

IN THE FIJI COURT OF APPEAL

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CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 22 OF 1993

(Criminal Case No. 31 of 1993)

BETWEEN:

THE STATE

Appellant

and

MESEMA YABAKI

Respondent

Ms N. Shameem (DPP) for the Appellant
Mr D. Jamnadas for the Respondent

Date and Place of Hearing: 26 August, 1994, Suva
Delivery of Judgment: 26 August, 1994

JUDGMENT OF THE COURT

This is an appeal by the State against a sentence of 18 months imprisonment suspended for two years imposed on the Respondent for the offence of manslaughter.

At the time of sentence the Respondent was expecting a child. She has since given birth to a child. She had cooperated with police right from the outset and has expressed remorse.

The trial judge took all relevant facts and circumstances into account. This is what he said -

"This is a very sad and a tragic case where a young life has been lost. The deceased was a sickly child and step daughter of the accused. She has young children of her own in addition to the two children of her husband by a previous association. She has difficulties in disciplining the deceased hence the use of the stick. No doubt the accused is sorry and remorseful for the loss of her step daughter. Her experience in Court will no doubt discourage her from the use of sticks on the rest of her children in future. The loss of her step daughter will remain with her throughout her life. I believe this case will send a signal not only to parents but to all those who have the responsibility of looking after children, the danger of beating children with sticks.

The accused is 3 months pregnant now and has five other children to look after apart from her husband.

In considering the appropriate sentence to be imposed, I have taken into account the facts and background of this case, the previous good record of the accused, her plea of guilty and the plea in mitigation by her learned counsel. Be that as it may, I cannot however, dismissed altogether from my mind the suffering and torment the deceased had suffered as a result of the beating meted out to her by the accused which could influence me to impose an even more lenient sentence than the one I intend to impose against her."

The learned Director of Public Prosecutions agrees that efforts were made by the Respondent to heal the injuries she had inflicted on the deceased during chastisement, but these proved abortive.

We are not persuaded that the sentence imposed by him was either manifestly lenient or wrong in principle. Consequently we dismiss the appeal.

Moti Tikaram
 Sir Moti Tikaram
 President, Fiji Court of Appeal

E. Williams
 Sir Edward Williams
 Judge of Appeal

Justice J.A.
 Mr Justice Dillon
 Judge of Appeal