

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 329 of 2015

[CRIMINAL JURISDICTION]

STATE

V

1. PETERO TAITUSI
2. LOATA VITALINA

Counsel : Ms. S. Serukai for State
Mr. L. Qetaki with Ms. L. Manulevu for 1st accused
Mr. T. Lee for with Ms. A. Prakash for 2nd accused

Hearing on : 03rd - 06th July 2017

Summing up on : 07th July 2017

Judgment on : 10th July 2017

JUDGMENT

1. The accused persons are charged with the following offence;

Statement of Offence

MANSLAUGHTER ARISING FROM BREACH OF DUTY: contrary to section 240(a)(b) and (c)(i) and (ii) and 241(2) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PETERO TAITUSI and **LOATA VITALINA** on the 28th day of February 2013 at Sawanikula village, Vunidawa in the Central Division, failed to

ensure the safety of Iosefo Gabriele Muria who is under their charge and that such failure caused the death of the said Iosefo Gabriele Muria.

2. The assessors returned with the unanimous opinion that both the accused are not guilty of the above offence.
3. I direct myself in accordance with the summing up delivered to the assessors on 07th July 2017 and the evidence adduced during the trial.
4. To establish the offence of manslaughter arising from breach of duty, the prosecution should prove the following elements beyond reasonable doubt;
 - (i) the accused;
 - (ii) made an omission;
 - (iii) the accused owed a duty towards the deceased in accordance with section 241 of the Crimes Act;
 - (iv) the omission caused the death of the deceased; and
 - (v) the omission amounts to a negligent breach of that duty.
5. Both accused did not dispute the element based on identity. The accused admitted that the deceased was their son. There was no dispute that each accused owed a duty towards the deceased to provide him with necessaries of life. It is also admitted that the deceased died on 28/02/13.
6. The two main issues to be decided in this case in respect of each accused are;
 - a) whether there was an omission; and
 - b) whether that omission constitutes a negligent breach of the duty owed towards the deceased.
7. The prosecution relied on the first prosecution witness to prove that the 2nd accused was informed on 19/02/13 at the Samabula Health Centre that the

deceased was having a serious medical condition that required him to be taken to the Colonial War Memorial ("CWM") Hospital.

8. On the issue of whether the first prosecution witness informed the 2nd accused about the medical condition of the deceased, I noted that the said witness was not consistent. On one occasion she said that she was instructed by the second prosecution witness to refer the deceased to the CWM Hospital and she explained to the 2nd accused during the period she was arranging an ambulance that the deceased needed to be taken to the CWM hospital for further examination. She also said that she classified the breathing as pneumonia after her first assessment but agreed that she made the request for the ambulance 2 1/2 hours after she first assessed the deceased. When she was asked whether in that 2 1/2 hours she explained to the 2nd accused about the condition of the deceased, she said she explained that the baby needs hospitalisation. When it was suggested that she never explained about the condition of the deceased to the mother, she said she explained to the mother before she did the full assessment. She again said that the baby had fast breathing and that means pneumonia. She said she explained to the mother that pneumonia could kill her baby.

9. The first prosecution witness also said that the 2nd accused told her that the 2nd accused will take the deceased to the CWM Hospital in a taxi and she was also told that the 2nd accused had money for the taxi when she inquired. Upon a careful observation of the notes the first prosecution witness had made on PE 01, and in particular the notes she had made on 19/02/13, I note she had written in a blue pen that at 12.30pm '... look stable. . . . active now.' Immediately after the last line of that note, there is an entry in a black pen 'Died at home . . .' It can be clearly noted that the following note is written between the aforementioned two notes which suggests that this note was made after the deceased died.

'Arrange for ambulance. mum prefer to go in a taxi, Easy - Fare [with] mum.'

10. Considering the above and the manner in which she responded during cross examination, I am inclined to form the view that the first prosecution witness' evidence about informing the 2nd accused about the deceased's medical condition is not credible and reliable. Moreover, considering all the evidence, I am not convinced that even the first prosecution witness came to the conclusion that there was a life threatening situation. The evidence suggests that she 'felt' that it is better to have the deceased further examined. The second prosecution witness who was the paediatric registrar on call that day clearly said that she accepted the referral based on the first prosecution witness' concerns owing to the fact that the deceased was brought to the health centre on several occasions.
11. On the other hand, I believe the evidence of the 2nd accused who said that she was only told to wait for the ambulance and she was not informed about any serious medical condition the deceased was having. I also believe her evidence that she decided to go home because the deceased was hungry after waiting at the health centre for a considerable period of time. According to the evidence of the first prosecution witness and PE 1, this was after two and a half hours of waiting.
12. The first prosecution witness had observed at 12.30pm on 19/02/13, that is just before the 2nd accused took the deceased home, that the deceased was stable and active. No evidence was presented by the prosecution to show that there were circumstances for the 2nd accused to reasonably conclude that the deceased required urgent medical treatment thereafter until 28/02/13.
13. According to the third prosecution witness, the cause of death was the blood clot in the vessel that supplies blood to the left lung or left pulmonary emboli. The third prosecution witness agreed that when a patient suffers from the said condition it is critical and has less chance of survival even with different modes of treatment.

14. Considering all the evidence led in this case including the cautioned interview statement of the 2nd accused, I am not satisfied that the prosecution had established beyond reasonable doubt that the 2nd accused's conduct in this case amounts to criminal negligence.
15. According to the prosecution, the case against the 1st accused is that he also knew that the deceased required medical treatment and he failed to take steps to provide same. Considering the evidence led by the prosecution including the cautioned interview statement of the 1st accused, I am not satisfied that the prosecution had proven beyond reasonable doubt that the conduct of the 1st accused amounts to a negligent breach of the duty owed towards the deceased that warrants criminal punishment.
16. *It is easy to be wise after the event.* [Arthur Conan Doyle, The Complete Sherlock Holmes] It is human nature that we feel guilty of unfortunate events in hindsight with the thought that if a particular course of action was taken, we could have avoided such event. But this wisdom in hindsight is not sufficient to establish criminal negligence in the offence of manslaughter arising from a breach of duty.
17. For the reasons given above, I agree with the unanimous opinion of the assessors that both accused are not guilty of the offence charged.
18. I find each accused not guilty of the offence of manslaughter under section 240 of the Crimes Act. Both accused are acquitted accordingly.



Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused : Legal Aid Commission, Suva.