

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 160 of 2020

[CRIMINAL JURISDICTION]

STATE

V

SANJAY LAKHAN

Counsel : Mr. N. Sharma for the State
Mr. A. Singh for the Accused

Hearing on : 09 – 13 November 2020

Summing up on : 19 November 2020

Judgment on : 20 November 2020

Sentenced on : 27 November 2020

SENTENCE

1. Sanjay Lakhan, you stand convicted of the following offences after trial;

FIRST COUNT

Statement of Offence

Act With Intent To Cause Grievious Harm: contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence

SANJAY LAKHAN, on the 19th day of May, 2020 at Bau Road, Nausori in the Eastern Division, with the intent to cause grievous harm to **VIKASHNI DEVI**, unlawfully wounded the said **VIKASHNI DEVI** with a cane knife.

SECOND COUNT

Statement of Offence

Act With Intent To Cause Grievious Harm: contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence

SANJAY LAKHAN, on the 19th day of May, 2020 at Bau Road, Nausori in the Eastern Division, with the intent to cause grievous harm to **RD**, unlawfully wounded the said **RD** with a cane knife.

2. Before you were arrested for this matter you were employed as a driver and you were required to work on night shifts. Your wife (PW1) dropped you at your workplace around 7.20pm on 17/04/20. After an unexpected turn of events that night you ended up going home in the early hours of the following morning, which was around 1.00am. When you reached home, you had to witness your wife behaving intimately with another man. The evidence revealed that this other man was a police officer by the name of Naleenesh Reddy. That same morning your wife and your stepdaughter (PW2) left the house with that man. Two days later, you decided to forgive your wife especially because your landlord and his wife insisted and you allowed your wife and the stepdaughter to come back to the house.
3. However, your wife continued to have the affair with the aforementioned man. She started leaving the house every evening without letting you know where she was going. You noticed that her hair is messy and her makeup is gone when she returned and she would directly go to the bathroom to have a shower upon her return. When you questioned her as to where she had been going, she would argue with you. Your stepdaughter would argue with you and physically push you when she talks to you. On more than one occasion, your wife took steps to call the police and tried to have you taken into custody with false accusations and on one occasion you had to seek forgiveness from your wife and the stepdaughter in front of the police to save yourself from being taken into custody.
4. On 19/05/20, you came home around 8.30am after work with the groceries your wife requested you to bring. However, just before you entered the house, you

happen to hear your wife conversing with the aforesaid man over the phone about getting that man to come and pick her every day after she sells her car. You got angry. You confronted your wife about the conversation you heard and she denied. Then she asked her daughter, your stepdaughter to call the police.

5. At that moment you became very angry and in your words 'your brain went crazy'. You went to your stepdaughter's room and took the cane knife which was kept under the mattress in that room. You came with the cane knife and you first struck both legs of your stepdaughter with it on the thighs. She sustained deep cut injuries on both legs resulting in heavy bleeding. Then, with that knife you struck your wife's left leg near the knee joint and both her forearms. Your wife sustained deep cut injuries on her left leg and her left forearm and a cut injury on her right forearm resulting in heavy bleeding. According to your wife, after seeing her condition and all the blood in the sitting room you attempted to commit suicide.
6. Your wife had to undergo a surgery where an iron rod was inserted to support her knee. She cannot walk properly now and she is still undergoing treatment (physiotherapy). Your daughter is unable to run now as a result of the injuries as running causes pain in her legs.
7. According to the evidence, it is when your wife told your stepdaughter to call the police on 19/05/20 while you were confronting the wife about her conversation with the 'policeman' that you got so angry and then engaged in this conduct. It appears that, because your wife after she was seen with that 'policeman', had brought the police on more than one occasion during the past month when there were arguments between the two of you, you had reasons to believe that your wife had made some arrangement with the said policeman to get down the police to your house whenever she wanted to soften you. This anger compounded by the slow-burn situation you endured with over a period of about one month since 18/04/20, led you to commit the two offences you are

now convicted of. You are 45 years old and you have studied up to Form 7. You have no previous convictions.

8. Pursuant to section 255 of the Crimes Act 2009 (“Crimes Act”) read with section 3(4) of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”), the maximum punishment for the offence of act with intent to cause grievous harm is life imprisonment.
9. In the case of *State v Lal* [2020] FJCA 44; AAU001.2017 (28 April 2020) Prematilaka JA had made the following very useful analysis on the sentencing tariff applicable for the offence under section 255 of the Crimes Act and the range of sentences imposed in relation to that offence;

[16] In *State v Vakalaca* HAC027 of 2018: 31 May 2018 [2018] FJHC 455 Gounder J once again said

‘[13] The offence of Act with Intent to Cause Grievous Harm is punishable by discretionary life imprisonment. The tariff for this offence is between 6 months imprisonment to 5 years imprisonment, and in cases where a weapon is used, the starting point should range from 2 years imprisonment to 5 years, depending on the nature of the weapon (State v Mokubula [2003] FJHC 164; HAA0052].2003S (23 December 2003).’

