

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 271 of 2022

STATE

v

BI BAODANG

Counsel: Mr. M. Vosawale and Ms. T. Sharma for the State
Ms. B. Malimali and Mr. P. Pranesh for the Accused

Date of Mitigation & Sentencing Submission: 29 August 2024

Date of Sentence: 27 September 2024

SENTENCE

1. **Bi Baodang**, the accused, is indicted with the offence of *Attempted murder* laid out as follows in the Information by the Director of Public Prosecutions dated 6 September 2022:

COUNT 1

Statement of Offence

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

Particulars of Offence

BI BAODANG on the 2nd day of August, 2022, at Suva in the Central Division, attempted to murder **QU GUANG QING**.

2. Bi Baodang pleaded *not guilty*, tried, found guilty and convicted of the aforesaid offence on 26 July 2024. This is the Court's finding on sentence.

Brief facts

3. On the evening of 2 August 2022 Qu Guang Qing (PW3) left the wharf at Walu Bay, Suva, and went home driving off in a black pickup vehicle registration number HJ676, and while driving along Rodwell road he was shocked to notice Bi Baodang (DW1) suddenly getting up from behind the back seat and confronting Qu Guang Qing (PW3) that he has not been good to him while at the same time putting a knife in front of Qu Guang Qing's chest. Bi Baodang (DW1) then stabbed Qu Guang Qing's chest area and Qu Guang Qing was shocked and covered the stabbed and wounded area with his right hand, and tried to open the vehicle door to disembark while the vehicle was still moving. Qu Guang Qing then managed to get off the vehicle and ran shouting that someone had wanted to kill him. This was witnessed by Samuela Tikoivavalagi (PW1) who saw, between 8pm and 8.30pm on 2 August 2022, the black twin cab vehicle stop in the middle of Rodwell road just in front of where he sells food and the driver a Chinese man wearing a vest got out of the vehicle and was touching his ribs which was bleeding and walked a bit ahead. PC 6430 Mohammed Rasasa (PW2) and PC 7577 John Musudroka (PW5) attended to the incident and thereafter Bi Baodang (DW1) was taken to the Suva municipal market police post for further interrogation, and Qu Guang Qing (PW3) conveyed to the CWM Hospital. On 3 August 2022 at about 12.30am Dr. Akash Biman Prasad (PW4) conducted surgery termed *Exploratory Laparotomy* on Qu Guan Qing (PW3). Dr. Prasad (PW4) found an incision or a clean break in the skin on PW3's left nipple area which extended into the chest up to one of the ribs after which point its trajectory had changed downwards into the abdomen cavity. The exit wound was found on the left side of the diaphragm. The abdominal fat was found stuck in the exit wound and there was active bleeding from small vessels in this abdominal fat. The tract that was formed from the entry to the exit wound was at least 12cm long and was adjacent to the

heart, the spleen, and the left lobe of the liver. Because the tract had gone through the chest, it had injured the left lung and the lining of the left lung called the *Pleura* causing *Haemopneumothorax* which is the collection of air and blood in the cavity surrounding the lung, which in turn can cause the patient to experience shortness of breath and chest pain. Dr. Prasad (PW4) opined that the stab wound sustained by PW3 was potentially life threatening and most likely inflicted by a sharp knife.

Attempted Murder sentence analysis

4. ***Attempted Murder*** is contrary to sections 44(1) and 237 of the Crimes Act 2009, and the maximum penalty is life imprisonment.
5. Section 44(1) of the Crimes Act 2009 state, *'[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'*. Murder is contrary to section 237 of the Crimes Act 2009, and the penalty is *'[m]andatory sentence of imprisonment for life, with a judicial discretion to set a minimum term to be served before pardon may be considered'*.
6. Section 18(1) of the Sentencing and Penalties Act 2009 state, *'[s]ubject to sub-section (2), when a court sentences an offender to be imprisoned for life or for a term of 2 years or more the court must fix a period during which the offender is not eligible to be released on parole'*.
7. For instance, in Rokotuiwailevu v State [2022] FJSC 21; CAV0011.2018 (28 April 2022), in dismissing the Appellant's application for enlargement of time and leave to appeal, the Supreme Court therefore upheld the Appellant's conviction and sentence of life imprisonment with a minimum term of 8 years for attempting to murder his father Peni Navuku ordered by the Lautoka High Court. Furthermore, in Darshani v State [2018] FJSC 25; CAV0015.2018 (1 November 2018) the Supreme Court dismissed the Appellant's application for leave to appeal against conviction and sentence, consequently the court upheld the Appellant's conviction and sentence of life imprisonment with a non-parole period of 20 years for three counts of *Attempted murder*.

