

**STATE v ASHWIN CHAND (HAC0049 of 2012L)**

HIGH COURT — CRIMINAL JURISDICTION

5 KUMARARATNAM J

2, 3 August 2012

10 **Criminal Law — sentencing — causing disturbance in judicial proceeding — act with intent to cause grievous harm — aggravating factors — mitigating circumstances — concurrent sentence — non-parole period — Crimes Decree ss 194(1)(g), 255(b) — Penal Code ss 199, 200, 224 — Rehabilitation of Offenders Act — Sentencing and Penalties Decree ss 4(1), 4(2), 15(3), 18(1).**

15 The accused pleaded guilty to, and was convicted of, causing a disturbance in the course of a judicial proceeding, and acting with intent to cause grievous harm.

**Held –**

20 (1) In addition to the accused's 58 previous convictions, the aggravating factors in this case were that the attack was unwarranted, it was against a judicial officer in the course of a judicial proceeding, it was a pre-planned act of terror and it disrupted the judicial proceedings.

(2) The appellant's guilty plea, plea for forgiveness, remorse, attendance at counselling and rehabilitation, age and his responsibility to support his mother and family are mitigating factors.

25 Accused sentenced to eight weeks' imprisonment for first count and five years for second count. Sentences to run concurrent to each other. Three year non-parole period

*Seini K Puamau* for the State.

*Accused* in person.

30 [1] **Kumararatnam J.** The Director of Public Prosecution had preferred the following charges against the accused above named.

**FIRST COUNT****Statement of Offence (a)**

35 **CAUSING A DISTURBANCE IN THE COURSE OF A JUDICIAL PROCEEDING:** Contrary to s 194(1) (g) of the Crimes Decree No: 44 of 2009.

**Particulars of Offence (a)**

40 **ASHWIN CHAND** on the 5th day of March 2012 at Lautoka in the Western Division, during the course of a judicial proceeding namely Criminal Case Number HAC 032 of 2005, caused a disturbance in that the said **ASHWIN CHAND** threw papers in the direction of the prosecutor and walked out of the court Dock without the court's leave, prior to the rising of the Court for that day.

**SECOND COUNT**45 **Statement of Offence (a)**

**ACT WITH INTENT TO CAUSE GRIEVOUS HARM:** Contrary to s 255(b) of the Crimes Decree, 2009.

**Particulars of Offence (b)**

50 **ASHWIN CHAND** on the 6th day of March 2012 at LAUTOKA in the Western Division, with intent to cause grievous harm to **THE HONOURABLE JUSTICE SITHAMBARAMPILLAI THURAIRAJA**, unlawfully attempted

to strike **THE HONOURABLE JUSTICE SITHAMBARAMPILLAI THURAIRAJA** with a projectile, namely a concrete fragment.

[2] When this case was taken up on the 2nd day of August, 2012 the accused pleaded guilty to both charges filed against him. Accepting the Plea to be unequivocal this court found him guilty and convicted him under ss 194(1)(g) and 255(b) of the Crimes Decree No: 44 of 2009.

[3] State Counsel submitted following summary of facts of which the accused admitted.

10 **Count 01:**

On the 5th of March 2012, High Court Criminal Case Number HAC 032 of 2005 was called before the Honorable Mr Sithambarampillai Thuraiaraja in High Court 1 of the High Court of Fiji at Lautoka. Ashwin Chand (the accused) stood trial for Murder contrary to s 199 and 200 of the Penal Code, Cap 17.

15 At the call of the case, Ashwin Chand made an application in Court which was refused by the learned Trial Judge. Upon hearing Mr Justice Thuraiaraja's ruling on the application, the accused threw his disclosure papers in the direction of the prosecutor and walked out of the accused box without court's leave. The court had not given the accused person permission to leave the box. The court had not  
20 adjourned the matter and not risen for that day. It had been clear that after the application, the matter would immediately proceed to trial.

The accused box faces the judge's bench and between the judge's bench and the accused box are counsel's tables. The prosecutor sits in front of and slightly to the right of the accused box and the Defense sits immediately in front of the  
25 box. The accused was unrepresented at the trial.

**Count 2**

On the 6th day of March, 2012, High Court Criminal Case Number HAC 032 of 2005 was called before the Honorable Mr Justice Sithambarampillai  
30 Thuraiaraja in the High Court Number 1 of the High Court of Fiji at Lautoka. Ashwin Chand (the accused) stood trial for Murder contrary to s 199 and 200 of the Penal Code, Cap 17.

The trial had commenced and the State Prosecutor had led the evidence of Dr PR Goundar, a Pathologist. During the accused person's cross examination of the  
35 Pathologist, the accused became visibly and verbally frustrated with certain answers. The trial judge intervened and addressed remarks to the accused person about the appropriateness of his behavior. The accused, who was at the time in the accused box, then went towards his left, picked up a blue bag, pulled out a fragment of concrete from within the bag and hurled it directly at the judge.

