

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 179 of 2022

STATE

V

ABID HUSSEIN

Counsel	:	Mr. J. Nasa for the State.
	:	Ms. K. Kumar and Mr. R. Kishan for the Accused.
Dates of Hearing	:	12, 13 March, 2025
Closing Speeches	:	18 March, 2025
Date of Judgment	:	18 March, 2025
Date of Sentence	:	04 April, 2025

SENTENCE

1. In a judgment delivered on 18th March, 2025, this court found the accused not guilty of one count of attempted murder, and he was accordingly acquitted. However, the accused was found guilty of the lesser offence of act with intent to cause grievous harm. The accused was also found guilty of another count of act with intent to cause grievous harm and one count of criminal trespass, and he was convicted for all these counts.
2. The brief facts were as follows:

- a) The first victim, Wazid Hussein, and the accused, Abid Hussein, are biological brothers. The second victim, Nazra Begum, is the maternal aunt of both the accused and Wazid, who had travelled from California to visit them. All three were residing together in one house.
- b) On 11th November. 2022, in the morning, the accused was cutting grass in the garden when both victims went to the shop. Upon their return, the accused was sitting in the porch, sharpening his cane knife.
- c) Shortly after, Wazid came out of the house and questioned the accused about what he had said to their aunt. There was a heated exchange of words between the two. The accused was holding the knife, so Wazid picked up an iron rod from the porch. The argument between the two continued, Wazid became angry and struck the railing with the iron rod.
- d) The accused stood up holding the cane knife. Wazid turned to go into the house. At that moment, the accused struck Wazid on the neck with the knife, resulting in a cut that began to bleed. Meanwhile, Nazra, who was unarmed, had come behind Wazid, trying to protect him. The accused struck Nazra on her right hand. Consequently, her arm, one third below the elbow, was severed, exposing her veins, tendons, and bone.
- e) Vilive, the neighbour of the accused, witnessed the incident. He intervened and separated the two brothers, who were struggling with each other on the floor. Vilive threw away the cane knife, retrieved Nazra's severed arm, placed it into a container, and transported Wazid and Nazra to Lautoka Hospital.

- f) Nazra was in critical condition, bleeding profusely and was hospitalized for some time. Meanwhile, Wazid was examined by a doctor and discharged, since the injuries he had sustained were superficial.
 - g) Thereafter, the accused went to the house of Aseri Dilawa. Upon seeing his blood stained clothes, Aseri made it clear that she did not want to be involved. However, the accused forcefully entered her house and stayed there for about four to five minutes. Concerned by this behaviour, Aseri left the house and sat on the porch. The accused was later arrested, caution interviewed and charged.
3. The state counsel filed sentence submissions, and the defence counsel filed mitigation submissions for which this court is grateful.
4. The counsel for the accused presented the following mitigation and personal details about the accused:
- a) The accused is 60 years of age;
 - b) First Offender;
 - c) Was self-employed Taxi Driver;
 - d) Is married;
 - e) Seeks leniency of the court;
 - f) Is sincerely remorseful;
 - g) Acknowledges his wrong doing and genuinely regrets his actions;
 - h) Promises not to reoffend.

AGGRAVATING FACTORS

5. The following aggravating factors are obvious:

a) Breach of Trust

The victims and the accused are family members who were living in the same house. By his actions, the accused grossly breached the trust of the victims. Furthermore, the attack on the aunt was entirely unprovoked.

b) Victim was vulnerable

The aunt was vulnerable, defenceless, and helpless. She was on the porch, trying to protect the other victim when the accused suddenly attacked her. The accused showed no mercy and struck her with such force that her right arm was entirely severed below the elbow.

c) Accused was undeterred

The accused was undeterred in his actions. After injuring both victims, he did not render any assistance. Instead, he quickly left the scene and went to his neighbour's house.

d) Prevalence of the offence

These types of offences have become prevalent nowadays. People are resorting to violence, which is deeply concerning and unacceptable.

e) Safety at home

The victims were at home, a place where they were supposed to be safe. However, this was not the case due to the actions of the accused.

TARIFF

6. The maximum penalty for the offence of act intended to cause grievous harm is life imprisonment. The accepted tariff for this offence committed

by any means other than a weapon, is between 6 months to 5 years imprisonment. However, if the attack is by a weapon the starting point should range from 2 years to 5 years imprisonment depending on the nature of weapon used and other aggravating circumstances. Moreover, the more serious and permanent the injuries, the higher the sentence should be (*see State v Mokubula [2003] FJHC 164: HAA 0052 of 2003 (23 December, 2013)*).

7. In *State vs. Seremaia Nalulu and others*, HAC 155 of 2010 (23 July, 2013) Madigan J. had stated that sentences up to 8 years would not be out of order.
8. The maximum penalty for the offence of criminal trespass is 1 year imprisonment.
9. Section 17 of the Sentencing and Penalties Act states:

“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. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence for the three offences.
11. Considering the objective seriousness of the offences committed I take 3 years imprisonment (lower end of the scale) as the starting point of the sentence. The sentence is increased by 5 years for the aggravating factors.

