

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 173 of 2020

STATE

vs.

SAMISONI NAQELO

Counsel: Mr. J. Singh for the State
Ms. R. Nabainivalu for Accused

Date of Hearing: 31st July 2023
Date of Closing Submission: 02nd August 2023
Date of Judgment: 20th September 2023
Date of Sentence: 26th September 2023

SENTENCE

1. The Director of Public Prosecution charged you with one count of Assault Causing Actual Bodily Harm, contrary to Section 275 of the Crimes Act and two counts of Rape, contrary to Section 207 (1) and (2) (a) and Section 207 (1) and (2) (b) of the Crimes Act. You pleaded guilty to Assault Causing Actual Bodily Harm, though you pleaded not guilty to the two counts of Rape. On the 20th of September 2023, the Court found you not guilty of two counts of Rape and acquitted of the same.

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2. Having satisfied that you have fully comprehended the legal effect of your plea and that it was voluntary and free from force and influence, the Court convicted you of the said offence of Assault Causing Actual Bodily Harm on the 20th of September, 2023.
3. According to the Summary of Facts, you punched the Complainant on her head, neck and back after an argument with her at your farm on the 5th of June 2020. You were in a domestic relationship with the Complainant at that time.
4. There are a few approaches in setting the tariff for the Assault Causing Actual Bodily Harm. In **State v. Tugalala (2008) FJHC 78; HAC 025/2008S**, the High Court found the tariff for Assault Causing Actual Bodily Harm ranges from an absolute or conditional discharge to 12 months imprisonment. In **State v Qalobula - Sentence [2020] FJHC 255; HAC100.2018** (the 3rd of April 2020), Hamza J found the tariff is 3 months to 12 months imprisonment. Aluthge J in **State v Kumar - Sentence [2019] FJHC 544; HAC46.2019** (the 22nd of May 2019) found that the tariff for the offence of Assault Causing Actual Bodily Harm when committed in a domestic setting, ranging from 6 months to 18 months.
5. You have not used any weapons or greater force in committing this crime. However, you have breached the Complainant's trust in you as her partner by committing this crime.
6. You are a first offender and are entitled to a substantive discount.
7. Considering these reasons, I sentence you to 6 months imprisonment for this offence of Assault Causing Actual Bodily Harm contrary to Section 275 of the Crimes Act. Having considered your age, your previous good character and the level of harm in this offence, I suspend your sentence for a period of two years.

9. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a Permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Sections 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until this Court or any other competent Court is varied or suspended. Furthermore, if you breach this restraining order, you will be charged and prosecuted for an offence under Section 77 of the Domestic Violence Act.
10. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe", written over a horizontal dotted line.

Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

26th September 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.