. This case has been looming since 2016 against you and must have caused you some stress.
1. 23. You will not get any reduction in sentence for cooperating with police. You denied hitting your wife when questioned.
1. 24. I accept that your son falling and your wife not being forthcoming about it must have caused you to be upset with her. This still does not give you a license to have done what you did.
1. 25. Some consideration must also be taken for your past good character as well.
1. 26. You look after the family.
1. 27. Your wife blames herself for what happened. Both you and her must know that she has nothing to apologize for when it comes to unjustified violence.
1. 28. Altogether, your sentence is reduced to 5 months imprisonment.

GUILTY PLEA

1. 29. The timing of your plea seemingly is late.
1. 30. I accept your counsel's submission that you pleaded not guilty because you did not accept all of the acts of violence prosecution was alleging.
1. 31. I accept that if you knew, you could have pleaded guilty but only to the act of violence you accept committing.

1. 32. You sentence is reduced further to 4 months imprisonment for your early guilty plea.

SUSPENSION

1. 33. I can suspend your 4 months imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.
1. 34. 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. 35. Your sentence will be aimed at deterrence and to punish you.

FINAL SENTENCE

1. 36. You are sentenced to 4 months imprisonment.
1. 37. You have not spent any time in remand so I will not deduct any further period.
1. 38. I am only inclined to suspend your 4 months imprisonment term in part.
1. 39. You will serve 1 month imprisonment immediately.
1. 40. The remaining 3 months will be suspended for the next 2 years.
1. 41. Commit any other offence in the next 2 years and this 3 months imprisonment held in waiting may be activated.

[suspended term explained to the defendant]

1. 42. In addition, I will order that the interim Domestic Violence Restraining Order [DVRO] with standard non-molestation conditions which was imposed on you earlier on the 15th day of November 2016 in this case will be made final. This is to protect your wife.
1. 43. Breach any condition of this DVRO and you may be charged with a separate offence of breaching a DVRO.

[explained to the defendant]

1. 44. 28 days to appeal.

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

Dated at Tavua this 29th day of October, 2018.