

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No: HAC 205 of 2018**

**STATE**

**V**

**ALIPATE NASEVANI**

**Counsel** : Mr. J. Niudamu for the State.  
: Mr. J. Uludole for the Accused.

**Date of Submissions** : 08 August, 2019  
**Date of Sentence** : 21 August, 2019

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**SENTENCE**

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1. The accused is charged with the following offences as per the amended information dated 24<sup>th</sup> April, 2019:

**FIRST COUNT**

**Statement of Offence**

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

***Particulars of Offence***

**ALIPATE NASEVANI** on the 3<sup>rd</sup> day of November 2018 at Sigatoka in the Western Division with intent to cause grievous harm to

**ANASEINI CAGINAVANUA** unlawfully wounded the said **ANASEINI CAGINAVANUA**.

**SECOND COUNT**

**Statement of Offence**

**DISOBEDIENCE OF LAWFUL ORDERS:** Contrary to Section 202 of the Crimes Act 2009.

***Particulars of Offence***

**ALIPATE NASEVANI** on the 3<sup>rd</sup> day of November 2018 at Sigatoka in the Western Division disobeyed the lawful orders of the Sigatoka Magistrates' Court by not keeping the peace and not being of good behaviour for a period of 12 months as ordered by the Sigatoka Magistrates' Court on the 25<sup>th</sup> day of July 2018 vide CF 587/17.

2. On 27<sup>th</sup> May, 2019 the accused pleaded guilty to both the counts in the presence of his counsel. Thereafter on 12<sup>th</sup> July, 2019 the accused admitted the summary of facts read by the State Counsel as follows:

- “ 1. *The accused is Alipate Nasevani (hereinafter referred to as the “accused” of Malevu, Sigatoka;*
2. *The complainant is Anaseini Caginavanua (hereinafter referred to as “PW1”) of Malevu, Sigatoka.*
3. *The complainant and the accused are cousins.*
4. *On 3<sup>rd</sup> November, 2018 at about 11.30am, PW1 was at her cousin, Merelita Nabobo’s house washing clothes and cleaning the house with her niece.*
5. *At about 12.15pm while they were still cleaning the house, the accused walked into the house and questioned PW1 as to why she was inside the house. The accused then pick up a piece of wood and then hit PW1 several times after the complainant had refused to leave the premises.*
6. *The accused then pushed PW1 out of the house.*

7. *PW1 was medically examined at Sigatoka Hospital by Doctor Shynal Chand and Doctor Chand's findings were as follows:*

- *Left arm both upper and lower bruised noted with swelling at lower arm;*
- *Right arm bruised noted with swelling at lower arm;*
- *Right calf tenderness with bruises;*
- *Left gluteal region and thigh bruises noted*

*Other observations*

- *Multiple scratch and bruises noted at back*

*Professional Opinion*

- *Injury recently acquired*

8. *The matter was reported to the police. The accused was arrested and caution interviewed.*

9. *The accused already had an existing matter at the Sigatoka Magistrate's Court which is CF 587/17 where he was ordered by the Court to keep the peace and be on good behaviour for a period of 12 months.*

10. *Accused breached this order by assaulting PW1.*

3. After considering the summary of facts read by the State Counsel which was admitted by the accused, this court is satisfied that the accused entered an unequivocal plea of guilty on his freewill.

4. This court is also satisfied that the accused has fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of both the offences.

5. In view of the above, this court finds the accused guilty as charged and he is convicted for the two offences.

6. Both counsel filed their written submissions, victim impact report and mitigation for which this court is grateful.
7. The following personal details and mitigation have been presented by the counsel for the accused:
  - a) The accused is 46 years of age;
  - b) Married with 3 children eldest being 12 years of age;
  - c) He is a subsistence farmer and a small shopkeeper in his village;
  - d) Sole bread winner of the family;
  - e) Pleaded guilty at the earliest opportunity and is remorseful for what he had done;
  - f) Has apologised to the victim through the village headman;
  - g) Seeks forgiveness and leniency of the court and also promises not to reoffend, it was not a premeditated attack on the victim;
  - h) No permanent injuries caused to the victim;
  - i) The accused is currently employed as a construction worker.
8. The counsel for the accused in his mitigation submits that the victim provoked the accused which deprived him of his self-control. Counsel further submits that the accused assaulted the victim because she would not leave the house she was in and was challenging his authority to chase her from his family house. Counsel seeks a suspended sentence.

### **TARIFF**

9. The maximum penalty for the offence of act with intent to cause grievous harm is life imprisonment. The maximum penalty for the offence of disobedience of lawful orders is 2 years imprisonment.

10. The tariff for the offence of act with intent to cause grievous harm is an imprisonment term between 2 years to 5 years depending on the type of weapon used(see *State v Mokubula [2003] FJHC 164: HAA 0052 of 2003 (23 December, 20013)*).
11. There is no tariff for the offence of disobedience of lawful orders, in my view a suspended sentence to 1 year imprisonment depending upon the circumstances of the offending is an appropriate sentence for this offending.

