

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 139 of 2016

[CRIMINAL JURISDICTION]

STATE

V

AISAKE VANA JUNIOR

Counsel : Ms. J. Fatiaki and Ms. S. Tivao for State
Mr. N. Tuifagalele for accused

Hearing on : 17th to 19th July 2017

Summing up on : 19th July 2017

Judgment on : 20th July 2017

Sentence on : 21st July 2017

SENTENCE

1. Aisake Vana Junior, you stand convicted of the offence of manslaughter contrary to section 239 of the Crimes Act 2009.
2. On 05th April 2016, you unlawfully killed your younger brother Suliasi Veisere by stabbing him with a kitchen knife. According to the evidence, the two of you had a fight over a bowl of dhal. You got angry while you were cooking in the kitchen because the deceased swore at you. You then went to the deceased who was in the sitting room where both of you exchanged punches. Thereafter, you got hold of the knife you were using in the kitchen even after the deceased told you not to take the knife, and you stabbed him once on his back.

3. To promote well-being in the society, people are expected to exercise a reasonable degree of self-control and tolerance; to live and let live. Causing the death of another human being over a dispute cannot be taken lightly. Leniency in dealing with this type of offending will send a wrong message to the society.
4. I have taken note of your evidence about the deceased's attitude towards you. You said during cross-examination "*yes, he has to respect me. But he thinks I am not acting that hard because all my friends are girls*". This evidence suggests that you may have experienced oppression in your own house over a period of time which may have given rise to a 'slow burn' reaction though the level of provocation meted out by the deceased at the time of the offence does not appear to be substantial. This factor will be considered in your favour in determining your culpability.
5. In terms of section 239 of the Crimes Act read with section 3(4) of the Sentencing and Penalties Act 2009, 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.
6. I take 05 years imprisonment as the starting point of your sentence.
7. I consider the following as aggravating factors;
 - a) You caused the death of your own younger brother inside the house the two of you were residing. After you stabbed the deceased you left the house while he lay on the ground, bleeding;
 - b) You approached the deceased and started the physical confrontation; and
 - c) You used a weapon, namely a kitchen knife.
8. Considering the above aggravating factors, I add 03 years to your sentence. Now your sentence is 08 years imprisonment.

9. I consider the following as your mitigating factors;
 - a) You have no previous convictions;
 - b) The domestic oppression you have experienced over a period of time that seems to have contributed to what took place on the day in question;
 - c) You cooperated during the investigation and during the trial; and
 - d) Your conduct during the trial indicated that you are remorseful.
10. In view of the above mitigating factors, I deduct 04 years of your sentence.
11. I hereby sentence you to an imprisonment term of 04 years. I order that you are not eligible to be released on parole until you serve 02 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
12. Your counsel had requested this court to consider either suspending your sentence under section 15(1)(d) of the Sentencing and Penalties Act or discharging you under section 44(1) of the Sentencing and Penalties Act, citing a case where the accused had pleaded guilty to the charge. A sentence of 04 years imprisonment cannot be suspended in terms of section 26(2)(a) of the Sentencing and Penalties Act. The overall circumstances of this case does not justify discharging you under section 44(1) of the Sentencing and Penalties Act.
13. 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.”
14. It is submitted that you were in custody for a period of 69 days. 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 03 months.

15. Accordingly, you are sentenced to 04 years imprisonment with a non-parole period of 02 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head sentence - 03 years and 09 months

Non-parole period - 01 year and 09 months

16. 30 days to appeal to the Court of Appeal.



Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitor for the Accused : Tuifagalele Legal, Barrister and Solicitor Suva.