[17] Thus, Mokubula provide general sentencing guidance that tariff for cases under section 255 of the Crimes Act, 2009 committed by any means other than a weapon, is between 6 months to 5 years of imprisonment but if the attack is by a weapon the starting point should range from 02 to 05 years which means that the final sentence could be over 05 years depending on the nature of the weapon and other aggravating circumstances. As stated by the Court of Appeal in *Vosa v State* [2019] FJCA 89; AAU0084.2015 (6 June 2019) the list aggravating and mitigating circumstances set out in Mokubula is not exhaustive.

[18] In *State v Rabia* HAC074 of 2011: 22 February 2012 [2012] FJHC 877 the nature of the injuries to the first complainant was very serious and his hand was severed as a result of the accused striking with the cane knife when the victim was 3 months pregnant. Her head was also injured where large amount of tissues were cut. The trial judge referred to *Mokubula* but imposed a sentence of 06 ½ years with a non-parole period of 05 years after taking 05 years as the starting point.

[19] In *State v Tuigulagula* HAC031 of 2010: 15 March 2011 [2011] FJHC 163 where the offence under section 255(a) involved domestic violence in which the victim was left with only a thumb on each hand, had injuries to her scalp and

had been traumatized by the attack and the High Court started with a starting point of 06 years and imposed 06 years of imprisonment on the accused and stated as follows. (The Court of Appeal refused leave to appeal against the sentence in Tuigulagula v State AAU0070 of 2011: 21 March 2012 [2012] FJCA 18.)

[20] In State v Nalulu [2013] FJHC 358; HAC 155.2010 (23 July 2013) is another example where a starting point of 06 years of imprisonment was taken ending up with a final sentence of 08 years given the seriousness of the circumstances surrounding the offence. It was held in Nalulu

'[19] The maximum penalty for act with intent to cause grievous harm contrary to Section 255(a) of the Crimes Decree 2009 is life imprisonment. Despite the accepted tariff being between 6 months and 5 years (as set by Shameem J in Mokubula (2003) FJHC 164) much higher sentences have been passed when the circumstances dictate. In Tuigulagula HAC 81 of 2010 this Court passed a sentence of six years on a husband who did very serious harm to his wife. The penalty being life imprisonment, it is to be regarded as a very serious offence indeed and sentences of up to 8 years would not be out of order.'

[21] Thus, it appears that while Mokubula still holds true as standard guidelines, a starting point above 05 years resulting in a final sentence of 5 years of imprisonment or more would be in order and may indeed be necessary where the gravity of an offence under section 255 of the Crimes Act so warrants. Similarly, in my view, there can be situations where no weapon is used in the attack but the other aggravating circumstances are so serious as to depart from the usual tariff of 6 months to 5 years of imprisonment. The converse also may be true if the mitigating circumstances are so compelling as to demand and justify a lenient sentence. This is mainly due to the fact that the discretionary range in the matter of sentence for an offence under section 255 of the Crimes Act is very wide stretching up to imprisonment of life.

10. As very clearly pointed out in the last paragraph of the above excerpts, the discretionary range stipulated for this offence by law, section 255 of the Crimes Act, is a term of imprisonment up to life imprisonment. Given the said maximum penalty prescribed by law and the nature of the offence under section 255(a) of the Act where the victim is wounded with the intention of causing grievous harm, in my view, the appropriate starting point for this offence (section 255(a)) should be 05 years imprisonment. This starting point should apply whether or not a weapon is used.
11. However, it would not be proper to select 5 years imprisonment as the starting point when the upper end of the applicable sentencing tariff is 05 years.

Therefore, I would respectfully differ with the sentencing tariff proposed in *State v Mokubula* [2003] FJHC 164; HAA0052J.2003S (23 December 2003) for the offence under section 224 of the Penal Code which is at the moment accepted as the sentencing tariff for the offence under section 255 of the Crimes Act based on certain previous decisions of this court.

12. The offences you are convicted of forms a series of offences of similar character and founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment for the two offences you are convicted of.
13. The offences you have committed also comes under the category of domestic violence offences. Section 4(3) of the Sentencing and Penalties Act provides guidance when a court is required to sentence an offender for a domestic violence offence. The section reads thus;

4(3) In sentencing offenders for an offence involving domestic violence, a court must also have regard to –

- (a) any special considerations relating to the physical, psychological or other characteristics of a victim of the offence, including –*
 - (i) the age of the victim;*
 - (ii) whether the victim was pregnant; and*
 - (iii) whether the victim suffered any disability;*
- (b) whether a child or children were present when the offence was committed, or were otherwise affected by it;*
- (c) the effect of the violence on the emotional, psychological and physical well being of a victim;*
- (d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim;*
- (e) the conduct of the offender towards the victim since the offence, and any matter which indicates whether the offender –*
 - (i) accepts responsibility for the offence and its consequences;*

