

IN THE HIGH COURT OF FIJI
AT LABASA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL CASE NO. HAA 25 OF 2020

(Magistrates' Court Case No. 333 of 2020)

BETWEEN: **ELIKI SENIKAUCAVA**

APPELLANT

AND: **THE STATE**

RESPONDENT

Counsel: **Appellant in person**
 Mr I Rakaria for the Respondent

Date of Hearing: **19 August 2020**

Date of Judgment: **24 August 2020**

JUDGMENT

1. On 29 May 2020, the appellant was charged with one count of criminal intimidation contrary to section 375(1) (a) (i) (iv) of the Crimes Act. The charge alleged that the appellant on 27 May 2020, without lawful excuse and with the intent to cause alarm to Litiana Vosavere threatened to stab her with a broken louver blade. The appellant was produced in the Magistrates' Court at Savusavu on the same day and further remanded in custody.
2. On 8 June 2020, the appellant waived his right to counsel and voluntarily pleaded guilty to the charge. When asked he informed the learned magistrate that he understood the consequences of his guilty plea. He admitted the facts except that he tried to stab the victim with a broken louver blade.

3. On 9 June 2020, the appellant in his mitigation informed the learned magistrate that he was 26 years old and married with two children. He said he was angry with the victim who was his spouse.
4. On 27 July 2020, the appellant was sentenced to 12 months imprisonment with a non-parole period of 6 months.
5. On 12 August 2020, the appellant filed a timely appeal against sentence. His main complaint is that the learned magistrate mistook the facts when he took into account that a cane knife was used in the commission of the offence.
6. The charge alleged that the appellant intimidated the victim using a broken louver blade. However, the facts alleged that the appellant also scarred the victim by holding a cane knife and swearing at her. When the facts were read out to him he disputed the fact that he had intimidated the victim with a cane knife. His version of the facts was that he chased the victim with a broken louver blade. Without resolving the disputed fact, the learned magistrate took into account as an aggravating factor that the appellant committed the offence armed with a cane knife.
7. The learned magistrate identified the following as the aggravating factors at paragraph [10]:
 - Domestic violence
 - Armed with a cane knife
 - Intoxicate at the time of the offending
8. The sentence was enhanced by 11 months to reflect the above aggravating factors.
9. In denouncing the crime the learned magistrate returned to the use of a cane knife and said at paragraph [17]:

You were armed with a cane knife and you ran after your wife. You were intoxicated at the time of the offending. Your wife was afraid of you. The court denounces your action towards your wife.

10. It is clear that the learned magistrate erred in the exercise of the sentencing discretion when he took into account a disputed fact as an aggravating factor to enhance the sentence. Another discernible error is that the learned magistrate took into account that the offence was a domestic violence in selecting the starting point of 10 months imprisonment and also as an aggravating factor to enhance the sentence. The double counting is an error.
11. For these reasons, the appeal is allowed and the sentence imposed on the appellant in the Magistrates' Court is set aside.
12. The maximum penalty for criminal intimidation is 5 years imprisonment. The tariff is 6 months to 2 years (*Sadriu v State* [2017] FJHC 216; HAA65.2016 (15 March 2017)). The appellant has previous convictions. His only mitigating factor is his early guilty plea – remorse and utilitarian value.
13. The aggravating factors are that the appellant was intoxicated and used a broken louver blade (weapon) to cause alarm to his spouse in breach of her trust. Fortunately, the victim was spared any physical harm.
14. A downward adjustment is made to the sentence to reflect the appellant's remand period of two months.
15. The appellant is sentenced to 6 months imprisonment effective from 27 July 2020. Suspension is inappropriate as the offence was committed in a domestic context. The main purposes of the sentence are denunciation and deterrence. The DVRO issued by the learned magistrate is affirmed.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Appellant in Person

Office of the Director of Public Prosecutions for Respondent

