

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 56 of 2015

STATE

V

MEREONI SENIOLI

Counsels : Ms A. Vavadakua for the State
Mr. A. Paka (L.A.C) or the Accused

Date of hearing : 6 May 2016

Date of Sentence: 9 May 2016

SENTENCE

[1] The accused was charged with the following count.

Statement of Offence

MANSLAUGHTER: Contrary to section 239 of the Crimes
Decree 44 of 2009

Particulars of Offence

MEREONI SENILOLI on the 18th day of November 2012 at Batiri Village, Seaqaqa in the Northern Division, made an omission which caused the death of **TARUSILA LAGI** and at the material time, **MEREONI SENILOLI** was reckless as to a risk that her omission will cause serious harm to **TARUSILA LAGI**.

- [2] The accused entered a plea to this unhappily worded count on 3 May 2016 and on 6 May she agreed a very detailed but relevant set of facts. Consequent to her plea of guilty and admission to the facts she was convicted of the charge.
- [3] The facts of the case are that on the 18th November 2016, the accused, then aged 20 was the effective guardian of the deceased, a child of 3 years old. They were in the village of Batirii near Seaqaqa attending a funeral. In the late afternoon the accused took the young girl with her to the river to wash some eating utensils. There were children swimming in the river but the accused told the deceased not to go into the river because she could not swim. The child obeyed and sat on a rock watching the other children while the accused washed the utensils.
- [4] The accused then left the child to go downstream to talk to a friend. She saw that there were others at the swimming spot but she did not tell the child she was going. When walking away, the child called the accused but she just told her to wait.
- [5] The accused was away for about 10 to 20 minutes talking to her friend. On returning to the swimming spot the child was not

there. She returned to the village thinking that she may have gone back but the girl was not there.

- [6] Overnight search parties were organized but no trace of the child was found. However at 6am the next day a villager going to the river to bathe found the body of the young girl lying face down between two rocks about 3 metres away from where she was last seen.
- [7] A forensic pathologist found that the child had died of asphyxia due to drowning.
- [8] Police enquiries revealed that the two were cousins but the accused regarded the deceased as her real sister and had been caring for her since she was a year old. The accused fully cooperated with the Police, admitting that the child's safety was in her own hands knowing full well that she could not swim. She admitted that when talking with her friend she did not look back to see if the child was safe.
- [9] The accused seeks forgiveness and is remorseful.

Mitigation

- [10] In written mitigation produced to the Court, Counsel submits that she is a first offender and is indeed remorseful. She entered a plea of guilty as soon as she had received legal advice.
- [11] The accused is now 24 years old but 20 at the relevant time.

The accused wishes to state to the Court the following personal plea:

“ Until today I still regret taking Tarusila, my 4 year old cousin to the river and it hurts me every day knowing that I cannot bring her back. I love her so much and I miss her dearly.”

[12] The accused is single but has two children of her own, aged 5 and 16 months. She lives in Labasa and stays home looking after her children.

The Law

[13] The maximum penalty for this offence is 25 years imprisonment and the accepted and authorized range of sentences is between a suspended sentence and 12 years (**Bae v State** C.A. AAU0015.98).

[14] In the case of **Toka** [2003]FJHC 183; Shameem J. said that in cases of manslaughter by gross negligence the range of sentences was from one year to 5 years and in following the English Court of Appeal she said that in such cases the Court should consider the following:

