

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

HIGH COURT CRIMINAL CASE NO. HAC 106 of 2018
[Magistrates' Court Criminal Case No. 15 of 2017]

BETWEEN : STATE

AND : SOLOMONE VAKALALABURE

Counsel : Ms S Lodhia for the State
Accused in Person

Date of Hearing : 7 May 2018

Date of Ruling : 9 May 2018

SENTENCE

- [1] Solomone Vakalalabure, you have pleaded guilty to a charge of assault occasioning actual bodily harm after waiving your right to counsel. You first appeared in the Magistrates' Court on 7 March 2016. Since you had a history of mental illness, the court ordered for a psychiatric report to determine your fitness to take a plea. Thereafter the case was adjourned on numerous occasions to check on the availability of the psychiatric report. On 9 February 2018, the court was informed that you were fit to plead. Your initial charge was act with intent to cause grievous harm, which is an indictable offence.
- [2] On 1 March 2018, the case was transferred to the High Court. On 24 April 2018, the Director of Public Prosecutions filed Information, charging you with an offence of assault occasioning actual bodily harm contrary to section 275 of the Crimes Act. You pleaded guilty to the charge at the arraignment. After hearing you, the Court is satisfied that your plea is informed and competent. You are convicted as charged.

- [3] In sentencing you, the Court must have regard to the circumstances and gravity of your offence. The incident occurred on 5 March 2017 at Lomaivuna, Naitasiri. On the day of the incident, you got annoyed with the victim when he tried to have a conversation with you. You picked up a cane knife and struck him in the head. Fortunately, the victim overpowered you and took the knife away from you. The victim was wounded. He sustained an incision – 11cm in length and 4cm deep.
- [4] On 6 March 2017 you were arrested and charged. You confessed to the assault under caution. You have been in custody on remand since your arrest.
- [5] The maximum penalty prescribed for assault occasioning actual bodily harm is 5 years' imprisonment. In *State v Anjula Devi* Criminal Case No. 04 of 1998 (Lab) Shameem J said:

The tariff for Assault Occasioning Actual Bodily Harm ranges from a suspended sentence when there is a degree of provocation and no weapon used, to 9 months' imprisonment for the more serious cases of assault.

- [6] The aggravating factor is the use of a weapon to inflict a head wound on your brother. An appropriate sentence in these circumstances would have been on the higher end of the tariff.
- [7] You are 50 years old. You never married. You are a first time offender. The victim is your brother. He is 47 years old. Although the exact nature of your mental condition is not known, it is not in dispute that at the time of the commission of the offence you were suffering from a mental illness. At the time of the commission of the offence, the victim described your condition as follows:

This morning, 05.03.2017 at about 8.00am, we all left Domain and returned home. At about 10.00am, we arrived at Lomaivuna. My sister and her husband dropped us at the junction and they returned to Nadi. We took a walk from that junction to our farm. It took us one (1) hour by foot to arrive home. I was carrying the umbrella and our groceries whilst Solo was just carrying his flip flop with him.

Whilst taking a walk home, it started to rain and I was persuading him to join me for the umbrella but he refuses. I was worried of him because he did not take his medication since yesterday but he was just shaking his head. He did not talk to me. I straight away knew that there is a problem.

Upon arrival at home, I checked the door and saw the lock hanging, I told Solo to wait for me whilst I return to our neighbor. I took a closer look but it was not lock. I opened the lock then opened the door and we entered the house. I recall that I informed him of something but he did not bother to listen to me. I got angry and told him aggressively saying "vaca ahh, vaca" meaning what's wrong. Whilst talking to him, I saw him bending down picked the cane knife lifted it and all of a sudden struck me which landed on my head and could feel the blood. He was very aggressive and told me that he will kill me. I was just saying no, no. I overpowered him, grabbed the knife and managed to escape from him.

- [8] Your early guilty plea and previous good character are mitigating factors. The next question is whether mental illness is relevant to sentencing, and if it is, to what extent. In *R v Anderson* [1981] VR 155; (1980) 2 A Crim R, it was held that the fact that an offender was, or is, suffering from a mental illness either at the time of the commission of the offence or at the time of sentencing may be taken into account at sentencing. Further, an offender's mental condition can have the effect of reducing a person's moral culpability and matters such as general deterrence, retribution and denunciation have less weight (*Muldrock v The Queen* (2011) 244 CLR 120 at [53]; *R v Israil* [2002] NSWCCA 255 at [23]; *R v Henry* (1999) 46 NSWLR 346 at 354). This is especially so where the mental condition contributes to the commission of the offence in a material way (*DPP (Cth) v De La Rosa* (2010) 79 NSWLR 1 at [177]; *Skelton v R* [2015] NSWCCA 320 at [141]).

- [9] The High Court of Australia explained the rationale for the principle in *Muldrock v The Queen* at [54]:

The principle is well recognized. It applies in sentencing offenders suffering from mental illness, and those with an intellectual handicap. A question will often arise as to the causal relation, if any, between an offender's mental illness and the commission of the offence. Such a

question is less likely to arise in sentencing a mentally retarded offender because the lack of capacity to reason, as an ordinary person might, as to the wrongfulness of the conduct will, in most cases, substantially lessen the offender's moral culpability for the offence. The retributive effect and denunciatory aspect of a sentence that is appropriate to a person of ordinary capacity will often be inappropriate to the situation of a mentally retarded offender and to the needs of the community.

- [10] The victim's statement indicates that you may have lacked the capacity to appreciate the gravity of your offence due to your mental illness. Your moral responsibility in these circumstances is far less than if the offence had been committed by an ordinary person. I take into account that you have spent 1 year 2 months in custody while on remand.
- [11] Due to these exceptional circumstances, I discharge you without any further punishment under section 15(h) of the Sentencing and Penalties Act.



A handwritten signature in blue ink, appearing to read "Daniel Goundar".

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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Accused in Person