

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 23 - 2019

STATE

-v-

APIMELEKI LOTO

Before : RM Fotofili L.
For Prosecution : Inspector Lenaitasi S. [Police Prosecution]
Accused : Mr. Samy A. [Legal Aid Commission]
Date of Sentence : 25th February 2020

SENTENCE

BACKGROUND

1. **APIMELEKI LOTO**, 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

APIMELEKI LOTO on the 24th day of January, 2019 at Nasomo, Vatukoula in the Western Division, assaulted (punched) **RANADI TOKAMATA** 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 44 year old wife. It was about 11pm when you called your wife to open the door. You were outside. You heavily smelt of liquor and was

staggering. After your wife opened the door, you threw a punch on her face which landed on your wife's left eye, injuring her. You left thereafter.

5. Your wife was medically examined about 12 hours later after your violence. The medical officer amongst other things, observed that her left eye region was tender and there was bruising to that eye region as well.
6. The matter was reported to police and you were arrested and then interviewed under caution. You admitted that you went drinking and when you returned home, your wife was not there. You went to her father's house and you called her. She answered and came to you. You said that she swore at you saying 'sonalevu' or big arse. You were angry. You admitted being drunk. You punched her. You punched her once. You don't know where the punch landed.
7. You are not a first offender. You have a previous conviction for common assault in Tavua CF 200 – 14. You were drunk and you kicked the female victim [not your wife] on the hip. The offence was committed on the 16th of November 2014.
8. You have not spent any time in remand.
9. You are 44 years old. You are married with a 5 year old daughter. You have some prospects and you may start full time work soon in a mining company. You are the sole breadwinner. You support your parents. You are remorseful and seek forgiveness. You have reconciled with the victim. You seek another chance.

LAW

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

TARIFF

11. 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

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

AGGRAVATING FEATURES

13. A domestic relationship was in existence. This was your wife.
14. You were drunk at the time.
15. You punched her eye.
16. I increase your sentence to 7 months imprisonment.

MITIGATION

17. You have a family to support.
18. I accept that you are remorseful.
19. You have cooperated with police during your interview.
20. I am certain that emotions must have been high at the time.
21. Your sentence is reduced to 4 months imprisonment.

GUILTY PLEA

22. You have pleaded guilty early and I will reduce your sentence to 2 months and 16 days imprisonment.

SUSPENSION

23. 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** if your sentence is 2 years and below.

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 is to punish you adequately.

SENTENCE

26. You have not spent any time in remand and so your sentence will not be reduced any further.
27. You are sentenced to 2 months and 16 days imprisonment.
28. This imprisonment term will only be suspended in part.
29. 1 month imprisonment is suspended for the next 2 years. Do not commit any other offence punishable with imprisonment in the next 2 years or you risk this 1 month imprisonment being activated.
30. You will serve 1 month and 16 days imprisonment, immediately.
31. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation conditions which was imposed and explained to you on the 28th of January 2019 is made final.
32. You are to continue behaving towards your wife. Do not misbehave or breach any of those DVRO condition as you may be charged and prosecuted for another offence.
33. I am aware of the sentence imposed on you earlier today in your Tavua CF 151 – 18 common assault case.
34. I am mindful of the totality principle and one transaction rule, I order that you serve your sentence consecutive to the sentence imposed in that file.
35. 28 days to appeal.



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Lisiata T.V. Fotofili
Resident Magistrate

Dated at Tavua this 25th day of February, 2020.