

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 132 of 2021

STATE

V

SANIL DUTT

Counsel	:	Mr. J. Nasa for the State.
	:	Mr. P. Sharma and Mr. N. Chand for the Accused.
Dates of Hearing	:	17 June, 2024
Closing Speeches	:	19 June, 2024
Date of Judgment	:	20 June, 2024
Date of Sentence	:	03 July, 2024

SENTENCE

1. In a judgment delivered on 20th June, 2024 this court found the accused guilty for one count of act intended to cause grievous harm and he was convicted accordingly.
2. The brief facts were as follows:
 - (a) On 8th May, 2021 after buying drinks at a nearby shop the victim, the accused and their nephew were drinking liquor at the playground behind the house of the victim. It was nearly midnight

midnight the drinks finished and they were about to go home when the victim asked the accused who had cut his coconut trees.

- (b) After an exchange of words the accused punched the victim on both sides of his face and before the victim could run away the accused stabbed the victim on his stomach with a sharp object. The victim tried to run away but he could not because at this time he fainted.
- (c) The victim was taken to the hospital and he was hospitalized for two weeks. According to the doctor the victim received injuries on his face and an open stab wound in his abdomen in the lower right quadrant. The penetration of the sharp object led to the removal of the victim's appendix.
- (d) The accused was arrested, caution interviewed and charged.

3. The state counsel filed written sentence submissions and the defence counsel filed mitigation for which this court is grateful.

4. The counsel for the accused presented the following mitigation on behalf of the accused:

- a) The accused is 39 years of age;
- b) Married with two children;
- c) Is a Driver by profession;
- d) Sole bread winner of the family;
- e) Was also supporting his elderly parents;
- f) Has assisted charitable organizations and is a member of religious groups;
- g) Is remorseful, seeks the forgiveness and mercy of the court.

AGGRAVATING FACTORS

5. The following aggravating factors are obvious:

a) Breach of Trust

The victim and the accused are cousin brothers who had grown up together and were neighbours. The accused grossly breached the trust of the victim by his actions. The attack on the victim was unprovoked. The victim was unarmed, unsuspecting, vulnerable and helpless.

b) Planning

There is some degree of planning involved the accused had gone to his home before going to the playground. He took advantage of the darkness in the playground by hiding a sharp object when he went to drink with the victim.

TARIFF

6. 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 (*see State v Mokubula [2003] FJHC 164: HAA 0052 of 2003 (23 December, 2013)*).
7. 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. I add 3 years for the aggravating factors bringing an interim total of 5 years imprisonment. I note that the accused has a previous conviction for assault in 2016 which is 8 years ago. The accused has also provided a character reference from his employer. In exercise of my discretion and the fact that the accused has been law abiding for the past

8 years I disregard his previous conviction and consider the accused as a first offender hence he receives a discount for good character.

8. The sentence is further reduced for good character and mitigation by 1 year. The sentence is now 4 years imprisonment.
9. The accused was remanded for 14 days in accordance with section 24 of the Sentencing and Penalties Act, in exercise of my discretion the sentence is reduced by 1 month as a period of imprisonment already served. The final sentence is 3 years and 11 months imprisonment. The accused counsel mentioned in his submissions that the accused was sickly but no medical report was tendered with the mitigation. Therefore this aspect of the mitigation has been disregarded.
10. The accused through his counsel is asking for a suspended sentence, in law the above sentence cannot be suspended. A suspended sentence will be too lenient and may encourage people to use a weapon or lethal objects to settle their differences which will send a wrong message to the community.
11. Considering the circumstances of the offending, the level of the accused culpability and the harm caused to the victim an immediate custodial sentence is warranted. When a person uses a weapon or a lethal object which causes serious injuries on another, he or she should be prepared to face severe consequences by way of an immediate custodial sentence.
12. 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.

13. 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.

14. In this regard I have taken into consideration the principle stated by the Court of Appeal in *Paula Tora v The State* AAU0063.2011 (27 February 2015) at paragraph 2 Calanchini P (as he was) said:


[2] The purpose of fixing the non-parole term is to fix the minimum term that the Appellant is required to serve before being eligible for any early release. Although there is no indication in section 18 of the Sentencing and Penalties Decree 2009 as to what matters should be considered when fixing the non-parole period, it is my view that the purposes of sentencing set out in section 4(1) should be considered with particular reference to re-habilitation on the one hand and deterrence on the other. As a result the non-parole term should not be so close to the head sentence as to deny or discourage the possibility of re-habilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent. It must also be recalled that the current practice of the Corrections Department, in the absence of a parole board, is to calculate the one third remission that a prisoner may be entitled to under section 27 (2) of the Corrections Service Act 2006 on the balance of the head sentence after the non-parole term has been served.

15. The Supreme Court in accepting the above principle in *Akuila Navuda v The State* [2023] FJSC 45; CAV0013.2022 (26 October 2023)] stated the following:

Neither the legislature nor the courts have said otherwise since then despite the scrutiny to which the non-parole period has been subjected. The principle that the gap between the non-parole period and the head sentence must be a meaningful one is obviously right. Otherwise there will be little incentive for prisoners to behave themselves in prison, and the advantages of incentivising good behaviour in prison by the granting of remission will be lost. The difference of only one year in this case was insufficient. I would increase the difference to two years. I would therefore reduce the non-parole period in this case to 12 years.

16. Considering the above, I impose 2 years and 6 months as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case.
17. Mr. Dutt I do not have any words to describe your action on your cousin brother. The circumstances of the offending are serious the doctors had to remove the appendix of the victim after a surgery. You had shown no mercy towards the victim he could have died if he was not taken to the hospital immediately.
18. No amount of repentance can save you from an imprisonment term you should have thought about the consequences of your actions before embarking on such an offending.

19. You are a coward, you should be ashamed of yourself you had no second thoughts about what you were doing. You do not deserve any mercy from this court.
20. In summary the accused is sentenced to 3 years and 11 months imprisonment with a non-parole period of 2 years and 6 months to be served before he is eligible for parole.
21. Due to the closeness of the relationship between the victim and the accused a permanent non-molestation order is issued to protect the victim under the Domestic Violence Act.
22. 30 days to appeal to the Court of Appeal.


Sunil Sharma
Judge



At Lautoka
03 July, 2024

Solicitors

Office of the Director of Public Prosecutions for the State.
Messrs Law Parmendra, Rakiraki for the Accused.