

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT AUCKLAND AUCKLAND**

**CRI-2017-004-008282
[2018] NZDC 3430**

NEW ZEALAND POLICE
Prosecutor

v

ASHISH ASHISH
Defendant

Hearing: 12 February 2018
Appearances: Sergeant G Travis for the Prosecutor
N Baier for the Defendant
Judgment: 12 February 2018

NOTES OF JUDGE N MATHERS ON SENTENCING

[1] Mr Ashish, you appear today to be sentenced in relation to a number of charges; namely common assault, threatening to kill, wounding with intent to injure, injuring with intent to cause grievous bodily harm and assault with intent to injure. You pleaded guilty to those charges some time ago.

[2] In relation to the facts, the first charges in time, namely the common assault and threatening to kill, arose out of an incident on [date deleted] 2016 when you were [details deleted] with [victim 1]. An argument started over [victim 1] contacting [name deleted]. You started yelling at her that you were going to kill her. She picked up her [young] daughter and, while she was holding her daughter, you stepped behind her and put your arm around her neck blocking her air passage. You held her in this position for about 30 seconds until her mother walked into the room. She then attempted to leave but you grabbed her legs in a rugby hold, preventing her from doing

so. Her mother asked you to leave the house but you refused and stayed for about 30 minutes until leaving.

[3] In May 2017, you sent the same victim a text message saying that you were going to kill her and the baby she was carrying.

[4] Then, on 13 August 2017, while you were on bail for the previous offending, [accommodation details deleted]. You arrived [at the address], you were intoxicated, one of [the occupants] became concerned about neighbours being disturbed by an abusive phone call you were having and you were asked to keep your voice down [details deleted]. Shortly thereafter, one of [the other occupants] arrived home and asked you to remain quietly [details deleted] or he would call the police. You refused and he called 111. While he was on the phone, you walked up behind him, you picked up a knife and you stabbed him in the lower back with the knife, resulting in a three-centimetre deep stab wound requiring stitches. The other two [occupants] forced you to the ground and, while you were on the ground, you stabbed one of them three times resulting in a minor cut to his left arm and two stab wounds to his back, one four centimetres and one five centimetres deep and both requiring stitches. During the time that you were restrained, the other victim, the third [occupant], also received a cut under his left arm. I do not think he required medical treatment for that.

[5] You have seen the victim impact statements and, in relation to [victim 1], I am aware that she has been in contact with you while you have been in custody. Ms Baier, your counsel, has handed to me some emails that she has sent to you. She says that while you have been in custody, she has been a lot happier. Her family have noticed that she has been happier and that she is a lot less stressed. She says that you have been writing to her but you are not writing back anymore. [Victim details deleted]. She does not want to have any more contact with you and wants a fresh start. She asks for a protection order because she does not want any contact and she is still scared of you.

[6] In relation to the other victims, the first at the time was 22. He was studying business management and he was working part time as a security guard [details deleted]. As a result of the stab wound, he had to go to hospital but the wound has

healed. But as a result of what happened, he lost his job. When he got stabbed, he said he was wearing his work jacket and he got blood on it and it was damaged. He went to work the next day but because he did not have his jacket, he was not able to wear his uniform. As a result of that, he lost his job. He felt angry about what happened because he had helped you. He said that he believes you acted as you did because you had been drinking.

[7] In relation to the other gentleman that was stabbed, he also was 22 and originally from India, as you are. He said he did not know you very well, he did not see you very much, you were a friend of the other flatmate that I have referred to. He spent the day in Auckland Hospital and received three stitches in each of the two wounds. He was off work for one and a half weeks and he still gets back pain that causes him discomfort and this victim impact report was written in January of this year.

[8] In relation to the third gentleman, he also was from India. He had been living in New Zealand for 18 months studying business. The cut under his arm was painful and he was worried about getting an infection from the knife. He said he was concerned because it was an unprovoked attack [from you]. He did not understand why you did this to him and to your friends.

[9] Your offending is going to have a lengthy effect on all four of your victims. I accept that you have written letters of apology to them but it is going to be some time, as I said, before they are going to be able to come to terms with what happened on this evening.

[10] Your offending must be deterred, it must be denounced and you must be held accountable. Having said that, however, I must impose the least restrictive penalty which is available to me in the hierarchy of sentences and I obviously intend to do that. It is accepted by you, through your counsel, Ms Baier, that a term of imprisonment is the least restrictive outcome possible.

