

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 285 of 2018

BETWEEN : THE STATE

AND : SEFANAIA TUIMOALA

Counsel : Mr I. Rakariya for the State
Ms L. Ratidara for the Accused

Date of plea : 06 December 2018

Date of Sentence : 14 December 2018

SENTENCE

1. Sefania Tuimoala, you are to be sentenced upon freely and voluntarily pleading guilty to one count of act with intent to cause grievous harm contrary to section 255(a) of the Crimes Act 2009.

2. The Court is satisfied that your plea is unequivocal and upon your admission of summary of facts, you are convicted as charged.
3. The victim in this case is your spouse. She is 39 years old. As per the summary of facts on 05 July 2018 at about 9 am you returned home from the farm and asked the victim for matches. She was busy weaving a mat and she told you to go and get it. You grew furious and struck the complainant on the right leg with a cane knife. When she laid helplessly on the floor you called for a taxi to take the victim to the hospital.
4. The victim was admitted in CWM hospital from 5 July 2018 to 17 July 2018. The medical report reveals the following medical findings;
 - a) A right proximal leg on dressing soaked with blood
 - b) An open fracture right proximal tibia
5. Further the victim had been prescribed for "plating right proximal tibia" and the medical report recommends long term rehabilitation to recover from the injury suffered by the victim.
6. I have considered the victim impact statement tendered by the State. It appears that the victim is still unable to work in their farm due to the injuries and she complains of pain in the open fracture on her leg. She has expressed that she is still in fear and she is afraid of you. The victim is facing difficulties in looking after the children due to this incident. It appears that the victim has received a long-lasting injury.
7. There is no tolerance for domestic violence in our society anymore. But instead of providing protection and care for your spouse you have committed a domestic violence offence by inflicting injury using a knife. This is a clear case of violation of the trust and security that exist between the parties in a domestic relationship. Although the previous approach of the courts was that offences in domestic context should be seen as no less serious than others, now the UK Sentencing guidelines emphasize that domestic context of offending makes it more serious as it represents a violation of trust and security that normally exist between people in an intimate relationship or

family relationship. The injury you inflicted is a serious one. It has changed her life style and made her more vulnerable physically as well as financially.

8. The Legal Aid Commission tendered written submissions on mitigation. I have considered the mitigation submissions made on your behalf. You are 52 years old and have two daughters aged 9 and 3 years. You are a farmer and you were earning around \$300 a week. It was submitted that you asked for matches to burn grass and when the victim refused you got angry. However, it should be noted that anger is not an excuse to unleash violence on family members.
9. In mitigation it is further submitted that you have sought forgiveness from the victim and you are remorseful of your actions. It is also stated that you wish to harvest the crops from your farm and intend to pay for the renewal of the farming lease. A letter from the victim was tendered with the mitigation submissions. She has stated that you and the victim have decided to reconcile for the sake of the children. Further she has stated that she has forgiven you.
10. Reconciliation after unleashing violence at home does not bear much significance in sentencing a perpetrator of domestic abuse. The courts have always looked at forgiveness and reconciliation in domestic violence offences with skepticism. The latest UK sentencing guidelines on domestic abuse observe the following in respect of the wishes of the victim in sentencing (para 10 of "Overarching Principles: Domestic Abuse 2018");

"A sentence imposed for an offence committed within a domestic context should be determined by the seriousness of the offence, not by any expressed wishes of the victim. There are a number of reasons why it may be particularly important that this principle is observed within this context:

- a) The court is sentencing on behalf of the wider public.
- b) No victim is responsible for the sentence imposed.
- c) There is a risk that a plea for mercy made by a victim will be induced by threats made by, or by a fear of, the offender.
- d) The risk of such threats will be increased if it is generally believed that the severity of the sentence may be affected by the wishes of the victim."

