

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 313 OF 2020

BETWEEN : **STATE**

AND : **MIKAELE LAWANIYAVI**
ISIKELI LAGIBALAVU
JOSATEKI RABULA

Counsel : Ms M Konrote for the State
1st Accused In Person
Mr N Singh for the 2nd Accused
Mr T Varinava for the 3rd Accused

Date of Hearing : **4 October 2023 – 6 October 2023**

Date of Judgment : **5 December 2024**

Date of Sentence : **20 December 2024**

SENTENCE

- [1] Mikaele Lawaniyavi, Isikeli Lagibalavu and Josateki Rabula, you have been found guilty of manslaughter of Subhas Chand (the victim), a 56-year old bus driver of Naduru, Nausori, following a trial.
- [2] The facts are that on Saturday, 3rd of October 2020, at around 1 pm, the victim drove his bus into the parking bay at the Nausori Bus Stand to drop off passengers. As the victim drove into the parking bay, he honked to warn off the public at the bus stand. The bus stand was crowded at the time.

- [3] Unbeknown to the victim, the side mirror of his bus hit Isikeli who was standing at the bay watching an arm wrestling game with his friend, Josateki. Isikeli was not physically hurt when he was hit by the side mirror and his claim that he fell down after he was hit is an exaggeration to justify his response to the incident. None of the witnesses who gave evidence for the prosecution saw that Isikeli fell.
- [4] The witnesses' account is that Isikeli was furious that the bus did not stop after he was hit. He and Josateki went and confronted the driver. After the passengers had disembarked, Josateki went and stood right behind the driver, facing the back of the driver's head. Isikeli went and stood on the steps of the entrance door next to the driver.
- [5] The scene was set to assault the driver. Isikeli confronted the victim and when the victim responded saying that he should not been standing at the parking bay area, both Isikeli and Josateki struck several blows to the victim's head and face with their fists.
- [6] The victim was helpless. He was surrounded and confronted with physical violence. He managed to grab hold of a wheel spanner that was on the floor next to him to fend off the attack on him when Mikaele struck the victim on the face with the sharp metal end of a long umbrella that he was holding. Mikaele acted together with Isikeli and Josateki as part of a joint enterprise to assault the victim. It was the strike with the umbrella that caused the victim to bleed from a cut in the face and to lose consciousness.
- [7] The victim was carried to the Nausori Health Centre by a bystander who was present at the scene. By the time the victim arrived at the Health Centre he was in a critical condition. He had visible facial injuries and showed signs of severe brain injury. He was virtually immobile and non-responsive.

- [8] The victim was transferred to CWM Hospital on the same day and he died after five days on the 9th of October 2020 of traumatic brain injuries. CT scan revealed that the victim had sustained multiple bone fractures to the right side of his face.
- [9] The victim's spouse has given evidence of the impact of death of the victim on them. The victim was the sole breadwinner in the family. His death took a significant emotional and financial toll on the victim's spouse and two daughters. The victim's spouse had never worked in her life. She now works as a cleaner at a tertiary institution in Suva to sustain herself. She and her two daughters live daily with the realization that they will never see or hear from their husband and father.
- [10] Any claim for remorse by the offenders are bit late now. A human life was taken away with senseless use of violence. All three offenders chose to defend the charge. Isikeli and Josateki claimed that they did not assault the victim at all against overwhelming evidence that they were the aggressors and the assault on the victim was an act of aggression. Any claim by them to have acted under provocation is based on thin grounds.
- [11] Mikaele chose to use his umbrella as a weapon and use considerable force to disarm the victim from using a spanner that he had picked up to defend himself from the violence inflicted on him by Isikeli and Josateki. None of you showed any compassion to the victim on the day he was assaulted while he was working as a bus driver. All three of you walked away from the scene after seriously injuring the victim, pretending nothing had happened.
- [12] Manslaughter carries a penalty of 25 years imprisonment and the tariff is from a suspended sentence to 12 years' imprisonment (*Kim Nam Bae v State* Cr App No. AAU0015 of 1998S). Counsel for the State has helpfully tabulated a summary of recent cases of manslaughter which I adopt as a guide:

Case	Brief Facts	Sentence
State v Ketenilagi – Sentence [2020] FJHC 145: HAC051.2018 (26 February 2020)	The attack on the victim was unprovoked the accused had punched the victim several times which included assaults on the chest and jaw.	Sentence to 6 years imprisonment with a non-parole period of 4 years.
State v Dumukoro Sentence [2016] FJHC 199: HAC 027.2014 (23 March 2016)	The accused and deceased were drinking when the accused swore at the deceased. Following this there was a fight between the accused and the deceased which was broken up. After going home, the accused got a kitchen knife from his house and came back and stabbed the deceased in the chest.	Imprisonment of 7 years with a non-parole of 5 years.
State V Naimoso [2018] FJHC 345: HAC095.2016 (27 April 2018)	This was a group attack on the deceased involving 4 accused persons. The court found that minimal provocation involved, the deceased died due to being hit (punches and kicks) several assaults during the altercation.	In terms of the offence of manslaughter one accused was sentenced to imprisonment of 8 years with non-parole of 5 years. He had a previous conviction. 2 other co accused with no previous conviction were sentenced to 6 years imprisonment with non-parole of 4 years.

- [13] In selecting a starting point, I consider that this is not a case of one punch killing. This is a case of a joint enterprise to assault the victim by three men using multiple blows to the face and head of the victim, causing serious facial and brain injuries and death of the victim. The victim died as a direct result of the assault on him. All three offenders are equally culpable for the victim's death.
- [14] The aggravating factors are that the assault was inflicted by three perpetrators, an umbrella was used as a weapon as a final blow to immobilize the victim from defending himself, the victim was a public transport driver and was attacked while working, and the assault was an act of aggression or road rage.
- [15] Mikaele, you are 48 years old and a vocational school teacher by profession. You had positive impact on many young men you have taught in school for 20 years. You were married with three children and then divorced and now remarried. Your present wife and your children from your previous relationship are financially dependent on you.
- [16] Isikeli, you are 24 years old and married with a young child. You work as a Factory Process Worker for Punja & Sons PTE Limited.
- [17] Josateki, you are 22 years old and single. You are currently working as a chef in Denarau.
- [18] All three of you have previous good character and family circumstances that operate as mitigating factors. Isikeli and Josateki were young and in their early twenties. Their young age mitigates the offence.

[19] But the offence involves use of violence to take away a human life. Human life is protected by the Constitution and International Law. Any criminal conduct that takes away a human life requires denunciation in the strongest terms.

[20] As this Court observed in *State v Ketenilagi* - Sentence [2020] FJHC 145; HAC051.2018 (26 February 2020) at [1]:

Any conduct that takes away the life of an innocent person must be denounced in the strongest terms. In other crimes the court will have seen and heard the victim in order to assess the impact of the crime but in manslaughter cases that is not possible because the loss is a human life. The impact of loss of a life is borne by the victim's family. They will have to live only with the memories, never to see the victim again.

[21] For all three offenders, I use 6 years imprisonment as a starting point, add 4 years to reflect the aggravating factors and deduct a total 2 years to reflect the mitigating factors and 2 months remand period. I deduct a further 1 year to reflect the post-charge delay of four years.

[22] All three offenders, please stand up.

- **Mikaele Lawaniyavi, for the manslaughter of Subhas Chand, you are sentenced to 7 years imprisonment with a non-parole period of 4 years**
- **Isikeli Lagibalavu, for the manslaughter of Subhas Chand, you are sentenced to 7 years imprisonment with a non-parole period of 4 years.**

- **Josateki Rabula, for the manslaughter of Subhas Chand, you are sentenced to 7 years imprisonment with a non-parole period of 4 years.**

[23] All of you have 30 days to appeal to the Court of Appeal.

[24] The court hopes that there is some sense of closure for the victim's family now that the perpetrators have been made to account for their criminal conduct and may the victim's soul rest in peace.



Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

1st Accused in Person

K S Law for the 2nd Accused

Legal Aid Commission for the 3rd Accused