

**IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION**

Criminal Case No: 176 - 2014

**STATE**

-v-

**PREM CHAND**

Before : RM Fotofili L.  
For Prosecution : WPC Chand A. [ Police Prosecution ]  
Accused : Mr Samy A. [ Legal Aid Commission ]  
Date of Trial : 26<sup>th</sup> February 2019  
Date of Sentence : 29<sup>th</sup> October 2019

**SENTENCE**

**BACKGROUND**

1. **PREM CHAND**, you have been found guilty after trial. You denied the following allegation:

**Statement of Offence**

**CRIMINAL INTIMIDATION**: Contrary to section 375 ( 1 ) of the *Crimes Act* No: 44 of 2009.

**Particulars of Offence**

**PREM CHAND** on the 18<sup>th</sup> day of March, 2014 at Tavua in the Western Division without lawful excuse, threatened **ABDUL AZIZ** with a cane knife with intent to cause alarm to the said **ABDUL AZIZ**.

2. The prosecution have withdrawn the other count or allegation against you for indecently insulting or annoying a person contrary to section 213 ( 1 ) of the **Crimes Act 2009** and I have discharged you accordingly in relation to that other count.
3. The victim you criminally intimidated was around 70 years old at the time. He is your neighbour. You two have known each other for around 20 to 30 years. You were upset with him and his family for not tethering or looking after their cows. You found

their cows on your farm. The victim was walking along a nearby road at the time and you chased the cows towards his direction. You threw a stone to scare the victim. You had a cane knife with you at the time and you threatened to cut the victim with it. You also swore at the victim saying 'bastard' and 'motherfucker'. The victim was literally scared out of his wit because of what you did. He fell to the ground and was lying on his side. He called out to his son for help. His son did come and you left the area. The victim became unconscious and was taken to hospital. He felt weak and was shaken up. The victim regained consciousness a few hours later when he was at the hospital.

4. You have not spent any time in remand.
5. You are a first offender.
6. You are 53 years old. You have 3 daughters. You are working as a driver. You have an enlarged heart and a letter from your doctor and other supporting documents have been filed regarding this. You need urgent medical assistance which can only be provided overseas according to your doctor. You have been treated on numerous occasions for dizziness, fainting and weakness amongst other things.

#### **LAW**

7. The maximum sentence that is imposable by law for the offence of criminal intimidation is up to 5 years imprisonment.

#### **TARIFF**

8. The sentencing range or tariff can be between 12 months imprisonment to 4 years imprisonment [ **State v Baleinabodua** [2012] FJHC 981; HAC145.2010 ( 21 March 2012 ).
9. The above sentencing range it must be said, is applicable to a charge of criminal intimidation which attracts a maximum imposable sentence of 10 years imprisonment.
10. Your counsel has filed a persuasive decision by my brother Magistrate Qica S. who opined in **State v Delai** [ 2013 ] FJMC; Criminal Case 266.2012 ( 14<sup>th</sup> January 2013 ) that the tariff for criminal intimidation with 5 years imprisonment as the maximum sentence, should be between 6 months to 2 years imprisonment.
11. In my opinion this tariff is appropriate.

### **STARTING POINT**

12. Considering the objective seriousness of the offence, a 13 month imprisonment term is selected as a starting point.

### **AGGRAVATING FEATURE**

13. This was your neighbour and you have known each other for years. A domestic relationship exists.
14. The victim was elderly or around 70 years old.
15. You swore at him and you tried to scare him with a stone and you chased some cows towards him. You also used a cane knife to threaten him.
16. He became unconscious as a result.
17. Your sentence is increased to 2 years and 5 months imprisonment.

### **MITIGATION**

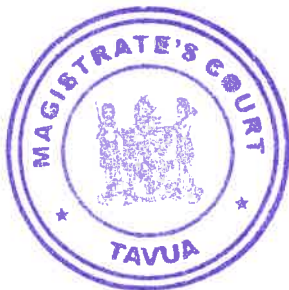
18. You are a first offender.
19. You have a family to support.
20. I accept that emotions must have been high at the time and you were probably upset about the cows left wandering around the area.
21. You have a serious heart condition.
22. Your sentence is reduced to 14 months imprisonment.

### **SUSPENSION & OBJECTIVE OF YOUR SENTENCE**

23. I can suspend your imprisonment term either in whole or in part pursuant to section 26 ( 2 ) ( b ) of the **Sentencing and Penalties Act 2009**.
24. Your sentence will be aimed at deterrence and is to punish you adequately.

**FINAL SENTENCE**

25. No further time will be deducted as you did not spend any time in remand.
26. You are sentenced to 14 months imprisonment.
27. Primarily because of your medical condition, I will suspend your sentence in whole.
28. You are not to commit any other offence punishable with imprisonment in the next 3 years. If you do, this 14 months imprisonment maybe activated.
29. You are fined \$300 and this is to be paid in 28 days. You default in paying this and you risk 19 days imprisonment.
30. The DVRO [ section 27 standard non-molestation conditions ] which was imposed and explained to you earlier on the 17<sup>th</sup> of August 2018 is made final. This is to protect the victim and deter you from misbehaving towards him in the future. Breach any condition of the DVRO and you may be charged with another offence.
31. 28 days to appeal.



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Lisiate T.V. Fotofili  
**Resident Magistrate**

Dated at Tavua this 29<sup>th</sup> day of October, 2019