

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 312 of 2018

BETWEEN : STATE

AND : ANIL CHAND

Counsel : Mr M Vosavale for the State
Mr Kumar for the Accused

Date of Plea : 21 February 2020

Date of Sentence Hearing : 16 March 2020

Date of Sentence : 25 March 2020

SENTENCE

1. Anil Chand, you stand convicted for the following counts;

First Count

Statement of offence

Attempted murder contrary to section 44(1) and 237 of Crimes Act

Particulars of offence

Anil Chand on the 25th day of July 2018 at Vatuwaqa in the Central Division, attempted to murder Sonam Chand

Second Count

Statement of offence

Assault causing actual bodily harm contrary to section 275 of Crimes Act 2009

Particulars of offence

Anil Chand on the 25th day of July 2018 at Vatuwaqa in the Central Division assaulted Sheenal Swastika Chand thereby occasioning her actual bodily harm.

2. The information was filed by the Director of Public Prosecutions on 06 September 2019. This case was scheduled for trial from 16 March 2020. However, on 21 February 2020 you indicated to court that you wish to take a progressive approach. Accordingly, you pleaded guilty to both counts.
3. On 10 March 2020 the summary of facts was read out and explained to you. You understood the summary of facts and admitted the same. I am satisfied that your pleas in respect of both counts are unequivocal. Accordingly, you were convicted for attempted murder and for assault causing actual bodily harm.
4. As per the summary of facts you were in a relationship with the first complainant, Sonam Chand and she was your girlfriend. The second complainant, Sheenal Swastika Chand is the first complainant's younger sister. After two years of relationship the first complainant informed you that she no longer wishes to continue the relationship with you. On 25 July 2018 the first complainant returned to the flat after work. The second complainant was also residing with her in the same flat. At around 7 pm the first complainant was

lying on a mattress and you entered her room when she was alone. You sat beside the mattress and started a conversation. Soon it became a heated argument and you suddenly pulled a knife and stabbed the first complainant on her right shoulder. When she resisted, you stabbed her multiple times on her back. The first complainant began to scream for help and you once again stabbed her on the left abdominal area.

5. The second complainant heard the scream and she entered the room. She tried to push you away. You struck her twice on her left shoulder. The second complainant managed to grab the knife. You pulled the hair of the first complainant when she attempted to escape from the room. You ran after her and pushed her into a drain. Then the neighbours came for her assistance.
6. You admitted in the summary of facts that you intended to cause death or serious harm to the complainant. According to the medical report of the first complainant she received multiple injuries. The second complainant has also received superficial lacerations on her left arm.
7. You were in a position of trust as the boyfriend of the first complainant. You used a weapon to commit the offences. You inflicted multiple injuries on the two complainants. You showed extreme disregard to the safety and well-being of your girlfriend and her sister. You attacked the second complainant when she came to save the first complainant. I consider those as aggravating factors.
8. Your counsel filed submissions on mitigation;
 - a. You are 33 years old.
 - b. You are separated from your wife and you have a son who is 11 years of age. Your son is fully dependent on you.
 - c. Your parents are elderly and sickly.
 - d. You are a first offender.
 - e. You have expressed remorse by pleading guilty.

9. The punishment for murder is mandatory life imprisonment. As per section 44(1) of the Crimes Act “a person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.”
10. Therefore, punishment for attempted murder is also mandatory life imprisonment. However, the Court has discretion to set a minimum term before pardon may be considered.
11. According to the judgement in *Balekivuya v State* [2016] FJCA 16; AAU0081.2011 (26 February 2016) when a person is sentenced the trial judge is required to exercise the discretion to set a minimum term in two steps. firstly, the court should consider whether a minimum term should be set. Secondly, it must consider the length of the term.
12. Maximum sentence for assault causing actual bodily harm is 5 years imprisonment. The tariff ranges from a suspended sentence to 9 months imprisonment.
13. You committed these offences in domestic context. Domestic violence offences are no more tolerated by our society. Although the previous approach of the courts was that offences in domestic context should be seen as no less serious than others, now the UK Sentencing guidelines emphasize that domestic context of offending makes it more serious as it represents a violation of trust and security that normally exist between people in an intimate relationship or family relationship. I am of the view that in selecting a minimum period the court should attach enough weight to reflect the abhorrence for domestic violence offences.

14. In State v Motonivalu [2017] FJHC 950; HAC013.2017 (19 December 2017)
Justice Rajasinghe observed that;

“In order to set a minimum term to be served for the offence of murder, the court is required to consider the aggravating and mitigating circumstances of the crime. Murders which are brutally carried out without any form of remorse or respect to human life must be given longer minimum period.”

15. Although you are convicted of attempted murder same guidelines can be used is setting a minimum period.

16. Section 17 of the Sentencing and Penalties Act provides for the court to impose aggregate sentences on offenders in such instances as follows;

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

17. In view of section 17 of the Sentencing and Penalties Act I decide to impose an aggregate sentence in respect of both counts.

18. Having considered the aggravating factors, your personal circumstances, mitigating factors and your previous good behavior I decide to set a minimum term of 8 years in this case.

19. Accordingly, I sentence you to mandatory life imprisonment with a minimum term of 8 years to be served before pardon may be considered.

20. Further I issue a permanent domestic violence restraining order for non-molestation and for non-contact for the safety of the first complainant.

30 days to appeal to the Court of Appeal.



At Suva
25 March 2020

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions
Solicitors for the Accused : Patrick Kumar Lawyers