

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 103 OF 2017S

STATE

vs

TAVENISA RACEVA

Counsels : Ms. J. Fatiaki for State
Ms. T. Kean and Ms. A. Singh for Accused

Hearing : 14, 15, and 18 March, 2019

Summing Up : 20 March 2019

Judgment : 21 March, 2019

Sentence : 22 March, 2019

SENTENCE

1. In a judgment delivered yesterday, you were found not guilty and acquitted of the following information:

Statement of Offence

MURDER: *Contrary to section 237 of the Crimes Act 2009.*

Particulars of Offence

TAVENISA RACEVA on the 9th day of March 2017 at Navua in the Central Division murdered her new born baby – an unnamed infant.

2. However, you were found guilty and convicted on the lesser offence of "infanticide", contrary to Section 244 (1) of the Crimes Act 2009. It was found that you wilfully suffocated your unnamed infant child to death on 9 March 2017, at Navua in the Central Division, when the balance of your mind was disturbed "by other matters, conditions, state of mind or experience associated with your pregnancy, delivery or post-natal state."
3. The brief facts were as follows. On 9 March 2017, you were 39 years old, unmarried with 6 children aged between 22 to 3 years old. Your eldest daughter aged 22 years was married, and your next two sons aged 18 and 16 years, were living with relatives in Nabukavesi and Nadi. You were looking after your 3 younger children, aged 11, 5 and 3 years, at the family farm at Vakabalea, Navua. You also looked after your mum, who was 82 years old. You, your mum and the 3 children lived in a tin house built by your father. Your father passed on in 2005. You had 4 brothers and 2 sisters, who had moved on from the family property.
4. You reached Class 8 education. You were employed as a housegirl earning \$100 per week. Your children attend Deuba Primary School. During the trial, it was found that you were finding it hard to make ends meet. Your children were fathered by four different males, but they offered no financial nor emotional support, in bringing up your children. You had to raise your children as a single mum. Your siblings had moved on, and formed their own families. However, none of them had offered financial nor social support in raising your 82 year old mother. During the trial, it was found that you were living in extreme poverty. You found it difficult to raise your mother and children. You had no support from anyone. This unfortunately led you to commit the crime of infanticide.
5. The crime of "infanticide" is a serious one, and the law had prescribed a maximum sentence equivalent to those found guilty of the manslaughter of a child [Section 244 (3) of the Crimes Act 2009].
6. In State v. Kesaravi Tinairatu, Criminal Case No. HAC 008 of 2001S, High Court, Suva, Her Ladyship Madam Justice N. Shameem said the following:

"...The tariff for infanticide cases in Fiji and in other Commonwealth countries, is a non-custodial sentence with counselling or hospital

orders. In R v Sainsbury (1989) 11 Cr. App. R(s), Current Sentencing Practice B1 – 63 the English Court of Appeal quashed a 12 month custodial term for an offence of infanticide committed by a 17 year old offender, saying that 59 cases of infanticide in 10 years, all had resulted in orders of probation or supervision or hospital orders. The court said (per Russell LJ) that while the offence was a serious one "the mitigating features, in our judgment, were so overwhelming that without any hesitation whatever we set this sentence aside for it that which we think will best serve the interests not only of this appellant but of society as well". A 3 year probation was substituted.

Similarly in Australia in R v Cooper (2001) NSW 769, a 21 year old offender, who pleaded guilty to infanticide, was ordered to enter into good behavior bond for four years with supervision and probation conditions, the sentencing judge holding "that a custodial sentence would be quite inappropriate to meet the circumstances of the case."

In the Queen v Diseree Anne Wright (Ca 478/00) the New Zealand Court of Appeal said that infanticide cases in New Zealand usually led to two year supervision orders.

In Fiji, this has also been the case. In State v Evangeline Kiran Nair Crim. Case No. 32 of 1989, the offender was bound over under section 42(1) of the Penal Code to be of good behavior for 1 year..."

7. The aggravating factor in this case was obviously the loss of an innocent young infant's life. The infant look to the mother for protection, but the same was not given, and his life taken away. This was a tragic loss of life.
8. The mitigating factors were as follows:
 - (i) At the age of 41 years old, this was your first offence;
 - (ii) You co-operated with police investigation;
 - (iii) You had been remanded in custody, awaiting trial for approximately one year.
9. Given the authoritative nature of State v Kesaravi Tinairatu (supra), I sentence you as follows:
 - (i) I order, having considered the nature of the offence, your character, home environment, and having obtained your consent through your counsel's submission, that you be placed under the supervision of the Probation Officer

responsible for Vakabalea, Navua, for a period of two years, pursuant to section 3 of the Probation of Offenders Act 1952;

- (ii) The supervising court will be Navua Magistrate Court;
- (iii) The probation order is subject to the following conditions:
 - (a) That you undergo counselling with the Department of Social Welfare as frequently as the Department sees fit;
 - (b) That you remain in residence at Vakabalea Road, Navua, subject to amendment under the schedule to the Probation of Offenders Act 1952;
 - (c) If you fail to comply with the terms of this order, or if you commit another offence during your period of probation, you will be liable to be sentenced for this offence.
- (iv) A copy of this order will be sent to the Probation Officer responsible for your supervision, and to the Navua Magistrate Court.

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, Suva**
Solicitor for Accused : **Legal Aid Commission, Suva**