[11] In relation to the aggravating features of the offending, this was a completely unprovoked attack. There was the use of a weapon, there was serious injury and there

was serious violence and you accept all of those matters and, of course, the charges reflect those aspects. There are no mitigating features in respect of the offending.

[12] I have received very helpful submissions from both the prosecution and your counsel. I am referred to the leading decisions of *R v Taueki*¹ and *Nuku v R*.² The prosecution submits a starting point of four years' imprisonment in relation to the lead charge of injuring with intent to cause grievous bodily harm, with an uplift for the other charges arising out of the same incident of 12 months, giving a starting point in respect of that group of offending of a term of five years' imprisonment. Ms Baier submits that the global starting point should be four to four and a half years' imprisonment.

[13] In my view, after considering all the aggravating features, I am of the view that the starting point in relation to the lead offence should be three years nine months, with an uplift of 12 months for the totality of the offending. It is accepted by Ms Baier that there must be an uplift for the earlier offending and I agree with both counsel, but for the later offending, it is likely that a community-based sentence would have been imposed, however, that is not the situation because of that later offending. Bearing in mind that [victim 1] was pregnant at the time and she was holding her young daughter and you blocked her air passage, I agree with the prosecution that there should be an uplift of three months' imprisonment. The second incident occurred while you were on bail and there must be an uplift to take that into account. I fix the uplift at two months' imprisonment. That brings the sentence, taking into account all those matters, to 59 months' imprisonment.

[14] Now turning to consider your circumstances, I have read the pre-sentence report. You are only 21. You came to New Zealand from India some two years ago. Your family still resides in India and you will be deported back there. You have the support of your parents. The pre-sentence report says that you appear to be remorseful and you have written letters of apology to the victims, which I have seen. What does concern me, however, is that in the report, you seem to try and lessen your offending and to blame the victims for your actions. Ms Baier has made submissions in respect

¹ *R v Taueki* [2005] 3 NZLR 372 (CA)

² *Nuku v R* [2012] NZCA 584

of those matters to me and I accept that there may have been some misunderstanding because English is your second language and I accept that you do now fully take responsibility for the offending.

[15] You have no previous convictions in New Zealand or India and I will give you credit for that and also for your youth. I also accept that it will be difficult for you serving a term of imprisonment in a foreign country without any support. In my view, the maximum discount I can give you for those factors is 15 percent. You pleaded guilty once a resolution was proposed and I am prepared to give you the maximum discount of 25 percent. Ms Baier has given me further documents which show that while you have been in custody, you have enrolled in various online programmes and I am prepared to give you credit for that also.

[16] After giving you the discounts for your youth and also for the plea of guilty, the sentence would be 37 and a half months. I accept that you are remorseful, as I said, and I take into account that you have taken steps to rehabilitate yourself, which goes to that issue of remorse, so from the 37 and a half months, I am prepared to give you a credit of three and a half months for those factors, which brings the end sentence down to 34 months' imprisonment. That will be served in relation to the wounding with intent to injure charge, the injuring with intent to cause grievous bodily harm and the assault with intent to injure and also the threatening to kill charge. In relation to the common assault charge, there will be a concurrent sentence of four months' imprisonment.

[17] The prosecution ask that I make a protection order in relation to [victim 1]. In view of the most recent victim impact statement, despite Ms Baier's opposition, I am satisfied that it is in her best interests that such an order be made.

[18] Mr Ashish, it is most unfortunate that you have now been sentenced to a term of imprisonment. You will be deported back to India. I hope that once you have completed the sentence and once you get back to India, you can turn your life around and make a new life back home.

[19] You are also subject to the three strike warnings. Given your conviction for injuring with intent to cause grievous bodily harm and wounding with intent to injure, you are now subject to the three strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences which lists the serious violent offences. If you are convicted of any serious violent offences, other than murder, committed after this warning and if a Judge imposes a sentence of imprisonment, then you will serve that sentence without parole or early release. If you are convicted of murder committed after this warning, then you must be sentenced to life imprisonment. That will be served without parole unless it would be manifestly unjust. In that event, the Judge must sentence you to a minimum term of imprisonment.

N Mathers
District Court Judge