

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

Criminal Case No: 312 - 2018

STATE

-v-

JOSEVA NAINIMA

For Prosecution: WPC Chand A. [Police Prosecution]
Accused: In Person, Deemed To Have Waived His Right To Counsel
Date of Sentence: 10th May 2019

SENTENCE

BACKGROUND

1. **JOSEVA NAINIMA**, you have pleaded guilty to the following charge:

Statement of Offence

ASSAULT OCASSIONING ACTUAL BODILY HARM: Contrary to section 275 of the *Crimes Act of 2009*.

Particulars of Offence

JOSEVA NAINIMA on the 4th day of November, 2018 at Togovere, Ra in the Western Division assaulted **SITERI NAITOMU**.

2. I am satisfied that your guilty plea or admission of guilt is voluntary and that you understand the consequence of your plea. The evidence also supports your guilty plea. I have convicted and found you guilty accordingly.
3. The victim here is your 22 year old wife. She questioned you about missing money. You two argued. You then hit her with a timber and a rope. Earlier that day you burned her clothes as you did not want her attending church.
4. The matter was reported. You were interviewed by police. You admit hitting your wife with a piece of timber and a rope. You hit her feet using both the weapons. You also kicked her. You only recall kicking her leg. You denied using excessive force.

5. Your wife was medically examined about 5 hours later. The medical officer amongst other things, observed that there was an abrasion and a mild swelling to her right leg and her head was swelling and was tender.
6. You are a first offender.
7. You have not spent any time in remand.
8. You are 28 years old. You seek forgiveness. You are still with your wife. She has just given birth and the child is 4 to 5 months old. You are the sole breadwinner. You promise not to reoffend.

LAW

9. The maximum sentence that is imposable by law for the offence of assault occasioning actual bodily harm is up to 5 years imprisonment.

TARIFF

10. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence and for more serious cases to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [see for example State v Kalouteretere - Sentence [2018] FJHC 845; HAC 270. 2018 (12 September 2018).

STARTING POINT

11. Considering the circumstance of your case, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

12. There was a domestic relationship in existence. This was your wife.
13. He used weapons.
14. You hit her multiple times. I accept that your violence was not excessive, but it is still violent enough to cause her injuries.
15. Your sentence is increased to 10 months imprisonment.

MITIGATION

16. You will get some reduction for having a past good history.
17. I accept that you are remorseful.
18. I accept that you must have been frustrated at the time.
19. You have cooperated with police.
20. You have a family to look after.
21. Your sentence is reduced to 5 months imprisonment.

GUILTY PLEA

22. Your guilty plea is early and I will reduce your sentence to 3 months and 1 week imprisonment.

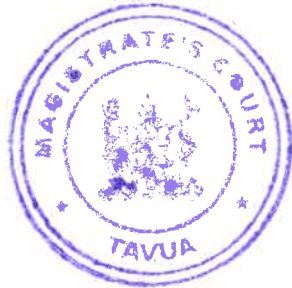
SUSPENSION

23. I can suspend your 3 months and 1 week imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.
24. 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.
25. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

26. You are sentenced to 3 months and 1 week imprisonment.
27. I will not reduce your imprisonment term any further as you did not spend any time in remand.
28. I will suspend 2 months imprisonment for the next 18 months.

29. Commit any other offence in the next 18 months and this term held in waiting maybe activated.
30. You will serve 1 month and 1 week imprisonment, immediately.
31. The DVRO with section 27 standard non-molestation conditions which was imposed and explained to you on the 12th of November 2018 is made final. You are to behave towards your wife. You breach any of these conditions and you may be charged and prosecuted for another offence. You can take a copy of the order after this.
32. 28 days to appeal.



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

Dated at TAVUA this 10th day of May 2019