

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 70 of 2018

STATE

V

RAMESH CHAND

Counsel : Miss D. Rao for the State.
Mr. J. Reddy for the Accused.

Dates of Trial : 23, 24 and 25 April 2019
Date of Summing Up : 25 April 2019
Date of Judgment : 26 April 2019
Date of Sentence : 26 April 2019

SENTENCE

1. The accused has been found guilty after trial in this Court of one count of **An Act Intended to Cause Grievous Harm** contrary to section 255(a) of the Crimes Act 2009.
2. The brief facts of the case were that the accused's wife and the victim's husband were joint trustees of land near Seaqaqa left to them by their father in unequal shares. The accused and his

wife were aggrieved at their being allotted a much smaller parcel of land and this grievance resulted in harassment, threats and general tension between the parties. .

3. The dispute came to a head on 10 September 2018 when the husband and son of the victim learned that the accused was cutting wood on land that purportedly didn't belong to him. The husband and son went to investigate and the victim followed shortly after. When challenged by the victim and her husband as to who had given them permission to cut this wood the accused rushed at the victim still holding the running chain saw. He tried to place it on her shoulder but she fended it off causing it to rundown her arm and cut her lower forearm. She sustained a rather serious incision on her arm.
4. The maximum penalty for this offence is life imprisonment and the tariff has been held to be a term of imprisonment of between 6 months to 5 years.
5. Obviously a chain saw in operation is an extremely dangerous weapon and to use it against another is an obvious attempt to seriously maim.
6. In mitigation, Mr. Reddy asks for mercy submitting that the 7 months already spent in custody awaiting trial is punishment enough. His remorse and clear record should afford him a suspended sentence.
7. The accused is 49 years old, married with three adult children. He and his wife grow sugar cane on their share of the land. His wife is now the only person left on the land which is isolated and he worries for her safety.

8. His counsel submits that there was no premeditation of the act.
9. Miss Rao for the State has handed up a victim impact report which speaks of the victim's ongoing trauma and emotional fragility as a result of the incident
10. I take a starting point of three years which reflects the severity of the deed and also reflects the breach of the interim DVRO issued against him.
11. I also deduct 12 months from the sentence in recognition of his hitherto clear record and for the difficult situation his wife faces on the farm
12. I disagree that the case warrants a suspended sentence and assault with a very dangerous weapon such as a chain saw can never be visited with a suspended sentence.
13. I allow for the seven month period he has spent in remand and the sentence I pass therefore is a term of 17 months imprisonment from today. He will serve a minimum term of 12 months before being eligible for parole.
14. I also make a final Domestic Violence Restraining Order against the accused as perpetrator and the victim Ms. Devi as protected person. This order is to remain in effect until further order of this Court.

Orders:

1. The accused is sentenced to a term of imprisonment of 17 months from today
2. He is to serve a minimum term of 12 months.

3. A final Domestic Violence Order is made to remain until further order.



A handwritten signature in black ink, appearing to read "P. K. Madigan", is written over the seal.

P. K. Madigan
Judge

At Labasa
26 April 2019