IN THE FIJI COURT OF APPEAL
Criminal Appeal No. 24/90

BEFORE THE HON JUSTICE MICHAEL M HELSHAM
PRESIDENT OF THE FIJI COURT OF APPEAL
AND THE HON JUSTICE SIR MOTI TIKARAM
RESIDENT JUDGE OF APPEAL
AND THE HON JUSTICE SIR GORDON WARD
JUDGE OF APPEAL

WEDNESDAY THE 3RD DAY OF JUNE, 1992 AT 9.30 A.M.

BETWEEN:

SARAS DEVI — APPELLANT

- and -

THE STATE — RESPONDENT

MR BABU SINGH — FOR THE APPELLANT
MR I MATAITOGA — FOR THE RESPONDENT

O R D E R

JUSTICE HELSHAM : This an appeal against severity of sentence.

The Appellant was on the 14th November, 1990 sentenced to two years imprisonment on a charge of manslaughter. She had been charged with murder but that charge was reduced to manslaughter and she pleaded guilty to that charge. The crime in respect of which she was charged, was performing an illegal abortion, as a result of which the person on whom the abortion was performed lost her life. It is unnecessary to recount in detail the facts of that particular activity but we have no hesitation in stating that the sentence which was imposed by the learned trial judge was perfectly proper in all the circumstances.

JUSTICE HELSHAM (CONTD) : At her time of trial and conviction, she was 48 years old. She had been married but a considerable time before that her husband had died. When that happened she already had three daughters and she was pregnant. That daughter was subsequently born and she entered into a defacto relationship with another gentleman and gave birth to another boy. That liaison did not last and she was for some years living on her own. The circumstances of her matrimonial and family life are not happy. She was unable at one stage at any event to care for her daughters. They were placed in a Girls' Home. Her son was at the time of her conviction living in a Salvation Army hostel or home but was visiting her regularly. After she had been arrested and charged, he ran away from that home and at the time of her conviction was in an Approved School. However, he visited her every Saturday.

The accused had spent eight months in custody before her conviction. At the time of her conviction, there was no Court of Appeal operating here. She sought bail and in April 1991 was granted bail, and that means she spent a total of 13 months in custody. She has since her bail moved house and is now living with her son supporting him, although he is not going to school, and she has a permanent job.

It is proper for this court to take into account on an appeal, intervening events that have occurred since the original hearing and sentence took place. We feel that in the interest of justice the fact that there was no Court of Appeal, the amount of time which she spent in custody, over both which she had no control, and

JUSTICE HELSHAM (CONTD) : other intervening events have meant that to serve the rest of her custodial sentence after her release on bail and having rehabilated herself in the meantime would seem now to be harsh and unconscionable. For that reason, we have decided to allow the appeal.

In lieu of the sentence which was imposed by the learned trial judge, we propose to substitute a sentence that would enable her to have been released on the 14th April, 1991.

J U D G M E N T

Appeal allowed. In lieu of the sentence of two years, a sentence that would enable the appellant to be released on 14th April, 1991 is substituted.

PRESIDENT

FIJI COURT OF APPEAL

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for CHIEF REGISTRAR

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