

**IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]**

CRIMINAL CASE NO. HAC 133 OF 2020

STATE

V

SUNNY RITESH NAND

Mr. Rafiq for the State
Mr. Singh and Ms. Ali for the Accused

Date of Hearing: 23, 24 & 25 April 2024
Date of Judgment: 29th April 2024
Date of Sentence: 21st June 2024

SENTENCE

- [1]. The offender was charged with one count of **attempted murder** and one count of **Breach of Domestic Violence Restraining Order**. He pleaded not guilty to both the charges.
- [2]. The trial was heard in April 2024. On 17 May, 2024 the offender was found guilty after trial and convicted on both counts. I have a duty to explain the **sentence** that I am going to impose on him.
- [3]. The gravity of an offence is gauged by the actual conduct of the offender and the objective circumstances of the offence. The victim was the offender's ex-defacto partner. The offences are domestic violence one.
- [4]. The facts are as follows. The offender and the victim were in a de-facto relationship. Before the incident the offender had lived separately in Kulukulu Sigatoka due to a Domestic Violence Restraining Order in placed against him. During the separation, the offender visited the victim on the

early morning of the 15th of July 2020 at the victim's residence in Bilalevu Settlement Sigatoka. Upon arrival at the victim's place he invited the victim for both of them to go to the farm and talk. Whilst at the farm the offender assaulted the complainant so badly that the victim sustained multiple severe head injuries highlighted in her medical report as

- i) Severe head injury – Comatose
- ii) Assault to the right side of the Victim's head causing hematoma
- iii) Base of the skull fractures noted are recent and consistent.

- [5]. The seriousness of the assault led to the victim's *semi – unconsciousness* condition after she was thrown into a ditch hole under a mango and the accused fleeing away from the scene. The alleged incident happened in a remote area part of Bilalevu settlement away from the house of the victim. The accused was seen by witnesses running away from scene and also accused made verbal admission to the witnesses that he had assaulted the victim and threw her into a ditch hole under a mango tree
- [6]. The victim was discovered by a search party lying semi unconscious in a ditch hole under a mango with multiple severe head injuries as outlined in the victim's to medical report. Hence, as a result of the serious head injuries sustained by the victim she was in a coma and admitted in the hospital for almost one month and two weeks. When the victim was released from hospital she was not in her right state of mind and she did not recall what happened to her at the time of the incident. She was unable to give evidence in Court due to her state of mind. Currently, she is encountering bad headaches and she has body aches and leg pain and mostly sleeps during the day.
- [7]. The impact was on the victim's three children who were normally dependent on her. She was meant to look after young children however after this incident the children have to look after their, mother as she had suffered from serious cognitive disabilities.

[8]. There was a betrayal of trust demonstrated by the accused person, the victim was his defacto partner and although they're no longer together the victim suffered from serious permanent head injuries

[9]. The maximum penalty prescribed for attempted murder is life imprisonment. For Breach of domestic violence Restraining order, the maximum penalty for Breach of Domestic Violence Restraining Order for a first offender is a fine of \$1,000.00 and 12 months imprisonment.

[10]. 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.”*¹

[11]. The two offences are part of the same transaction. The offender's culpability in respect of each offence is same. In these circumstances, an aggregate sentence is justified to reflect the offender's total criminality.

[12]. Since the sentence for attempted murder is fixed by legislature, I have no option but to impose a sentence of life imprisonment (Shaheen v State [2022] FJSC 17; CAV0015.2019 (28 April 2022)). The only discretion available is to set a minimum term to serve before a release may be considered. Counsel for the State has provided a useful summary of the sentences imposed in attempted murder cases as follows:

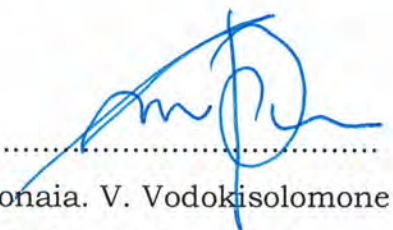
<u>CASE</u>	<u>SENTENCE</u>
1. <i>State v Nath - Sentence [2021] FJHC 6; HAC030.2018 (13 January 2021)</i>	Life imprisonment with a minimum term of 8 years <u>after trial</u> . [domestic violence offending; accused and victim were in a <i>de-facto</i> relationship; accused struck the victim with a cane knife].

