

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 407 of 2022

BETWEEN: STATE

AND: DEEPAK YOGESH CHAND

Counsel: Mr T Naimila for the State
Mr S Kumar and Ms S Prasad for the Accused

Judgement : 4 February 2025
Sentencing Hearing : 18 February 2025
Sentence : 25 February 2025

SENTENCE

- [1] Deepak Yogesh Chand, you appear today for sentencing.
- [2] You have been found guilty following a defended trial of acting with intent to cause grievous harm contrary to section 255(a) of the Crimes Act 2009.
- [3] The facts are set out in my Judgment dated 4 February 2025.
- [4] You are a taxi driver. On 13 August 2022, you travelled to Savutalele Settlement to pick up passengers. Four passengers got into your taxi. Before you left the Settlement, there was an exchange of harsh words between yourself and one of the passengers. As a result, all the passengers left your taxi and decided to organise another taxi. While they were standing by the side of the road, next to your taxi, you grabbed a small knife from inside your taxi and stood facing the passengers with the knife in your hand. I was unable to understand from the evidence why you did this but it does not matter. There was no justification for you doing so as there was no threat of harm to you at the time you grabbed the knife. One of the other passengers attempted to disarm you which

escalated matters resulting in you deliberately stabbing the victim, Jovesa Temo, in the chest with your knife.

- [5] The stabbing triggered a violent response from the passengers. You were physically beaten resulting in some serious injuries to you. Both you and Mr Temo were hospitalised. Fortunately for Mr Temo his injuries were not serious or permanent although this was more a result of good fortune. Sadly for you, your injuries were serious and it appears you have been left with some permanent cognitive problems.
- [6] The mitigation offered by your lawyer on your behalf is as follows:
- You are a first offender.
 - You are 36 years old, married and have two children.
 - You are the sole breadwinner for the family.
 - You fully cooperated with the police despite pleading not guilty to the charges.
 - You have already been punished as a result of the serious injuries you suffered from the beating.
 - You are remorseful.
- [7] The maximum penalty prescribed for an offence under s 255(a) is life imprisonment. The tariff for such offending was identified by Shameem J in *State v Mokubula* [2003] FJHC 164 (23 December 2003) as follows:¹

On the basis of these authorities, the tariff for sentences under section 224 of the Penal Code,² 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;

¹ At page 5.

² The equivalent provision to s 255(a) of the Crimes Act.

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...

- [8] In assessing the objective seriousness of your offending in this matter, I have considered the maximum sentences prescribed for the offence, the degree of culpability, the manner in which you committed the offence and the harm caused to Mr Temo. I give due consideration to the sentencing guidelines stipulated at section 4 of the Sentencing and Penalties Act 2009. In particular, I note that the tariff is between 2 to 5 years imprisonment where a weapon is used. The starting point depends on the nature of the weapon used. The weapon in this case was described as a small knife. An appropriate starting point is at the lower end, being 2 years imprisonment.
- [9] The aggravating factor present is the fact that you had the knife in your possession and used it against Mr Temo. However, this factor has already been taken into account in applying the tariff of 2 to 5 years. I do, however, take the Prosecution's point that these types of offences are increasing in prevalence and there needs to be some deterrence aspect to your sentence. I add 6 months taking your sentence to 2½ years imprisonment.
- [10] I turn to the mitigating factors in your case. You are a first offender with an otherwise unblemished record in your 36 years. I deduct 1½ years leaving a balance of 12 months imprisonment.
- [11] Pursuant to section 24 of the Sentencing and Penalties Act, the period that you spend in remand awaiting sentence shall be considered as time already served unless I

consider otherwise. You have spent 1 week on remand since your arrest.³ I make a deduction for time already spent on remand resulting in a sentence of 11 months 3 weeks imprisonment.

- [12] I now turn to consider whether this is a suitable case to impose a suspended sentence. Your lawyer submits that you should have a suspended sentence because of the circumstances of the offence and your previous good character.
- [13] Goundar J confirmed that the following principles are applicable when considering whether to suspend a custodial sentence:⁴

[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg CJ laid down guidelines for imposing suspended sentence at p.7:

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to

³ From 2/12/22 to 9/12/22.

⁴ *State v Sorovanalagi* [2012] FJHC 1135 (31 May 2012).

*justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate.*¹⁵

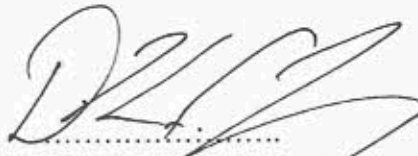
[14] I am satisfied that there are special circumstances in this case that justify a suspended sentence. Whilst you exhibited poor judgement in grabbing the knife, the events would not have occurred but for Mr Temo's younger brother's behaviour on that day. That does not justify your actions but it is relevant in terms of your sentence.

[15] Mr Chand, would you please stand.

[16] I make the following orders:

- i. You are sentenced to a period of 11 months and 3 weeks imprisonment. Your sentence is suspended for a period of 3 years. What this means is that if you commit any crime punishable by imprisonment during the suspended operational period of 3 years and you are found guilty of the crime by a court, then you are liable to be charged and prosecuted for an offence. If this happens, your sentence of 11 months and 3 weeks imprisonment will be restored.
- ii. You have 30 days to appeal to the Court of Appeal.




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D.K.L. Tuiqereqere
JUDGE

Solicitors:

Office of Director of Public Prosecutions for the State
Shahrukh Ali Lawyers for the Accused

⁵ My emphasis.