

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 057/ 2013

BETWEEN : STATE

A N D : MARIA TERESIA

COUNSELS: : Mr. S. Vodokisolomone for the State
Mr. P. R. Lomaloma for the Accused

Date of Hearing : 23/06/2014
Date of Sentence : 27/06/2014

SENTENCE

[01] The Director of Public Prosecution had preferred the following charges against the above named accused.

First Count

Statement of offence

MANSLAUGHTER ARISING FROM BREACH OF DUTY: Contrary to section 240 (a) (b) and (c) (i) and (ii) and 241(2) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MARIA TERESIA, on the 19th of November 2012 at Tavuki Village, Taveuni in the Northern Division, omitted her duty to take necessary precautions by failing to ensure that the candle light was in a safe position for the safety of Maria Sepo Ravuiwasa and such omission led to the burning of the house which caused the death of the said Maria Sepo Ravuiwasa her 4 year old daughter.

Second Count

Statement of offence

MANSLAUGHTER ARISING FROM BREACH OF DUTY: Contrary to section 240 (a) (b) and (c) (i) and (ii) and 241(2) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MARIA TERESIA, on the 19th of November 2012 at Tavuki Village, Taveuni in the Northern Division, omitted her duty to take necessary precautions by failing to ensure that the candle light was in a safe position for the safety of Romanu Ravuiwasa and such omission led to the burning of the house which caused the death of the said Romanu Ravuiwasa her 2 year old son.

- [02] When the Plea was taken on the 15th day of October, 2013 the accused pleaded not guilty to the charges. But she has changed her plea of not guilty to guilty on 23rd of June 2014. Accepting the plea to be unequivocal this court found the accused guilty and convicted her under Section 240 of Crimes Decree No: 44 of 2009.
- [03] State Counsel submitted the following summary of facts of which the accused admitted.

SUMMARY OF FACTS

- [04] On the 19th day of November 2012 at about 8.00pm the accused Maria Teresia of Tavuki Village, Taveuni had left her children namely Maria Sepo Ravuiwasa 4 years (Deceased 1) and Romanu Ravuiwasa 2 years (Deceased 2) asleep at their home and left out to look for cassava for her husband's dinner. Her husband was at work at Taveuni Police Station at that time no one else was at home except deceased 1 and 2 who were asleep at that time. The accused had lit a candle and place it on top of a wardrobe inside the house. When the accused left her home she had closed the doors when she left. At about 10.00pm on the same evening the

people in the village had saw fire coming from the direction of the accused home. The villagers rushed to the scene to try and stop the fire but cannot do so. The accused was returning from Qoreti's house at about 10.00pm when she saw her house on fire. At that stage nothing could be done to stop the fire and within minutes the fire had caused the house to collapse to the ground

- [05] The matter was reported to police and investigations were conducted. Fire investigators visited the scene and conduct their investigation and found out that the house cause of fire was the lit candle which was placed on top of the wardrobe as stated by the accused. Fire investigator Mr. Qica has also pointed out the spot on the scene where the fire had started and it was the same place where the wardrobe was located in the house of which the candle was placed.
- [06] The remains of the two deceased were uplifted by scene of crime personnel's and was examined by the government pathologist Dr Ponnuswami Goundar who found that the cause of death was 5th degree, 90 and 100% burns. The accused was interviewed under caution and formally charged for Manslaughter by Breach of Duty pursuant to section 240 (a), (b), (c) (i) & (ii) ad 241 (2) of the Crimes Decree No 44 of 2009.

THE LAW

- [07] Manslaughter arising from a breach of duty attracts a maximum sentence of 25 years imprisonment pursuant to Section 240 of the Crimes Decree No. 44 of 2009. The offence already existed under Section 198 of old Penal Code Cap.17. The punishment under penal code is imprisonment for life. Although there has been a great deduction from maximum penalty of life imprisonment to 25 years, the maximum term still indicative enough of how serious the legislature viewed this crime.

THE OLD TARIFF

- [08] In the case of **State v Milika Vadei** [2010] FJHC 168; HAC 0068/2009s [May 2010] His Lordship, Justice Temo stated the following when sentencing an accused person for the offence of Manslaughter:

"Manslaughter is a serious offence. It carries a maximum sentence of life imprisonment. However, case laws in Fiji seemed to show that penalties for manslaughter range from a suspended sentence to 12 years imprisonment. Sentences in the upper range were reserved for cases where the degree of violence was high and the provocation given was minimal. Sentences at the lower end of the scale were reserved for cases where the

*violence used was minimal and the provocation given was in the extreme: see **Kim Nam Bae v The State**, Fiji Court of Appeal, Criminal Appeal No. 1998S; **The State –v- Frances Bulewa Kean**, Criminal CASE No HAC 037 of 2007; **State v Amali Rasalusalu** Criminal Case No. HAC 003 OF 2003, High Court, Suva. The actual sentence passed will depend on the presence or otherwise of strong mitigating and/or aggravating factors”*

In **State –v- Kean** [2007] FJHC 69; HAC 37 OF 2007 per Winter J, had considered the following factors;

*[14] Manslaughter, the killing of a fellow human being by an unlawful act is recognized by the legislature as a very serious matter. It is also recognized that the offence can have varying degrees of culpability requiring different sentence. [See the **State v Ananai Curubea**, Criminal Case No. HAC 10 OF 1997S, 11 July 1997 Pain].*

[15] Penalties range from a suspended sentence to 12 years imprisonment. What is clear from the case law is that sentence in the upper ranges are required where the degree of violence is high and any provocation minimal. Sentences at the lower end of the scale are reserved for those cases where the violence used is minimal and provocation extreme.”

In the case of **Bae v State** (1999) FJCA 21, the Judges of Court of Appeal considered sentencing as follows:

“We have been referred to several cases of sentence on manslaughter in the High Court as well as in the Court of Appeal to enable us to determine the correct range of sentence for this type of offence. With respect, this is the correct approach that should be taken by the courts. The task of sentencing is not an exact science which is capable of mathematical calculation. This is particularly so with manslaughter where the circumstances and the offender’s culpability can vary greatly from case to case. An appropriate sentence in any case is fixed by having regard to a variety of competing considerations.”

In addition, the State would humbly seek that the Court also to consider the commonly cited decision of **State v Amani Rasalusalu** HAC 003 OF 2003:

"The tariff for manslaughter in Fiji ranges from a suspended sentence to 12 years imprisonment. Suspended sentences have been given in the most exceptional cases where there are extenuating circumstances in the accused's favour and where there may have been minimal violence with a high degree of provocation. Into this category fall drunken brawls leading to a single punch and a fatal fall, and cases of prolonged abuse and violence on the accused by the deceased leading to the sudden loss of self-control. Most cases of the killing of new-born babies fall into a separate category or "infanticide" where the mother is found to be suffering from post-partem depression. Non-custodial sentences are the norm for cases of infanticide, although a previous conviction for infanticide might lead to a custodial sentence. In cases of infanticide, a binding-over order or a conditional discharge together with orders for counseling might be considered appropriate. (R-v-Sainsbury (1998) 11 Cr. App. R (s), State -v- Evangaline Kiran Nair Cr. Case No. 32 of 1989, State -v- Kesaravi Tinairatu Timuri Cr. Case No. HAC 0008 of 2002S.

However this is not a case of infanticide. The balance of your mind was not disturbed. You had given birth to four children previously and knew how to take care of children. This is not a case of an irrational and mentally disturbed killing. This is a case of negligence.

I therefore use as my starting point 2 years imprisonment. In your favor is your personal situation. You are supporting your children by farming and fishing and I accept that you have a difficult life with little support from anyone other than your brother. Also in your favor is that circumstances forced you to give birth to your child in the bush where you got none of the assistance and support normally given to new mothers. Your personal circumstances are indeed tragic and aggravated by poverty and daily struggles to feed and clothe your children. Aggravating factors are that you made no attempt to keep the child warm, and left him there although you must have known that he needed care. After making the necessary adjustments I arrive at a sentence of 12 months imprisonment. I have treated you as a first offender because your one conviction is more than 10 years old."

[09] The State submits that the tariff for Manslaughter Arising from Breach of Duty is a suspended sentence to 12 years imprisonment.

[10] The accused was 9 months pregnant at the time of the fire. She gave birth to her daughter on 20th December 2012, about one month overdue. She had had labour pain one week before the fire and her doctor had advised her to take walk daily to

encourage the birth of her new baby. Accused followed the doctor's advice and would wait for her deceased children to sleep before she would take her walk. Due to financial hardship, the electricity was disconnected and the accused and her husband could not afford to buy kerosene for the lantern. Therefore, accused used a candle which she put in a saucer and kept on top of the drawer.

- [11] The accused is 29 years and married with two other children. The eldest is 08 years old and the younger is 1 year and 6 months old.
- [12] I have carefully considered these submissions in light of the provisions of the Sentencing and Penalties Decree No: 42 of 2009 especially Sections 4(1), (2) and 15 in order to determine the appropriate sentence.
- [13] Now I consider the aggravating factors:
- (a) The victims were 4 years and 1 year and 6 months old at the relevant time.
 - (b) The accused has breached the duty of care.
- [14] Now I consider the mitigating circumstances:
- (a) The accused has pleaded guilty before the commencement of the trial.
 - (b) The accused is married and has two small children.
 - (c) The accused has no previous convictions.
 - (d) The accused is remorseful.
 - (e) The marriage life of the accused had been shaken because of the incident.
 - (f) She has suffered more than enough traumas at the highest degree with the death of her children.
 - (g) The accused was under lots of pressure as she was 9 months pregnant and overdue at the time of the offence.
 - (h) She has to live everyday of her life with the knowledge that her children died because of her negligence.
- [15] Considering all aggravating and mitigating circumstances I sentence you as follows.
- (i) For the 1st count I take 24 months as starting point. I add 06 months for aggravating factors and deduct 06 months for the mitigating

factors. Now the sentence is 24 months imprisonment against the accused.

(ii) For the 2nd count I take 24 months as starting point. I add 06 months for aggravating factors and deduct 06 months for the mitigating factors. Now the sentence is 24 months imprisonment against the accused.

[16] I order your sentence to run concurrent to each other. Now your sentence is 24 months imprisonment.

[17] Considering Section 26(1) of Sentencing and Penalties Decree 2009 I suspend the 24 months imprisonment for a period of 3 years against the accused. Suspended sentence is explained.

[18] 30 days to appeal.



P Kumararatnam

JUDGE



At Labasa
27/06/2014