11. However, the court has to strike a balance between the possible effects on the children if the relationship is disrupted and the possible effects of violence on children or of any further incidents of violence, in sentencing an offender in a domestic violence case. In the present case the victim has stated in the victim impact statement that the children are asking for the father. Further the victim has mentioned about the difficulties in looking after the children. Justice Goundar in State v Vakalaca [2018] FJHC 455; HAC 027.2018 (31 May 2018) stated that;

“While this Court is mindful that the victim has expressed a wish to remain in a relationship with you, the paramount consideration is the protection of the victim and the prevention of violence. The courts have a duty to protect women and children from gender based violence. Deterrence, both special and general, and denunciation are primary purposes of punishment for domestic violence. Rehabilitation is only significant if the offender takes genuine effort to reform”.

12. You are not a first offender. You have 12 previous convictions. Therefore, you are not entitled for any reduction of your sentence for your previous good character.

13. However, the court has to give credit for your early plea. You have saved the court’s time by pleading guilty to the offence. The weight that should be attached to an early plea was observed as follows by Justice Goundar in Mataunitoga v The State [2015] FJCA 70; AAU125 of 2013 (28 May 2015);

“In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effects of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment.”

14. The courts no longer have to give 1/3 discount for early plea irrespective of the gravity of the case. His Lordship the Chief Justice, Gates while endorsing the approach

adopted by Justice Goundar in Mataunitoga [supra] observed the following in Aitcheson V The State [2018] FJSC 29;CAV0012.2018 (2 November 2018);

“The one third discount may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.”

15. Undoubtedly, the courts have always treated domestic violence offences with abhorrence. Domestic violence offences are a serious genre of crime given the long-lasting and devastating impact on the survivors and the overall damage caused to the social fabric in general. As far as the nature of this case is concerned I am of the view that your plea does not entitle you to one third discount. However, I am inclined to give you a lesser credit for saving the court’s time and for the expression of remorse by your early plea.

16. In State v Vucui [2017] FJHC 493;HAC63.2016 (7 July 2017) Justice Rajasinghe observed;

“Assault on women, specially within their own domestic environment is one of the worst form of physical assaults. Such offence undoubtedly causes adverse physical and psychological trauma in the life of the victim. Therefore, the court in sentencing offender of this nature is required to adopt a deterrence approach in order to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature”.

17. The maximum punishment for act intended to cause grievous harm is imprisonment for life. The tariff for this offence is between 2 years to 5 years imprisonment in case of an attack by a weapon according to Justice Shameem in State v Mokubula [2003] FJHC 164; HAAA0052J.2003S (23 December 2003).

18. In State v Tuigulagula [2011] FJHC 163;HAC031.2010 (15 March 2011) while imposing a 6 years imprisonment in a case of act with intent to cause grievous harm in domestic context Justice Madigan stated;

"I accept that the sentence is rather severe, but given that the maximum penalty for this offence is life imprisonment, and given that far too long now offences of violence within the family home have been visited with derisory sentences, six years is condign punishment for this horrific unprovoked attack."

19. In **State v Kailoma** [2018] FJHC 763;HAC46.207 & HAC63.2017 (21 August 2018) Justice Goundar emphasized the significance of increasing severity in sentencing in serious family violence cases as follows;

"The courts will never condone family violence. Family violence must be denounced. The primary purpose of sentence is deterrence, both special and general. Custodial sentence is inevitable in cases where a weapon is used to inflict physical injuries to the victim".

20. In **Aitcheson** (supra) the Supreme Court has remarked on the preferred sequence in which final term should be arrived at as follows;

"The Supreme Court has favoured the approach to granting the discount to be that the remand time is to be dealt with last. Once the term and non-parole period is arrived at, then the court will set out a suitable discount."

21. Taking all these factors into consideration I decide to impose three years imprisonment on you. You are eligible for parole after 2 years.

22. Given the circumstances of this case I decide that suspension of sentence is inappropriate.

23. You have been in remand custody since 09 July 2018 for about 5 months. To reflect the time that you have been in custody I order that you should serve a period of 2 years and 7 months. Therefore the non-parole period is now adjusted to one year and seven months.

24. The Magistrate's Court has already issued an interim DVRO for non-molestation on 09 July 2018. I make it a final order and accordingly a permanent domestic violence order is issued for non-molestation.

30 days to appeal.



A handwritten signature in black ink, consisting of several overlapping loops and lines.

Rangajeeva Wimalasena
Acting Judge