

PAULINO ULU v STATE (HAA0080 of 2006S)

HIGH COURT — CRIMINAL JURISDICTION

5 GATES J

21, 28 July 2006

10 **Criminal law — sentencing — criminal intimidation — Appellant had two previous convictions for injuring an animal and act with intent to cause grievous harm — Appellant committed similar offence 3 months after expiry of term of suspended sentence — whether sentence harsh and excessive — Criminal Procedure Code s 163 — Penal Code (Cap 17) s 330(a).**

15 The Appellant had two previous convictions for injuring an animal and for an act with intent to cause grievous harm against his father. He was sentenced to 12 months' imprisonment and suspended for 2 years. Three months after the expiry of the term of the suspended sentence, the Appellant committed the offence of criminal intimidation against his 65 year old father by threatening to kill him using a cane knife. He pleaded guilty in the Magistrates Court and the learned judge sentenced the Appellant to 18 months' 20 imprisonment, considering that it was the second time that he was charged for a similar offence. The Appellant appealed against his sentence alleging that it was harsh and excessive. The Appellant stated that there was already reconciliation with his father, he pleaded guilty and cooperated with the police. He represented himself in the appeal.

25 **Held** — The sentence was not harsh and excessive since criminal intimidation does not require the actual infliction of harm, merely the threat of it with intent to cause alarm. The 18 months' imprisonment was well within the acceptable range for the gravity of the circumstances of this offence. The term could not be suspended in view of the suspension of the previous term, never mind the plea or reconciliation.

Appeal dismissed.

30 **No cases referred to.**

Appellant in person

A. Ravindra Singh for the Respondent

35 **Gates J.** Appeal against sentence; severity of sentence; criminal intimidation, contrary to s 330(a) of the Penal Code (Cap 17); threat to cause death or grievous hurt; circumstances of aggravation converts offence to a felony with a maximum sentence of 10 years' imprisonment; Appellant sentenced to 18 months' imprisonment; pleaded guilty; says reconciled with father; two 40 previous convictions; one for act with intent to cause grievous harm where same complainant involved; had received 12 months' imprisonment suspended for 2 years; offence not reconcilable s 163 of the CPC; no longer private matter when weapon such as knife used; immediate term of imprisonment within acceptable range.

45 [1] On 17 May 2006, before the Suva Magistrates Court the Appellant Paulino Ulu pleaded guilty to a single count of criminal intimidation contrary to s 330(3) of the Penal Code (Cap 17). He was sentenced to a term of 18 months' imprisonment.

50 [2] The Appellant appeals against the sentence saying it is too harsh and excessive. He says he has now reconciled with his father, the complainant, who was threatened with the cane knife. He also refers to his guilty plea and to the fact

that he cooperated with the police. He was asked whether he wished to have legal representation and he said he wanted to handle his appeal himself.

5 [3] Criminal intimidation is normally a misdemeanour attracting a maximum penalty of 2 years' imprisonment. However, where the threat is to cause grievous hurt or death, among other circumstances, the offence becomes a felony subject to a maximum sentence of 10 years' imprisonment.

10 [4] On 13 May 2006 the Appellant had sent his daughter to his father and mother's house. It was a Saturday morning around 11 am. She had been asked to get some food for their breakfast. The Appellant's father refused. The Appellant then came and confronted his father, who in turn told him "not to drink grog too much and to look after his family". The Appellant did not like this admonishment and advice. He became very angry and swore at his parents.

15 [5] The Appellant would not be calmed, and eventually went and got his cane knife. He struck out at the father four times threatening to kill him. Fortunately, the father, though 65 years of age, was able to duck and to avoid being hit each time. The matter was reported to the police.

20 [6] The Appellant had two previous convictions. In 1998 he was fined for injuring an animal, and in 2004 for an act with intent to cause grievous harm (again the complainant was his father) he was given a sentence of 12 months' imprisonment suspended for 2 years. This present offence was committed 3 months after the expiry of the term of the suspended sentence.

[7] The learned magistrate sentenced the Appellant as follows:

25 This is the second time you have been charged for similar offence. The first incident, you were given a suspended sentence. This second offence, you shall go to Prison in view of the circumstances of the case. You are hereby sentenced to 18 months imprisonment. Hopefully, when you are released from Prison you shall respect your father.

30 **Aggravating factors**

[8] This was the second time the Appellant had been dangerously violent towards his elderly father. He had been given a suspended sentence on the first occasion. What sentence might he reasonably and correctly expect after flouting the law towards the same complainant in a repeat attack?

35 [9] This was a serious offence, though fortunately no actual harm came to his father from the knife wielding. The Appellant said he fully realised that a cane knife wound to an elderly man might endanger his life, and would most likely cause grievous hurt.

40 **Mitigating factors**

[10] The Appellant had pleaded guilty and said he was remorseful. He said he had reconciled with his father. This may be so. However, this is not a reconcilable offence under the s 163 of the Criminal Procedure Code. Anyway, once a cane knife or dangerous weapon is used in an assault the matter is no longer one "substantially of a personal or private nature". The use of the knife adds a dangerous aggravation to what might have been a case of mere fisticuffs. The interest of the public here is better served in no longer treating such violence as just a private matter. Law and order requirements of society mean that knife fights cannot be overlooked whether in suburbs, villages or settlements. The weapon element converts the assault or threat into a public matter.

Conclusion

[11] I have not been referred to a tariff for such offences. Not many of these cases come before the courts. I find the magistrate was correct in his observations and to treat the matter as requiring a term of imprisonment. Such a term could not
5 be suspended in view of the suspension of the previous term, never mind the plea or reconciliation.

[12] The offence does not require the actual infliction of harm, merely the threat of it with intent to cause alarm. Whether such conduct merited as much as
10 18 months' imprisonment is of no significance, for the term was well within the acceptable range for the gravity of the circumstances of this offence.

[13] Accordingly, the appeal fails and the sentence is upheld.

Appeal dismissed.

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