

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.69 of 2018

STATE

V

OLIVER WHIPPY

Counsel: Miss D Rao for the State
Mr. E.Radio with Miss K. Boseiwaqa (L.A.C.)
for the accused

Date of Judgment : 15 April 2019

Date of Sentence : 17 April 2019.

SENTENCE

1. The accused has been found guilty after trial of one count of causing grievous harm, contrary to section 258 of the Crimes Act 2009 and guilty on his own plea of two counts of criminal intimidation contrary to section 375(2) of the Crimes Act 2009.
2. These charges arose out of a frenzied attack by the accused on his *ex de facto* partner at her place of employment, the Koro Sun Resort in Savusavu.
3. After days of telephone threats and harassment, he arrived unexpectedly in her office on the morning of 25th August, 2018, brandishing a cane knife. Telling her he was going to kill her, he wielded a blow with the knife towards her neck, a blow that she fended off with her left hand, resulting in the grievous harm to her hand that needed subsequent surgery at CWM Hospital.

4. From her office, he dragged her through the grounds of the resort, beating her with the blade of the knife and uttering threats of murder.

The victim's colleague followed them, filming the on-going attack on her mobile phone. The accused threatened her to stop filming.

5. Eventually the Police arrived and the accused threatened to kill the victim if they came anywhere near him. Fortunately the Police were able to defuse the situation and make the accused surrender his knife and then himself.

6. The victim who was bleeding profusely passed out and was taken for urgent medical treatment at the Savusavu District hospital before being transferred to CWM.

7. The accused is 37 years old and until his arrest was a farmer in Wainunu, Bua. He has two daughters, including an 18 month old from his relationship with the victim.

8. The maximum penalty for causing grievous harm is 15 years imprisonment. This Court found that the tariff for the offence is a term of imprisonment of between 2 to 6 years in **PauliasiYasa** HAC44/2012. The starting point of sentence will of course depend on the severity of harm.

9. The maximum penalty for the offence of criminal intimidation where the threat is of death is fifteen years imprisonment. Temo J.in **AnasaBaleinabodua** set a tariff of 1-4 years for the lesser offence of intimidation under section 375(1)(a) but there is no reason why that tariff should pertain to convictions under the more serious 375(2).Convictions under subsection (2) should attract sentences of imprisonment between 2 and 6 years.

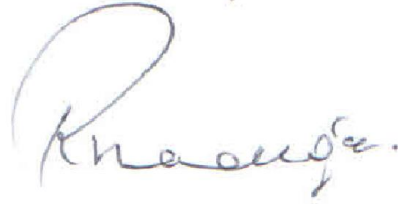
10. The accused was initially brought before the Court charged with attempted murder and two counts of criminal intimidation. He entered pleas of guilty to the two counts of intimidation and offered a plea to a lesser charge than attempted murder. This offer was not accepted by the Prosecution and the trial proceeded on the one count of attempted murder. The assessors and the Court found him not guilty of that count but guilty of the lesser count of causing grievous harm. His original offer to plead to this lesser charge must indeed receive some discount but not to the degree that a plea to the charge on the information would attract.
11. For the grievous harm conviction I take a starting point of 4 years imprisonment. There is serious aggravation to this offence in that the continuous assault took part in a well-known Vanua Levu tourist resort, where tourists could well have been alarmed by witnessing mayhem in what they would have expected to be a peaceful welcoming Fijian resort. As this Court has said on several occasions, any crime that would impact on tourists' perception of the "hidden paradise" must be regarded with great severity. For this aggravation I add three years to the sentence.
12. His Counsel in mitigation pleads his great remorse in these crimes that have removed him from his young daughters. The Court has seen evidence of his remorse and would deduct one year from the sentence to reflect that. For his early offer to plead to the crime which in fact he now stands convicted of I deduct a further one year meaning that the term he will serve for causing grievous harm will be a term of five years imprisonment. Until trial the accused was serving a term of imprisonment for an act with intent to grievous bodily harm to this very same victim. He is therefore not eligible to receive credit for time spent on remand or for good character.

13. For each of the two serious counts of criminal intimidation, I take a starting point of four years' imprisonment. The work colleague of the victim and the senior police officer were both seriously alarmed by the accused's threats to both them and to the victim.
14. I add three years for the same "tourist" aggravating feature referred to *supra* and for his remorse I deduct one year. To reflect his early guilty plea to both offences I deduct a full third that is 2 years, to arrive at a sentence for each of the criminal intimidations of four years imprisonment. These sentences will be served concurrently with each other and concurrently to the sentence for grievous harm.
15. The total term of imprisonment for all three crimes is a term of five years. He will serve a minimum of 4 years imprisonment before being eligible for parole.

Orders

1. For the conviction on the charge of causing grievous harm , the accused is sentenced to a term of 5 years imprisonment
2. For the second count of criminal intimidation, he is sentenced to a term of 4 years imprisonment
3. For the third count of criminal intimidation, he is similarly sentence to a term of 4 years imprisonment.
4. All three terms to be served concurrently with each other.
5. All three concurrent terms to be served concurrently with the term that he is already serving.

6. He is to serve a minimum of 4 years imprisonment before being eligible for parole.



P.K. Madigan

Judge

At Labasa
17 April 2019

