

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 176 of 2023

STATE

V

MOAPE KATIREWA

Counsel : Mr. L. Baleilevuka for the State.
: Mr. A. Samy for the Accused.

Date Plea taken : 18 December, 2023
Date S.O.F's read : 19 February, 2024
Date of Submissions : 08 March, 2024
Date of Sentence : 14 March, 2024

SENTENCE

1. The Director of Public Prosecutions filed the following information against the accused dated 7th December, 2023:

Statement of Offence

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

Particulars of Offence

MOAPE KATIREWA on the 30th day of September, 2023 at Ra in the Western Division, with intent to cause grievous harm to Luisa Nuqa,

unlawfully wounded the said Luisa Nuqa by stabbing her repeatedly in the back with a pair of scissors.

2. On 18th December, 2023 the accused pleaded guilty to the above count in the presence of his counsel. On 19th February, 2024 the accused was read and explained the summary of facts in the Itaukei language which he understood and admitted.

3. The brief facts were as follows:

1.0 **Brief Background**

1.1 The victim and the accused were in a de-facto relationship for 13 years and they have two children together.

2.0 **Facts**

2.1 In the morning of 30th September, 2023 the accused went to his farm, when he came home at around lunch time he was frustrated to find that the victim had not prepared anything for lunch. The accused told the victim to go to the shop and buy a tin fish and prepare lunch.

2.2 The victim went to the shop but did not return until around 7 pm in the evening. The accused was angry and he started to ask her where she had been, the victim informed him that she had gone to visit some of her family members who lived around the area. When the accused heard this, he asked her why she had gone and spent time at her relatives home instead of coming back to prepare his lunch. During his conversation, the victim was at the

fireplace cooking and out of anger and frustration, the accused started swearing at the victim.

2.3 In his state of anger, the accused picked up a pair of scissors and attacked the victim by stabbing her three (3) times on her back. The victim ran outside the house. The accused attacked the victim in full view of their children.

3.0 **Medical Report**

3.1 The victim was medically examined the same day. The specific medical findings of the doctor were multiple stab wounds on the back of the victim measuring 2cm by 1cm and 1cm deep.

4. The accused was arrested and caution interviewed wherein he admitted committing the offence.
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 the defence counsel filed mitigation 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 40 years of age;
 - b) First offender;
 - c) Is a Pastor and a Farmer;
 - d) Has two children from the relationship;
 - e) Cooperated with the police during investigation;
 - f) Early guilty plea;
 - g) Acknowledges his wrong doing and takes responsibility for his actions;
 - h) Promises not to reoffend.

AGGRAVATING FACTORS

10. The following aggravating factors are obvious:

- a) Breach of Trust

The victim and the accused were in a defacto relationship. 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 the fireplace cooking when the accused came from behind and started striking her with the scissors. The accused did not show any mercy towards the victim. The attack on the victim was in full view of the children.

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.

GUILTY PLEA

13. The accused pleaded guilty after a few adjournments which I accept 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.


14. 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)*).
15. In this case, this court accepts that the accused has shown some 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* (*Gordon Aitcheson vs. The State, (supra)*).

16. 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 but the prosecution had a strong case against the accused.
17. 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.
18. As per the court file the accused was remanded for 5 months and 12 days. In exercise of my discretion and in accordance with section 24 of the Sentencing and Penalties Act the sentence is reduced by 5 months and 15 days as a period of imprisonment already served.
19. 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, reduced for the mitigation and good character of the accused, early guilty plea and remand period.
20. Considering the circumstances of the offending, and the level of the accused culpability (unprovoked attack) particularly the use of a pair of scissors on a defenceless victim (in the presence of the children) calls for an immediate 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.
21. However, it cannot be ignored that it was the attitude and behaviour of the victim which had led to the frustration and anger of the accused. This does not mean that assault is to be condoned but the situation of

the accused is to be taken upon a holistic consideration of the facts. In this regard the final sentence is 2 years, 6 months and 15 days imprisonment.

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 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.
23. 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 2 years will be justified.
24. Mr. Katirewa you have committed a serious offence on the victim who was your defacto partner in full view of your children which is unacceptable and deserves condemnation. The circumstance of the offending in particular striking an unarmed person with a pair of scissors three times is a dangerous thing to do. You are lucky the victim did not sustain life threatening injuries.
25. A domestic violence witnessed by children sends a wrong signal for the future of a family which could have been avoided had both parties exercised mature judgment towards each other.

26. In summary I pass a sentence of 2 years 6 months and 15 days imprisonment with a non-parole period of 2 years to be served before the accused is eligible for parole. Considering that this is a domestic violence case which was seen by the children of the couple this court is not inclined to exercise its discretion under section 26 of the Sentencing and Penalties Act to suspend the sentence. The culpability of the accused and the harm caused to the victim cannot be ignored and therefore a suspended sentence will not be in public interest.
27. Due to the closeness of the relationship between the accused and the victim the interim non-molestation orders imposed by the Magistrate's Court at Rakiraki under the Domestic Violence Act is made permanent. It is also recommended that the Commissioner of Corrections Services facilitate anger management course for the accused.
28. 30 days to appeal to the Court of Appeal.


Sunil Sharma
Judge



At Lautoka

14 March, 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.