

The matter was reported to police and the accused was arrested and brought to Sigatoka police station. In the Accused interview, he admitted threatening the victim as he stated that the property belonged to him. The accused was later charged for criminal intimidation and kept in custody for court.

3. The appellant was convicted and sentenced for 16 months and 9 days on 12.5.2014.
4. This appeal was filed on 19.9.2014 after appellant was granted leave to appeal out of time in HAM 139 of 2014 on 15 September 2014.
5. The ground of appeal against the sentence are:
 - (i) The learned Magistrate erred in law and in principle when he regarded this case as middle range without an objective seriousness of the offence which resulted in a harsh and excessive sentence
 - (ii) The learned Magistrate erred in law and in principle when he took into account as an aggravating factor that the appellant was accompanied by three i-Taukei men whilst he made threats to the complainant which is erroneous and was disputed by the appellant in summary of facts
 - (iii) The learned Magistrate erred in law and in principle when he took into account as an aggravating factor the verbal threats when this is already an ingredient of the offence of criminal intimidation
 - (iv) The learned Magistrate misstated the maximum penalty of criminal intimidation in this case which therefore renders the sentence of 16 months and 9 days imprisonment as harsh and excessive.
6. Both parties have filed written submissions.

1st Ground

7. The learned Magistrate had followed the judgment of Hon. Mr. Justice S. Temo in ***State v Baleinabodua*** and the tariff is from 12 months to 4 years imprisonment. Then he selected a starting point of 2 years considering this case as middle range.
8. In ***Koroivuki v State*** [2013] FJCA 15; AAU 0018.2010 (5th March 2013) the Supreme Court observed the following in selecting the starting point.

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this stage. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls outside either below or higher than the tariff, then the sentencing Court should provide reasons why the sentence is outside the range."

9. Considering the objective seriousness of this offence, I am in agreement with the learned Magistrate and there is no merit in this ground and it fails.

2nd Ground

10. The learned Magistrate had identified the following as the aggravating factors:

"The aggravating factor was the display of knife followed by verbal threats and that you were accompanied by 3 i-Taukei men when you made threats on the complainant whilst he was inside the house you claimed to belong to you and your intent was to forcefully vacate him from the premises. I enhance your sentence by 1 year, increasing your sentence to 3 years imprisonment."

11. The appellant says that he disputed that he was with three i-Taukei men. However, the court record indicated that when above summary of facts was put to the appellant on 17.3.2014, the appellant had admitted the same. In the summary of facts it is stated that:

"On the above date, time and place the Accused with 3 Fijian men entered the compound of the victim was looking after and tried to vacate him."

12. Therefore it was correct for the learned Magistrate to consider this fact as an aggravating factor and there is no merit in this ground and it fails.

3rd Ground

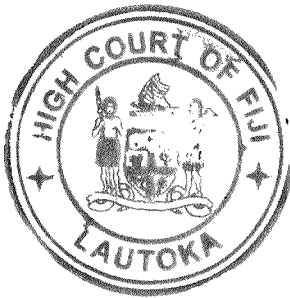
13. The ingredients of the charge are that the accused without lawful excuse threatened the complainant with a cane knife to cause injury to him. According to summary of facts the accused had also abused the complainant. Therefore considering that as an aggravating factor is correct. There is no merit in this ground as well and it fails.

4th Ground

14. The learned Magistrate had identified the maximum punishment for Criminal Intimidation as 5 years. If the threats were to cause grievous harm, death, destruction to any property by fire or to impute chastity to a woman the imprisonment is 10 years. Then it is stated *"As per summary of facts, the maximum penalty in your case is 10 years imprisonment since threat for personal violence to cause grievous harm was made on the life of complainant and you were holding a cane knife with intent to evict him from the house."*

15. There is nothing in the summary of facts that threat for personal violence to cause grievous harm was made on the life of complainant.

16. Although the sentence ordered by the learned Magistrate is within the range he fell into error when he considered facts which were not in the summary of facts and decided that the maximum penalty is 10 years.
17. At the time of hearing of the matter, the counsel for the appellant informed Court that they are only seeking the Court to suspend the balance of the sentence of the accused.
18. The appellant had already served 4 months and 16 days of his sentence. The learned Magistrate decided not to suspend the sentence on the basis that there was great risk that the appellant could have used the cane knife to harm or cause violence to the complainant. Further threats to other people by use of cane knife cannot be taken lightly in rural and cane belt areas because of the significant risks it poses on the life and high frequency of such threats.
19. This background warrants this court to exercise its powers in terms of Section 256 (2) (a) of the Criminal Procedure Decree to vary the operation of the sentence of the appellant.
20. Accordingly the balance of the appellant's sentence is suspended for a period of 3 years. Suspended sentence is explained to the appellant. Appellant to be released from the prison custody today.
21. Appeal allowed. Operation of the sentence varied.




Sudharshana De Silva
JUDGE

AT LAUTOKA
28th October 2014

Solicitors: Office of the Legal Aid Commission for the Appellant
Office of the Director of Public Prosecution for the Respondent