

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

Criminal Case No.: HAC 26 of 2021

STATE

V

VILIMONE BALEVIREWA

Counsel : Mr. T. Tuenuku for the State.
Ms. S. Ali and Mr. F. Singh for the Accused.

Dates of Hearing : 11, 12, 13, 17, 18 October, 2022

Closing Speeches : 24 October, 2022

Date of Judgment : 24 October, 2022

Date of Sentence : 15 November, 2022

SENTENCE

1. In a judgment delivered on 24 October, 2022 this court found the accused guilty for two counts of attempted murder and one count of act intended to cause grievous harm.
2. The brief facts were as follows:
3. The first victim Tarusila Qoli and the accused are husband and wife. The second victim Meli Vuiyasawa is the brother of Tarusila. On 16th

January, 2021 at about 4 am Tarusila and the accused were returning home after a grog session.

4. Tarusila was carrying the torch, due to heavy rain the walkway in the settlement was muddy. According to Tarusila her relationship with the accused was not good at the time.
5. When the couple were on the road they had an argument the accused threatened Tarusila that he will kill her. This threat got Tarusila scared.
6. The accused went near Tarusila put his hands around her neck and told her not to shout and if she did he will stab her with the lighter he had in his hand, although Tarusila was terrified she screamed.
7. At this time, the accused punched Tarusila and she fell on the ground the accused sat on her stomach held her neck and was choking her. The place where Tarusila fell there were potholes filled with water. The accused continued choking Tarusila whilst her head was submerged in the pothole. Tarusila wanted to scream but she could not the accused was choking her by using both his hands. The accused also bit her cheek.
8. Tarusila was short of breath she realized if someone did not come to help her soon she will die. At this time Tarusila's uncle Ilivasi came and punched the accused who then released her neck.
9. Tarusila was medically examined, the doctor in his evidence stated that the injuries in the front portion of the neck was due to substantial force being applied on the neck of the victim possibly from strangulation.

10. The accused fled from the scene and went to Ba during the day he purchased a knife and took it with him to Vunikulu Settlement where the victim was living. The accused waited for night fall and he entered the bedroom of Tarusila with the knife. Tarusila was sleeping with her two young children, the accused locked the bedroom door and stabbed Tarusila a number of times.
11. The medical report of the first victim showed mild injuries and fracture on the left 5th finger due to puncture wounds.
12. Furthermore, Meli the second victim came to the rescue of his sister and he also got stabbed by the accused a number of times. The injuries sustained by Meli on his back, shoulder and behind his ear were serious and life threatening requiring hospitalization.
13. The accused was arrested, caution interviewed and charged.
14. The state counsel filed sentence submissions and the defence counsel filed mitigation submissions for which this court is grateful.
15. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - a) The accused is 37 years of age;
 - b) Has three young children from his marriage with the first victim;
 - c) Was employed as a construction worker earning \$180.00 per week;
 - d) Cooperated with police during investigation.

AGGRAVATING FACTORS

16. The aggravating factors are as follows:

a) Unprovoked attack

This was an unprovoked attack on both the victims who were vulnerable, unarmed and unsuspecting of what the accused could do to them.

b) Victims were attacked in the comfort of their home

The accused entered Tarusila's bedroom where she was sleeping with her two young children. Meli was attacked in his house as well. Both victims were supposed to be safe in their home but this was not to be as a result of what the accused did to them.

d) Breach of trust

The accused grossly breached the trust of both the victims by what he did to them.

d) Planning

There is a degree of planning involved. The accused went to Ba and purchased a knife with the intention to use it on the first victim which he took with him into the bedroom where the first victim was sleeping.

17. Under section 44 of the Crimes Act the sentence for attempted murder is mandatory life imprisonment. Section 44(1) of the Crimes Act states:

44. — (1) 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.


18. The sentence for the offence of murder is fixed by law this court, however, has a discretion to determine a minimum term to be served before the offender is eligible for a pardon.
19. The maximum sentence for the offence of act intended to cause grievous harm is life imprisonment.
20. Section 17 of the Sentencing and Penalties Act states:

“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.”
21. I am satisfied that the three offences for which the accused stands convicted are offences founded on the same facts. Therefore, taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for all the offences.
22. I note from the court file that the accused was remanded for about 1 year 10 months and 10 days. When an accused is found guilty and convicted for the offence of attempted murder the sentence of life imprisonment becomes mandatory the only discretion the sentencing court has is in respect of the minimum term to be imposed.
23. Under the aggregate sentence regime of section 17 of the Sentencing and Penalties Act the accused is sentenced to mandatory life imprisonment with a minimum term of 9 years, 1 month and 20 days to be served before a pardon may be considered.

24. The purpose of a minimum term is to assure the community and the public at large that offenders for such an offence serve a definite and meaningful period of imprisonment.
25. In arriving at the minimum term this court has taken into account the aggravating factors, mitigation of the accused including his good character (previous conviction of assault occasioning actual bodily harm in 2016 is disregarded) and the remand period which is just in all the circumstances of this case.
26. Mr. Balevirewa you have committed serious offences against your wife and brother in law. The victims were unsuspecting, it was an unprovoked, uncalled and senseless attack by you with a knife you had concealed with you when you entered the bedroom of Tarusila in the night. You cannot be forgiven for what you have done. You did not care about your children who were sleeping in the same room as your wife when you attacked her and your brother in law.
27. From the evidence adduced, it is obvious to me that the accused needs help in controlling his anger. He had made up his mind to use a lethal weapon against his wife to demonstrate his anger on her. This court recommends that the Commissioner of the Correction Services makes provisions for the accused to undergo counseling and anger management courses to help him in controlling his anger.
28. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victims compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which was just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.

29. In summary, I pass an aggregate sentence of mandatory life imprisonment with a minimum term of 9 years, 1 month and 20 days to be served before a pardon may be considered. Due to the closeness of the relationship between the accused and both the victims a permanent non-molestation and non-contact orders are issued to protect both the victims under the Domestic Violence Act.
30. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka

15 November, 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.