

IN THE HIGH COURT OF FIJI

AT LAUTOKA

IN THE WESTERN DIVISION

CRIMINAL CASE NO.: HAC 80 OF 2017

STATE

-v-

VOATE VUTONILOMA

Counsel: Mr S. Seruvatu for the State
Ms P. Chand for the Accused

Date of Sentence : 26th May 2017

SENTENCE

1. VOATE VUTONILOMA, after a full trial, you were convicted by the learned Magistrate at Nadi of one count of Attempted Murder contrary to Section 214 of the Penal Code Cap.17.
2. The learned Magistrate transferred this matter to this Court for mitigation and sentence under Section 190(1) of the Criminal Procedure Act.
3. You are now before this Court for sentence.

4. On the 4th day of September, 2005 at Saunaka Village, Nadi, you, under influence of alcohol, attempted to kill Joseva Ratabua (complainant) by deliberately bumping your vehicle against him and knocking him down. As the complainant fell on the ground, you reversed the vehicle and hit the complainant a second time causing him severe injuries. Complainant was stuck between the two tyres (rear) and was dragged for some distance. He was fortunate to save his life as he was not run over by tyres. He was taken to the hospital under a critical condition and found to have wounds over his face and chest and was bed ridden in hospital for 4 months.
5. Upon perusal of the record, I am satisfied that you were activated by an 'intent to kill' and the conviction was available on evidence recorded by the learned Magistrate.
6. "Attempted murder" is a serious offence. The penalty under the Penal Code is a mandatory sentence of life imprisonment.
7. To select a starting point for your sentence, I looked at culpability factors and the harm caused to the complainant to gauge the objective seriousness of your offending. This incident was a horrific one. You have demonstrated a high level of culpability. However, there is no evidence of preplanning and therefore I consider your offending to be one of spontaneous. You took your car after an argument but there is no evidence that victim offered any provocation to justify your action. The Complainant has received permanent injuries and will live with the emotional effects of the trauma of your attack for years to come.
8. There is no specific tariff set for Attempted Murder under the Penal Code. Upon examination of case law it is revealed that a sentence between 6-11 years imprisonment has been imposed depending on circumstances of each case. In order to reach a sentence that is just and reasonable in the circumstances of your case, I examined decided Attempted Murder cases under the Penal Code.

9. In *State v Laduva* [2004] HAC 003/04 14 June 2004, the accused was sentenced to ten years' imprisonment for attempting to murder his daughter with a bayonet. His Appeal against sentence to the Fiji Court of Appeal was dismissed.
10. In *State v. Bobby Hemant Singh* HAC 052 of 2007(L), Winter J sentenced the accused, a 32-year-old man to 8 years' imprisonment for trying to kill his *de facto* spouse in a premeditated attack by setting her on fire with kerosene and matches.
11. In *State v Samy* [2007] FJHC78; HAC 029S.06 92 (November 2007), the accused pleaded guilty to three counts of Attempted Murder. Accused had struck his mother on the face, head and neck with a chopper and two others, in a premeditated attack.

Justice Shameem took the starting point of 9 years and stated:

"Given the degree of premeditation, the use of dangerous weapon, the lasting injuries on the victims and the betrayal of trust, I arrive at 11 years imprisonment. I deduct 2 years for your guilty plea. I arrive at a sentence of 9 years imprisonment on each count. The total term would be excessive if I ordered consecutive terms. I therefore sentence you to 9 years imprisonment on each count to be served concurrently"

12. In *Waqanivalu v State* [2008] FJSC 44: CAV0005.2007 (27 February 2008), the Supreme Court refused special leave to appeal against the sentences of ten years' imprisonment imposed by the High Court and affirmed by the Fiji Court of Appeal. The Appellant had been convicted for five counts of Murder and one count of Attempted Murder. For the Attempted Murder charge, he was sentenced to ten years' imprisonment.
13. In *State v Atik* [2010] FJHC 199; HAC045.2009 (10 June 2010) Justice Madigan handed down a sentence of six years' imprisonment to a convict who attempted to kill his *de facto* wife. His Lordship, stated as follows:

"The facts revealed during trial show that on the 23rd June 2009 at Elevuka (Ba) you met your wife at a house she was renting. She had for some weeks prior to that been co-habiting with a younger man whom she had met by chance at the Lautoka bus stand. You, understandably, were not happy about that and the purpose of your visit that day was to get her back to take care of your 2 boys aged 6 and 9. You took a cane knife with you to "punish" her if she did not consent to coming back. An argument ensued and you dragged your wife into the compound where you hit her with the knife on the head and arm. Police arrived, having been called by neighbours and they luckily were able to disarm you and subdue you. Your wife suffered a serious injury to her head including a fractured skull. That shows the force you had used in the blow to her head. Any blow to the head is extremely serious and such a forceful blow underlines your intent to kill your wife".

.....

I take as my starting point a term of 5 years' imprisonment. You obviously planned to do this deed by bringing your own cane knife and hiding it in bushes outside. For that aggravating factor, I add a further two years. As a credit for the time you have spent in custody awaiting trial I deduct 12 months. The term of imprisonment that you will serve is one of 6 years, and you will not be eligible for parole for the first four years.

14. Having considered the objective seriousness of your offending, I select a starting point of 9 years.
15. There are no aggravating factors in this case.
16. Your Counsel has mitigated on your behalf and tendered a lengthy submission for my consideration.
17. You are now 37 years old and a father of 4 children. You have separated from your wife. You are the sole breadwinner of your family.

19. You are remorseful for what you have done and seek court's forgiveness. You have sought apology from the complainant and his family three times and the complainant has forgiven you on the condition that you pay him compensation.
20. You have cooperated with police investigations.
21. I deduct 2 years from your sentence to reflect above mentioned mitigating circumstances bringing your interim sentence to 7 years' imprisonment.
22. This incident happened in 2005, and this case has been hanging over your head for nearly 12 years as "the Sword of Damocles". You should receive a special discount on that account irrespective of who was responsible for the delay. I deduct 10 months for the delay caused by the system.
23. You have been in remand for nearly two months. For that, I deduct further 2 months.
24. Having considered Sections 4 and 15 (3) of the Sentencing and Penalties Act, I impose a sentence 6 years' imprisonment.
25. **Your final sentence is 6 years' imprisonment.**

26. ^{30 days} to appeal to the Court of Appeal



At Lautoka
26th May 2017

A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge
Judge

Solicitors: Office of the Director of Public Prosecution for State
Office of the Legal Aid Commission for Accused