

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 336 of 2023

BETWEEN: **STATE**

PROSECUTION

A N D: **TEVITA MASAVU MATE**

ACCUSED PERSON

Counsel : Ms. M. Naidu for the State
 : Ms. K. Maharaj for Accused

Date of Sentence : 28th March 2024

SENTENCE

1. The Acting Director of Public Prosecution, on the 17th day of November 2023, filed this Information, charging you with one count of Manslaughter, contrary to Section 239 (a) (b) (c) of the Crimes Act, one count of Dangerous Driving Occasioning Grievous Bodily Harm, contrary to Sections 97 (4) (c) and 114 of the Land Transport Act and one count of Driving Motor Vehicle without a valid driving License, contrary to Sections 56 (3) (a) (6) and 114 of the Land Transport Act. The particulars of the offences are:

COUNT ONE

Statement of Offence

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

Particulars of Offence

TEVITA MASAVU MATE on the 09th day of August, 2023, at Nina Street, Suva, in the Central Division drove a motor vehicle registration number JQ 890 in a manner that caused the death of MERE SULU and at the time of driving the said vehicle, TEVITA MASAVU MATE was reckless as to the risk that his conduct would cause serious harm to another.

COUNT TWO

Statement of Offence

DANGEROUS DRIVING OCCASIONING GRIEVOUS BODILY HARM: *Contrary to Sections 97 (4) (c) and 114 of the Land Transport Act 1998,*

Particulars of Offence

TEVITA MASAVU MATE on the 09th day of August, 2023, at Nina Street, Suva, in the Central Division drove a motor vehicle registration number JQ 890 along Nina Street in a manner dangerous to another person and was involved in an impact thereby occasioning grievous bodily harm to MERESEINI KOROI.

COUNT THREE

Statement of Offence

DRIVING MOTOR VEHICLE WITHOUT A VALID DRIVING LICENSE: *Contrary to Sections 56 (3) (a) (6) and 114 of the Land Transport Act 1998.*

Particulars of Offence

TEVITA MASAVU MATE on the 09th day of August, 2023, at Nina Street, Suva, in the Central Division drove a motor vehicle number JQ 890 along Nina Street without being a holder of a valid driving license.

2. You pleaded guilty to these three counts on the 21st day of February 2024 and admitted the summary of facts read to you in open Court. Satisfied that you fully comprehended the legal effect of your pleas and that your pleas were voluntary and free from influence, I now convict you for these three offences as charged in the Information.
3. It was revealed by the summary of facts that you have driven a motor vehicle bearing the registration number JQ 890, belonging to your employer, without a valid driving license on the 9th day of August 2023. While driving the vehicle, you reversed it, intending to enter your employer's loading bay on Nina Street dangerously and recklessly. You knocked down the Deceased and the Victim of the second count when they were walking alone on Nina Street. Due to the impact, the Deceased sustained severe injuries and eventually succumbed to those injuries.
4. The maximum sentence for Manslaughter is twenty-five years imprisonment. The maximum sentence for Dangerous Driving Causing Grievous Bodily Harm is \$2,000/2 years imprisonment and disqualification for 12 months, while the maximum sentence for Driving a Motor Vehicle without a valid license is \$200/30 days.
5. These three offences are founded on the same series of offences with similar characters. Therefore, I find it appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
6. 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 minimal provocation. However, this is a case of homicide caused by a motor vehicle accident. There is no separate tariff for this type of homicide.
7. The Fiji Court of Appeal in Hill v State [2018] FJCA 123; AAU109.2015 (the 10th day of August 2018) has outlined an appropriate approach in sentencing offenders for 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)].”

8. The Deceased's death has undoubtedly caused a devastating impact on her family. Therefore, the level of harm is substantially high. You have reversed the car on a busy road

without paying attention to the pedestrians using the road. Consequently, I find that the level of culpability in this matter is high.

9. It was reported in the summary of facts that you went inside the loading bay and started to cry after this incident. You plead guilty at the very first opportunity, showing your remorse and repentance for committing this crime. You are a 29-year-old young person without any previous convictions. You are entitled to a substantive discount for your previous good character and early plea of guilty, showing your remorse.
10. Considering the foregoing reasons, I sentence you to three (3 years) imprisonment as an aggregate sentence for these three offences.
11. The Fiji Court of Appeal in Vakaruru v State [2018] FJCA 124; AAU94.2014 (17 August 2018) discussed the appropriate circumstances of imposing a suspended sentence for the offence of Manslaughter, where Sharma JA observed that:


“The current sentencing trend for the offence of manslaughter under the Crimes Act appears to be between 5 years to 12 years imprisonment. The above sentencing range does take into account the objectives of section 4 of the Sentencing and Penalties Act. Section 26 (2) (a) of the Sentencing and Penalties Act gives the High Court the powers to suspend a final sentence if it does not exceed three (3) years imprisonment. Accordingly, there is no need to establish a new tariff for the offence of manslaughter. A sentencing court can impose a suspended sentence based on the circumstances of the offending, a tariff may be construed as a restriction or may even confuse a sentencer. In exceptional cases a sentencing court should consider suspending a sentence. (emphasis added)”

12. Considering the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I partially suspend your sentence. Accordingly, you shall serve **ten (10) months** of your sentence forthwith, and the remaining 26 months are suspended for three

years. Considering the nearly one month that you spent in remand custody before this sentence, the actual period you have to serve is **nine (09) months** imprisonment.

13. It is important to note that if you engage in any criminal activity within the next three (3) years and are subsequently found guilty by the Court, you will be subjected to charges and prosecution under Section 28 of the Sentencing and Penalties Act.
14. Thirty (30) days to appeal to the Fiji Court of Appeal.




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

At Suva

28th March 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.