

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 097 OF 2014S

STATE

vs

- 1. SAMUELA KACI**
- 2. APENISA TUBAKILAKEBA**

Counsels : Mr. M. Vosawale and Ms. S. Lodhia for State
Ms. T. Leweni for Accused No. 1
Mr. P. Tawake for Accused No. 2

Hearing : 5 to 8 April, 11 and 12 April, 2016

Summing Up : 14 April, 2016

Judgment : 14 April, 2016

Sentence : 27 May, 2016

SENTENCE

1. In a judgment delivered on 14 April 2016, the court found you two not guilty of murdering Mr. Veresa Tubuanakoro on 23 February 2014 at Suva in the Central Division, but guilty of his manslaughter, on the same date. You two were acquitted of the murder charge, and convicted of the manslaughter of the deceased.

2. The brief facts of the case were as follows. On 23 February 2014, Accused No. 1 was 20 years old, and Accused No. 2 was 24 years old. The deceased was approximately 45 years old. All three were enjoying themselves in the Islanders Nightclub early morning on 23 February 2014, and were consuming liquor. A while later, Accused No. 1 was accused of stealing a person's camera. The person was the deceased's friend. A bouncer took Accused No. 1 out of the nightclub to investigate the matter.
3. The deceased followed them outside the nightclub. He questioned Accused No. 1 and started punching his face. Accused No. 2 came down also, and assisted Accused No. 1 by punching the deceased's head. Accused No. 2 and the deceased began exchanging punches from the nightclub front door, onto the road and onto the front pavement of Singh's curry house restaurant. Accused No. 1 joined Accused No. 2 in punching the deceased. The deceased couldn't take both accuseds' punches and fled to the Tatslotto shop at the corner.
4. Both accuseds pursued him. They got hold of him and delivered a strong punch to his face. He fell down on the concrete pavement with his head heavily hitting the same. Both accuseds then repeatedly kicked and stomped on the deceased while he laid on the ground. The two accuseds later left the crime scene. The deceased's friends took him home in a taxi. The next day he was conveyed to CWM Hospital. He was seen by doctors. He died 15 days later as a result of massive brain and head injuries caused by the accuseds' assaults on him on 23 February 2014.
5. In **State v Arthur James Kamoe Moore**, Criminal Case No. HAC 114 of 2010S, High Court, Suva, I said the following, "...**"Manslaughter" is a serious offence. It carries a maximum sentence of 25 years imprisonment. However, case laws in Fiji seemed to show that penalties for manslaughter range from a suspended prison sentence to 12 years imprisonment. Sentences in the upper range were reserved for cases where the degree of violence was high and the provocation given was minimal. Sentences at the lower end of the scale were reserved for case where the violence used was minimal and the provocation given was in the extreme; see Kim Nam Bae v The State, Fiji Court of Appeal, Criminal Appeal No. AAU0015 of 1998S; The State v Frances Bulewa Kean, Criminal Case No. HAC 037 of 2007S, High Court, Suva; State v Amali Rasalusalu, Criminal Case No. HAC 003 of 2003, High Court, Suva. The actual sentence passed will depend on the mitigating and aggravating factors...**"
6. The aggravating factors, in this case, were as follows:
 - (i) The use of extreme violence to resolve a problem. This problem is becoming prevalent in our society, especially so amongst the youths, when they are intoxicated. What

started out as an alleged theft of a camera in a nightclub ended with the death of the deceased. Accused No. 1 was alleged to have stolen a person's camera in the nightclub. The deceased intervened. A fight ensued between the deceased and the two accuseds. The two accused later severely assaulted the deceased to death. People must learn to resolve problems peacefully. This is especially so when people are drunk;

- (ii) As a result of you two's offending, Mr. Veresa Tubuanakoro had unnecessarily lost his life, and you two have caused sadness and heart-ache to his family;
- (iii) By offending against the accused, you had shown no regard whatsoever to his right to life.

7. The mitigating factors, were as follows:

- (i) As for Accused No. 2, at the age of 26 years, this is your first offence;
- (ii) You both had been remanded in custody for approximately 1 year 4 months each;
- (iii) On the facts of this case, you two did not start the violence; it was the deceased, however, you two should have stop the assault when he fled.

8. I start with a sentence of 5 years imprisonment. I add 2 years for the aggravating factors, making a total of 7 years imprisonment. I deduct 1 years 4 months for time already served while remanded in custody, leaving a balance of 5 years 8 months imprisonment. I deduct another 8 months for mitigating factor number (iii), leaving a balance of 5 years imprisonment. For Accused No. 2, I deduct another 1 years for being a first offender, leaving a balance of 4 years imprisonment.

9. The summary of your sentences are as follows:

- (i) Accused No. 1 : 5 years imprisonment
- (ii) Accused No. 2 : 4 years imprisonment

10. Mr. Samuela Kaci and Mr. Apenisa Tubakilakeba, for the manslaughter of Mr. Veresa Tubuanakoro on 23 February 2014 at Suva in the Central Division, I sentence you as follows:

- (i) Mr. Samuela Kaci, you are sentenced to 5 years imprisonment, with a non-parole period of 4 years imprisonment, effective forthwith;
- (ii) Mr. Apenisa Tubakilakeba, you are sentenced to 4 years imprisonment, with a non-parole period of 3 years imprisonment, effective forthwith.

11. You have 30 days to appeal to the Court of Appeal.



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JUDGE

Solicitor for State	:	Office of the Director of Public Prosecution, Suva.
Solicitor for Accused No. 1	:	T. Leweni, Barrister and Solicitor, Suva.
Solicitor for Accused No. 2	:	Legal Aid Commission, Suva.