**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 26 of 2016**

**STATE**

**V**

**JONE TAHA SENICEVA**

**MOSESE VUVANUA**

**AND**

**VILIAME SIGANIQAVOKA**

**Counsel** : Ms. Susan Serukai, Mr. Yogesh Prasad and Mr. Taitusi Tuenuku for the State

Mr. Kevueli Tunidau for the Accused

**Dates of Trial** : 12-13, 15-16 & 19-21 June 2017

**Summing Up** : 23 June 2017

**Judgment** : 26 June 2017

**Sentence** : 29 June 2017

# SENTENCE

**[1]** Jone Taha Seniceva, Mosese Vuvanua and Viliame Siganiqavoka; the three of you have been found guilty and convicted of the following offence for which you were charged:

**FIRST COUNT**

***Statement of offence***

**MANSLAUGHTER** –Contrary to Section 239 of the Crimes Act No. 44 of 2009.

*Particulars of the Offence*

**JONE TAHA SENICEVA, MOSESE VUVANUA AND VILIAME SIGANIQAVOKA** on the 11th of December 2015 at Vusuya, Raralevu, Nausori in the Central Division, unlawfully killed **ALBERT TURUSI ALIPATE VAKADEWAVOSA.**

**[2]** The three of you pleaded not guilty to the above mentioned charge and the ensuing trial was held over 7 days.

**[3]** At the conclusion of the evidence and after the directions given in the summing up, the three Assessors unanimously found you guilty of Manslaughter. Having reviewed the evidence, this Court decided to accept their unanimous opinion and found you guilty and convicted you of the said charge.

**[4]** The case for the prosecution was that the three of you assaulted the deceased and thereby caused his death. The prosecution case was that the offence of manslaughter was committed jointly by the three of you in prosecution of a common purpose.

**[5]** There are no eye witnesses in this case. The prosecution case is based primarily on the caution interview statements made by you. In support of their case the prosecution led the evidence of the Investigating Officer, Woman Detective Corporal Anjaleen Kumar, and Dr. James Kalougivaki, the pathologist who conducted the post mortem examination on the deceased person. Each of you gave evidence in support of your case.

**[6]** Since you are not challenging the admissibility of the said caution interview statements, the statements have been tendered to Court by consent of both the prosecution and the defence. These caution interview statements have been tendered to Court as Prosecution Exhibits **P1A** (Jone Taha Seniceva); **P1B** (Mosese Vuvanua) and **P1C** (Viliame Siganiqavoka). You also admit to making the statements.

**[7]** The three of you have stated that the deceased was a thief. At about 3.00 in the morning on 11 December 2015, you found the deceased was stealing items from an Army Officer/Military Officer's house, situated close to your residence. You had confronted the deceased. You state that you acted in self-defence so as to subdue the deceased.

**[8]** Section 42(1) of the Crimes Act sets out: *"A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence."*

**[9]** In terms of Section 42(2) of the Crimes Act:

*"A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:*

*(a) to defend himself or herself or another person; or*

*(b) to prevent or terminate the unlawful imprisonment of himself or herself or another person; or*

*(c) to protect property from unlawful appropriation, destruction, damage or interference; or*

*(d) to prevent criminal trespass to any land or premises; or*

*(e) to remove from any land or premises a person who is committing criminal trespass —*

*and the conduct is a reasonable response in the circumstances as he or she perceives them."*

**[10]** The prosecution counters this position by submitting that excessive force was used by the three of you on the deceased. The prosecution also submits that none of you sustained any injuries during the incident. As such the injuries caused on the deceased were excessive and not proportionate in the circumstances of this case.

**[11]** As part of further investigations the three of you were produced for medical examination. Your medical reports were tendered to Court as Prosecution Exhibits **P4A** (Jone Taha Seniceva); **P4B** (Mosese Vuvanua) and **P4C** (Viliame Siganiqavoka).

**[12]** Dr. James Kalougivaki, conducted the post mortem examination on the deceased and issued the post mortem report. The post mortem report was tendered to Court as Prosecution Exhibit **P5**. The Doctor explained in detail the external and internal injuries suffered by the deceased.

**[13]** The Doctor has given the cause of death as:

(a) Severe Traumatic Brain Injury and Subarachnoid Haemorrhage ;
(b) Severe Extensive Head Injury;
(c) Multiple Traumatic Injuries;
(d) Blunt Force Trauma.

**[14]** According to Section 239 of the Crimes Act the maximum penalty for the offence of Manslaughter is an imprisonment for 25 years. The offence of Manslaughter involves the loss of a human life as a result of your conduct. Though the degree of culpability of Manslaughter is lesser in comparison to murder, still the offence of Manslaughter involves the death of another human being. Causing another person's death for whatever reason or under whatever circumstances is indeed a serious offence.

**[15]** In the case of ***Kim Nam Bae v The State*** (unreported) Fiji Cr. App. No. AAU0015.1998S, (26 February 1999), the Court of Appeal held as follows;

*"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."*

**[16]** It can be noted from the above case, that the Court of Appeal had observed that the penalty imposed for Manslaughter ranges from a suspended sentence to 12 years for different Manslaughter cases. Thus, the case of ***Kim Nam Bae*** (supra) seems to be only making an observation on the range of sentences which were pronounced by the courts in Manslaughter cases, rather than establishing a tariff for the offence.