8. As illustrated in Rokotuiwailevu v State (supra) and Darshani v State (supra), given that the maximum penalty for the offence of *Attempted murder*, like *Murder*, is fixed in law that of life imprisonment, the matter to be determined by this Court in Bi Baodang's case is what non-parole term to fix in accordance with the steps enunciated by the Fiji Court of Appeal in Tevita Vuniwai v State [2024] FJCA 100; AAU176.2019 (30 May 2024), paragraphs 91 - 121.

9. Relying on the steps prescribed by the Fiji Court of Appeal in Tevita Vuniwai v State (supra), I find as follows:

Step 1 – Category of seriousness of the *Attempted Murder*

The category of seriousness of the *Attempted murder* in this case is '**High**' justified by the fact that Bi Baodang had boarded Qu Guang Qing's (PW3) vehicle HJ676 with a knife without the latter knowing, and Bi Baodang then getting up all of a sudden along Rodwell Road, Suva, confronted and stabbed Qu Guang Qing (PW3) on the chest, which category according to the table at paragraph 91 of Tevita Vuniwai v State (supra) deserves a starting point of 20 years imprisonment, and minimum term range of 15 – 25 years imprisonment.

Step 2 – Aggravating and mitigating factors

With the starting point of 20 years imprisonment, 3 years is added due to the aggravating factors in that Bi Baodang had boarded Qu Guang Qing's vehicle with a knife without the latter knowing, and then intentionally stabbed Qu Guang Qing on his chest while he drove home from work. Furthermore, due to extent of the stab wound on Qu Guang Qing's chest, he had to be operated upon by Dr. Prasad (PW4) who opined that the stab wound sustained by PW3 was potentially life threatening and most likely inflicted by a sharp knife. Apart from the stab wound, the emotional and psychological trauma endured by Qu Guang Qing, and the fact that he could have lost his life are also aggravating factors.

Of the 23 years imprisonment, 1 year is deducted for the mitigating factors taking into consideration that Bi Baodang has no prior conviction, 46 years of age, married with a young daughter back in China, and earning a living as a fisherman.

Step 3 – Guilty plea

Bi Baodang pleaded *not guilty* to *Attempted Murder*, tried, found guilty and convicted of the aforesaid offence on 26 July 2024.

Step 4 – Time served on remand

A further deduction of 2 years is made of the 22 years imprisonment, for time served on remand, thus arriving at a term of 20 years.

Step 5 – Proportionality

The 20 years arrived at in step 4 is within the minimum term range of 15 – 25 years imprisonment for this *Attempted Murder* being categorized as ‘High’ in terms of seriousness as per step 1.

Serving of sentence in China

10. In the course of the sentencing hearing, defence counsel raised the possibility of Bi Baodang, a citizen of China, serving his sentence in the Peoples’ Republic of China, in light of Justice Daniel Goundar’s decision in State v Wang Qi Yong [2020] FJHC 753; HAC189.2019 (3 September 2020), where the learned judge held at paragraph 10:

The offender is sentenced to life imprisonment. It is a matter for the State to decide whether the offender is to serve his sentence in Fiji or to be deported to China.

11. Justice Goundar’s remark pertaining to deportation is, in my view, premised on section 50(b) of the Immigration Act 2003 which state:

50. Subject to this Part, the Minister may order the deportation of a person who is not a citizen, being - (b) a person who has, before or after the commencement of this Act, been convicted, in the Fiji Islands or another country, of an offence which carries a fine of not less than \$20,000 or imprisonment of 10 years or more (including life imprisonment or death sentence); ...

12. State counsel provided written confirmation by the Fiji Corrections Service dated 20 September 2024 that Wang Qi Yong, a Chinese national, is currently serving his sentence of life imprisonment at the Naboro Minimum Correction Centre for *Murder*.
13. Furthermore, there is no bilateral agreement between the Republic of the Fiji and Peoples' Republic of China that enable Chinese nationals duly convicted in Fiji to be sent back to China for purposes of serving their imprisonment term in China, or *vice versa*.

Conclusion

14. Bi Baodang is convicted of Count 1 – *Attempted murder* in the Information by the Director of Public Prosecutions dated 6 September 2022.
15. Bi Baodang is sentenced to life imprisonment, with a minimum term of 20 years imprisonment.
16. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in blue ink, appearing to read "Pita Bulamainavalu", is written over a dotted line.

Hon. Mr. Justice Pita Bulamainavalu
PUISNE JUDGE

At Suva

27 September 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

Pacific Chambers for the Accused