

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**

**Criminal Case No: HAC 051 of 2012**

**BETWEEN:**

**STATE**

**AND:**

**TANOA COLAISAUILAGI**

**Counsel:** Ms. P. Low for State  
Mr. P. Lomaloma for Accused

**Date of Hearing:** 15 – 17 July 2013  
**Date of Summing Up:** 18 July 2013  
**Date of Judgment:** 19 July 2013  
**Date of Sentence:** 22 July 2013

**SENTENCE**

[1] Tanoa Colaisauilagi, you stand convicted of manslaughter of Pio Mainanukuloa. The offence was committed on 1 August 2012 at the Bounty nightclub in Labasa.

- [2] This is your sentence. The maximum penalty prescribed for manslaughter under the Crimes Decree is 25 years imprisonment.
- [3] *In Kim Nam Bae v State* Criminal Appeal No. AAU0015 of 1998, the Court of Appeal observed that sentences for manslaughter range from a suspended sentence to 12 years imprisonment. Recently, in *State v Raj* [2013] FJHC 94; HAC041.2012 (7 March 2013), this Court imposed a sentence of 4 years' imprisonment for manslaughter where the deceased was punched and kicked several times after he had fallen to the ground from the initial assault. The Court referred to the following guideline cases at paragraph [12]:

Suspended sentences have been imposed in cases where the offenders have used minimum violence such as one punch causing the victim to die of head injury as a result of a fall on a hard surface (*State v Mikaele Buliruarua* Criminal Case No. HAC 001/2001). Sentences have been suspended also in cases of battered women syndrome or extreme provocation for a prolonged period of time by the deceased (*State v Shakuntala Devi* Criminal Case No. HAC 001/2001S, *State v Leba* [2004] FJHC 61; HAC 0021J.2003S, *State v Wati* [2001] FJHC 316; [2001] FLR 336, *State v Darshani* [2006] FJHC 24; HAC 0007S. 2005). The dominant factor in assessing the culpability of an offender in a manslaughter case is the degree of violence used to cause death. The duration of the violence and the use of weapons are also relevant in determining the offender's culpability. Kicking resulting in death of the victim is considered serious and will attract an immediate custodial sentence

*(Shashi Kapoor v The State* Criminal Appeal No. AAU0028/2000S). Gang violence resulting in death will attract a substantial custodial sentence *(State v Orisi Roko & Ors.* Criminal Case No. HAC0013/2000).

- [4] Your counsel has advised this Court that you are 27 years old and single. You support your elderly parents by farming. You have two previous convictions for disorderly behaviour and resisting arrest that are seven years old. I consider the previous convictions irrelevant and give weight to your previous good character.
- [5] According to the facts of this case, the violence used by you was minimal. You punched the deceased once in his face. The deceased fell down and knocked his head on the concrete surface. He died of subdural haemorrhage. The facts as established by evidence also show that the deceased provoked you on more than one occasions by challenging you to fight and by swearing at you. You got so annoyed with the deceased that you could not stop yourself from punching the deceased once.
- [6] The provocation offered by the deceased, the use of minimum violence and the previous good character and personal circumstances of the offender mitigate the offence. The involvement of alcohol is the only aggravating factor. The loss of a human life must not be condoned, but in the present case, the mitigating circumstances are so compelling that an immediate custodial sentence would be unjust and inconsistent with the guideline cases on manslaughter. In my judgment, a suspended sentence would be a just and fair punishment in terms of deterrence and rehabilitation of the offender.

[7] Tanoa Colaisaulagi, this Court sentences you to a term of 2 years' imprisonment suspended for 3 years for the manslaughter of Pio Mainanukuloa. In the next 3 years, if you commit another offence, you could be charged with breaching a suspended sentence, and if convicted, you will be liable to serve the 2 years' imprisonment imposed in this case.

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**Daniel Goundar**  
**JUDGE**

At Labasa  
Monday 22 July, 2013.

**Solicitors**

Officer of the Director of Public Prosecutions, Labasa for State  
P.R. Lomaloma & Esq , Mr Lomaloma, Labasa for Accused