40 The accused screamed as he hurled the concrete fragment, 'you are not giving me justice. This will stop the case!' The Honorable Mr Justice Sithambarampillai Thuraiaraja only had time to move slightly to his left, thus avoiding a direct hit to the head. The concrete fragment hit the wall directly behind the learned judge, exactly where the learned judge's head would have  
45 been had if not moved in time. The impact of that throw left a dent within the wooden panel of the wall immediately behind the learned Trial Judge's head.

**TARIFF**

[4] Causing a Disturbance in the Course of a Judicial Proceedings attracts a  
50 maximum sentence of 03 months imprisonment Pursuant to s 194(1)(g) of the Crimes Decree.

[5] Act with Intent to Cause Grievous Harm attracts a maximum sentence of life imprisonment pursuant to s 255(b) of the Crimes Decree, 2009.

[6] Section 255 of the Crimes decree, 2009 duplicates s 224 of the Penal Code, Cap 17. The maximum penalty remains the same. The accepted tariff under s 224  
5 of the Penal Code Cap 17 is imprisonment of between 6 months to 5 years.

[7] The accused is 35 years of age. When arrested he co-operated with the police and made confession in his Record of Interview. Presently he is serving 22 years prison sentence. Due to this prison term he dearly misses his sickly mother and his family.

10 [8] I have carefully considered these submissions in light of the provisions of the Sentencing and Penalties Decree No: 42 of 2009 especially those of the section set out below in order to determine the appropriate sentence.

[9] Section 15(3) of the Sentencing Decree provides that:

15 *‘as a general principle of sentencing, a court may not impose a more serious sentence unless it is satisfied that a lesser or alternative sentence will not meet the objectives of sentencing stated in s 4, and sentence of imprisonment should be regarded as the sanction of last resort taking into account all matters stated in the General Sentencing Provisions of the decree’.*

20 [10] The objectives of sentencing, as found in s 4(1) of the Decree, are as follows:

1. *To punish offenders to an extent and a manner, which is just in all the circumstances;*
2. *To protect the community from offenders;*
- 25 3. *To deter offenders or other persons from committing offences of the same or similar nature;*
4. *To establish conditions so that rehabilitation of offenders may be promoted or facilitated;*
- 30 5. *To signify that the court and the community denounce the commission of such offences; or*
6. *Any combination of these purposes.*

[11] Section 4(2) of the Decree further provides that in sentencing offenders, a court must have regarded to:

- 35 a) *The maximum penalty prescribed for the offence;*
- b) *Current sentencing practice and the terms of any applicable and guideline Judgments;*
- c) *The nature and gravity of the particular offence;*
- d) *The defender’s culpability and degree of responsibly for the offence;*
- 40 e) *The impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;*
- f) *Whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;*
- 45 g) *The conduct of the offender during the trial as an indication of remorse or lack of remorse;*
- h) *Any action taken by the offender to make restitution for injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under*
- 50 *this Decree;*
- i) *The offender’s previous character;*

j) *The presence of any aggravating or mitigating factors concerning the offender or any other circumstance relevant to the commission of the offence; and*

5 k) *Any matters stated in this Decree as being ground for applying a particular sentencing option.*

[12] **Now I consider the aggravating factors:**

1. The accused is adversely recorded with a total of 58 previous convictions of which 38 are valid pursuant to the Rehabilitation of offenders Act 1997.
- 10 2. The attack was an unwarranted attack against a Judicial Officer during the course of a judicial proceeding.
3. It was an act of terror, pre-planned and clearly designed to bring an end to his trial before that judge.
4. The action of the accused disrupted the judicial proceedings.

15 [13] **Now I consider the mitigating circumstances:**

1. The accused pleaded guilty before the commencement of the trial.
2. Accused is 35 years old and has his mother and family to support.
3. Pleads forgiveness from court.
4. He is remorseful.
- 20 5. He has attended various counseling and undergoing rehabilitation programs.

[14] Considering all aggravated and mitigating circumstances I impose sentence as follows.

- 25 • For the 1st count I take 06 weeks as starting point. I add 03 weeks for aggravating factors and deduct 01 week for the mitigating factors. Total sentence for 1st count is 08 weeks imprisonment.
- For second count I take 03 years as starting point. I add 03 years for aggravating factors and deduct 01 year for mitigating factors. Total sentence for 2nd count is 05 years.
- 30 • I further order that both sentence to run concurrent to each other.

[15] In this case the accused attempted to attack on the judicial officer which is highly dangerous and potentially lethal. It was an attack which could have resulted in at least death or grievous harm had the judicial officer not moved just in time to avoid being struck.

35 [16] An attack against a judicial officer in a court of justice is to be considered with great degree of seriousness. The court must send a message to the community that violence of this kind will not be tolerated.

[17] I further order that you serve this sentence of 05 years imprisonment consecutively with your pre-existing sentence.

40 [18] Acting in terms of s 18(1) of the Sentencing and Penalties Decree, I impose 03 years as non-parole period.

[19] 30 days to appeal.

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*Sentence imposed.*

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