

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 377 of 2019
[CRIMINAL JURISDICTION]

STATE

V

APISAI TAMANIKOROLEVU

Counsel : Ms. M. Konrote for the State
Ms. L. Manulevu and Ms. R. Nabainivalu for the Accused

Hearing on : 22 - 25 February 2021

Judgment on : 26 February 2021

Sentenced on : 26 February 2021


SENTENCE

1. Apisai Tamanikorolevu, you stand convicted of the offence of assault causing actual bodily harm contrary to section 275 of the Crimes Act 2009 (“Crimes Act”).
2. To state the facts very briefly; on 09/11/19, you caused actual bodily harm to a police officer whilst at a police post. You went to the relevant police post in relation to a dispute you had with your de facto wife. You ended up having a scuffle with the police officer who was on duty at that police post. You used a kitchen knife during that scuffle and you caused an abrasion of 0.5mm on the left shoulder of the police officer near his armpit with that knife. The evidence did not establish beyond reasonable doubt that the said officer was at that time properly executing his duties as a police officer given the doubt that surfaced that the said officer may have assaulted you first. That was the reason you were found guilty of the offence under section 275 of the Crimes Act but not section 277.

3. It was submitted that you are 29 years old and you were an IT Technician, doing private jobs. You were looking after you mother.
4. The maximum sentence for the offence under section 275 of the Crimes Act is an imprisonment term of 5 years. The sentencing tariff that is generally applied for this offence is a term of 03 months to 12 months.
5. I would consider the following circumstances as the aggravating factors in this case;
 - a) The offence was committed inside a police post;
 - b) The victim was a police officer; and
 - c) The use of a knife to commit the offence.
6. The only mitigating factor is that you are a first offender.
7. Considering all the circumstances of the offending as revealed in evidence, the aforementioned aggravating factors and the mitigating factor, and the maximum penalty for the offence, I have decided to impose a sentence of 02 years imprisonment. I would use my discretion not to fix a non-parole term in view of the provisions of section 18(3) of the Sentencing and Penalties Act.
8. You have spent a period of 01 year, 03 months and 17 days in custody in view of this matter. The said period will be considered as time already served in terms of section 24 of the Sentencing and Penalties Act.
9. In the result, you are hereby sentenced to a term of imprisonment of 02 years. In view of time spent in custody the time remaining to be served is 08 months and 13 days.

10. Having considered the facts of this case and the fact that you are a first offender, I have decided to suspend the remaining term of the sentence. Accordingly, the remaining term of the sentence imposed on you shall be suspended for a period of 03 years. The court clerk will explain you the effects of a suspended sentence.
11. Accordingly, you will be released today. You are thoroughly warned and advised to hereafter abide by the laws of this country and to lead a good life.
12. Thirty (30) days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused