

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU14 OF 2012
(High Court No. HAC 173 of 2010)

BETWEEN : VILIAME RATOA

Appellant

AND : THE STATE

Respondent

Coram : Chandra JA
Bandara JA
Perera JA

Counsel : Mr. S. Waqainabete for the Appellant
Mr. Y. Prasad for the Respondent

Date of Hearing : 3 February 2017

Date of Judgment : 23 February 2017

J U D G M E N T

Chandra JA

[1] I agree with the Judgment and proposed orders of Bandara JA.

Bandara JA

[2] This is an appeal against the sentence only.

The appellant was charged with the offence of manslaughter contrary to Section 239(a), (b), (c)(ii) of the Crimes Decree No. 44 of 2009 in the High Court at Suva, on 8th March 2012, for having punched, Kinisimere Wati and thereby causing her death.

[3] The assessors unanimously found the appellant guilty of the said charge and the learned High Court Judge concurred with the assessors opinion and convicted the appellant for 7 years with a non-parole period of 6 years.

[4] The sentence order of the learned High Court Judge appears at page 12 of the Court proceeding. In the 5th paragraph of the said order the learned High Court Judge has indicated five mitigating factors. They are as follows:

“The mitigating factors in your case were as follows:

- (i) You are 29 years old, married with an adopted son.*
- (ii) You are the sole breadwinner.*
- (iii) You look after your elderly father.*
- (iv) You were slightly provoked in this case, when the deceased allegedly ransacked your market.”*

[5] In paragraph 6 of the aforesaid order of the learned High Court Judge has indicated six grounds as aggravating factors that guided him to impose the sentence in question.

“The aggravating factors were as follows:

- (i) This case started as a result of a verbal argument between your wife and the deceased. The deceased’s husband was your wife’s previous husband. Instead of the two ladies getting on in life, they often argued when they met. You knew this all the time. On 18th August 2010, while the two were yet arguing again, you allowed yourself to be involved. It was a women’s fight, but you allowed yourself to be involved. It was a women’s fight but you allowed yourself into it, by punching or backslapping the deceased. In my view, it was more like a*

punch that caused the deceased's brain injuries that lead to her death. You didn't use a non-violent way to settle the women's argument on 18th August 2010. Instead, you were extremely violent in punching the deceased, resulting in her suffering brain injuries, and later death.

- (ii) *By punching the deceased, you showed utter disregard to her safety, including her life.*
- (iii) *The life of a mother of two young children had been unnecessarily lost. These two young children, aged 4 and 3 years old, will never see their mother again. They will never again enjoy the mother-child relationship that so many of us, take for granted.*
- (iv) *On 18th August 2010, your market produce was more important to you than the life of a person. This is obviously wrong. Life is worth more than any market produce."*

[6] As indicated in the said order the learned High Court Judge has started with a sentence of 5 years imprisonment. Thereafter he has added 4 more years for the starting sentence of 5 years taking into consideration the aggravating factors making it a total period of 9 years imprisonment.

Thereafter 2 years have been deducted having taken into consideration the aforesaid mitigatory factors.

[7] All in all the learned High Court Judge has sentenced the Appellant to a 7 years imprisonment with a non-parole period of 6 years.

[8] Being aggrieved by the said sentence imposed by the learned High Court Judge the appellant has preferred the instant appeal.

[9] Section 21(1) of the Fiji Court of Appeal Act is the primary provision most relevant to the Applicant when exercising his discretion whether to appeal after a full trial before the High Court. The provision reads:

“21. – (1) A person convicted on a trial before the High Court may appeal under this Part to the Court of Appeal -

(a) against his conviction on any ground of appeal which involves a question of law alone;

(b) with the leave of the Court of Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the Court to be a sufficient ground of appeal; and

(c) with the leave of the Court of Appeal against the sentence passed on his conviction unless the sentence is one fixed by law.”

[10] The respondent in their submissions in response to the appellant’s grounds of appeal states (Page 7 of the Proceedings)

“That the learned Trial Judge was correct in imposing said 7 year sentence with a non-parole period of 6 years having regard to the serious circumstances of the instant case.”