**[17]** In the case of ***State v. Dumukoro*** [2016] FJHC 199 (23 March 2016), Justice Vincent S. Perera stated "I am inclined to form the view that the tariff for the offence of Manslaughter under Section 239 of the Crimes Decree (Act) should be 5 years to 12 years imprisonment."

**[18]** I am inclined to agree with the above tariff of 5 years to 12 years imprisonment proposed by Justice Perera for the offence of Manslaughter.

**[19]** In determining the starting point within the said tariff, the Court of Appeal, in ***Laisiasa Koroivuki v State*** *(Criminal Appeal AAU 0018 of 2010)* has formulated the following guiding principles:

*"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range."*

**[20]** In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 5 years for the offence of Manslaughter.

**[21]** The aggravating factors as set out by the State are as follows:

(i) Taking away the life of another human.

(ii) The offence was committed by three men, where the deceased was overpowered.

(iii) Excessive force was used to subdue the deceased. Use of punches that caused the death of the deceased.

(iv) Multiple wounds were found on the external and internal parts of the deceased's body.

(v) The deceased was tied up with wires after he was unresponsive.

(vi) The injuries sustained by the deceased were not proportionate to the injuries sustained by the accused.

**[22]** Right along the case for the prosecution has been that excessive force was used by the three of you on the deceased. The prosecution also submits that none of you sustained any injuries during the incident. As such the injuries caused on the deceased were excessive and not proportionate in the circumstances of this case. Court is conscious that these factors contributed in the prosecution proving the offence of Manslaughter against you. As such not all the above factors should be considered again as aggravating factors against you.

**[23]** However, it is clear that multiple injuries were caused on the deceased both external and internal that led to his death. These injuries went far beyond the self-defence that was required to subdue the deceased in the circumstances of this case. Therefore, it is my view, that Court must consider some degree of the above circumstances as aggravating circumstances as well. Accordingly, I add a further 3 years to your sentence for aggravating circumstances. Your sentence is now 8 years.

**[24]** In mitigation Jone Taha Seniceva, you have submitted that you are 36 years of age and that you are married with a 5 year old child. You are working as a carpenter. It is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.

**[25]** Mosese Vuvanua, you have submitted that you are 34 years of age, married with 3 children aged, 6, 4 and 2 years of age. You are working as a carpenter. It is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.

**[26]** Viliame Siganiqavoka, you have submitted that you are 30 years of age, married with 3 children aged, 5, 4 and 1 year of age. You submit that your wife is carrying your 4th child and is 7 months pregnant. You are working as a panel beater. It is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.

**[27]** The State has confirmed that the three of you have no previous convictions.

**[28]** You submit that you are very remorseful for your actions. What you perceived as your duty to the protection of the Vusuya Community under the Vusuya Community Watch

Scheme has resulted in the unfortunate death of the deceased. You submit that you have great regret for this incident.

**[29]** Court observes that the three of you have always co-operated with the Police during the investigations into this case. You are not challenging the admissibility of the caution interview statements made by you, and the said statements have been tendered to Court by consent of both the prosecution and the defence. There are no eye witnesses in this case. The prosecution case is based primarily on the caution interview statements made by you.

**[30]** Considering all the above mitigating factors I deduct 5 years from each of your sentences. Your sentences would now be 3 years.

**[31]** Accordingly, I sentence each of you to a term of 3 years imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act No. 42 of 2009, I order that you are not eligible to be released on parole until you serve 2 years of that sentence.

**[32]** You have submitted that you should be imposed a suspended sentence. Considering all the facts and circumstances of this case, Court is not inclined to grant a suspended sentence in this case.

**[33]** In this regard I refer to the case of ***State v Vilikesa Tilalevu and Savenaca Mataki*** **[2010] FJHC 258, (20 July 2010)** where His Lordship Nawana J held in relation to the first offenders:

> *"I might add that the imposition of suspended terms on first offenders would infect the society with a situation – which I propose to invent as 'First Offender Syndrome – where people would tempt to commit serious offences once in life under the firm belief that they would not get imprisonment in custody as they are first offenders. The resultant position is that the society is pervaded with crimes. Court must unreservedly guard itself against such a phenomenon, which is a near certainty if suspended terms are imposed on first offenders as a rule".*

**[34]** Section 24 of the Sentencing and Penalties Act 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."*

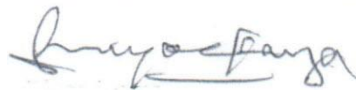
**[35]** Each of you have been in remand for this case from 15 December 2015 up to the time you were enlarged on bail on 9 March 2016. Accordingly, you have been in remand custody for approximately 3 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that the period of 3 months

should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

**[36]** In the result, Jone Taha Seniceva, Mosese Vuvanua and Viliame Siganiqavoka, you are each sentenced to a term of imprisonment of 3 years with a non-parole period of 2 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

| | | |
|---|---|---|
| Head Sentence | - | 2 years and 9 months. |
| Non-parole period | - | 1 year and 9 months. |

**[37]** You have 30 days to appeal to the Court of Appeal if you so wish.



**Riyaz Hamza**
**<u>JUDGE</u>**
**<u>HIGH COURT OF FIJI</u>**

**<u>AT SUVA</u>**
Dated this 29th Day of June 2017

**Solicitor for the State** : **Office of the Director of Public Prosecutions, Suva.**
**Solicitor for the Accused** : **Messrs. Kevueli Tunidau Lawyers, Lautoka.**