<p>2. <i>State v Arjun - Sentence [2020]</i> <i>FJHC 1100; HAC017.2018 (23 December 2020)</i></p>	<p>Life imprisonment with a minimum term of 8 years <u>after trial</u>. [domestic violence offending; accused and victim were in a relationship; accused had struck the victim with a knife].</p>
<p>3. <i>State v Chand - Sentence [2020]</i> <i>FJHC 971; HAC309.2020 (18 November 2020)</i></p>	<p>Life imprisonment with a minimum term of 8 years <u>after trial</u>. [Domestic violence offending; accused and victim were married but separated at the relevant time; accused stabbed victim with an iron rod on her neck].</p>
<p>4. <i>State v Padiyachi - Sentence [2019]</i> <i>FJHC 140; HAC352.2018 (11 December 2019)</i></p>	<p>Life imprisonment with a minimum term of 15 years <u>after trial</u>. [Domestic violence offending; accused and victim were in a relationship; accused tried to drown the victim].</p>
<p>5. <i>State v Tabua - Sentence [2015]</i> <i>FJHC 726; HAC365.2013 (2 October 2015)</i></p>	<p>Life imprisonment with a minimum term of 8 years <u>after trial</u>. [Domestic violence offending; accused and victim were in a relationship; accused had struck the victim with a kitchen knife].</p>
<p>6. <i>State v Narayan - Sentence [2017]</i> <i>FJHC 756; HAC143.2016 (29 September 2017)</i> Accused was charged with Attempted Murder and AWITCGH.</p>	<p>Life imprisonment with a minimum term of 12 years imprisonment <u>after trial</u>; [domestic violence offending; accused was the ex-husband of the victim; accused had stabbed his ex-wife with a knife on her head, hand/elbow and neck.</p>
<p>7. <i>State v Faiyash - Sentence [2019]</i> <i>FJHC 666; HAC40.2018 (28 June 2019)</i> Accused was charged with Attempted Murder and Damaging Property.</p>	<p>Aggregate sentence of life imprisonment with a minimum term of 6 years, 7 months and 20 days <u>after trial</u>; [accused had driven his car into a phone booth which the victim was in; no domestic relationship however the accused had asked the victim to be in a relationship with him].</p>

- [13]. The level of harm caused by the offender is high. His subjective features such as his age (42 years old), and family background carry less weight. His claim of being remorseful is made late and cannot be considered as genuine. The only mitigating factor is the offender's cooperation with police.
- [14]. The aggravating factors are that the offender was the ex- defacto partner of the victim and is vulnerable. The offender is responsible for victim's safety and security. Instead the offender breached the trust of his partner and her children. There was also a degree of planning involved to escape from the scene after severely assaulting victim and abandoning her in a ditch hole under the mango tree. The severe head injuries sustained was life threatening and has led to permanent cognitive disabilities to the victim.
- [15]. The message to the offender and others must be clear. The court's duty is to denounce and deter domestic violence by imposing condign punishment. The gravity of the offences justify severe but just and fair **sentence**.
- [16]. The victim was a friend and someone he knew. The calculated vicious attack while the victim was with the offender was therefore defenseless and vulnerable.
- [17]. The injuries to the victim were life threatening and but for the intervention of others, could have resulted in death. These are serious aggravating factors.
- [18]. I take into account that the offender had spent 6 months and 26 days in custody on remand.
- [19]. The offender is sentenced to an aggregate **sentence** of life imprisonment with a minimum term of 10 years and 5 months to serve before any release may be considered.

[20]. 30 days to appeal to the Fiji Court of Appeal.




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Sekonaia. V. Vodokisolomone
Acting Puisne Judge

Solicitors:

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