[11] The learned trial Judge in his sentencing remarks has stated that:

“The life of a mother of two young children had been unnecessarily lost. These two young children, aged 4 and 3 years old will never see their mother again. They will never again enjoy the mother-child relationship that so many of us take for granted. On 18th August 2010, your market produce was more important to you than the life of a person. This is obviously wrong. Life is worth more than any market produce.”

[12] In **Kim Nam Bae v. State** [1999] the Fiji Court of Appeal has held that:

“The task of sentencing is not an exact science which is culpable of mathematical calculation. This is particularly so with manslaughter where the circumstances and the offenders culpability vary greatly from case to case. An appropriate sentence in any case is fixed by having regard to a variety of competing considerations. In order to arrive at the appropriate penalty for any case the courts must have

regard to sentences imposed by the High Court and the Court of Appeal for offences of the type in question to determine the appropriate range of sentence. The case demonstrate that the penalty imposed for manslaughter ranges from a suspended sentence where there may have been grave provocation is minimal."

[13] In **Navitalai Rauve v. State** [1990] AAU 13/90 the Fiji Court of Appeal has observed

"punishment for manslaughter of a serious kind normally ranges from 7 to 10 years, depending on the degree of gravity then reduced from 12 years to 10 years for grave offence of pushing semi-invalid elderly lady off her bed resulting in bleeding and death. 10 years will not only meet the ends here but will also lend support to a need for degree of consistency in punishment for like offences."

[14] The ground of appeal that the Appellant is advancing is that:

"The sentence of 7 years of imprisonment with a non parole of 6 years is indeed harsh, manifestly excessive and wrong in principle in light of all the circumstances of the case."

It goes without saying that sentence is a discretionary exercise of judicial function.

[15] The trial Judge needs to weigh many factors to arrive at a sentence that fits the crime and should not

- (1) Act upon wrong principles;
- (2) Take into account extraneous or irrelevant considerations;
- (3) Mistaken facts;
- (4) Fail to take into account the relevant considerations.

[16] Eventhough the maximum penalty for manslaughter is 25 years imprisonment, in certain instances suspended sentences have been imposed where situations warrant, such as one punch causing the victim to die of head injury as a result of a fall on a hard surface. (**State v. Makade Buliruarua** Criminal Case No. HAC 021/2001).

- [17] Alisi had called the accused to the scene. At the scene the accused having seen what had occurred had got angry and annoyed. He had gone up to the deceased and punched her on her mouth. The deceased fell on the floor, bleeding from the mouth and had a blackout. However, she got up and went home. Three days later she complained of headaches and died on her way to the hospital. The post mortem report revealed that she died of brain injuries. The fact that the said brain injuries were consequential to the punches made by the Appellant was not in dispute.
- [18] The learned trial Judge has considered the manner in which the incident had occurred as part of the aggravating factors which cannot be considered as such. The term of 4 years had been added to the starting point of the sentence which we consider was excessive.
- [19] Having regard to the circumstances of the case we consider that a sentence of 7 years imprisonment for the instant one punch manslaughter is excessive.
- [20] Accordingly we vary the sentence in the following manner:-
- (1) We would reduce the 4 years added for aggravating factors to 3 years. Giving the same deduction of 2 years for mitigating factors the head sentence would be 6 years.
 - (2) We further order a non-parole period of 5 years.
 - (3) We hold that sentencing the accused for 6 years imprisonment with a non-parole period of 5 years will meet the ends of justice.

Perera JA

- [21] I agree with the proposed orders of Bandara JA.

Orders of Court

(1) *The appeal is partially allowed. The Appellant is sentenced to 6 years imprisonment with a non-parole period of 5 years.*



Hon. Justice S. Chandra
JUSTICE OF APPEAL



Hon. Justice N. Bandara
JUSTICE OF APPEAL



Hon. Justice V. Perera
JUSTICE OF APPEAL