

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 25 of 2021

STATE

vs.

RAMENATABE VUATAUVOLI

Counsel: Ms. A. Vavadakua for the State
Ms. L. Filipe for the Accused

Date of Hearing: 02nd to 04th August 2022

Date of Closing Submission: 05th August 2022

Date of Judgment: 18th August 2022

Date of Sentence/Mitigation Submission: 22nd August, 2022

Date of Sentence: 26th August, 2022

SENTENCE

Introduction

1. Mr. Ramenatabe Vuatauvoli, you were found guilty and convicted on the 18th of August 2022 of attempted manslaughter of Semi Nate your brother and the 2nd Count of an act

with an intent to cause grievous harm to Sovia Lei Ratu by this Court after a full hearing of the trial of which I presided. You appear today to be sentenced for the said offences.

Circumstances of the Offending

2. On the 8th of January 2021 you were living in a same house with your brother Semi Nate. Both of you shared the house but occupied separate portions. It is true that you were in occupation of the entirety of the house on your own until early 2019. You permitted Semi Nate to occupy one room. After he came into occupation with his spouse Sovia, they did extend their occupation to the second room unilaterally without notice or informing you.
3. Between that incident and the present incident in January 2021 there were several incidents and unpleasantness was brewing between your families. Finally on the 8th of January 2021, the porch in your house was broken may be by accident by Semi Nate and Swearing words between Semi Nate and your wife Nancy were exchanged. You were informed of this whilst in the church, it was when you returned. Unfortunately, you had a hammer in your hand and upon confronting Semi Nate you reacted in an extremely violent manner and dealt a blow with the hammer hitting the forehead of Semi Nate, smashing the skull between his eyes. You did deal several more blows to the face and head. He suffered extensive multiple fractures to his skull and the injury penetrated into the brain.
4. According to the surgeon Dr. Samuela Nanovu, Semi Nate would have met with a certain death if not for receiving immediate medical attention. He explained that though the surgery was successful due to the damage and injury to the frontal lobe of the brain, Semi Nate will have long lasting consequences such as loss of memory, change of character and change of mood. In short, your assault on Semi Nate had been ferocious.
5. Then in a rage threw the hammer at Sovia who came to help Semi Nate. The hammer was thrown with such velocity and fury though Sovia blocked it with her wrists it struck her head and shoulder. The head was lacerated with a permanent scar toward the forehead and the shoulder was slightly dislocated as seen in the scan report which injuries were grievous

in nature. Loss of control due to provocation was the reason but you are guilty of attempted manslaughter and act with intent to cause grievous harm.

Sentencing regime

6. As for sentencing in view of section 44(1) of the Crimes Act the same sentence prescribed for manslaughter will be applicable which reads thus;
 - i. *44. (1) A person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.*
7. According to Section 239 of the Crimes Act the maximum penalty for the offence of Manslaughter is imprisonment for 25 years. The same sentence will apply to Attempted manslaughter. The offence of Attempted manslaughter involves the attempt to determine human life. Though the degree of culpability of Manslaughter is lesser in comparison to Attempted Murder, still the offence of attempted Manslaughter involves an act with the intention to cause the death of another human being. Such an act for whatever reason or under whatever circumstances is indeed a serious offence
8. As for the 2nd count the maximum penalty prescribed by section 255 of the Crimes Act for act with intent to cause grievous harm is life imprisonment. The tariff ranges from 6 months to 5 years imprisonment, depending on the nature of the weapon used and the seriousness of the injuries sustained by the victim (*State v Mokubula* [2003] FJHC 164; HAA0052J.2003S (23 December 2003)).

Aggregate Sentence

9. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”), reads thus;

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that

could be imposed if the court had imposed a separate term of imprisonment for each of them.”

10. The count of attempted manslaughter and count of act with intent to cause grievous harm for which you have been convicted are offences founded on the same facts and are of similar character. In accordance with section 17 of the Sentencing and Penalties Act, I consider it just and appropriate to impose an aggregate sentence for both offences having the attempted manslaughter count as the base sentence as it is the serious of the two offences.

11. However there seems to be no tariff determined for attempted manslaughter up to date. Determining and declaring tariff for the purposes of sentencing in the High Court is a matter for the Court of Appeal and the Supreme Court. Whereas the sentence prescribed for manslaughter is applicable, I will follow and be guided by the tariff as set and determined for manslaughter. As for tariffs for manslaughter the range is between suspended sentences to twelve years imprisonment depending on the circumstances. This was determined by the Court of Appeal in **Kim Nam Bae** (1999) FJCA 21; AAU 0015/98: (26 February 1999) and their Lordships held thus;

"The cases demonstrate that the penalty imposed for manslaughter ranges from a suspended sentence where there may have been grave provocation to twelve years imprisonment where the degree of violence is high and the provocation is minimal. It is important to bear in mind that this range covers a very wide set of varying circumstances which attract different sentences in different manslaughter cases. Each case will attract the appropriate sentence within the range depending on its own facts."

