

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

Criminal Case No. HAC 317 of 2018
[Lau Criminal Case No. 69 of 2018]

BETWEEN : STATE

AND : MOSESE VOSA

Counsel : Ms S Lodhia for the State
Mr K Chang for the Accused

Date of Hearing : 21 September 2018

Date of Sentence : 30 November 2018

SENTENCE

- [1] Mosese Vosa, you have freely and voluntarily pleaded guilty to a charge of act with intent to cause grievous harm contrary to section 255(a) of the Crimes Act 2009. You are represented by counsel. The Court is satisfied that your guilty plea is informed and unambiguous. You are convicted as charged.
- [2] The circumstances of the offending are set out in the facts tendered by the prosecution and admitted by you. The charge arose from a domestic dispute between you and your wife, the victim. She is 32 years old. You are 51 years old. Together you have two children. Your daughter is 9 years old and your son is 8 years old. Your family is depended on you.
- [3] The incident occurred on 21 July 2018 in Salia village, Nayau, Lau. You had an argument with your wife regarding her whereabouts the previous night. You accused

her of drinking with the youths instead of attending an event for the women in the village. She kept quiet because she was scared of you. When she did not respond to your questions, you beat her in the legs, back and shoulders with the stick several times. When she went inside the house you followed her and gave her more beatings until the stick broke. The violence continued. You punched her in the head and then tried to strangle her by pressing her neck with your bare hands. She kicked you hard when she started to choke. You fell backwards. For a moment she thought that the violence had stopped. But you continued with the use of violence on her after she did not respond to your accusations. You picked up the broken stick and gave her more beatings until she lost consciousness. When she regained consciousness you were not at the scene. The victim found her daughter beside her, crying. She got up and walked to the health centre accompanied by the village nurse.

- [4] The following day, the victim was medically examined at the Lakeba Hospital. According to the medical report, the victim feared for her safety and was in pain. She sustained multiple bruises and swelling all over her body. She was kept in the hospital for neurological observation for 24 hours before being discharged. Fortunately, the injuries were not serious.
- [5] On 23 July 2018, you were arrested and interviewed under caution. You confessed to the use of violence on your wife. You were charged and produced in court. You have been in custody on remand since 23 July 2018.
- [6] The maximum penalty prescribed for the offence of act with intent to cause grievous harm is life imprisonment. The tariff is between 6 months to 5 years imprisonment (*State v Mokubula* [2003] FJHC 164; HAA0052J.2003S (23 December 2003)). The seriousness of the offence is gauged by the seriousness of the injuries, premeditation or planning, length and nature of attack and vulnerability of the victim (*State v Vakalaca - Sentence* [2018] FJHC 455; HAC027.2018 (31 May 2018)).
- [7] In cases of family violence, the primary purpose of the sentence is deterrence, both special and general. The courts have a duty to protect women and children from all

forms of violence. Rehabilitation is relevant if the offender has taken responsibility for his crime and has addressed or has offered to address his violent behaviour.

[8] In her victim impact statement, your wife has said:

“I feel sorry for my husband and I have forgiven him. I admitted that due to my action that made my husband assault me. My children want him to come back home and we miss him.”

[9] The Court has also received a counselling report on the victim. According to the counsellor, the victim is traumatized by the assault inflicted on her by her husband. The victim trusted her husband but she fears that she may be victimized again. However, she blames herself for her predicament because her husband’s family has showed little empathy to her following his arrest.

[10] I am mindful of the wishes of the victim to continue with her relationship with her husband. But I am cautious in placing too much weight on her wish. The elephant in the room is the family violence. Without removing the elephant, the sanctity of marriage and family cannot be restored. Violence will continue and the victim is exposed to further physical and psychological harm. The power imbalance between you and the victim as in other similar cases of family violence is obvious. The victims, who mostly are women, are forced to reconcile and live in violent relationships because of cultural barriers and lack of support, financial and emotional.

[11] Since you are in custody on remand little assistance is available to you to address your violent behaviour. But I am satisfied that if you are offered rehabilitative programmes for gender based violence you will make an attempt to reform your behaviour. You have expressed genuine remorse by confessing your crime to police and by entering an early guilty plea. Court time and resources have been saved by your early guilty plea. You are also a person with previous good character. For all these mitigating factors I give you a reduction in sentence by one year.

[12] I now consider the aggravating factors. You breached the trust of your wife by inflicting physical violence on her. You had exposed one of your children to

violence who was found in a distressed condition after your wife regained her consciousness. A weapon was used to inflict the violence resulting in physical injuries. Manual strangulation resulting in choking was a dangerous act. The beatings were prolonged to a point the victim lost consciousness.

[13] These are some grave aggravating factors that justify a jail sentence to denounce family violence and deter you and others from committing family violence. Finally, I am mindful of the proportionality principle, that is, your punishment must fit the crime you committed.

[14] Taking all these factors into account, I sentence you to 18 months' imprisonment. Suspension is inappropriate. You have already served about 4 months in custody on remand. The remaining term you will have to serve is 14 months' imprisonment.

[15] A permanent DVRO with standard non-molestation conditions is issued for the protection of the victim and her children in the future.



A handwritten signature in black ink, appearing to be "D. Goundar", written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Office of Legal Aid Commission for the Accused