

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC: 62 OF 2015

THE STATE

V

VILIVE MIRAMIRA

Counsel: Mr. S. Babitu with Ms. R. Uce for the State
K. Tunidau for the Accused

Date of Hearing: 23rd October, 2015

Date of Sentence: 27th October, 2015

SENTENCE

- [1] Mr. Vilive Miramira (the Accused) stands convicted after trial for the following charge and now comes before this Court for sentence.

Statement of offence

MANSLAUGHTER: Contrary to Section 239 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

VILIVE MIRAMIRA on the 27th day of March 2015, at Yasawa in the Western Division, unlawfully killed Lora Nai.

- [2] Brief facts are as follows:

Accused, Vilive Miramira, who is twenty six years of age, started a *de facto* relationship with the deceased, Lora Nai, who was only 17 years of age. She was addicted to smoking and drinking Grog, both habits intolerable to him. He imposed commandments on his young partner to prevent her from drinking and smoking. She was often found at breach of those commandments and faced severe penalties from the Accused. One day Lora was beaten up with a coconut stem in front of his house when people in the neighbourhood flocked to witness.

- [3] This is only one incident during the short relationship lasted only for one year. Accused himself admitted in Court that he had assaulted Lora on two occasions with a broom (tofale). When Lora visited the nurse at Teci Nursing Station for treatments after the final onslaught, Accused admitted punching on Lora's head.
- [4] Nurse opined swelling in the head to have been caused by a hematoma, collection of blood underneath the skin, due to blunt trauma. Pathologist who conducted the autopsy on Lora's body opined that primary causes of death were severe bilateral bronchopneumonia and meningitis. Both causes are linked to infections. The blunt trauma had opened up the scalp the bacteria to enter the brain and the blood stream.
- [5] The Accused is 26 years old. He is looking after his mother. To earn a living he works as a driver and fisherman.
- [6] The maximum penalty for manslaughter is 25 years imprisonment. Under the Penal Code, the maximum penalty was life imprisonment. As observed by the Court of Appeal in **Vilimoni Navamocea v The State** Criminal Appeal No. AAU0002 of 2006 at paragraph [17]: The offence is still considered serious because of loss of a human life.

"There can be no more serious offence than one which needlessly takes away the life of an innocent person. In other crimes the court will have seen and heard the victim and been able to assess the horror of what he or she has experienced. In manslaughter cases that is, of necessity, impossible. Yet utter devastation to the victim's family will be inevitable. How can an offence which results in taking an innocent life be sentenced less severely than an offence of violence which does not?"

- [7] Sentences for manslaughter range from a suspended sentence to 12 years imprisonment. In **Kim Nam Bae v State** Cr App No. AAU0015 of 1998S it was said:

The task of sentencing is not an exact science which is capable of mathematical calculation. This is particularly so with manslaughter where the circumstances and the offender's culpability can vary greatly from case to case. An appropriate sentence in any case is fixed by having regard to a variety of competing considerations.

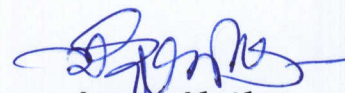
- [8] The dominant factor in assessing the culpability of an offender in a manslaughter case is the degree of violence used to cause death. The duration of the violence and the use of weapons are also relevant in determining the offender's culpability.

- [9] 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 AAU 0028/2000S).
- [10] Miramira had not used any weapon in his final onslaught. But he had punched most vulnerable part of Lora's body, causing her headaches for days, swelling and eventually dying of bilateral bronchopneumonia and meningitis. Degree of violence is somewhat minimal. However, duration of violence is considerable. Deceased had been subjected to violence over a period of time before being succumbed to injuries.
- [11] This is a classic case of Domestic violence. Lora's death arises out of a domestic dispute. Social workers in Fiji have expressed a concern over the high incidence of domestic violence in the community and sentences in respect of this type of offence must reflect the Court's disapproval of this kind of behaviour and the desire to protect women in domestic disputes. **Bae v State** (*supra*).
- [12] Spousal abuse is a major social problem in Fiji. It also has economic consequences. Due to the importance and sanctity of the family in the social, cultural milieu in Fiji there is still considerable under reporting of spousal abuse. ("Prakash J in **State v Prabha Wati**" 2001 1 FLR 336 at 337).
- [13] Defence Counsel seeks mercy and justice for the Accused on account of his remorseful attitude. However, I doubt whether he had been genuinely remorseful. True, accused had accompanied his wife to the Teci Nursing Station when she went for treatments. His presence at the nursing station had rather frightened Lora to come up with the true story of assault. He had once flown from Yasawa to Lautoka to visit hospitalised Lora. However, Lora's suffering at the Hospital had not prevented him from going fishing. When Lora's condition got deteriorated at his sister's place, he had failed to bring her back to the hospital.
- [14] Provocation offered by the deceased was minimal. Drinking grog and smoking are habits common in Fijian women. Breach of rules imposed to control such habits in a male dominated domestic environment should never pave way for unfortunate incidents like this. If the Accused found those habits intolerable, he could have chosen other alternatives open to him without resorting to violence. By a reasonable person's standard, the reaction of the Accused has been unreasonably disproportionate to what the deceased had done.
- [15] The only compelling mitigating factors are the Accused's clean record and his comparative youth. On those grounds, I am minded to give some weight to the principle of rehabilitation in sentencing him.

- [16] For the offence of manslaughter, I pick two years as the starting point. I add two years for aggravating factors and reduce one year for all mitigating factors.
- [17] On the charge of manslaughter, the Accused is sentenced to three years' imprisonment.
- [18] 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 001/2002).
- [19] 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).
- [20] Considering that there was minimum provocation, recurrent domestic violence, Court sees no reason why a custodial sentence in the particular circumstances of this case should be regarded as wrong in principle. Immediate custodial sentence correctly reflects the Court's duty to protect women from spousal abuse and to punish and deter the culprit.
- [21] Having considered the nature of the offending and the age of the Accused, I fix a non-parole period of two years.
- [22] The Accused may appeal his sentence to the Court of Appeal within 30 days, with the leave of that Court.



AT LAUTOKA
27th October 2015


Aruna Aluthge
JUDGE

**Solicitors: Office of the Director of Public Prosecution for State
Tunidau Lawyers for the Accused**