

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 111 OF 2014S

STATE

vs

GAUNA COLATI

Counsels : Mr. Y. Prasad for State
Mr. P. Tawake for Accused
Hearings : 25 August, 3 and 27 October, 2014
Sentence : 7 March, 2016

SENTENCE

1. On 25 August 2014, in the presence of your counsel, you pleaded guilty to the following information:

CHARGE

Statement of Offence

MANSLAUGHTER: Contrary to section 293 (a), (b) and (c)(ii) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

GAUNA COLATI on the 27th day of March 2014, at Suva, in the Central Division, unlawfully assaulted **SOLOMONE SENILAGAKALI**, which caused the death of the said **SOLOMONE SENILAGAKALI** and at the time of the assault was reckless as to the risk that his conduct would cause serious harm to **SOLOMONE SENILAGAKALI**.

2. On 3 October 2014, the prosecution read their summary of facts in court. Briefly, they were as follows. On 27 March 2014, you were 35 years old. You were a diver by profession. The deceased was 21 years old at the time and a cousin of yours. On 27 March 2014, at midday, you had been drinking liquor with friends at the Gerrick Club. Late that night, you went to the Union Club, where you met the deceased. The deceased asked you to sell his mobile phone, so he could get some cash.
3. You two went to the BBQ stalls at Central Street near the Handicraft Centre. You were trying to sell your cousin's mobile phone. However, he started to blame you that you were trying to steal his phone. He started swearing at you. He was also drunk at the time. You then punched him twice on the mouth with your right hand. He fell on the concrete path heavily, with his head hitting the same. He suffered serious head and brain injuries. He died on 29 March 2014.
4. The court checked with your counsel to see that you are admitting all the elements of the offence of manslaughter. On your behalf, your counsel admitted the prosecution's summary of facts. You admitted, through your counsel, that you punched the deceased twice at the material time, and that conduct resulted in the deceased falling hard on a concrete path, resulting in him suffering massive head and brain injuries, resulting in his death. You admitted, through your counsel that, you were reckless as to the risk that your conduct would cause the deceased serious harm. As a result of the above, the court found you guilty as charged, and convicted you accordingly.
5. In **State v Viliame Ratoa**, Criminal Case No. HAC 173 of 2010S, I said the following, "...Manslaughter" is a serious offence, and carries a maximum sentence of 25 years imprisonment. The tariff for manslaughter in Fiji is a suspended prison sentence to a sentence of 12 years imprisonment. Sentences in the upper range were reserved for cases where the degree of violence was high, and the provocation minimal. Sentences in the lower range were reserved for cases where the violence used was minimal, while the provocation was extreme. The tariff covers a very wide set of varying circumstances which will attract different sentences, depending on its own set of facts: **Kim Nam Bae v The State**, Criminal Appeal No. AAU 0015 of 1998S, Fiji Court of Appeal; **The State vs Francis Bulewa Kean**, Criminal Case No. HAC 037 of 2007S, High Court, Suva; **The State v Tomasi Kubunavanua**, Criminal Case No. HAC 021 of 2008, High Court, Suva. Of course, the actual sentence will depend on the aggravating and mitigating factors..."
6. The aggravating factors, in this case, were as follows:

- (i) The use of violence to solve a problem. In this case, the deceased was 21 years old and you 35 years old – a 14 years age difference. The deceased was your cousin. You were both drunk at the material time, as you had been consuming liquor prior to the incident. The argument over the deceased's mobile phone was so insignificant that the use of force (ie. punches) to remedy the problem of his allegation of theft against you, was not justified. Even his alleged swearing at you was no reason to punch him twice, when he was very drunk. You punching him was not justified, and consequently, you will have to loose your liberty to atone for your misdeed.
- (ii) Through your offending, you have caused untold heart aches and sadness to the deceased's family. You still have your life while the deceased had lost his through your actions. You will have to serve a custodial sentence to teach you not to use force unnecessarily to solve your problems.

7. The mitigating factors, were as follows:

- (i) Although you pleaded guilty to the charge 4 months 14 days after the first call, you nevertheless saved the court's time;
- (ii) You have not offended in the last 10 years;
- (iii) You are married with 3 young children, and it appeared, you are the sole bread winner;
- (iv) You are active in your village community in fostering and advancing the welfare of youths;
- (v) You have been remanded in custody since 1 April 2014, that is, 1 year 11 months 6 days ago.

8. I start with a sentence of 6 years imprisonment. For the aggravating factors, I add 3 years, making a total of 9 years imprisonment. For time already served while remanded in custody for 1 year 11 months 6 days, I deduct 2 years, leaving a balance of 7 years imprisonment. For pleading guilty to the offence, I deduct another 2 years leaving a balance of 5 years imprisonment. For other mitigating factors, I deduct another 2 years imprisonment, leaving a balance of 3 years imprisonment.

9. Mr. Gauna Colati, for the manslaughter of Solomon Senilagakali on 27 March 2014, at Suva in the Central Division, I sentence you to 3 years imprisonment, with a non-parole period of 2 years imprisonment, effective forthwith.



Salesi Temo
JUDGE

Solicitor for the State
Solicitor for Accused

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Office of the Director of Public Prosecution, Suva.
Legal Aid Commission, Suva.