

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 49 of 2020

BETWEEN : **THE STATE**

AND : **KINIVILIAME COLAITINIYARA RABICI**

Appearances : Ms. Latu, L. with Ms. Lomaloma M. and Ms. Thaggard E. for the State
: Mr. Raramasi S. for the Accused

Date of Trial : 13 – 15 June 2022

Judgment : 17 June 2022

Sentence : 27 June 2022

SENTENCE

1. Following a trial, the offender was convicted of attempted murder.
2. The facts are that offender and the victim are friends. Though the victim is from another island, they came to know each other in the village and used to drink grog together. On the night of 22 July 2020, the two of them drank grog with others and later, drank homebrew brought by the offender. While drinking homebrew, a fight broke out. The victim left the drinking party at this point and went home to sleep. Home was some distance away and when he got home, went straight to sleep.
3. He was awakened sometime around 3 o'clock in the morning when he felt pain on his back, neck and the top of his head. He sustained multiple stab wounds to these parts of his body. The wound to his head was not so serious but those on his back penetrated deep enough to injure his lungs. He passed out after jumping out of the house following the attack, in an

attempt to save himself. He regained consciousness at the Health Centre. He was in a critical condition. Both doctors testified that the wounds were life threatening and could have resulted in death had he been presented late.

4. He did not see his assailant but circumstantial evidence placed the offender at the scene immediately before and in the vicinity immediately after the attack on the victim, with blood on his chest and the front of his body and on both his hands. The knife he was wielding was bloodstained. He told his grandfather Saula, "Kuku, death is here."
5. When interviewed by the Police and shown the knife taken from him shortly after the incident, the offender had admitted the knife was his saying he had brought it with him from home. This was evidence of pre-meditation and planning. The number of stab wounds, the gravity of the injuries and the words uttered by the accused not long after stabbing the victim point to an irrefutable inference of intent to murder.
6. The maximum penalty for the offence of attempted murder is the same as that for the completed offence of murder, which is a mandatory sentence of imprisonment for life, with a judicial discretion to set a minimum term to be served before pardon may be considered.
7. A mandatory life sentence means the sentence of life imprisonment is fixed by law. The Court has no discretion to give a lesser sentence, its jurisdiction limited only as to the setting of a minimum term to be served before pardon may be considered.

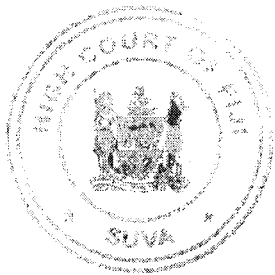
Sentences for attempted murder

8. In *State v Tabua* Crim. Case No: HAC 365 of 2013 Decision of 2 October 2015, the accused stabbed his *de facto* partner three times on the chest with a kitchen knife following an alcohol related disagreement. He was sentenced to mandatory life imprisonment, to serve 8 years imprisonment before being considered for a pardon.
9. In *State v Narayan* - Sentence [2017] FJHC 756; HAC143.2016 (29 September 2017), the accused was charged with a count of attempted murder and a count of act with intent to cause grievous harm. The facts at trial were that he had stabbed with a kitchen knife his

former wife on her head, neck and left arm. There was evidence of pre-meditation and planning in his taking the knife from home with the intention of stabbing the victim. For attempted murder, he was sentenced to life imprisonment, with a minimum of 12 years imprisonment to be served before pardon may be considered.

10. In *State v Padyachi* – Criminal Case No. HAC 352 of 2018, 11 December 2019, the accused who was in a relationship with the victim, had tried to drown her. He was found guilty of attempted murder and sentenced to life imprisonment with a minimum term of 8 years.
11. In *State v Arjun* Criminal Case No. HAC 017 of 2018 – Decision of 23 December 2020, the accused who had been in a relationship with the victim struck her with a knife on her head, chin and fingers. He was sentenced to life imprisonment, with a minimum sentence of 8 years imprisonment to be served before he can be considered for pardon.
12. More recently in *State v Singh* Criminal Case No. HAC 170 of 2020, 16 June 2022, the Accused was charged with a count of arson and two counts of attempted murder. The victims of the attempted murder charges were his two sons. He was sentenced to an aggregate sentence of life imprisonment with a minimum term of 14 years to be served before any release is considered.
13. The level of harm and culpability in this case is significant. The number of stab wounds and their seriousness in causing injury to vital organs points to a brutal attack. The knife was brought from home and with intent to do harm to the victim.
14. The offender is 28 years old and prior to this offending, had a clean record. This is the only consideration in his favour. His personal and family circumstances carry very little weight in mitigation.
15. His plea of being remorseful at this late stage of proceedings rings hollow and insincere.

16. The victim was a friend and someone he knew. The calculated vicious attack was while the victim was asleep and therefore defenceless and vulnerable. The injuries to the victim were life threatening and but for the intervention of others, could have resulted in death. These are serious aggravating factors.
17. In sentencing the offender, I give priority to the principles of punishment and deterrence.
18. The offender has been remanded in custody for about 1 year, 11 months. I take this into account.
19. The offender is sentenced to life imprisonment. He is to serve a minimum term of 8 years imprisonment before a pardon may be considered.
20. 30 days to appeal to the Fiji Court of Appeal.




Siamu F. Bull
Acting Judge

Solicitors:

Office of the Director of Public Prosecutions for the State
Raramasi Law for the Accused