- (ii) *has taken steps to make amends to a victim, including action to minimise or address the negative impacts of the offence on a victim;*
- (iii) *may pose any further threat to a victim;*
- (f) *evidence revealing the offender's –*
 - (i) *attitude to the offence;*
 - (ii) *intention to address the offending behaviour; and*
 - (iii) *likelihood of continuing to pose a threat to a victim; and*
- (g) *whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance.*

14. I would select 07 years as the starting point of your aggregate sentence.
15. Both victims in this case have suffered permanent injuries as a result of your brutal attack on them. You used a weapon and it was a dangerous weapon. Your wife now suffers a disability. The other victim, your stepdaughter was 14 years old at the material time. Apart from the injuries she sustained, she had to witness, her mother, being seriously wounded by you. It was the same for your wife, apart from the pain and trauma she suffered from the injuries you inflicted on her, she had to witness her daughter being wounded by you. Thus, the physical and the emotional trauma caused by you to the two victims on 19/05/20 are enormous. These are the aggravating factors in this case.
16. You being the husband and the father of the two victims respectively, if circumstances were different, I would have concluded that there is a serious breach of trust on your part. You said you loved your wife a lot and you have her name tattooed on your chest. The evidence in this case revealed that it is the breach of the trust by your wife that in fact led to the unfortunate events that took place on 19/05/20 at your house. You have suffered ill-treatment at the hands of the two victims over a period close to one month. While the violent attack you meted out on the two victims cannot be condoned, the emotional suffering you appear to have gone through over a period of time that led to that attack on

19/05/20 cannot be simply ignored. The attack you carried out was not a premeditated act and you acted rather impulsively. In a way, you can also be perceived as a victim in this entire episode. These circumstances under which the two offences were committed should be taken into account in mitigation. Though provocation is not a defence for the offence relevant to this case it could certainly be considered in mitigation when it comes to sentencing. In addition, you are a first offender.

17. This case presents a significant challenge in deciding the appropriate sentence that should be imposed on you considering all the circumstances of the offending. On one hand this is a very serious domestic violence offence where a wife and a daughter were brutally attacked inside the house, and, on the other hand this is also a case where you were pushed to let your emotions take control of you due to the psychological stress you endured.
18. Having carefully considered all circumstances and the sentences imposed by the other divisions of this court in relation to this offence, the aggregate sentence that I would consider that would serve the ends of justice in this case is a term of imprisonment for 04 years. However, in view of the special circumstances noted in this case I would fix your non-parole term at 18 months in view of section 18(1) of the Sentencing and Penalties Act as amended by Act No. 29 of 2019. In fact I would have opted to suspend your sentence after you serve an immediate custodial term of 18 months, but in terms of section 26(2)(a) of the Sentencing and Penalties Act the High Court lacks the power to suspend a sentence which exceeds 03 years.
19. It should be noted that, if not for the special circumstances in this case and had this been a premeditated crime, I would have sentenced you to a term of 10 years imprisonment given the violence you have unleashed on your wife and your 14 year old stepdaughter.


20. You have spent a period of 06 months and 08 days in custody in view of this matter. The said period will be considered as time already served in terms of section 24 of the Sentencing and Penalties Act.
21. In the result, you are hereby sentenced to a term of imprisonment of 04 years with a non-parole term of 18 months. In view of time spent in custody the time remaining to be served is as follows;

Head sentence - 03 years; 05 months; and 22 days
Non-parole period - 11 months and 22 days
22. Having considered the facts of this case, a permanent Domestic Violence Restraining Order is issued against you, identifying the two victims in this case, **VIKASHNI DEVI** and **RD** as the protected persons. You are hereby ordered not to have any form of contact with the said victims directly or by any other means, unless otherwise directed by this Court.
23. I consider it necessary also to place on record my observations on two other matters. Though there may be some justification in PW1's conduct of not admitting the extra marital affair she had, not only that she lied on oath, but apparently she had also made her 14 year old daughter PW2 lie in court on oath regarding the same matter. The 14 year old PW2 went to the extent of disputing the entries made in the official records of CWM hospital regarding what she had told the medical officials. This conduct of PW1 and PW2 cannot be approved though I decided to accept their evidence in part.
24. Moreover, police officers are required to maintain peace an order in the community. The evidence in this case revealed that a particular policeman's conduct had not only destroyed a family but also led to a wife and a daughter being maimed and the husband to go through a criminal trial and end up in jail. Even though this particular conduct of the police officer may not amount to a criminal offence, this would be an appropriate matter for the Police Department

to look into and after verifying the veracity to explore the possibility of any steps being taken to prevent another case of this nature in the future.

25. Thirty (30) days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors:

**Office of the Director of Public Prosecutions for the State
Anil J. Singh Lawyers for the Accused**