

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 135 of 2019**

**STATE**

vs.

**PIO RATUWAQA**

**Counsel:** Ms. S. Tivao for the State  
Mr. V. Vosarogo for Accused

**Date of Hearing:** 02<sup>nd</sup> March 2021

**Date of Closing Submission:** 03<sup>rd</sup> March 2021

**Date of Judgment:** 10<sup>th</sup> March 2021

**Date of Sentence:** 19<sup>th</sup> March 2021

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**SENTENCE**

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1. The Court found you guilty of one count of Manslaughter, contrary to Section 239 (a) & (b) & (c) (ii) of the Crimes Act, which carries a maximum sentence of twenty-five years imprisonment and convicted for the same. The particulars of the offence are that:

***COUNT 1***

*Statement of Offence*

**MANSLAUGHTER:** *Contrary to Section 239 (a) & (b) & (c) (ii) of the Crimes Act 2009.*

*Particulars of Offence*

**PIO RATUWAQA** on the 30<sup>th</sup> day of March, 2019 at Suva, in the Central Division, drove motor vehicle with registration number HZ 404 along Gardener Road Nasese, in a manner that caused the death of **ANE TAUATEA TAAKE**, and at the time of driving, the said **PIO RATUWAQA** was reckless as to the risk that his conduct would cause serious harm to **ANE TAUATEA TAAKE**.

2. It was proved during the hearing that you had driven the car bearing registration number HZ 404 while having 158.4 milligrams of alcohol in 100 millilitres of your blood, along the Gardener Road on the early morning of the 30th of March 2019. You were going to drop the deceased at her home. While driving along Gardener Road, the car had fallen to Nasova creek. The deceased died after the vehicle fell down. The cause of death is Ischaemic heart disease, but the panic or the fright situation caused by accident is one of the contributing factors for death.
3. The tariff for Manslaughter ranges from a suspended sentence where there has been a great deal of provocation to 12 years imprisonment where there has been a minimal provocation. However, this is a case of homicide caused by a motor vehicle accident. There is no separate tariff in respect of the cases of homicide caused by a motor vehicle accident.
4. The Fiji Court of Appeal in **Hill v State [2018] FJCA 123; AAU109.2015 (the 10th of August 2018)** has outlined an appropriate approach in sentencing offenders for the offences of this nature, where Aluthge JA said that:

*“Road accidents cause immense human suffering. Every year, a considerable number of people are killed and seriously injured. This represents a serious economic burden. It is understandable that cases of serious driving offences causing death are referred to courts by the DPP in the form of Manslaughter because he considers that the prescribed sentence and tariff for Causing Death by Dangerous Driving is unduly lenient.*

*Motor manslaughter cases cause particular difficulty for sentencers. By definition, it is one which always gives rise to extremely serious harm. Understandably this often leads to calls from victims' families, and from the wider community, for tough sentencing. On the other hand, an offender sentenced for causing death by reckless driving did not intend to cause death or serious injury, even in the extreme case where he or she deliberately drove for a prolonged period with no regard for the safety of others. Therefore, the sentencing should strike an appropriate balance between the level of culpability of the offender and the magnitude of the harm resulting from the offence.*

*A factor that courts should bear in mind in determining the sentence which is appropriate is the fact that it is important for the courts to drive home the message as to the dangers that can result from dangerous driving on the road. It has to be appreciated by drivers the gravity of the consequences which can flow from their not maintaining proper standards of driving. Motor vehicles can be lethal if they are not driven properly and this being so, drivers must know that if as a result of their driving dangerously a person is killed, no matter what the mitigating circumstances, normally only a custodial sentence will be imposed. This is because of the need to deter other drivers from driving in a dangerous manner and because of the gravity of the offence. [R v Cooksley (supra)].”*

5. The death of the deceased has undoubtedly caused a devastating impact on her family. Therefore, the level of harm is substantially high. However, there is no evidence of over-speeding, driving in a dangerous manner, disregarding the road rules, etc. You had driven the vehicle while having 158.4 milligrams of alcohol in 100 millilitres in your blood. The accident had not caused any physical injuries, external or internal, to the deadened. Therefore, I find that the level of culpability in this matter is very low.

6. You have been separately charged in the Magistrate's Court for driving a motor vehicle while there is present in the blood a concentration of alcohol in excess of the prescribed limit, contrary to section 103 (1) of the Land Transport Authority Act. You had pleaded guilty for that matter. Your plea of guilty in that matter could not be considered in this sentence in your favour. However, the Court could consider your early plea of guilty in the Magistrate's Court as an indication of your remorse and repent in driving the vehicle in a manner that ultimately contributed to the deceased's death.
7. I consider your age, your family background, and the contribution you have made to the community as mitigatory factors. You were actually helping the deceased when this tragic incident took place as you were going to drop her home in the early morning hours of the 30th of March 2019.
8. Having considered the above-discussed reasons, I find this is a case distinguishably different from other cases involving death caused by a motor vehicle. Thus, I find a sentence of the lower level of tariff that would meet this sentence's purpose. I accordingly sentence you to two years imprisonment.
9. Having considered your previous good conduct since 1994 and the reasons discussed above, I partially suspend your sentence. Accordingly, you shall serve twelve months of your sentence forthwith, and the remaining period of twelve months is suspended for three years. Considering the period of nearly two months that you have spent in remand custody before this sentence, the actual period you have to serve is ten (10) months imprisonment.
10. If you commit any crime during that period of three (3) years and found guilty by the Court, you are liable to be charged and prosecuted for an offence according to Section 28 of the Sentencing and Penalties Act.

11. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to be "R.D.R.T. Rajasinghe", written over a horizontal dotted line.

Hon. Mr. Justice R.D.R.T. Rajasinghe

**At Suva**

19<sup>th</sup> March 2021

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Vosarogo Lawyers for the Accused.