

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 097 OF 2022**

**BETWEEN** : STATE

**AND** : TOUE MAIO

**Counsel** : Ms N Ali for the State  
Ms N Ali for the Accused

**Date of Hearing** : 15 November 2022

**Date of Sentence** : 18 November 2022

**SENTENCE**

- [1] The offender has pleaded guilty to a charge of act with intent to cause grievous harm to her spouse (the victim) with whom she had been married for 16 years. She is 70 years old. He is 55 years old – 15 years younger than her. The couple lived with their extended family in Narere.
- [2] On the day of the incident, 21 December 2021, when the victim returned home from his cleaning job in the evening, there was no dinner made for him. He had his shower and went straight to bed. The offender suspected that he was unfaithful to her. While he was asleep the offender stabbed the victim several times in the face with a kitchen knife.
- [3] After stabbing the victim, the offender walked out of their bedroom leaving the victim in pain. The victim bled profusely. Other family members heard the offender shouting and saying that she loved the victim and that she does not want anyone else to take her place in his life.

- [4] The family members took the victim to the hospital and reported the incident to police. The doctor who medically examined the victim noted lacerations on the victim's right eyebrow and at the nose bridge. He was kept at the hospital for further tests and observations and then discharged.
- [5] The offender was arrested and interviewed under caution. She confessed to police that she had stabbed the victim with a kitchen knife for no reasons.
- [6] After the offender was charged she was medically examined at the St Giles Hospital. The examination revealed that the offender was not suffering from any mental illness at the time of the incident and that she was medically fit to stand trial.
- [7] When the offender was arraigned on the charge she pleaded guilty and expressed remorse. The guilty plea is early. It has saved considerable court's time and resources. The offender's previous good character also mitigates the offence.
- [8] The offender's gender and advanced age are not mitigating factors. These factors are not a licence to engage in family violence. Similarly reconciliation with the victim or the victim's wishes in domestic violence cases carry little mitigating value (*Vutovuto v State* [2014] FJHC 929; Criminal Appeal 21.2014 (18 December 2014)).
- [9] There is no evidence of any history of violence on the offender by the victim. The attack on the victim was completely unprovoked. He was unarmed and asleep when he was stabbed in the face. It appears the attack on the victim was due to the offender's own insecurities instead of provocation by the victim. The fact that a knife was used to inflict physical injuries on the victim aggravates the offence.
- [10] The maximum penalty prescribed for the offence is life imprisonment. In *State v Mokubula* [2003] FJHC 164; HAA0052J.2003S (23 December 2003) Shameen J

enunciated useful guidelines for sentencing in cases of act with intent to cause grievous harm as follows:

On the basis of these authorities, the tariff for sentences under section 224 of the Penal Code, is between 6 months imprisonment to 5 years imprisonment. In a case of an attack by a weapon, the starting point should range from 2 years imprisonment to 5 years, depending on the nature of the weapon. Aggravating factors would be:

1. Seriousness of the injuries;
2. Evidence of premeditation or planning;
3. Length and nature of the attack;
4. Special vulnerability of the victim;

Mitigating factors would be:

1. Previous good character;
2. Guilty plea;
3. Provocation by the victim;
4. Apology, reparation or compensation.

In general terms, the more serious and permanent the injuries, the higher the sentence should be. As a matter of principle, a suspended sentence is not appropriate for a case of act with intent to cause grievous harm not only because it is contrary to the accepted tariff, but also because section 29(3)(a) of the Penal Code contains a legislative fetter to the section 29 powers to impose a suspended sentence for crimes of violence (*DPP – v- Saviriano Radovu* Crim. App. No. HAA0006 of 1996; *State –v- Senitiki Naqa and Others* Crim. App. No. HAA0023 of 2003S).

- [11] The injuries sustained by the victim are not permanent or serious. But a weapon was used to inflict physical facial injuries on the victim, adding to an element of breach of trust in intimate partner relationships. The courts have said repeatedly, that such conduct calls for a deterrent sentence (*Vutovuto v State* [2014] FJHC 929; Criminal Appeal 21.2014 (18 December 2014)).

- [12] I pick 2 years as my starting point after incorporating the aggravating factors. I deduct 18 months to reflect the mitigating factors.
- [13] The offender is convicted and sentenced to 6 months imprisonment. There are no exceptional circumstances to justify suspending the sentence.
- [14] Interim DVRO issued against the offender in the Magistrates' Court is made permanent.



  
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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

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