

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 241 - 2018

STATE

-v-

GABRIELI RATU

Before : RM Fotofili L.
For Prosecution : Inspector Lenaitasi S. [Police Prosecution]
Accused : In Person
Date of Sentence : 10th January 2020

SENTENCE

1. **GABRIELI RATU**, you initially pleaded not guilty. You changed your mind and eventually pleaded guilty to the following charge:

Count 1

Statement of Offence

INDECENT ASSAULT: Contrary to section 212 (1) of the **Crimes Act 2009**.

Particulars of Offence

GABRIELI RATU, on the 20th day of May, 2018 at Tavualevu Village, Tavua in the Western Division, unlawfully and indecently assaulted **Sainimili Barisita**.

Count 2

Statement of Offence

BREACHING BAIL CONDITION: Contrary to section 26 (1) of the **Bail Act. No 26 of 2002**.

Particulars of Offence

GABRIELI RATU, on the 20th day of May, 2018 at Tavua in the Western Division being bailed by the Tavua Magistrate Court vide CF 89 – 18, 92 – 18, breached by not complying with the condition imposed by the court.

2. I am satisfied that your guilty plea and admission in court is voluntary and that you understand the consequences.
3. I have also taken judicial notice of the records in your other file. For example, Tavua CF 89 – 18. In that case you are charged with unlawful possession of illicit drugs [cannabis sativa] amounting to 2.2 grams. You were granted bail in that case on the 27th of March 2018 and one of your conditions of bail was not to re-offend.
4. You reoffended when you committed the offence of indecent assault (Count 1).
5. There was no reasonable cause for breaching your condition of bail.
6. I find you guilty and convict you of both counts in the charge accordingly.
7. The 29 year old female victim is a fellow villager. She was sleeping in her bedroom with her youngest daughter. The bedroom light was on. It was around 3am when the defendant entered the bedroom. He pulled aside her blanket and pulled up her skirt to her abdomen. When the victim woke up she saw the defendant on the bed staring at her. The victim recognised the defendant and asked the defendant what he was doing there. The defendant kept staring and did not say anything. The defendant left the room and told the victim not to tell anyone what happened. The victim later relayed what happened to her mother who was sleeping in another room.
8. After the matter was reported, the defendant was interviewed under caution by police. Generally, he refused to answer the questions put to him.
9. I sentenced you the defendant in Tavua CF 292 – 18 for one count of damaging property and one count of breaching your bail condition by consuming alcohol. You were sentenced on the 23rd of November 2018. The offences were committed on the 7th of October 2018. That case was committed after this case and so I will treat you as a first offender.
10. You are fortunate to have been bailed considering the various cases you had before me. Your bail was cancelled and that was for good reason. You have failed to reappear when bailed and you have several cases pending and that arose while you were on bail. See for example Tavua CF 240 – 18 [absconding bail] , CF 151 – 19 [drunk and disorderly], and CF 17 – 18 [assault occasioning actual bodily harm] .
11. I will not consider any time you have spent in remand as time served.

12. You seek forgiveness. You regret wasting the court's time. You promise not to reoffend. You have learnt while in remand and that you wish to work and support your family. You have a daughter who is 1 year and 8 months old. You aim to be a good person. You apologize for not pleading guilty earlier.
13. Your wife was present in court on the day you pleaded guilty and she verifies that she has a child with you. She runs a small business which is a source of income.

MAXIMUM SENTENCE

14. For indecent assault, the maximum punishment that is imposable is up to 5 years imprisonment.
15. The maximum sentence that is imposable by law for absconding or breaching a bail condition can be a fine of up to \$2,000 and or imprisonment of up to 12 months.

SENTENCING RANGE or SENTENCING TARIFF

16. The sentencing tariff for indecent assault is between 12 months to 4 years imprisonment [**Rokota v The State** [2002] FJHC 168; HAA0068J.2002S (23 August 2002)].
17. The sentencing tariff for breaching a bail condition and absconding bail are the same. It is between a suspended sentence to 9 months imprisonment [see for example - **Ulumatai v State** [2019] FJHC 114; HAA90.2018 (22 February 2019)].

Starting Point

18. Considering the objective seriousness of the offence, I select the following starting points:

Count 1: Indecent Assault – 13 months imprisonment

Count 2: Breach of Bail - 1 month imprisonment

Aggravating Factors

19. You entered the house and bedroom of the victim.
20. This was in the morning.
21. You are from the same village.
22. You breached your bail condition relatively quickly [within 2 months]. This was brazen and defiant.

Count 1: Indecent Assault - your sentence is increased to 2 years imprisonment.

Count 2: Breach of Bail – your sentence is increased to 2 months imprisonment.

Mitigating Factors

23. You were a first offender when you committed the offences.
24. You have a family to support.
25. I am not persuaded that you are truly remorseful. However, I am persuaded that you have genuine aspirations for your family.

Count 1: Indecent Assault - your sentence is reduced to 1 year and 4 months imprisonment.

Count 2: Breach of Bail – your sentence is reduced to 1 month imprisonment.

GUILTY PLEA

26. Your guilty plea is not early. You say that you are a changed man in response to my enquiry with you as to why you did not plead guilty earlier.
27. Some discount will be given to you for pleading guilty nonetheless.

Count 1: Indecent Assault – your sentence is reduced to 10 months and 14 days imprisonment.

Count 2: Breach of Bail – your sentence is reduced to 18 days imprisonment.

DISCRETION

28. I can suspend your sentence whether in whole or in part pursuant to section 26 (1) and (2) (b) of the Sentencing and Penalties Act 2009 if your sentence does not exceed 2 years imprisonment.
29. I am also mindful of section 4 of the Sentencing and Penalties Act 2009 when considering your sentence in this case.
30. I place emphasis on the community's denunciation of this type of offending and the need for deterrence when sentencing you.

SUMMARY

31. As I have explained earlier, no time spent in remand will be considered as time served.
32. Your sentence is as follows:

Count 1: Indecent Assault – 10 months and 14 days imprisonment

This will be suspended in part. You will serve 5 months and 14 days imprisonment immediately.

The remaining 5 months imprisonment is suspended for the next 3 years. Do not commit any other offence [punishable with imprisonment] in the next 3 years. If you do, you risk this 5 months imprisonment held in reserve being activated.

Count 2: Breach of Bail – 18 days imprisonment

**I refuse to suspend this imprisonment term whether in part or in whole.
You will serve this 18 days imprisonment term immediately.**

33. I am aware of your sentence passed earlier on you today in Tavua CF 240 -18 [absconding bail].

34. I am mindful of the totality principle and one transaction rule.
35. **You will serve your sentence for Count 1 and Count 2 consecutive to each other and consecutive to any other sentence.**
36. I am aware that your sentence for indecent assault is below the recommended tariff but your sentence is reflective of your circumstance and the circumstance of the offence in this case.
37. **I am satisfied that a domestic relationship exists. I impose and finalise a domestic violence restraining order [DVRO] with section 27 standard non-molestation conditions on you for the benefit and protection of the victim.**
38. Do not breach any of the condition of the DVRO or misbehave towards the female victim. If you do, you may be charged and prosecuted for another offence.

28 days to appeal.



Dated at Tavua this 10th day of January, 2020

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Lisiate T.V. Fotofili

Resident Magistrate