

IN THE MAGISTRATES' COURT OF FIJI
AT NADI
[CRIMINAL JURISDICTION]

Criminal Case no: CF 468/2024

STATE

v.

INOKE NAWANIVANUA

For Prosecution: DPP – Ms Navunicagi

For Accused: In Person

Date of Sentence: 11th October, 2024

SENTENCE

Background

1. INOKE NAWANIVANUA [hereinafter referred to as 'Accused'] you were charged with **Grievous Harm**: contrary to section 258 of the Crimes Act 2009. The particulars are as follows;

Statement of Offence

Grievous Harm: Contrary to Section 258 of the Crimes Act 2009.

Particulars of Offence

INOKE NAWANIVANUA on the 7th day of October, 2023 at Nadi in the Western Division unlawfully and maliciously does grievous harm to Anaseini Bole.

2. This offence is an indictable offence (triable summarily) and you elected to be tried in the Magistrate Court.
3. The victim is your wife so the offending falls under the domestic violence offence.
4. You received a full set of disclosures from the State. You preferred the English language.

5. You understood the charge that was read and explained to you. You pleaded guilty to the charge on your own free will. But only after the state informed the court that they would proceed with the charge. The charge was also amended prior to the plea being taken in terms of the complainant's name changing from "Anaseini Bola" to "Anaseini Bole".
6. You admitted the Summary of Facts that was read to you in the English language in Court. The brief facts are as follows:
 - a. On 7th October, 2023, the complainant was taking part in the Fiji Airport volleyball tournament representing the Border Police Women's Team. She was at the ground around 8am.
 - b. At about 10.47am she checked her phone and saw that the accused had left several missed calls on her phone. When she returned his call the accused informed her that while trying to withdraw at the BSP ATM his card got blocked as he entered the wrong pin number.
 - c. The Complainant then logged into banking online and transferred money from the accused account into her account.
 - d. The Accused then came and picked up \$100.00 from the complainant.
 - e. While returning home the couple had an argument to which they decided to talk it over at home.
 - f. At about 3pm after the games, the complainant returned home. When she reached home she noticed that the accused was at home.
 - g. The accused told her to pack her clothes and leave. The complainant refused to leave as she was worried about her 6-month old child.
 - h. Whilst she was standing in the bedroom the accused came and punched the complainant on the face. She fell unconscious and only woke up to the accused washing the blood from her mouth.
 - i. The accused then took the complainant to Nadi Hospital, who was then referred to Lautoka Hospital where she was admitted at the Trauma Ward. As per the Medical Report the doctor noted the following injuries in the specific medical findings;
 - a) Right facial swelling secondary to trauma to face (punched)

- b) Open wound fracture between tooth 32 & 33
 - c) Active bleeding from fracture sight
 - j. The accused was then arrested and interviewed where he made full admissions.
 - k. He was thereafter charged for one count of Grievous Harm.
7. The medical report of the victim and the record of interview of the accused, was tendered as part of prosecution evidence via the summary of facts.
8. Being satisfied with your guilty plea and admission to the Summary of Facts, the Court finds you guilty you as charged.

Statutory Sentence and Tariff

9. The statutory sentence for the offence of *Grievous Harm* is 15 years imprisonment
10. The accepted tariff for Grievous Harm is between 2 to 6 years imprisonment. The starting point will depend on the severity of harm. (*State v Yasa* [2013] FJHC 101; HAC44.2012 (8 March 2013))

Aggravating and Mitigating Factors

11. The aggravating factors are:
- i. Domestic violence;
 - ii. Minimal provocation on the part of the Complainant when you committed this offence;
 - iii. The assault was committed in front of your 6-month child;
 - iv. The victim amongst other injuries suffered an open wound fracture between tooth 32 & 33;
 - v. You breached the trust of your wife, instead of protecting your wife, you did the complete opposite;
 - vi. The victim had to be admitted for three days.
12. The mitigating factors are:
- i. First offender;
 - ii. Cooperated with police;
 - iii. You helped to take the complainant to the hospital after she regained consciousness;

- iv. You sought forgiveness from the complainant in open court and you have reconciled with the complainant. You still live the complainant and are expecting your second child with her;
- v. The complainant has accepted your apology and stated in court that this is the first time something like this has happened.

13. You being a first offender the court will regard you to be of good character.

14. Your early guilty plea has saved the prosecution and court's time to run a full hearing. Full discount (1/3) to the sentence.

CONVICTION OR NON-CONVICTION

1. On the date of plea, you sought that for a non-conviction to be entered. Doing so, would effectively terminate you from the Fiji Police Force.
2. The factors that need to be considered by the court in exercising its discretion whether to record a conviction or not, have been stipulated under Section 16 (1) of the Sentencing and Penalties Decree, where it states that;

"In exercising its discretion whether or not to record a conviction, a court shall have regard to all the circumstances of the case, including-

- a) The nature of the offence,
- b) The character and past history of the offender; and
- c) The impact of a conviction on the offender's economic or social well-being, and on his or her employment prospects

3. In **State v Batiratu [2012] FJHC 864; HAR001.2012 (13 February 2012)**, the High Court on revision had said that a non-conviction would only be given for morally blameless persons or if there is a technical breach of the law.

