

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

Criminal Case No.: HAC 46 of 2019

BETWEEN : STATE

AND : YOGESH ROHIT LAL

Counsel : Ms D Rao for the State
Ms S Devi for the Accused

Date of Hearing : 4 - 5 February 2020

Date of Sentence : 13 February 2020

SENTENCE

- [1] Salesni Devi was a daughter, wife and mother. On 21 August 2019, she was a victim of gratuitous violence at the hands of her husband. She was killed in her home. The offender has pleaded guilty to her murder.
- [2] Ms Devi was 34 years old. She had been married to the offender for nearly 18 years. Together they had three young children. Two months before she was killed, she had moved to live with her parents in Wainikoro, Labasa. Her matrimonial home was in Daku, Labasa. When Ms Devi moved to her parents' home, she took her youngest child (2-year old daughter) with her. She left her two other children (a son and a daughter) with the offender.

- [3] On the day Ms Devi was killed she was at home with her mother and daughter. According to the photographs of the crime scene, the house was made of corrugated iron and timber with basic facilities.
- [4] The offender left his home at 6.30pm on a bus and arrived at Ms Devi's home at around 7pm when it was dark. After arriving at Ms Devi's home, the offender disconnected the electricity and hid at the back of the house. When Ms Devi came out to check the main switchboard, the offender sneaked from behind and struck her on the head with the cane knife he had brought from his home. She sustained injuries to her hand and head. Ms Devi's mother rushed to her daughter's rescue but the offender pushed her away. Her mother pleaded with the offender to spare her daughter from harm. The offender did not listen.
- [5] The attack on Ms Devi was in the presence of her two-year old daughter. Despite being seriously injured, Ms Devi ran inside her house for safety. But the offender pursued her inside the house and struck her multiple times in the neck and head with the cane knife. Ms Devi's mother tried to stop the offender but to no avail. Ms Devi died at the scene. She sustained multiple deep slash wounds to her head, neck, left upper limb and posterior trunk. Her skull and facial bones were exposed due to the slash wounds and her neck was almost severed.
- [6] After killing Ms Devi, the offender left the house and returned to his home in Daku. He took the cane knife with him. When he arrived at his home, he called his immediate family and friends and told them that he had killed Ms Devi and was waiting for the police. The offender was arrested on the same night at around 9.30pm from his home. He has been in custody on remand since the date he was arrested.
- [7] When the offender was interviewed under caution by the police, he answered only a few questions. He said he was involved in a maintenance dispute with his wife after they separated and that his wife was threatening to kill him and settle down with another person in Suva with their youngest child. He also claimed that his wife was of

promiscuous character. He made similar claims when he addressed the court at the sentencing hearing.

- [8] The victim's character is of little relevance in sentencing. Even if Ms Devi was of promiscuous character, she had a right to life. She may have wanted to move on with her life after separation, but the offender was obsessed with her. He frantically pursued her after separation. He also involved the elders from his community to convince her to reconcile and return to him. It appears that their differences were irreconcilable and that the marriage had broken down. Ms Devi stood her ground not to return to the offender for the reasons best known to her.
- [9] The motive for the killing is clear. The offender could not accept that Ms Devi had a right to autonomy and a right to choose her own course in life. He could not accept that she no longer wanted to be in a relationship with him. He considered himself entitled to insist that Ms Devi conform to his wishes rather than pursuing her own. The prospect of Ms Devi pursuing a new relationship was galling to him. He felt ridiculed when Ms Devi rejected him. In response to her perceived temerity, he killed her, his own wife and the mother of his three children.
- [10] The offender is 40 years old. He is a sugar cane farmer and a vegetable seller. His character was unblemished until he killed his wife. Letters of support for the offender have been submitted to the Court by religious leaders and elders from his community. I do not doubt that the offender had a good standing in the community and that he was a dedicated father and a hardworking member of the community, which I consider as a mitigating factor. But I am cautious to accept any suggestion that the offender was justified to kill his wife.
- [11] The offender committed family violence. The culture of male partners using violence against their female partners is a serious problem in our community. In many cases the male partners resort to violence because they are not prepared to accept decisions of their female partners for self-autonomy. It is must be made clear that the elephant in the room is not female self-autonomy but family violence. The courts must ensure that those who

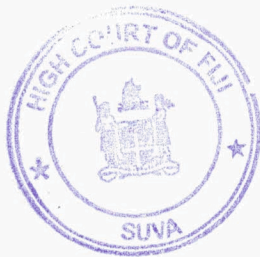
commit family violence resulting in the death of a spouse or partner pay a heavy price for their crimes, to punish them, to denounce the crime, and to deter others. The victims of family violence must be protected insofar as the courts are able to afford them protection. The harmful impact of domestic violence is felt not only on the family of the victim but also on the community.

- [12] In considering the mitigating factors, I take into account that the offender pleaded guilty at the first opportunity. An offender may benefit from an early guilty plea in two ways. Firstly, an early guilty plea may indicate that the offender is genuinely remorseful, and secondly, there is a utilitarian value to a guilty plea, that is, the State is saved of the costs of holding a trial.
- [13] In the present case, the offender is entitled for a discount for the utilitarian value of his guilty plea but not for remorse. It was unrealistic to submit that the offender was remorseful. When the offender addressed the Court during sentencing he gave me an impression that he realizes the gravity of his conduct, but he thinks he was justified in doing what he did to his wife. He thinks he is a victim of betrayal of trust by his wife whom he loved. There is also a psychological evaluation report on the offender that states he is not remorseful but believes that he was justified to kill his wife.
- [14] There is some evidence that the offender suffers from a moderate form of personality disorder but there is no evidence to suggest that his psychological condition at the time of the offending diminished his capacity to realize the gravity of his action. His intention was to kill his wife when he struck her multiple times with a cane knife.
- [15] The fact that Ms Devi was a victim of extreme violence in her own home where she was entitled to safety and security is an aggravating factor. Ms Devi was vulnerable because she was living in a rural community with little support. She was attacked at night with a weapon. The offender brought the cane knife concealed in a sack from his home. He turned off the electricity to either cause the occupants to come out of the house or to conceal his identity. The offender's actions show that he came to Ms Devi's home with

the intention to carry out an execution kind of killing. Another aggravating factor is that he carried out the execution in the presence of his two-year old child.

[16] The punishment for murder is fixed by Parliament. It is life imprisonment with discretion to fix a minimum term before a pardon may be considered. The presence of the aggravating factors that I have identified justify fixing a minimum term. Let me explain to the offender the effect of fixing a minimum term. Once a minimum term is fixed the offender cannot apply for a pardon until he had served the fixed term. After serving the fixed term he may apply to the President to pardon him upon advice of the Mercy Commission, but it is not necessary that he will be granted one. In the event the offender is not granted a pardon, he remains in prison till death.

[17] Yogesh Rohit Lal, for the murder of Salesni Devi you are convicted and sentenced to life imprisonment with a minimum term of 24 years.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused