

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 266 of 2016

BETWEEN: STATE

PROSECUTION

AND: KAVAIA NAKAUCIRI

ACCUSED PERSON

Counsel: Mr. T. Qalinauci for State  
Ms. M. Tarai for Accused

Sentence: 19<sup>th</sup> October 2016

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**S E N T E N C E**

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1. Kavaia Nakauciri, you stand convicted on your own plea of guilty, for one count of Manslaughter.
2. The brief facts of the case are, on 15/06/2015 the forklift driver Netani Vosa brought a metal sheet into the machine shop located within the IMEL workshop at Eliza Street, Walu Bay. He put on the handbrake while the engine was on and got off the forklift. He was assisted by you (accused) to lift the metal sheet. You wanted to drive the forklift although you had not driven a forklift before and also you were not authorised to drive the forklift. When the driver Netani was trying to

put the metal sheet properly, he heard the sound of forklift reversing. He then shouted and you accidentally stepped on the accelerator instead of the brake pedal. Then the forklift reversed and pushed a bench together with the table and pushed it against the security guard (deceased) who was sitting on a chair behind the table. Then you pushed the gear, moved the forklift forward for the deceased to move out. Deceased walked a few meters and laid on the floor and touched his stomach and requested for an ambulance. There was no mechanical defect in the forklift. Deceased underwent a surgery at the hospital there on 25.06.2015, the deceased passed away at ICU CWM hospital. Cause of death was Acute Suppurative Peritonitis (severe) due to severe traumatic abdominal injuries as a result of fatal motor vehicle accident. Then you voluntarily surrendered to police, admitted driving the forklift and that it hit the deceased who was sitting behind a table. You also admitted that you had no authority to drive the forklift.

3. The maximum penalty prescribed for manslaughter in terms of section 239 of the Crimes Decree 2009 is imprisonment for 25 years.
4. Tariff for manslaughter ranges from a suspended sentence to 12 years imprisonment. (**Kim Nam Bae v. State** Cr. App. No. AAU0015 of 1998S)
5. In **State v. Viliame Ratoa** Criminal Case No. HAC 173 of 2010S, Court said:

*"Manslaughter" is a serious offence, and carries a maximum sentence of 25 years imprisonment. The tariff for manslaughter*

*in Fiji is a suspended prison sentence to a sentence of 12 years imprisonment. Sentences in the upper range were reserved for cases where the degree of violence was high, and the provocation minimal. Sentences in the lower range were reserved for cases where the violence used was minimal, while the provocation was extreme. The tariff covers a very wide set of varying circumstances which will attract different sentences, depending on its own set of facts: Kim Nam Bae v The State, Criminal Appeal No. AAU 0015 of 1998S, Fiji Court of Appeal; The State vs Francis Bulewa Kean, Criminal Case No. HAC 037 of 2007S, High Court, Suva; The State v Tomasi Kubunavanua, Criminal Case No. HAC 021 of 2008, High Court, Suva. Of course, the actual sentence will depend on the aggravating and mitigating factors."*

#### **Aggravating factors**

6. You knew that you were not competent to drive the forklift and you still drove it.

#### **Mitigating factors**

7. You are 25 years old. You are a first offender. You pleaded guilty to the charge at the 1<sup>st</sup> available opportunity. The personal background as submitted by your counsel is also taken into consideration.
8. I take 3 years as the starting point. I add one year for the aggravating factors and deduct 2 years for the mitigating factors. Now your interim

sentence is 2 years. I further deduct 8 months for your early guilty plea. Now your sentence is 1 year and 4 months.


9. Now I will consider whether your 16 months imprisonment period should be suspended.

*"In practice the suspended sentence has become associated with certain categories of cases, although it is not limited to them. The most typical use of the suspended sentence, so far as the Court of Appeal is concerned, is in the case of an offender of previous good character who has committed an offence of a relatively serious nature (but not in the first order of gravity) under circumstances of substantial mitigation." (Principles of Sentencing by D. A. Thomas Second Edition-page 245)*

10. I take into consideration that you are a first offender, you pleaded guilty to the charge and you are remorseful. Although you did not cause injury to the deceased intentionally you drove the forklift when you had no authority to drive the same, causing fatal injuries to the deceased.
11. On the facts placed before the Court, you may not have foreseen or expected this to happen when you tried to handle the forklift although you were reckless as to the risk that your conduct would cause harm to some person in the vicinity.

12. I also take into consideration that you will be graduating at Fiji National University this December.
13. Taking into consideration the above factors I find it appropriate to suspend your sentence. Hence, you are sentenced to 16 months imprisonment, suspended for 2 years.



  
Priyantha Fernando  
Judge

**At Suva**

19<sup>th</sup> October 2016

**Solicitors**

Office of the Director of Public Prosecutions for the State  
Office of the Legal Aid Commission for Accused