In my view, you are not morally blameless neither is this case a technical breach of the law. In my view, giving a non-conviction would not be in the public interest.

As per the recent case of any **Qalodamu v State [2024] FJHC 549; HAA4.2024 (13 September 2024)** stated

"It is essential to provide compelling evidence or facts to the Court establishing that the recording of a conviction certainly affects the Accused's employment prospects if the Accused seeks a fine without a non - conviction. A mere statement that the conviction might affect in such a manner is undoubtedly not sufficient."

Inoke Nawanivanua, you are convicted as charged.

SENTENCE

15. In sentencing you, the Court took into account of the factors outlined in section 4(1) and (2) of the Sentencing and Penalties Act 2009.
16. Taking into consideration the objective seriousness of the offence of Grievous Harm, this Court takes a starting point of 24 months' imprisonment and adds 18 months for the aggravating factors and deducts 8 months for the mitigation factors so the interim sentence is 34 months' imprisonment. Full discount (1/3) for the early guilty plea so the sentence comes to 23 months' imprisonment.
17. I am mindful of section 26 of the Sentencing and Penalties Act 2009 that I have the discretion to suspend a sentence when the final sentence is below 2 years' imprisonment.
18. The Court looks at the sentencing remarks of Goundar J in **Balagan v State** [2012] HAA 31/11S 24 April 2012 at [20] in considering to suspend a sentence:

Whether an offender's sentence should be suspended will depend on a number of factors. These factors no doubt will overlap with some of the factors that mitigate the offence. For instance, a young and a first time offender may receive a suspended sentence for the purposes of rehabilitation. But, if a young and a first time offender commits a serious offence, the need for special and general deterrence may override the personal need for rehabilitation. The final test for an appropriate sentence is – whether punishment fits the crime committed by the offender?' (my emphasise)

19. You committed a serious offence on the victim. As the result of your attack on the victim she fell unconscious and later she had to be admitted after she suffered from an open wound fracture between her tooth 32 & 33, had active bleeding from the fracture sight and her right face was swelling due to her face being punched. The court is of the view that deterrence overrides your rehabilitation.
20. In **State v Tilalevu** [2010] FJHC 258; HAC081.2010 (20 July 2010) Justice Nawana stated:

'...the imposition of suspended terms on first offenders would infect the society with a situation - which I propose to invent as 'First Offender Syndrome' - where people would tempt to commit serious offences once in life under the firm belief that they would not get imprisonment in custody as they are first offenders. The resultant position is that the society is pervaded with crimes. Court must unreservedly guard itself against such a phenomenon, which is a near certainty if suspended terms are imposed on first offenders as a rule.'

21. In a case such as domestic violence, the courts in Fiji have always taken a tough stand. That stand is very clear in **Matai v State [2018] FJHC 25; Criminal Appeal 108.2017Ltk (26 January 2018)**, where his Lordship Justice Sharma said *that the courts in only exceptional circumstances should pass a suspended sentence for cases of assault in a domestic setting. When a lighter sentence is given considering the gravity of the case, the objective of deterrence is not achieved. When this is so, the very complainant that made the report could face perilous consequences.*
22. Considering the circumstance of the case, being a first offender and the manner of the attack on the victim and the reasoning behind your actions, you will serve 5 months' imprisonment and the balance of 18 months' imprisonment is suspended for 3 years. You did not spend any time in remand,
23. The sentence fell below the accepted tariff because the mitigating factors together with one-third (1/3) discount for early guilty plea outweighs the aggravating factors.
24. Local case authorities now state that there must be exceptional circumstances that exist for the court to suspend the sentence, especially in a case of domestic violence.

As a husband, it is one of your responsibilities to protect your family from harm from others. In your case, the harm came from within the family which took the form of you. In my view a deterrent sentence is needed in your case. A suspended sentence in my view is not suitable considering the facts of the case and the injuries that the complainant sustained.

25. The court issues a permanent domestic violence restraining order (DVRO) of section 27 (non-molestation conditions) to protect the victim for the rest of her life.
26. The court officer will now explain to you the meaning of a suspended sentence.
27. You are warned by the court that when you commit another offence within 3 years after serving your imprisonment term, you may be charged for the offence of **Breach of Suspended Sentence** contrary to section 28 of the Sentencing and Penalties Act 2009. If the court finds you guilty and convicts, you then the sentencing court may activate the above sentence.
28. You are warned by the court that when you breach the permanent DVRO (section 27) then you may be charged for **Breach of DVRO** contrary to section 77 of the Domestic Violence Act 2009.

28 days to appeal

11th October, 2024



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Talei Kean
[Resident Magistrate]