12. Where a weapon is used, the attack is brutal and where the provocation has not been overwhelming, a custodial sentence is clearly called for. (vide-Justice Shameem in **Mani** – HAC 005/2000).

13. Manslaughter necessarily entails death of a person. However, in attempted manslaughter though death has not ensued it is purely due to the good fortune of the victim that he survives the attack and lives to tell the tale. This is the distinction between manslaughter and attempted manslaughter. However, the survival of the victim is for reasons beyond the control of the Accused and I see no justification to consider a more favourable tariff in respect of attempted manslaughter vis-à-vis manslaughter. That being so, I would follow the same tariff as determine for manslaughter for the present offence of attempted manslaughter.

14. Considering the viciousness of the assault, use of the hammer, the manner in which the injuries were inflicted and the seriousness of those injuries caused makes this offending serious but the cumulative provocation caused by the several incidents that preceded and the threat of being deprived of the lifelong dwelling. Loss of family property is a serious and a sensitive issue especially in the Fijian culture and the society. This certainly make the provocation overwhelming. Upon considering the gravity and objective seriousness of the offences, to my mind it is reasonable and just to pick 4 years' imprisonment as the starting point of the aggregate. However, the final sentence will depend on the mitigating and aggravating factors which I will consider next.

Aggravating Factors

15. First, I will consider the aggravating factors. I observe the following aggravating circumstances of your offending:
 - a. The victim has spent almost 3 weeks in hospital.
 - b. The extremely serious nature of the injuries.
 - c. Attacking Sovia when she was trying to help Semi.
 - d. The victims were unarmed.

16. I am inclined to add 1 year and 6 months to the starting point for the above-mentioned aggravating factors bringing the interim sentence to 5 years and 6 months' imprisonment

Mitigating Factors

17. Now as for the mitigating factors the following circumstances were submitted, that you;
 - a. Are 4 years of age and have 6 children between 21 and 9 years of age
 - b. This was not a pre-meditated attack but a spur of the moment reaction due to loss of self-control,
 - c. The accused is remorseful and during the trial he admitted causing injuries which demonstrates he is remorseful.
 - d. He has no previous conviction and he is a person of previous good character.
 - e. According to letter tendered by Reverend Saula Tawake, the accused has been closely associated with the church and rendering his services as a church elder, worship team leader, janitor and church stage facilitator. He is a father of 9 children including one adopted child.

18. For the mitigating factors as aforesaid will deduct 2 years and 6 months, leaving a balance of 3 years imprisonment. In view of the reasons discussed above,

19. I sentence you to a total aggregate period of three (3) years' imprisonment for both the counts for which you stand convicted.

Non-Parole period

20. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that a two (2) years non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for two (2) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

21. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed compels me to state that the purpose of this sentence is to punish you in a manner that is just in all the circumstances, and in a manner which is just in all the circumstances of the case.

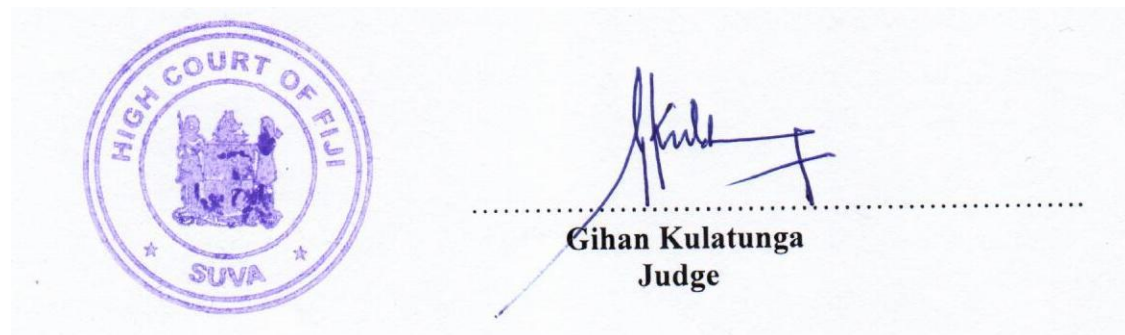
Head Sentence

22. Accordingly, I sentence you to an aggregate period of three (3) years imprisonment for the offence of attempted manslaughter and of act with intent to cause grievous harm as

charged and convicted. However, you are not entitled to parole for two (2) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

23. You were in arrested remanded for this case on 11th January 2021 and had been in remand up to date. You have been in custody for a period of nearly 20 months. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 20 months be considered as imprisonment that you have already served.
24. Accordingly, the actual aggregate sentence is a period of one (1) year and four (04) months imprisonment with a non-parole period of four (04) months.
25. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



At Suva
26th August, 2022.

Solicitors
Office of the Director of Public Prosecutions for the State.
Legal Aid Commission for the Accused.