

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 270 - 2018

STATE

-v-

AJAY ACHARI

Before : RM Fotofili L.
For Prosecution : IP Lenaitasi S. [Police Prosecution]
Accused : In Person, Waived Right To Counsel
Date of Sentence : 11th February 2020

SENTENCE

BACKGROUND

1. **AJAY ACHARI**, you have pleaded guilty to the following charge:

Statement of Offence

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

Particulars of Offence

AJAY ACHARI on the 22nd day of September, 2018 at Maqere, Tavua in the Western Division assaulted **SHALINI CHAND** thereby occasioning 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. During the course of the proceedings, it surfaced that you had some mental health history. It was opined that you are bipolar. I have heard from the doctor and I have heard from you and considering the history and totality of the evidence in this case, I am satisfied that you are capable of understanding the proceedings [fit to plead]

and that you were not suffering from some mental impairment or challenge at the material time [presumption remains that you were sane].

4. I find you guilty and convict you of the charge.
5. The victim here is your 41 year old wife. You questioned her whether she was having an affair with your brother. You slapped her three times on the face, once on her head, you punched the back of her neck and you twisted her hand. Your wife and your daughter wanted to escape from the house but you locked them inside the house and threatened to kill them if they escaped. They were locked inside your house for about 5 hours until some males passing by were waved and they came to aid your wife and daughter. This made you open the door.
6. Your wife, the victim was medically examined about 8 hours later after your violence. Amongst other things, the medical officer observed that her right arm was swollen, she had a swollen eye [black eye], there was a cut to her lower lip and bruising to her back and right leg.
7. The matter was reported and you were arrested and then interviewed under caution by police. You questioned your wife and she told you that a man had come to the house and if she wants a baby, then it was none of your business or it was not your problem. You admitted slapping your wife three times. You said that you were the sole breadwinner and she was not to speak like that to you. You said that you closed your wife inside the house so your wife would not harm herself. You finally told her to go after your wife called some boys. You admit that the injuries on her face were most likely caused when you slapped her and when she tried to escape.
8. You are not a first offender. You have a previous conviction for assault causing actual bodily harm in 2011.
9. You have spent no time in remand.
10. You are 39 years old. You are looking after your two children. One of them will be attending University. You are the sole breadwinner, working for a scrap metal business.

LAW

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

TARIFF

12. 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

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

AGGRAVATING FEATURES

14. The victim was your wife or a domestic relationship existed.
15. You caused several injuries to her as a result of your actions as evidenced in the injury to her arm, face, head, back and leg.
16. You constrained your wife and daughter inside the home and threatened them with death if they left. You kept them inside the house for 5 hours.
17. I increase your sentence to 11 months imprisonment.

MITIGATION

18. You have a family to support.
19. You are remorseful.
20. I accept that some passion must have existed at the time.
21. You have cooperated with police during your interview.
22. Your sentence is reduced to 6 months imprisonment.

GUILTY PLEA

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

SUSPENSION

24. 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**.
25. 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.
26. Your sentence will be aimed at deterrence and is to punish you adequately.

SENTENCE

27. No further time will be deducted from your sentence as you did not spend any time in remand.
28. You are sentenced to 4 months imprisonment.
29. I am inclined to suspend this but only in part.
30. 2 months of your imprisonment term is suspended for the next 3 years.
31. You are not to commit any other offence punishable with imprisonment in the next 3 years or you risk this 2 months imprisonment held in waiting being activated.
32. You will serve 2 months imprisonment immediately.
33. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation which was imposed on you and explained to you on the 25th of September 2018 is made final.
34. The circumstance in this case certainly calls for the protection of all your immediate family members. The DVRO will now be in place for the protection of both your children and your wife.
35. The court registry is to obtain the names of all the protected persons and include their names in the final DVRO.

36. Prosecution is to advise all the protected persons of the DVRO.
37. Do not breach any condition of this DVRO Mr Ajay Achari or you may be charged with another offence.
38. The court registry is to advise or update the Tavua Hospital, Mental Health Unit of this sentence no later than 7 days from today as they normally provide medication to the defendant or his family and to keep them apprised of the defendant's situation.
39. 28 days to appeal.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Rakiraki this 11th day of February, 2020