

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 06 of 2019

BETWEEN : THE STATE

AND : JOLAME NAYACAKALOU

Counsel : Ms. Prenika Kirti Lata for the State
Ms L. Volau for the Accused

Date of plea : 24 April 2019

Date of Sentence : 27 August 2019

SENTENCE

1. Jolame Nayacakalou, you are to be sentenced upon freely and voluntarily pleading guilty to the following counts;

First Count

Statement of Offence

Criminal Trespass: Contrary to Section 387 (1) (a) of the Crimes Act 2009.

Particulars of Offence

Jolame Nayacakalou on the 24th day of November 2018, at Nadi in the Western Division, entered into the dwelling house of Siti Khan, without any lawful excuse.

Second Count

Statement of Offence

Act Intended to cause Grievous Harm: Contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence

Jolame Nayacakalou on the 24th day of November 2018, at Nadi in the Western Division, with intent to do some grievous harm to Elia Rakumu, unlawfully wounded the said Elia Rakumu by striking him with a kitchen knife.

Third Count

Statement of Offence

Common Assault: Contrary to Section 274 (1) of the Crimes Act 2009.

Particulars of Offence

Jolame Nayacakalou on the 24th day of November 2018, at Nadi in the Western Division, unlawfully assaulted Linda Khan by punching her and grabbing her hair.

Fourth Count

Statement of Offence

Act Intended to cause Grievous Harm: Contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence

Jolame Nayacakalou on the 24th day of November 2018, at Nadi in the Western Division, with intent to do some grievous harm to Lynda Khan, unlawfully wounded the said Linda Khan by striking her with a kitchen knife.

Fifth Count

Statement of Offence

Act Intended to cause Grievous Harm: Contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence

Jolame Nayacakalou on the 24th day of November 2018, at Nadi in the Western Division, with intent to do some grievous harm to Moape Wara Junior, unlawfully wounded the said Moape Wara Junior by striking her with a kitchen knife.

Sixth Count

Statement of Offence

Damaging Property: Contrary to Section 369 (1) (a) of the Crimes Act 2009.

Particulars of Offence

Jolame Nayacakalou on the 24th day of November 2018, at Nadi in the Western Division, unlawfully and willfully damaged the house door and windows valued at \$500.00, the property of Siti Khan.

2. You admitted the summary of facts in respect of each count. I am satisfied that your plea in respect of each count is unequivocal, and thus you are convicted for all six counts.
3. According to the summary of facts on 24 November 2018 you entered the house of Siti Khan (PW1). You were heavily intoxicated, and you entered the room of Elia Rakumu (PW 2). You slit Elia Rakumu's neck while he was sleeping. According to the medical report Elia Rakumu has received 3 lacerations on the neck and on left shoulder. Then Linda Khan (PW 3) rushed to stop you and you punched her on the left cheek and got hold of her hair. You further attacked Linda Khan with the knife and when she resisted, the knife hit her left ear and cheek causing injuries. As per the medical report a superficial laceration was noted on the left year extending to the left cheek. Moape Wara Junior (PW 4) who was 9 years old heard the noise and when he came out of his room you threw the knife at him causing injuries. Medical report confirms a superficial laceration on the left side of his abdomen. You damaged window louver blades and a door valued at \$ 500 while trying to flee the scene.
4. You have engaged in a spree of violent acts. You have committed the offences whilst under the influence of alcohol. Injuring a nine year of child is an attack on a vulnerable victim. You have even targeted the person who came to help the first victim. You carried out this attack on the victims at their own residence. You have not shown any regard to their privacy or safety. I consider those as aggravating factors in this case.

5. In mitigation it was submitted that you are 22 years and single. You are unemployed and reside with your aunty and uncle. Although intoxication is submitted as a mitigating factor it must be noted that commission of offences whilst under the influence of alcohol is not a mitigatory factor.
6. However, I am satisfied that you have expressed remorse by pleading guilty at the earliest opportunity. By doing so, you saved the time of the court and relieved the victims from giving evidence in court. However in Aitcheson V The State [2018] FJSC 29;CAV0012.2018 (2 November 2018) the discount that can be given to an early plea was discussed as follows;

“The one third discount may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.”

7. Given the nature of the offences you have committed I am of the view that you are not entitled to 1/3 discount. But I decide to give you a lessor discount for the early plea. Further you are entitled to an appropriate discount for your previous good character.
8. The maximum sentence for criminal trespass is one-year imprisonment. The tariff for criminal trespass is one month to nine months (Raruwai v State [2007] FJHC 55;HAA071-077.2007(10 August 2007).
9. The maximum punishment for act intended to cause grievous harm is imprisonment for life. The tariff is between 2 years to 5 years imprisonment in case of an attack by a weapon according to Justice Shameem in State v Mokubula [2003] FJHC 164; HAAA0052J.2003S (23 December 2003).

10. The maximum punishment for common assault is imprisonment for one year. There is no set tariff for this offence. It appears that it is left to the discretion of the courts to impose appropriate sentences for common assault. (State v Mocevakaca [2019] FJHC 350; HAC85.2016 (17 April 2019); State v Singh [2016] FJHC 595; HAC89.2013 (5 July 2016); State v Pinau [2013] FJHC 195; HAC012.2013 (18 April 2013).
11. The maximum sentence for damaging property is two years imprisonment. The tariff for damaging property is 3 months to 12 months imprisonment. (State v Baleinabodua [2012] FJHC 981; HAC145.2010 (21 March 2012).
12. The offences in this case are originated from the same transaction. Section 17 of the Sentencing and Penalties Act provides that if the offences are founded on the same facts the court can impose an aggregate sentence. Therefore, I decide to impose an aggregate sentence in respect of the offences you are charged with.
13. Having taken into account the above discussed sentencing guidelines, facts of the case, aggravating and mitigating factors I impose an aggregate sentence of 3 years imprisonment on you for the offences you are charged with.
14. The courts have a duty not only to punish the offenders but also to send a message of general deterrence to the society when sentencing an offender. Violence unleashed on innocent members of the public, without any provocation, must be denounced unreservedly. Although you are a first offender, I decide not to suspend your sentence as I am of the view that a lenient non-custodial sentence would not serve the purposes of offending in this case given the serious nature of the offences you committed.
15. You have been in remand custody nearly for a period of one month. I make a downward adjustment to your sentence to reflect the time that you were in remand custody.

16. Accordingly, you should serve a period of 2 years and 11 months imprisonment. I fix a non-parole period of 2 years.



A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned above the name.

Rangajeeva Wimalasena
Acting Judge

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Office of the Legal Aid Commission