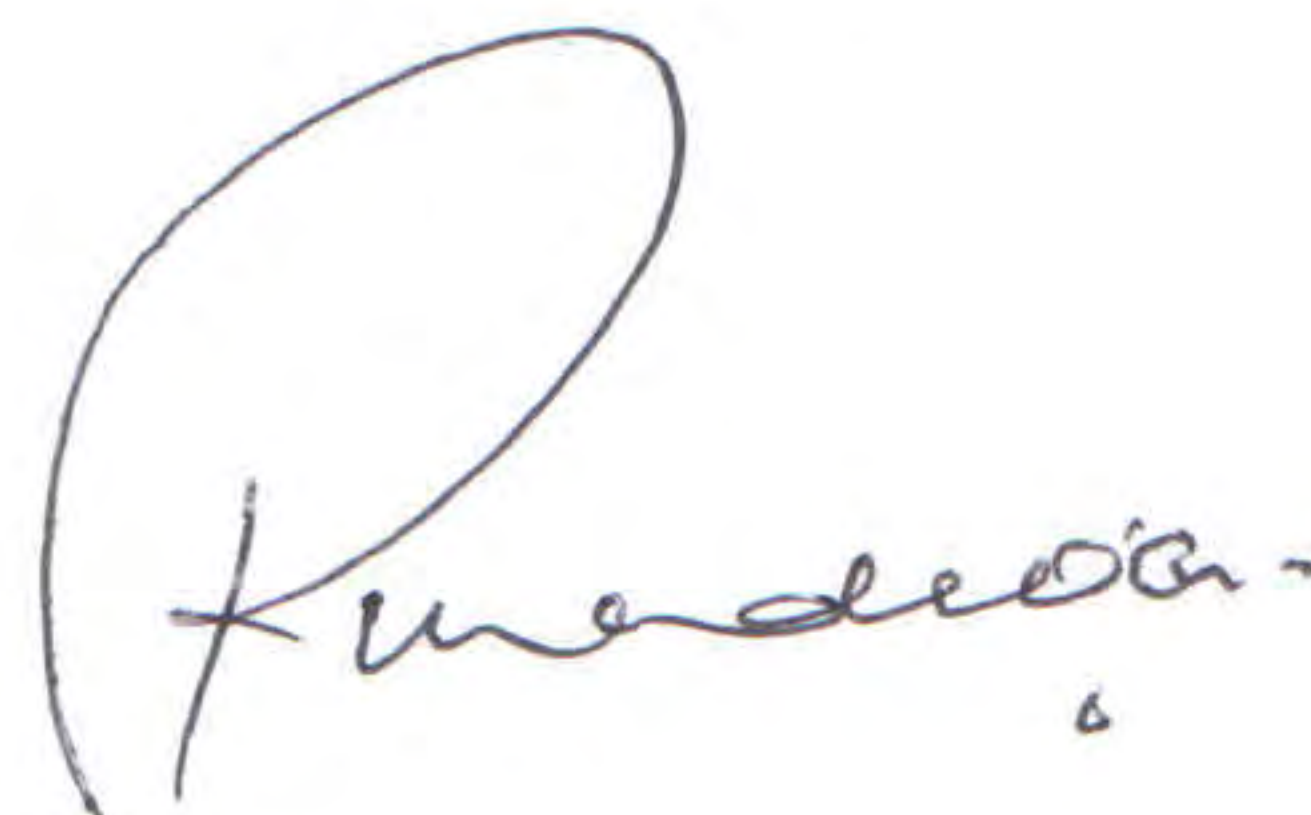
- (i) The conduct causing death. If the negligence was particularly reprehensible a long custodial term should be imposed.
- (ii) Public concern and the need for deterrence
- (iii) Whether the offender had intended any violence , and if so
- (iv) The risk involved of serious harm and the extent that that risk must have been apparent to those involved.

Discussion

[15] The facts present a very unfortunate situation where a lapse of attention for about 15 minutes led to disaster. There was certainly no intention on the part of the accused for any harm to

come to the child. She had seen the girl sitting on a rock watching the others and she had been told not to go into the water.

- [16] The mitigating elements available to this accused are powerful. She has a clear record, co-operated fully with the Police and entered a very early plea before this court. There was clearly a strong attachment between accused and deceased and I am sure that the accused will spend her whole life feeling responsible for this tragedy. Her remorse has been obvious to the Court.
- [17] Taking into account the forceful mitigation, I sentence the accused to 12 months imprisonment, a term which is suspended for a term of 12 months.
- [18] Suspended sentence explained.



P.K. Madigan
Judge

At Labasa
09 May 2016