

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 122 of 2021

STATE

V

KRISHNA KUMAR aka ANIL KUMAR

Counsel : Ms. P. Lata for the State.
: Ms. S. Ali for the Accused.

Date of Submissions : 17 May, 2022

Date of Sentence : 19 May, 2022

SENTENCE

1. The Director of Public Prosecutions filed the following information against the accused dated 21st December, 2021:

COUNT ONE

ACT WITH INTENT TO CAUSE GRIEVOUS HARM: contrary to section 255 (a) of the Crimes Act 2009.

Particulars of Offence

KRISHNA KUMAR also known as ANIL KUMAR on the 15th day of May 2021 at Nadi in the Western Division with intent to cause grievous

harm to MEENA KUMARI unlawfully wounded the said MEENA KUMARI with a cane knife.

2. On 27th January, 2022 the accused pleaded not guilty to the above count in the presence of his counsel. After four adjournments when the matter was scheduled for pretrial conference hearing the accused through his counsel informed the court that he wished to take a progressive approach.
3. On 5th April, 2022 the accused pleaded guilty to the above count and thereafter on 28th April the accused was read and explained the summary of facts in the Hindi language which he admitted.
4. The brief facts were as follows:
 - a) The accused (58 years) of Nawaka, Nadi and the victim (54 years) are husband and wife but were living separately at the time of the incident. On 15th of May, 2021 at about 1.30pm the accused went to the work place of the victim. The victim was working in a Restaurant in Nadi having her lunch at a table. The accused went and sat opposite the victim and asked her as to when she was coming home. The victim said that she will come later.
 - b) The accused pushed the table towards the victim who got stuck. He then grabbed the victim's left hand took out a knife from his trousers and then chopped the victim's hand from the elbow. After the victim's arm was chopped, the accused then placed it on the table and cut it further into pieces.
 - c) After that he grabbed the victim's right arm and chopped her wrist and fingers. The accused then told the victim if she comes out of the table he would chop her head. The victim's colleagues

shocked and frightened to assist the victim since the accused was holding a cane knife. After the accused left the restaurant, the victim became unconscious and woke up in the hospital.

- d) The accused was arrested and caution interviewed wherein he admitted that he took a cane knife to the victim's workplace. After hiding the cane knife inside the right side of his trousers he went and sat with the victim. While she was having her lunch he took out the cane knife from his trousers and attacked her. He then left with the cane knife, got into his car and drove home. The accused admitted the CCTV footage shown during his interview.
- e) The medical reports from Dr. Mohammed Imtishal dated 18th November, 2021 and from Dr. Manisha R. Pillay dated 15th May, 2021 confirms traumatic injuries to the victim's body. She had a laceration on the right hand with bone exposed and the left hand had traumatic amputation of the forearm below the elbow with active bleeding.
- f) The victim was given IV antibiotics, IV fluids and blood transfusion. She was taken to the operation theatre for surgical repair of the hand and was later transferred to CWM Hospital for definite management.
- g) The medical report from CWM Hospital dated 22nd November 2021 confirms that the left arm of the victim was completely amputated while the right arm was near total amputation. Re-implant of the left forearm was attempted in Nadi, however, when the patient arrived at CWM Hospital in Suva the limb was Ischemic and a formal amputation was done. On right arm the bones were stabilized with k-wires and all the tendons were repaired.

5. After considering the summary of facts read by the state counsel which was admitted by the accused and upon reading his caution interview this court is satisfied that the accused has entered an unequivocal plea of guilty on his freewill.
6. This court is also satisfied that the accused has fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offence of act with intent to cause grievous harm.
7. In view of the above, this court finds the accused guilty and he is convicted as charged.
8. The state counsel filed sentence submissions and victim impact statement whereas the defence counsel filed mitigation submissions for which this court is grateful.
9. The counsel for the accused presented the following mitigation and personal details about the accused:
 - a) The accused is 60 years of age;
 - b) Is a Motor Mechanic by profession;
 - c) Has three adult children;
 - d) Cooperated with the police during investigation;
 - e) Pleaded guilty;

- f) Acknowledges his wrong doing and takes responsibility for his actions;
- g) He was angry at the time;
- h) Promises not to reoffend;
- i) Deeply regrets his actions, seeks forgiveness from this court.

AGGRAVATING FACTORS

10. The following aggravating factors are obvious:

a) Breach of Trust

The victim and the accused are wife and husband. The accused grossly breached the trust of the victim by his actions. The attack on the victim was unprovoked.

b) Victim was vulnerable

The victim was vulnerable, defenceless, and helpless. She was at work and having her lunch when the accused attacked her all of a sudden. The accused did not show any mercy towards the victim and continued striking her with a knife. The injuries on the victim are very serious.

The victim was assaulted in front of her colleagues who were horrified at the manner in which the accused had attacked and harmed the victim. They could not intervene since they were scared the accused may harm them.

c) Accused was undeterred

The accused was undeterred in what he was doing. He had stealthily brought the knife with him that no one in the restaurant could make out what the accused was hiding. There is a degree of planning involved the accused knew the owner will not be in the restaurant at the time.

d) Victim Impact Statement

In the victim impact statement the victim stated that after the incident she has not been able to do anything on her own such as feed herself, comb her hair or dress herself. According to the victim "*her world has come to a halt*". She has become totally dependent on others and unable to lead a normal life.

