

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 318 OF 2016S

STATE

Vs

BAI DURUIMATA

Counsels : Mr. T. Tuenuku for State
Ms. S. Prakash for Accused

Hearings : 13 April, 2018

Sentence : 20 April, 2018

SENTENCE

1. On 13 April 2018, in the presence of your counsel, you pleaded guilty to the following amended information:

Statement of Offence

MANSLAUGHTER: Contrary to Section 239 of the Crimes Act 2009.

Particulars of Offence

BAI DURUIMATA and SANAILA NOKE on the 5th day of July, 2016, at Nausori, in the Eastern Division, punched and stomped JOSEVA ROKOTUITAVUKI causing his death and BAI DURUIMATA and SANAILA NOKE were reckless as to a risk that their conduct, will cause serious harm to the said JOSEVA ROKOTUITAVUKI,

2. The prosecution then presented the following summary of facts:

On the 5th of July, 2016, the accused Bai Duruimata, 37 years old, Farmer of Delaidamanu village, was drinking beer together with the deceased, Joseva Rokotuitavuki, 32 years old, rugby player of Jittu Estate, at Whistling Duck Nightclub in Nausori.

While drinking beer together, the accused Bai Duruimata was annoyed by the fact that the deceased was not buying any beer for them.

Being annoyed by the fact that the deceased was not buying any beer, the accused Bai Duruimata, being reckless as to a risk that his conduct would cause serious harm to the deceased, threw a punch at the deceased landing on the deceased's mouth, causing the deceased to fall unconscious on the hard floor of Whistling Duck Nightclub. The deceased suffered Severe Traumatic Head injuries as a result of the punch of the accused and the deceased falling onto the hard floor of Whistling Duck nightclub. These severe traumatic head injuries ultimately caused and led to the death of the deceased on the 13th of August, 2016 as per Post Mortem Report, dated 15th August, 2016.

The accused Bai Duruimata, was arrested and caution interviewed at Nausori Police Station, whereby he admitted throwing a punch which landed on the deceased's mouth at Question 70 and question 71 of his caution interview. In question 80 and 82, the accused Bai Duruimata admitted that he had punched the deceased when the deceased was lying on the floor of Whistling Duck nightclub.

3. The court then checked with you, through your counsel, on whether or not you are admitting the above summary of facts, the elements of the offence of manslaughter and the particulars of the offence in the amended information. Through your counsel, you admitted the above summary of facts, you admitted the elements of manslaughter in your case and you admitted the particulars of the offence in the amended information. As a result of the above admissions, the court found you guilty as charged and convicted you accordingly.
4. It was accepted that you were a first offender. The prosecution submitted you antecedent report and the victim impact report. You did not challenge the same. Your counsel presented a well written plea in mitigation. Then I listened to the prosecution's and your counsel's submission on sentence.

5. In State v Vilikesa Rinavuaka, Criminal Case No. HAC 239 of 2012S, High Court, Suva, I said the following:

“...“Manslaughter”, as a criminal offence, is still considered by society and the law makers of this country as a serious offence, and thus had prescribed a maximum sentence of 25 years imprisonment (see section 240 of the Crime Act 2009). In the repealed Penal Code, Chapter 17, the maximum penalty for manslaughter was life imprisonment (see section 201 of the Penal Code).

Despite the above change in the legislation, the law and tariff on manslaughter is still the same, as when I said in State v Milika Videi, Criminal Case No. HAC 068 of 2009S, High Court, Suva, the following, “...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 often 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. AAU0015 of 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...”.

6. The aggravating factors in this case were as follows:

- (i) **The use of violence to resolve a problem in a Night club.** People go to a night club to enjoy themselves. They go there with friends, consume alcohol and meet new friends. It is a place designed to bring happiness to peoples' lives. In this case, the deceased was there to enjoy himself. He was consuming alcohol with you and your friends. You said the deceased was not contributing to the purchase of beer. You got annoyed with this. You should have told him to go, instead of being violent to him. You could have asked the bouncers to take him away. You are not allowed to be violent to others, unless it's a case of self-defence. In this case, you punched him in the mouth, and he fell hitting his head on the night-club's concrete floor. Your violence was totally uncalled for. Then you punched him while he lay unconscious on the floor. He died of massive head injuries as a result of your violence. You must not complain when you lose your liberty to pay for your crime.

(ii) By offending against the deceased, you have taken away his life, and thus you have violated his right to life:

(iii) Through your offending, you had caused heartache and sadness to his family.

7. The mitigating factors were as follows:

(i) At the age of 38 years, this is your first offence;

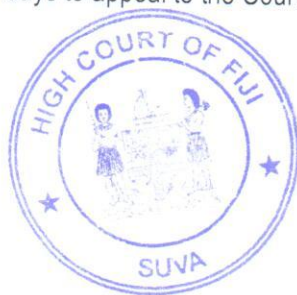
(ii) You pleaded guilty 1 year 7 months after first call in the High Court and on the trial date. As a result, you saved some court time;

(iii) You had been remanded in custody for a total of 10 months approximately

8. I start with a sentence of 5 years imprisonment. I add 3 years for the aggravating factors, making a total of 8 years imprisonment. I deduct 10 months for time already served, while remanded in custody, leaving a balance of 7 years 2 months. For pleading guilty, I deduct 1 year 2 months, leaving a balance of 6 years imprisonment. For being a first offender, I deduct 2 years leaving a balance of 4 years imprisonment.

9. Mr. Bai Duruimata, for the manslaughter of Mr. Joseva Rokotuitavuki on 5 July 2016 at Nausori in the Eastern Davison, I sentence you to 4 years imprisonment, with a non-parole period of 3 years, effective forthwith.

10. You have 30 days to appeal to the Court of Appeal.




Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Nausori.**
Solicitor for Accused : **Office of the Legal Aid Commissioner, Nausori.**