

***R v Fesus (No 9)* [2018] NSWSC 176 (23 February 2018) – New South Wales Supreme Court**

‘Factors effecting risk’ – ‘Historical offence’ – ‘Historical sentencing practice’ – ‘Murder’ – ‘Physical violence and harm’ – ‘Post-separation violence’ – ‘Strangulation’

Charges: Murder

Case type: Sentence.

Facts: The defendant was convicted of the 1997 murder of his 18-year-old wife. The judge found that the defendant strangled his wife after she proposed to leave him and take the children with her ([50]). The defendant denied the allegations and attempted to cover up the murder, but later made admissions to an undercover police officer in 2013 ([23]).

Issues: Sentence to be imposed.

Decision and Reasoning: Justice Johnson had regard to sentences imposed for similar cases in 1997 ([88]-[93]) and imposed a head sentence of 22 years’ imprisonment with a non-parole period of 16 years and 6 months ([98]). At [50]-[51] Johnson J explained:

The Offender murdered his young wife in the course of a domestic dispute arising from her declaration that she proposed to leave him and take the children with her. Although the Offender and Jodie had lived together for about two years, they had only been married for three months at the time of her death. Jodie was a young mother who, despite her considerable life experience at that time, was barely an adult. The Offender was 26 years old at the time of the offence.

The fact that the marriage was breaking down (after only three months) does not assist the Offender. It has been observed that killings within a domestic situation occur very often when there has been a build-up of tension between the killer and victim over a period of years : *R v Whitmore* [1998] NSWCCA 75 at [16]. That is not the position in this case. Here, the Offender murdered his very young wife at a time of marital strain after just three months of marriage.

Justice Johnson also noted the lack of previous domestic violence, and the prevalence of choking in domestic violence:

The evidence does not suggest a prior history of domestic violence on the part of the Offender towards Jodie. That said, their relationship was not a particularly long one and his response to Jodie’s desire to leave was a savage and homicidal one.

The use of choking in the course of domestic violence is now well recognised as a gross form of control with a capacity (as occurred here) to cause death: *Cherry v R* [2017] NSWCCA 150 at [75].