It is noted that the accused is a first offender who comes to court as a person of good character. The sentence is reduced by 1 year for mitigation and good character. The interim aggregate sentence is 7 years imprisonment.

12. As per the court file the accused was remanded for 3 months and 5 days. In accordance with section 24 of the Sentencing and Penalties Act and in exercise of my discretion the sentence is reduced by 3 months and 10 days as a period of imprisonment already served.
13. The sentence is now 6 years, 8 months and 20 days imprisonment. From the evidence adduced, it is noted that the complainant, Wazid, was the initial aggressor. In fairness to the accused, the sentence is further reduced by 3 months. The final aggregate sentence is 6 years, 5 months and 20 days imprisonment.
14. Considering the circumstances of the offending and the level of the accused's culpability (an unprovoked attack on Nazra), involving the use of a cane knife on a defenceless victim, such offences clearly warrant an immediate custodial sentence. When a person uses a weapon against another, he or she must be prepared to face severe consequences.
15. Having considered section 4 (1) of the Sentencing and Penalties Act and noting the serious nature of the offences committed against both victims, I am compelled to state that the purpose of this sentence is to punish the offender to an extent and in a manner that is just under all the circumstances of the case, while also aiming to deter the offender and others from committing offences of the same or similar nature.
16. Under section 18 (1) of the Sentencing and Penalties Act (as amended), the imposition of a non-parole period serves as a deterrent to others and

ensures the protection of the community as a whole. However, this court cannot ignore the fact that the accused, while being punished, should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason.

17. In this regard, I have taken into consideration the principle stated by the Court of Appeal in *Paula Tora v The State* AAU0063.2011 (27 February 2015) at paragraph 2 Calanchini P (as he was) said:

[2] The purpose of fixing the non-parole term is to fix the minimum term that the Appellant is required to serve before being eligible for any early release. Although there is no indication in section 18 of the Sentencing and Penalties Decree 2009 as to what matters should be considered when fixing the non-parole period, it is my view that the purposes of sentencing set out in section 4(1) should be considered with particular reference to re-habilitation on the one hand and deterrence on the other. As a result the non-parole term should not be so close to the head sentence as to deny or discourage the possibility of re-habilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent. It must also be recalled that the current practice of the Corrections Department, in the absence of a parole board, is to calculate the one third remission that a prisoner may be entitled to under section 27 (2) of the Corrections Service Act 2006 on the balance of the head sentence after the non-parole term has been served.

18. The Supreme Court in accepting the above principle in *Akuila Navuda v The State* [2023] FJSC 45; CAV0013.2022 (26 October 2023)] stated the following:

Neither the legislature nor the courts have said otherwise since then despite the scrutiny to which the non-parole period has been subjected. The principle

that the gap between the non-parole period and the head sentence must be a meaningful one is obviously right. Otherwise there will be little incentive for prisoners to behave themselves in prison, and the advantages of incentivising good behaviour in prison by the granting of remission will be lost. The difference of only one year in this case was insufficient. I would increase the difference to two years. I would therefore reduce the non-parole period in this case to 12 years.

19. Considering the above, I impose 5 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and also meet the expectations of the community which is just in the circumstances of this case.
20. Mr. Hussein, you have committed serious offences against both victims, namely your brother and aunt. The injuries suffered by your aunt are serious and permanent, she has lost her right arm. The circumstances of these offences, especially striking an unarmed person with a cane knife, constitute a highly dangerous act.
21. The evidence revealed a horrific and dreadful attack on Nazra. You are fortunate that the victim did not lose her life as a result of your senseless actions. From the medical report, it is clear that the harm caused to the victim has left her permanently disabled, hindering her ability to lead a normal life. Nazra had travelled from California to visit you, and this was how you chose to treat her.
22. You are a threat to the community. You showed no mercy to either victim, and neither will this court. A long term imprisonment is inevitable. You

had complete disregard for the health and safety of the victims. No amount of regret or repentance can restore the lost glory of Nazra's normal life.

23. You had no second thoughts about your actions, you were determined to cause the victims grievous harm, and you succeeded. You do not deserve any mercy from this court. This incident is a case of domestic violence that escalated beyond control.
24. I am satisfied that the term of 6 years, 5 months and 20 days imprisonment 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 offence.
25. In summary, I pass an aggregate sentence of 6 years, 5 months and 20 days imprisonment with a non-parole period of 5 years to be served before the accused is eligible for parole.
26. Due to the closeness of the relationship between the accused, Wazid and Nazra a permanent non-molestation and non-contact orders are issued to protect both victims under the Domestic Violence Act.
27. 30 days to appeal to the Court of Appeal.


Sunil Sharma
Judge



At Lautoka
04 April, 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.