

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

Criminal Case No: 116- 2019

STATE

-v-

JONE DELAI

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Mr. Samy A. [Legal Aid Commission]
Date of Sentence : 18th August 2020

SENTENCE

BACKGROUND

1. **JONE DELAI**, you have pleaded guilty to the following charge:

Statement of Offence

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

Particulars of Offence

JONE DELAI on the 2nd day of May, 2019 at Wainivoce, Tavua in the Western Division assaulted **LITIANA MALUMUSIVI** thereby causing her actual bodily harm.

2. I am satisfied that your guilty plea and admission in court is voluntary and that you understand the consequences. The evidence tendered in support of your admission also supports your guilty plea.
3. I find you guilty and convict you of the charge.
4. The victim here is your 25 year old wife. She left home with your 3 children and went to stay with an aunty. Your wife left as she had differences with your mother. You returned from work and then went to fetch your wife. You told your wife to go back.

You used a belt to hit her, you pushed her from behind, you slapped her telling her to go and apologise to your mother. You walked her for about half a kilometre doing this to your wife.

5. Your wife, the victim was medically examined about an hour later after your violence. Amongst other things, the medical officer observed that her jaw was mild and tender, there was bruising to her shoulder, there was bruising to her thigh, bruising to her buttocks and her leg.
6. The matter was reported and you were arrested by police. They interviewed you under caution. You admitted being at work when your mother called you saying that your wife had left with the children taking some money. You went and brought your wife and children. You then told your wife you wanted to talk. You said that you wanted to talk to her about using \$25 of the family money and for spreading gossip resulting in your sister in law running away. You told your wife that you will belt her. You took out your belt and hit her. You belted her thighs and slapped her on the neck. You chased her with a Sasa broom to go and apologise to your mother. You then returned home and sought an apology from your wife for beating her. You wanted to teach your wife a lesson.
7. You are a first offender.
8. You have not spent any time in remand.
9. You are 28 years old. You have 4 children. You are employed as a logging officer earning \$180 weekly. You are the treasurer of your family unit and the victim had taken \$1,640 from the fund. When you questioned her, she replied harshly to you. You lost your temper. You hit the victim out of frustration. You regret your lack of self-restraint. You are remorseful for your actions. You seek mercy and forgiveness. You are the sole breadwinner. Your wife is diagnosed with cancer.
10. Your wife, the victim was present in court on the 31st of January 2020 and verifies that you have apologised to her. She was 8 months pregnant at the time in January and will give birth in March 2020. She accepts that she took some money but she has returned it.
11. A letter from Church Pastor has been tendered as part of your mitigation. The Pastor verifies that the parties have reconciled and are living together.

LAW

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

TARIFF

13. 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

14. Considering the objective seriousness of the offence, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

15. The victim is your wife or a domestic relationship existed.
16. The beating would have taken several minutes. You marched her for half a kilometre inflicting violence on her. It was torture in-order that she apologizes.
17. You used a weapon, in this case, a belt.
18. You hit her several times causing those injuries to her thigh, buttocks and legs
19. I increase your sentence to 10 months imprisonment.

MITIGATION

20. You are a first offender.
21. You have cooperated with police when interviewed.
22. You have a family to support.
23. You are remorseful.
24. I accept that you were upset and emotional at the time.

25. Your sentence is reduced to 6 months imprisonment.

GUILTY PLEA

26. You have pleaded guilty early and I will reduce your sentence to 4 months imprisonment.

SUSPENSION

27. I can suspend your imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.
28. 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.
29. Your sentence will be aimed at deterrence and is to punish you adequately.

SENTENCE

30. No further reduction will be made to your sentence as you did not spend any time in remand.
31. You are sentenced to 4 months imprisonment or to 112 days imprisonment.
32. This will only be suspended in part.
33. 74 days of your imprisonment term will be suspended for the next 2 years.
34. Do not commit any other serious offence or any offence punishable with imprisonment in the next 2 years or you risk this 74 days imprisonment that is held in waiting being activated.
35. You will serve 38 days imprisonment immediately.
36. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation which was imposed on you and explained to you on the 6th day of May 2019 is made final. This is to protect the victim, your wife forever until the order is cancelled or varied.

37. Do not breach any condition of this DVRO or you may be charged with another offence.
38. 28 days to appeal.



A handwritten signature in blue ink, appearing to be "L. Fotofili".

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

Dated at Tavua this 18th day of August, 2020