

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 148 of 2016

[CRIMINAL JURISDICTION]

STATE

V

SANGEETA DEVI

Counsel : Ms. W. Elo for State
Mr. M. Yunus for Accused

Hearing on : 20 - 21 September 2018

Summing up on : 21 September 2018

Judgment on : 21 September 2018

Sentence on : 27 September 2018

SENTENCE

1. Sangeeta Devi, you stand convicted of the offence of manslaughter contrary to section 239 of the Crimes Act 2009.
2. On 09th January 2016, you caused the death of your new born child by not seeking medical assistance during the delivery. The child died due to excessive blood loss as a result of its umbilical cord not being clamped.

3. Your counsel had submitted that you are 33 years old, the husband had left you and you have four children, as your personal circumstances. Your counsel urged that this court should consider the wellbeing of your four children as a mitigating factor to reduce your sentence. However, your husband was present in court during the hearing. He informed court that he had returned from Labasa and he is willing to look after the children.
4. The prosecution had urged that this court should treat causing the death of a child more seriously than causing the death of an adult when it comes to sentencing. This submission has merit. In sentencing offenders, the courts have always regarded the vulnerability of the victim as an aggravating factor. As submitted by the prosecution your sentence should reflect the denunciation of your conduct by this court and the society and should serve as a deterrent.
5. On the other hand, your counsel had submitted that the loss of a child is a lifetime trauma to a mother and this factor should be taken into account in sentencing the mother for causing the death of her own child.
6. I will bear these factors in mind in determining the appropriate sentence.
7. In terms of section 239 of the Crimes Act read with section 3(4) of the Sentencing and Penalties Act 2009, the maximum punishment for the offence of manslaughter is 25 years imprisonment. In the case of *Vakaruru v State* [2018] FJCA 124; AAU94.2014 (17 August 2018) the Court of Appeal concluded that the sentencing tariff for the offence of manslaughter should be 5 to 12 years imprisonment.
8. I take 05 years imprisonment as the starting point of your sentence.

9. There was no evidence that you used violence in this case. However, you have caused the death of a human being at its most innocent and vulnerable state. You brought the infant to this world and you had the responsibility above anyone else at the material time to ensure that the deceased lives. On the other hand, as your counsel had submitted, you will suffer due to your conduct for the rest of your life. Taking into account these circumstances, I would add 1 year to your sentence. Now your sentence is 6 years imprisonment.
10. The fact that you are a first offender will be regarded as a mitigating factor and I would deduct 2 years of your sentence in view of that fact.
11. In the circumstances, I would sentence you for an imprisonment term of 04 years. I order that you are not eligible to be released on parole until you serve 02 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
12. Section 24 of the Sentencing and the Penalties Decree reads thus;
"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."
13. I note that you have been in custody for a period of 1 month and 12 days. The period you were in custody shall be regarded as a period of imprisonment already served by you pertaining to the sentence imposed on you in this case. I hold that the period to be considered as served should be 02 months.

14. Accordingly, you are sentenced to 04 years imprisonment with a non-parole period of 02 years. Considering the time spent in custody, the time remaining to be served is as follows;
- Head sentence - 03 years and 10 months
Non-parole period - 01 year and 10 months
15. The non-parole period fixed in this case should not prevent you from being released after serving two-thirds of your head sentence of 4 years in view of the provisions of section 27(2) of the Prisons and Corrections Act in the event you are not released on parole after serving the non-parole period.
16. Thirty (30) days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera
JUDGE

Solicitors;

Office of the Director of Public Prosecutions for State.
M. Y. Law, Ba for accused.