

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 378 of 2018

BETWEEN : THE STATE

AND : SEMISI DAKUYAU SAKIUSA

Counsel : Mr S. Tivao for the State
Ms L. Ratidara for the Accused

Date of plea : 05 December 2018

Date of Sentence : 14 December 2018

SENTENCE

1. Semisi Dakuyau Sakiusa, 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 now convicted as charged.
3. You were in a de facto relationship with the victim. She is 21 years old. On 01 October 2018 the victim was at a birthday party at her cousin's residence at Wailekutu Settlement, Lami. When she went to the toilet you came and dragged her out of the toilet. You were then stopped by the victim's cousin. When she went to the living room you returned with a chopper (knife) and hit the complainant on her head with the chopper. Further you physically assaulted the victim. The victim's family members and friends managed to stop you. The victim received injuries due to the assault.
4. The victim was medically examined on 01 October 2018. The medical report reveals the following medical findings;
 - a) Right side of scalp - cut size about 2 ½ inches long and deep to the bone
 - b) Right side head - hair cut on that side that the hair is short and irregular
5. The State informed the court that the victim could not be interviewed to prepare a victim impact statement as she was not willing to come forward. Therefore, this court does not have the opportunity to assess the impact on the victim apart from the medical findings.
6. In any event it should be noted that there is no tolerance for domestic violence in our society anymore. This is a clear case of violation of the trust and security that exist between the parties in a domestic relationship. Instead of providing protection and care for your de facto partner you have committed a domestic violence offence by inflicting injury using a chopper. When she was in the toilet you have initially dragged her out and regardless of the intervention by her family members you have continued to act violently. Then you came with a knife. The circumstances indicate premeditation. Further to the injury inflicted on her with the knife, you have physically assaulted her too. You unleashed violence at someone else's house in front of the victim's family and friends. Further you have targeted her head which is a vulnerable part of the body. I consider those as aggravating factors.

7. 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.
8. The Legal Aid Commission tendered written submissions on mitigation. I have considered the mitigation submissions made on your behalf. You are 23 years old and you were in a de facto relationship with the victim. You have a 3-year-old son with the victim. In mitigation it is further submitted that you seek forgiveness and you are willing to reform if given the opportunity. It was informed that you have been in remand custody since 5 October 2018.
9. It was also submitted that you have sought forgiveness from the victim and you have reconciled with her. However, I am not inclined to accept that as there is already an interim DVRO for non-contact. Further the victim refused to come forward. Even if you have reconciled with the victim it should be noted that reconciliation after unleashing violence on family members does not bear much significance in sentencing a perpetrator of domestic abuse. The courts have always looked at forgiveness and reconciliation which intrinsically follow domestic abuse, 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."

10. You are a young first offender. I am inclined to give you appropriate credit for your clean records.

11. You pleaded guilty saving the court's time. I consider it as an expression of remorse. 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."

12. 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 Aitchison 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."

13. 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 expressing remorse by your early plea.

14. 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”.

15. 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).

16. 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.”

17. 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”.

18. 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.”

19. Taking all these factors into consideration I decide to impose two years imprisonment on you. Further I decide not to fix a non-parole period.

20. Although you are a young first offender I decide that suspension of sentence is inappropriate as the court is obliged to send a stern message to the society of the repercussions of resorting to family violence, apart from achieving the other purposes of sentencing enunciated in section 4(1) of the Sentencing and Penalties Act.

21. You have been in remand custody since 03 October 2018 for about 10 weeks as per the Magistrate’s court record. To reflect the time that you have been in custody I order that you should serve a period of 1 year 9 months and 2 weeks.

22. The Magistrate’s Court has already issued an interim DVRO for non-molestation and for non-contact on 03 October 2018. I make it a final order and accordingly, a permanent domestic violence order is issued for non-molestation and for non-contact.

30 days to appeal.



A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned above the printed name.

Rangajeewa Wimalasena
Acting Judge