

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

HIGH COURT CRIMINAL CASE NO.: HAC 127 OF 2009

BETWEEN : STATE

Prosecution

AND : JIUTA DAUCINA

Accused Person

Date of Hearing : 11/10/2010 – 15/11/2010.

Date of Sentence : 17th November, 2010.

SENTENCE

[1] You have been convicted of the manslaughter of Motofaga Atalifo contrary to S198 and 201 of the Penal Code Act 17.

[2] At the time of the offence you were the community police officer for the district in which the deceased died. On the 10th of September 2009 you attended a drinking party at the home of your co-accused; others were also present including the deceased. It is clear from the evidence that all of you had been drinking a considerable quantity. Your co-Accused and the deceased fell into an argument; at first you did not become involved. However, when they argued for a second time you did become involved and joined with your co-Accused in using violence on the deceased. Your part in the violence was to stamp a number of times on the head of the deceased as he lay on the ground, completely defenceless. It was a terrible thing to do. He died from very severe head injuries, injuries which typically result from stamping.

- [3] After the incident you returned to your home. Later you came back to your co-Accused's house and instructed his wife to clean up the blood. You took the homebrew container back to your home; in doing that you deliberately disturbed the crime scene. You also moved an electric fan that your co-accused had used to hit the deceased; you did that with a similar purpose in mind.
- [4] It was your co-Accused's wife who provided the principal evidence against you. She was an entirely honest witness who had nothing whatsoever to gain from telling lies to the court. Her husband had received his sentence following his plea of guilty and she did not in any way try to pretend that he was not equally involved in the death of Motofaga.
- [5] I have considered the submissions that have been made on your behalf and I take such account as I can of the fact that you are of previous good character and that you have served for 5 years as a police officer without any disciplinary matters being recorded against you. I also take account of the character evidence that has been submitted on your behalf. It is clear from the character references that you have been a good husband, you have been actively involved in your Church and that you are respected in your community. There is no doubt that your behaviour on this occasion was out of character.
- [6] As the authorities in relation to sentencing in manslaughter cases make clear each case depends upon its own facts and that has given rise to a very wide range of sentences. The starting point is that a life has been unlawfully taken and it is the task of the Court to assess the level of culpability of the Accused. I have already summarised the basis upon which I must assess the level of sentence that is appropriate in your case.
- [7] Your co-Accused received a three year sentence; the sentence was significantly discounted by his plea of guilty from a starting point of six years. I taken the same starting point; however, firstly there is no discount for a guilty plea and secondly a serious aggravating feature of the case is that you

were a Police Officer at the time. Although you were not on duty, you have a responsibility for keeping law and order in the district. On this occasion, not only did you completely fail to carry out that responsibility, you became involved in a drinking party that became violent, you failed to bring it under control and you used serious violence on the deceased.

- [8] An additional aggravating feature of the offence is that after the offence you tried to cover up what had happened and also to persuade your co-Accused's wife to lie for you, to save you from the police.
- [9] It is important that the public should be able to trust the police and your actions have undermined that trust.
- [10] You have disgraced the proud name of the Fiji police force and you have let your colleagues down in a most disgraceful and serious way.
- [11] Taking a starting point of 6 years, the aggravating features of the case to which I have referred would result in an increase for 6 years to 7 years. However, I will reduce that period by one year to take account of the powerful character references that I have read.
- [12] Accordingly, the sentence that I pass upon you is one of 6 years imprisonment. I also set a non-parole period, namely, the period that you must serve before consideration is given to your release; that will be a period of four and a half years. You will be given credit for the 3 days that you spent in custody.



A handwritten signature in black ink, appearing to be "Graham Cottle".

Graham Cottle
JUDGE

At Suva
17th November, 2010.