

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 365 of 2013

STATE

v.

JOSATEKI TABUA

Counsel: Mr. M. Vosawale for State
Mr. P. Tawake for Accused

Hearing: 21st, 22nd and 23rd September 2015

Summing Up: 25th September 2015

Judgment: 28th September 2015

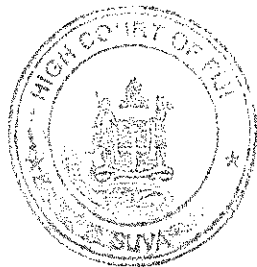
Sentence: 02nd September 2015

SENTENCE

1. Josateki Tabua you stand convicted for attempted murder of Timaima Vatubua.
2. The brief facts of the case are that Timaima was your defector partner. After having drinks at the Union Club you came home with Timaima and her friends in the early hours and continued to drink. When they finished the drinks and wanted to bring some more beer, you stopped them from doing so.
3. Timaima wanted to go with her friends to continue drinking. You stopped her from leaving the house with her friends as she was drunk.

4. After an argument, Timaima told you to find another woman and that she got another man. Then you got angry and frustrated. You went to the kitchen, got a kitchen knife, forcefully opened the bedroom door, and stabbed Timaima three times on her chest causing serious injuries. Thereafter, you were repenting for what happened.
5. The penalty prescribed for Attempted Murder in terms of Section 237 to be read with Section 44 (1) of the Crimes Decree 2009 is, mandatory sentence of imprisonment for life with a judicial discretion to set a minimum term to be served before pardon.
6. Therefore, I sentence you to imprisonment for life.
7. I turn to consider the minimum term you have to serve before pardon.
8. The aggravating factors are that this is a domestic violence offence as the complainant was your defector partner. You used a kitchen knife to commit the offence. The nature of the injuries are also considered.
9. Your mitigating factors are that you are remorseful and you cooperated with the police in their investigations. This was not a premeditated offence. Your age and period you were in remand are also considered. Although it was submitted by your counsel that you are a first offender, your antecedent report confirms that you have one previous conviction in the Magistrates Court Nasinu in 2006 for Damaging Property.
10. I also take into consideration that you got angry and it was painful when the complainant told you to find another woman and she has got another man. However it cannot be considered as a reason for provocation to stab the victim with a kitchen knife as you did.

11. Considering all mentioned above. I fix 8 years as the minimum period you have to serve before being considered for pardon.
12. Your final sentence is imprisonment for life with a minimum period of 8 years to be served before being considered for pardon.
13. Having considered the Domestic relationship between you and the complainant, I order a permanent Domestic Violence Restraining Order to be in place identifying the victim Timaima Vatubua as the protected person.



A handwritten signature in black ink, appearing to be "Priyantha Fernando".

Priyantha Fernando

Judge

At Suva

02nd October 2015

Solicitors

Office of the Director of Public Prosecution for State

Office of the Legal Aid Commission for Accused