### **AGGRAVATING FACTORS**

12. The following aggravating factors apply to this case:

- a) Unprovoked attack

Contrary to what the counsel for the accused submitted in his written submission the attack on the victim was unprovoked. The summary of facts admitted by the accused supports this, the victim was cleaning the house when the accused walked in, and started questioning the victim as to why she was in the house he then picked a piece of wood and assaulted her.

- b) Domestic Violence

The victim is the accused cousin sister who was at her cousin's house for the purpose of cleaning the house.

- c) Victim Impact Report

According to the victim impact report the victim has been emotionally and psychologically affected as a result of the incident that she has to keep away from the accused, and is fearful of walking and staying alone.

13. In this case an object in the form of a wood was used by the accused. As a matter of principle wounding or injuring another with a weapon or an object should almost immediately attract a custodial sentence. The offending is further aggravated since it is a product of domestic violence. As per the Fiji Police Medical Examination Form the victim was hospitalised since fractures were also noted on the left and right ulnar.
14. In *State v Kailoma* [2018] FJHC 763; HAC46.07 & HAC63.2017 (21 August 2018) Goundar J emphasized the significance of increasing severity in sentencing in serious family violence cases as follows:

*“The courts will never condone family violence. Family violence must be denounced. The primary purpose of sentence is deterrence, both special and general. Custodial sentence is inevitable in cases where a weapon is used to inflict physical injuries to the victim”.*
15. Considering the objective seriousness of the offence of act with intent to cause grievous harm committed I take 2 years imprisonment (lower range of the tariff) as the starting point, for the aggravating factors I increase the sentence by 3 years bringing the total to 5 years imprisonment. For the mitigation I further reduce the sentence by 6 months.
16. The accused does not receive any discount for good character since he has a previous conviction for common assault CF 587/17 Magistrate’s Court at Sigatoka and for breach of bail condition. The accused was put on a good behaviour bond in respect of CF 587/17 for 12 months on 25<sup>th</sup> July, 2018 and in a short time thereafter on 3<sup>rd</sup> November, 2018 the accused breached the lawful orders of the court. The interim sentence is now 4½ years. For the early guilty plea I reduce the sentence by 1½ years since I consider the accused is genuinely remorseful, the sentence is now 3 years imprisonment. The accused

was remanded for 7 days, in accordance with section 24 of the Sentencing and Penalties Act the remand period is deducted as a period of imprisonment already served.

17. The final sentence for the offence of act with intent to cause grievous harm is 2 years 11 months and 23 days imprisonment.
18. For the offence of disobedience of lawful orders the accused is sentenced to 6 months imprisonment. Considering the totality principle of sentencing both the sentences are to be served concurrently.
19. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who was the accused's cousin sister compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which was just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
20. Under section 26 (2) (a) of the Sentencing and Penalties Act his court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment.
21. In order to suspend the sentence of the accused this court has to consider whether the punishment is justified taking into account the seriousness of the offences committed by the accused. In this regard the guidance offered by Goundar J. in *Balaggan vs. State, Criminal Appeal No. HAA 031 of 2011 (24 April, 2012)* at paragraph 20 is helpful:

*“Neither under the common law, nor under the Sentencing and Penalties [Act], there is an automatic entitlement to a suspended sentence. Whether an offender's sentence should be suspended will depend on a*

*number of factors. These factors no doubt will overlap with some of the factors that mitigate the offence. For instance, a young and a first time offender may receive a suspended sentence for the purpose of rehabilitation. But, if a young and a first time offender commits a serious offence, the need for special and general deterrence may override the personal need for rehabilitation. The final test for an appropriate sentence is whether the punishment fits the crime committed by the offender?"*

22. Taking into account the fact that the offences committed are serious which happened in a domestic situation by the use of an object a suspended sentence is not appropriate.
23. Under section 18 (1) of the Sentencing and Penalties Act, I impose 1½ years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and also meet the expectations of the community which is just in the circumstances of this case.
24. Mr. Nasevani you have committed a serious offence against your cousin sister by using a wood causing serious injuries although not permanent. It was a senseless attack on a defenceless person.
25. It is obvious to me that you have a problem with controlling your anger in this regard it is recommended that the Corrections Centre facilitate an anger management course for you.
26. In summary I pass sentence of 2 years 11 months and 23 days imprisonment with a non-parole period of 1½ years to be served before the accused is eligible for parole. Due to the closeness of the relationship between the accused and the victim a permanent non-molestation and non-contact orders are issued to protect the victim under the Domestic Violence Act.



27. 30 days to appeal to the Court of Appeal.

  
**Sunil Sharma**  
**Judge**



**At Lautoka**

21 August, 2019

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Messrs. Bale Law, Suva for the Accused.**