

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 133 OF 2015

STATE

-v-

TIMOCI NAVUNA

Counsel : **Mr. J. B. Niudamu for the State**
K. Tunidau for the Accused

Date of Hearing : **06th March, 2016**

Date of Sentence : **14th March, 2016**

SENTENCE

1. On 4th February, 2016, the Accused, Timoci Navuna, entered an unequivocal plea of guilty to the following count:

Statement of Offence

MANSLAUGHTER: Contrary to Section 239 of the Crimes Decree 44 of 2009.

Particulars of Offence

TIMOCI NAVUNA on the 23rd day of July 2015 at Nadi in the Western Division, being reckless as to the risk that his conduct would cause serious harm, killed **INOKE RAUGA**.

2. Accused was represented by a Counsel at the time of his plea. I explained to the Accused the consequence of the guilty plea and the tariff for the

sentence. Accused informed Court that he pleaded guilty to the charge on his own free will and confirmed his plea.

3. Court accepted the plea of guilt after being satisfied that it was unequivocal, voluntary and free from any influence.
4. Accused agreed the set of following summary of facts filed by the Prosecution on 4th March 2016. On the same day, Accused was convicted upon him agreeing summary of facts. He now comes before this Court for sentence on the conviction.
5. Agreed summary of facts were that:

On 23rd July 2015 between 1.30 am to 2.00 am at Main Street, Nadi Town, the Accused, Mr Timoci Navuna, 29 years, unemployed of Vatutu, Nadi, assaulted Inoke Rauga (hereinafter referred to as the "deceased"), 38 years, Waiter of Dratabu Village, Nadi which caused the deceased to receive serious injuries and later died at the CWM Hospital, Suva.

On the above mentioned date, time and place, the Accused was drinking inside the Deep Sea Night Club with one Joeli Koroi (hereinafter referred to as "PW1"), 20 years, student of Vatutu Village, Nadi when the deceased joined them. Whilst they were drinking, deceased then removed his Dratabu Rugby Jersey No. 9 and handed it over to the Accused. They continued drinking until the Night Club closed and they all made their way out. At the Nadi Main Street, deceased demanded his jersey back from Accused. The Accused and deceased involved in a heated argument where they started swearing at each other. Accused then returned the jersey to the deceased and told him to go away. The deceased kept on following the Accused which frustrates the Accused. The Accused then threw a punch on the deceased which landed on the deceased's mouth which caused the deceased to fall on the ground and her head landed on footpath.

PW1 then pushed the Accused aside and held the deceased's head and then he saw blood coming out of the deceased's nose and mouth. PW1 then arrange for a transport and then they conveyed the deceased to Nadi Hospital with the Accused. The deceased was later transferred to the Lautoka

Hospital. Due to the seriousness of the injuries, the deceased was then transferred to Colonial War Memorial Hospital (hereinafter referred to as "CWM Hospital") in Suva. The deceased was admitted at the Intensive Care Unit at the CWM Hospital and later passed away on Monday the 27th of July, 2015.

A post-mortem was later conducted on the deceased by Dr. Daniella Eliora John on 30th July 2015 and the cause of death was 'a severe intracranial hemorrhage due to basal skull fracture and severe traumatic head injury which was caused from a blunt force trauma (A copy of the Post-Mortem report of the deceased is attached).

The Accused was arrested and interviewed under caution whereby he admitted punching the deceased on the mouth as in Questions and Answers 115 to 119 (A copy of the caution interview of the Accused in English is attached). The Accused was then charged for one count of **MANSLAUGHTER** contrary to Section 239 of the Crimes Decree 44 of 2009.

Maximum Sentence

6. As per section 239 of the Crimes Decree, the offence of Manslaughter carries a maximum prison term of twenty five years.

Tariff

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...

"The cases demonstrate that the penalty imposed for manslaughter ranges from a suspended sentence where there may have been grave provocation to 12 years imprisonment where the degree of violence is high and provocation is

minimal. It is important to bear in mind that this range covers a very wide set of varying circumstances which attract different sentences in different manslaughter cases. Each case will attract the appropriate sentence within the range depending on its own facts."

Starting Point

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. Madam Shameem J observed in **The State v Litia Leba** Cr. Case No. HAC021.2003S, 11 February 2004 (at p.3):

"With the wide range in the tariff, picking a starting point can become fraught with value judgments as to what a "serious" manslaughter is."
10. There is no evidence of pre planning. Accused had not used any weapon. I pick three years as the starting point.

Aggravating Circumstances

11. After an argument, accused had dealt a punch on the mouth of the deceased which caused her to fall on the ground. They were having alcohol together till late night. He knew that he was drunk when he punched. His reaction to the provocation had been disproportionate to the provocation offered.

Mitigating Circumstances

12. Accused is 29 years old, single and a first offender. He had pleaded guilty immediately on the reduction of the charge to Manslaughter and did not waste the Court's time. He did not deny to the Police in his caution interview statement the single punch he threw at the deceased that subsequently led to the death of the deceased.
13. Mr. Navuna is very remorseful for what had happened that led to the death of the deceased. He and his family had traditionally approached the deceased's family (*Bulubulu*) seeking their forgiveness for the tragedy. The deceased's family had accepted the traditional approach made and conveyed forgiveness to the deceased and his family. Deceased's

grandfather was present in court to acknowledge the same. According to his Counsel, Mr Navuna had learned a lot from his experience and took immediate steps to rehabilitate him by refraining from consuming alcohol and a resolution not to enter any nightclub again. He had, since the grant of his bail returned to his native village of Namaqumaqua in Serua to contribute as best as he can to his family by doing subsistence farming and his village community at large by encouraging the youths of the village to refrain from drinking alcohol and nightclubbing. He is attending church regularly and engaged himself in church related activities.

14. I add one year for the aggravating factor and reduce two years for all mitigating factors.
15. On the charge of Manslaughter, the Accused is sentenced to two years' imprisonment.

Suspended Sentence

16. Section 26 of the Sentencing and Penalties Decree 2009 provides for suspended sentencing in the following terms:

26. — (1) On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.

(2) A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—

(a) does not exceed 3 years in the case of the High Court; or

(b) does not exceed 2 years in the case of the Magistrate's Court.

17. 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).

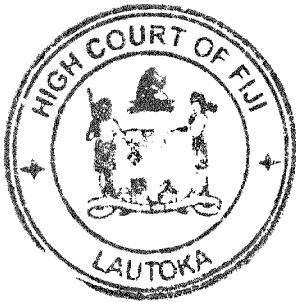
18. For reasons given in my ruling, the operation of half of the term of imprisonment is suspended for a period of two (02) years from the date of sentence. Accordingly, accused is to serve only twelve months in prison from the date he is sentenced. Balance twelve months' term is suspended for a period of two years.


[The purpose and the effect of the suspended term is explained to the accused along with the consequences of the breach under section 26 (3) of Sentencing and Penalties Decree 2009].

19. If an offence punishable with a term of imprisonment is committed within the operational period of the suspended term, the suspended term shall begin to run in addition to the sentence that the accused may get for the subsequent offence.

20. The accused is also informed that the commission of an offence punishable with imprisonment during the operation of the suspended sentence is an offence itself against Section 28 of the Sentencing and Penalties Decree for which he could be arraigned and punished by the Court.

21. 30 days to appeal to the Court of Appeal.




Aruna Aluthge
Judge

At Lautoka
14th March, 2016

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