

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 53 of 2023

STATE

V

VARAYAME NAKARAWA WAISAVU

Counsel : Ms. S. Prakash for the State.
Mr. A. Samy for the Accused.

Date Plea taken : 02 February, 2024

Date S.O.F's read : 19 February, 2024

Date of Submissions : 08 March, 2024

Date of Sentence : 13 March, 2024

SENTENCE

1. The accused is charged with the following offence as per the information filed by the Director of Public Prosecutions dated 18th August, 2023:

Statement of Offence

ATTEMPTED MURDER: Contrary to section 44(1) and 237 of the Crimes Act 2009.

Particulars of offence

VARAYAME NAKARAWA WAISAVU on the 20th day of March, 2023 at Rakiraki in the Western Division, attempted to murder one Setareki Waisavu.

2. This file was first called in the High Court on 11th April, 2023. The information was filed on 21st August, 2023 thereafter on 2nd February, 2024 the accused pleaded guilty in the presence of his counsel. On 19th February, 2024 the accused admitted the summary of facts after it was read and explained to him in the Itaukei language.
3. The brief summary of facts is as follows:
 - a) The accused 25 years is the son of the victim Setareki Waisavu, at the material time the accused and his father did not have a good relationship so the accused was residing with his aunt.
 - b) On 20th March 2023, at around 6am, the victim was in his kitchen trying to light firewood to cook breakfast. The accused entered the kitchen with a cane knife and from behind the victim struck him on his head with the cane knife.
 - c) The accused also struck the victim on his back. At this time the accused uttered the following words "*o iko o rape takinei mai nakoro*" meaning "you raped aunty from the village".
 - d) The victim ran towards the neighbours house and saw the accused following him. The neighbours and the other children of the victim shouted at the accused. The accused went back into the house and the victim was rushed to the hospital.

- e) The victim received the following injuries as per the medical report:
- a) Laceration on scalp – left parasagittal from parietal to occipital approximately 15 to 18 cm deep and bleeding profusely;
 - b) Superficial laceration from mid axillary line mid chest extending from posterior to scapular line.
- f) According to the medical report, the victim sustained left tempo parietal open fracture after he was struck on the head with the cane knife. The victim suffered bleeding in the left side of his brain although he survived he may not fully regain strength of his right upper and lower limbs.
- g) The accused was arrested and caution interviewed whereby he admitted striking the victim twice with a cane knife.
4. After considering the summary of facts read by the state counsel which was admitted by the accused in the presence of his counsel, and upon reading the caution interview of the accused and the Fiji Police Medical Examination Form of the victim this court is satisfied that the accused had entered an unequivocal plea of guilty on his freewill.
5. 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 by the accused satisfies all the elements of the offence of attempted murder the accused is charged with.
6. In view of the above, this court finds the accused guilty as charged and he was convicted accordingly.

7. The state counsel filed her sentence submissions, victim impact statement and the defence counsel filed his mitigation submissions for which this court is grateful.

8. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - a) The accused was 25 years of age at the time;
 - b) First Offender;
 - c) Fisherman;
 - d) Regrets what he has done;
 - e) Seeks leniency and forgiveness of the court;
 - f) Early guilty plea;
 - g) Had cooperated with the police during investigation;
 - h) Realizes his wrong doing and is remorseful.

AGGRAVATING FACTORS

9. The following aggravating factors are obvious:
 - a) Unprovoked attack on the victim
The accused attacked an unarmed victim (his father) with a cane knife whilst the victim was trying to light firewood to cook breakfast. The victim was unsuspecting and vulnerable when the accused struck him from behind with the cane knife.

 - b) The victim were alone
The victim had his back to the accused, the accused knew the victim was alone and he took advantage of the situation.

c) Failure to assist the victim

After striking the victim, the accused did not render any assistance but instead chased the victim with the cane knife in his hand until the villagers intervened.

d) Victim Impact Statement

According to the victim impact statement, the victim has suffered psychological and emotional harm as follows:

- i) Is not able to fulfil his financial obligations as the head of the family due to the injuries received;
- ii) Unable to do what he used to do;
- iii) Experiencing partial disability.

GUILTY PLEA

10. The accused pleaded guilty shortly after the matter was marked for plea to be taken. 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.


11. 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)).

12. In this case, this court accepts that the accused has shown some remorse as opposed to genuine remorse when he pleaded guilty. 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* (see *Gordon Aitcheson vs. The State (supra)*).
13. 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 early, however, the prosecution had a strong case against the accused.
14. Nevertheless, by pleading guilty the accused saved the court's time, expenses and prevented the victim from reliving his ordeal in court. Bearing this in mind, the accused ought to receive some reduction for his guilty plea.
15. 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.
16. 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.
17. I note from the court file that the accused has been in remand for about 11 months and 20 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.

18. The accused is sentenced to mandatory life imprisonment with a minimum term of 8 years and 10 days to be served before a pardon may be considered.
19. 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.
20. In arriving at the minimum term this court has taken into account the aggravating factors, mitigation of the accused including his good character, early guilty plea and the remand period which is just in all the circumstances of this case.
21. Mr. Waisavu you have committed a serious offence against your father. The victim was unsuspecting, it was an unprovoked, uncalled and senseless attack with a cane knife. You cannot be forgiven for what you have done. The victim could have died but it was the quick action by the neighbours and the doctors that saved the victim's life.
22. 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 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.
23. In summary, I pass a sentence of mandatory life imprisonment with a minimum term of 8 years and 10 days to be served before a pardon may be considered.

24. 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge



At Lautoka

13 March, 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.