

**IN THE MAGISTRATES COURT OF FIJI AT LABASA  
EXTENDED CRIMINAL JURISDICTION**

Magistrates' Court Criminal Case No. 569 of 2016  
High Court Criminal Case No. 52 of 2016

**STATE**

-v-

**KARALAINI LUVENTOGA**

**For the State:** Constable V. Chand

**For the Defendant:** Ms. Marama, of counsel instructed by the Legal Aid Commission

**Date of Sentencing Hearing:** 26 November 2018, 6 May 2019, 10 May 2019

**SENTENCE**

1. You entered a plea of guilty to *Act Intended to Cause Grievous Harm* contrary to section 255 (a) of the **Crimes Act 2009** on 26 November 2018.
2. In open court you indicated that you understood and admitted the State's Summary of Facts. The Facts reveal that on Tuesday 27<sup>th</sup> September 2016 you and your husband were cutting cane at Nananu, Lalakoro in Seaqaqa. Your husband came and asked you to stop and have tea but you did not. You continued to cut cane. Your husband then returned from tea and your husband asked you to hand over your cane knife so that he might sharpen it. You did not respond so he merely sharpened his own knife and then came over to where you were and started cutting cane beside you.
3. You then asked him why he had not sharpened your knife. He came nearer to you and you hit out at him with your cane knife. The tip of the cane knife hit the back of his head. More than that you proceeded to hit him twice more over the head with the back of your cane knife.
4. Your husband received a 5 x 1 cm laceration and another 2 x 2 cm laceration to the back of his head. Your sister in law heard of the incident and it was she who reported your actions to the Police.
5. You were initially charged on 19 October 2016. You initially entered a plea of not guilty on 19 October 2016 as is your right in law. You were represented by counsel at the time. The matter was called over successive dates in 2017 and 2018. On 26 November 2018, you then entered your guilty plea.
6. The matter was then adjourned over successive dates in January and February 2019 to permit the Legal Aid Commission to file your plea in mitigation.

7. Your guilty plea cannot be said to be a guilty plea at the first available opportunity but it is unequivocal. I find you guilty and I convict you as charged.
8. This was no minor or technical breach of the law. At the end of the day, I must bear in mind that you struck out at your husband *with a cane knife*.
9. To show mercy here through the entering of a non-conviction would send the wrong message to spouses and partners and workers who find themselves angry and who choose to act on that anger while armed with a deadly weapon.

#### ***Maximum Penalty & Tariff***

10. The maximum penalty for this offence is imprisonment for life.
11. The tariff is a term of imprisonment between 6 months and 5 years and in cases where a weapon is used the starting point ought to range from 2 to 5 years depending on the nature of the weapon: *see* **State v. Vakalaca – Sentence** [2018] FJHC 455; HAC 027. 2018 (31 May 2018) per Goundar J. at [13].
12. The offence may be aggravated by the seriousness of the injuries sustained, premeditation or planning, length and nature of the attack and vulnerability of the victim: *see* **State v. Vakalaca**, *supra* at [13].

#### ***Aggravating Factors***

13. You used a cane knife to attack your husband.
14. Having said that, the offence was not pre-meditated, the attack was short and over quickly, and the injuries that your husband sustained were, fortunately, very minor.

#### ***Mitigating Factors***

15. You are 28 years old. You were 25 years old at the time of the offending. You are married and you and your husband have been married for 6 years. You have a daughter who is in Class 3.
16. You perform domestic duties. You look after your husband and your child. You supplement the family food supply and income by gathering seafood or by fishing.
17. You are deeply remorseful for your actions. You seek the mercy and forgiveness of the court. You promise not to re-offend. You and husband are still together. You fully cooperated with the Police and you made full admissions to the Police. Your offence was not pre-meditated and you had only meant to smack your husband with the flat end of your cane-knife.
18. You were a young, first offender at the time of the commission of the offence. Your husband came to Court on 10 May 2019 and he pleaded for mercy on your behalf. On oath, he testified that he had not wished the matter to be reported at all. In his view, it was a minor family dispute that you both needed to resolve in private but the matter was taken out of his hands when his sister reported the matter to the Police.
19. No criticism is or can be made against his sister for reporting but this is an important indication of the attitude of the victim toward the offender and toward the offending against him.

20. Moreover, he testified that you had never acted in violence toward him before that and you have never acted in violence toward him after that incident. He said that he has experienced a sea-change in your manner and attitude toward him and the marriage. Fortunately, instead of dividing you the incident has strengthened your commitment toward to your marriage and to each other. This is no small thing. It is evidence of genuine reconciliation between victim and offender.

21. You and he have a small family and you play a huge part as helpmeet and mother, your husband testified. He said that the incident in question was an aberration brought on by the heat of the day and the pressures of trying to make ends meet at that time. You had had to work beside him in the heat of the day cutting cane, long and arduous labour from all accounts. He said that your support has been enormous throughout your marriage and was enormous even at that time. He said that you had had an argument because he was not spending enough time with and on the family, a charge he accepted as true.

22. He asked the Court to please show mercy on you.

### **Sentencing**

23. I pick a starting point of 2 years imprisonment. This was an offending involving the use of a cane knife.

24. Moreover, I increase your sentence by 12 months for the fact that this was a crime of domestic violence. Your sentence is now imprisonment for 3 years.

25. I reduce your sentence by 1 year for your personal circumstances and in particular, in recognition of the fact that you are a young, first offender who cooperated fully with the police and who has successfully reconciled with the victim of your crime. Your sentence is now 2 years.

26. I further reduce your sentence by 8 months for your guilty plea. It might not have been an early guilty plea but I am convinced that it is a genuine one. Your sentence is now 1 year and 4 months.

27. I am empowered to suspend a term of imprisonment of 2 years or less pursuant to section 26 (2) (b) of the **Sentencing and Penalties Act 2009**. I am satisfied that there is little utility in sending you to prison in all the circumstances of this case. You are an excellent candidate for rehabilitation and I recognize that by suspending your term.

28. I sentence you to imprisonment for 1 year and 4 months and I suspend this term for a period of 2 years.

29. You must not commit another offence in the next 2 years. If you do, you may find yourself serving the 1 year and 4 month term I have suspended today.

30. **28 days to appeal.**



.....  
Seini K Puamau  
**Resident Magistrate**



Dated at Labasa this 27<sup>th</sup> day of May 2019