TARIFF

11. The maximum penalty for the offence of act intended to cause grievous harm is life imprisonment. The accepted tariff for this offence is between 2 years to 5 years imprisonment depending on the type of weapon used. Moreover, the more serious and permanent the injuries, the higher the sentence should be (*see State v Mokubula [2003] FJHC 164: HAA 0052 of 2003 (23 December, 2013)*).
12. In *State vs. Seremaia Nalulu and others, HAC 155 of 2010 (23 July, 2013)* Madigan J. had stated that sentences up to 8 years would not be out of order.

13. Considering the objective seriousness of the offence committed I take 2 years imprisonment (lower end of the scale) as the starting point of the sentence. The sentence is increased for the aggravating factors. I note that the accused has one active previous conviction for assault occasioning actual bodily harm.
14. In view of the above, the accused does not receive any reduction for good character, but for the mitigation advanced by the accused the sentence is reduced accordingly.

GUILTY PLEA

15. Although the accused has pleaded guilty after four adjournments I accept it as early guilty plea. In *Gordon Aitcheson vs. The State*, criminal petition no. CAV 0012 of 2018 (2 November, 2018) the Supreme Court offered the following guidance at paragraphs 14 and 15 in regards to the weight of a guilty plea as follows:

[14]. In ***Rainima -v- The State*** [2015] FJCA 17; AAU 22 of 2012 (27 February 2015) Madigan JA observed:

“Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the “high water mark” of discount is one third for a plea willingly made at the earliest opportunity. This court now adopts that principle to be valid and to be applied in all future proceeding at first instance.”

In ***Mataunitoga -v- The State*** [2015] FJCA 70; AAU125 of 2013 (28th May 2015) Goundar JA adopted a similar but more flexible approach to this issue:

“In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effect of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment.”

*[15]. The principle in **Rainima** must be considered with more flexibility as **Mataunitoga** indicates. The overall gravity of the offence, and the need for the hardening of hearts for prevalence, may shorten the discount to be given. A careful appraisal of all factors as Goundar J has cautioned is the correct approach. The one third discount approach may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.*

16. This court accepts that genuine remorse leading to a guilty plea is a substantive mitigating factor in favour of an accused, however, the guilty plea must be entered in the true spirit of remorse since genuine remorse can reduce the harshness in the final sentence (*see Manoj Khera v The State, CAV 0003 of 2016 (1 April, 2016)*).
17. In this case, this court does not accept that the accused has shown genuine remorse when he pleaded guilty. Initially, the accused had pleaded not guilty. I have perused the attachments raised in the summary of facts filed in court and I can say with certainty that the prosecution had a strong case against the accused.
18. Genuine remorse is about genuinely feeling sorry for what a person has done, accepting guilt because of strong evidence and proof of the offender's deeds and then pleading guilty is not genuine remorse *per*

se. In this regard, the sentencing court has a responsibility to assess the guilty plea along with other pertinent factors such as the timing of the plea, the strength of the prosecution case etc. Here there is no doubt the timing of the guilty plea is not that late, however, the prosecution had a very strong case against the accused.

19. Nevertheless, by pleading guilty the accused saved the court's time and expenses and also prevented the victim from reliving her experience in court. Bearing this in mind, the accused ought to receive some reduction for his guilty plea.
20. After further reducing the sentence for early guilty plea, the head sentence is 8 years imprisonment.
21. As per the court file the accused was remanded for 1 year and 2 days. In accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced as a period of imprisonment already served. The final sentence is 7 years imprisonment.
22. Considering the circumstances of the offending, and the level of the accused culpability (unprovoked attack) particularly the use of a cane knife on a defenceless victim calls for an immediate long term custodial sentence. When a person uses a weapon on another he or she should be prepared to face severe consequences by way of an immediate custodial sentence.
23. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.

24. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand, this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason. In my view a non-parole period of 6 years will be justified.
25. Mr. Kumar you have committed a serious offence on the victim who is your wife. The injuries suffered by the victim are serious and permanent she has basically lost her left arm forever. The other limb although saved by the doctors will not be of much use to the victim, striking an unarmed person with a cane knife is a dangerous thing to do.
26. The summary of facts reveals a horrific and dreadful attack on the victim in a public place. You are lucky that the victim did not die as a result of your senseless attack. From the medical report it is obvious that the harm caused to the victim has made her handicapped in leading a normal life.
27. You are not only a coward but a threat to the community. You did not have any mercy for the victim at the time. A long term imprisonment term is inevitable, I cannot fathom why you would want to cut into pieces the fallen arm and then strike the other arm when the victim was already in pain and blood was flowing freely from the wounds. This shows you had no regard for the health and safety of the victim. No amount of regret and/or repentance will bring back the lost glory of a normal life.

28. You had no second thoughts about what you were doing you were determined to cause the victim grievous harm which you succeeded hence you do not deserve any mercy from this court. This was a domestic violence case which went out of control because of you.
29. In summary I pass a sentence of 7 years imprisonment with a non-parole period of 6 years to be served before the accused is eligible for parole.
30. Due to the closeness of the relationship between the accused and the victim a permanent non-molestation and non-contact orders are issued to protect the victim under the Domestic Violence Act. It is also recommended that the Commissioner of Corrections Services facilitate Anger Management Course for the accused.
31. The accused is at liberty to apply for the relaxation of the domestic violence restraining orders upon release from the Corrections Centre.
32. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka
19 May, 2022

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Accused.