

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC. 033 of 2016

STATE

V

RUSIATE LALI

Counsel : Mr. Y. Prasad for the State
Mr. S. Valenitabua for the Accused

Date of Sentence : 27th May 2016

SENTENCE

1. Rusiate Lali, you were charged for the following offence by the Director of Public Prosecutions;

Statement of offence

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

Particulars of offence

RUSIATE LALI on the 6th day of December 2015 at Nausori in the Central Division unlawfully killed **SUNIA BALEISAMABULA**.

2. You pleaded guilty for the above charge on 01st March 2016 and you were convicted accordingly on 15th March 2016.
3. Briefly, on 6th December 2015 around 12.20am while you were drinking beer at the Whistling Duck Nightclub, Nausori, you felt that the deceased tried to pick your pocket.

Then you got angry and assaulted the deceased. You delivered three punches while the deceased was moving backwards and as a result of the last punch on the deceased's face, the deceased fell and hit his head on the concrete floor. The deceased was taken to the Nausori Health Center and was pronounced dead around 1.00am. The cause of death was traumatic brain injury.

4. In terms of section 239 of the Crimes Decree 2009 ("Crimes Decree") read with section 3(4) of the Sentencing and Penalties Decree 2009 ("Sentencing and Penalties Decree"), the maximum punishment for the offence of Manslaughter is 25 years imprisonment. In the case of *State v Dumukuro* [2016] FJHC 199; HAC27/2014 (23 March 2016) this court noted that the tariff for the offence of manslaughter is 5 to 12 years imprisonment.
5. Your counsel submits that this court should exercise its discretion in not recording a conviction against you. Your counsel points out that you were provoked by the conduct of the deceased, you could not control yourself and you did not intend to kill the deceased. You had cooperated with the police. You are a first offender. You are the co-owner of a family run business in Australia. According to your counsel, a conviction will affect your future potential for employment overseas, business dealings, further education and applying to travel or reside overseas.
6. Section 16 of the Sentencing and Penalties Decree provides that a court shall have regard to all the circumstances of the case including the following in exercising the discretion whether or not to record a conviction;
 - (a) *the nature of the offence;*
 - (b) *the character and past history of the offender; and*
 - (c) *the impact of a conviction on the offender's economic or social well-being, and on his or her employment prospects.*
7. In the case of *State v Nayacalagilagi* [2009] FJHC 73; HAC165.2007 (17 March 2009), Gounder J succinctly summed up the criteria to be considered in exercising the power to discharge an offender without recording a conviction as follows;

“[3] Subsequent authorities have held that absolute discharge without conviction is for the morally blameless offender, or for an offender who has committed only a technical breach of the law (State v Nand Kumar [2001] HAA014/00L; State v Kisun Sami Krishna [2007] HAA040/07S; Land Transport Authority v Isimeli Neneboto [2002] HAA87/02). In Commissioner of Inland Revenue v Atunaisa Bani Druavesi [1997] 43 FLR 150 HAA 0012/97, Scott J held that the discharge powers under section 44 of the Penal Code should be exercised sparingly where direct or indirect consequences of convictions are out of all proportion to the gravity of the offence and after the court has balanced all the public interest considerations.”

8. You are convicted of manslaughter under section 239 of the Crimes Decree where you have caused the death of another human being by your conduct where you had the intention to cause serious harm or you were reckless as to the risk that your conduct will cause serious harm. You took it upon yourself to punish the deceased in a violent manner. The offence you had committed is not a mere technical breach of the law and you cannot be classified as a morally blameless offender. The direct and indirect consequences of a conviction do not in any way outweigh the gravity of the offence committed by you. Therefore, I hold that this is not a fit and proper case to exercise the discretion not to record a conviction.
9. Accordingly, I proceed to sentence you for the offence of manslaughter under section 239 of the Crimes Decree. I take 5 years imprisonment as the starting point of your sentence.
10. I consider the following as aggravating factors;
 - a) You took law onto your own hands;
 - b) You continued to assault the deceased while he was moving backwards;
11. Considering the above aggravating factors, I add 4 years. Now your sentence is 9 years imprisonment.

12. I consider the following as your mitigating factors;
 - a) You pleaded guilty at an early stage;
 - b) No previous convictions;
 - c) You cooperated with the police;
 - d) Your counsel says you are remorseful;
 - e) You are 40 years old and married.

13. By pleading guilty at an earlier stage, you saved Court's time. Even though you did not plead guilty at the earliest opportunity, I consider it appropriate to grant you a one third reduction of your sentence. I deduct 3 years of your sentence in view of your early guilty plea and arrive at 6 years imprisonment.

14. For the other mitigating factors, I deduct further 3 years.

15. I hereby sentence you for an imprisonment term of 3 years imprisonment. I order that you are not eligible to be released on parole until you serve 2 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Decree.

16. Considering all the circumstances of this case and the strong mitigating factors in your favour, I consider it appropriate to partly suspend your sentence. Hence, I order that you serve 6 months of the above sentence forthwith and the balance period of 30 months is suspended for 2 years.

17. Section 24 of the Sentencing and the Penalties Decree reads thus;

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”

18. I note that you were arrested for this matter on 6th December 2015 and bail was granted on 15th February 2016. The period you were in custody shall be regarded as a period of

imprisonment already served by you pertaining to the sentence imposed on you in this case. I hold that the period to be considered as served should be 2 months and 9 days.

19. Accordingly, you are sentenced for 3 years imprisonment. You should serve 6 months of that sentence forthwith and the balance period of 30 months is suspended for 2 years. Considering the time spent in custody, the time remaining to be served forthwith is 3 months and 21 days.

20. 30 days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera
JUDGE

Solicitors for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Toganivalu & Valenitabua, Suva**