

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 11 of 2014

STATE

V

SULITA LIVEMA

Counsel : Mr. J. B. Niudamu for the State.
: Ms. J. Singh [LAC] for the Accused.

Dates of Hearing : 7, 8,9,10 August, 2017
Closing Speeches : 14 August, 2017
Date of Summing Up : 16 August, 2017
Date of Judgment : 18 August, 2017
Date of Sentence : 31 August, 2017

SENTENCE

[1] In a Judgment delivered on 18 August, 2017 this court found the accused guilty for the offence of Infanticide contrary to section 244 (1) of the Crimes Act.

[2] The brief facts were as follows:

The accused who was 26 years of age living in an Itaukei village in the interior of Rakiraki got pregnant from her Indo Fijian boyfriend. When she informed her boyfriend about her pregnancy she was dumped by him. The accused was ashamed of her pregnancy she did not tell anyone about it and also did not attend any ante-natal clinic or receive any social or emotional support during her pregnancy. This was her first child.

- [3] In the early hours of 23 January, 2014 the accused gave birth to a full term baby boy in her bathroom. The experience of child birth was very painful. The accused felt very weak and the sole of her feet were painful since she was standing at the time of childbirth. Furthermore the accused fell on the floor of the bathroom and was unconscious for a few minutes when she regained consciousness she saw the baby on the floor.
- [4] The accused as a result of her balance of mind been disturbed by not having fully recovered from the effects of childbirth, her experience associated with her pregnancy, delivery, lack of social and emotional support and not able to receive any ante-natal advise or care dumped her newborn baby in the pit toilet who died as a result of drowning.
- [5] Both counsel have filed helpful written submissions for which the court is grateful.
- [6] When a woman is found guilty of the offence of Infanticide in accordance with section 244 (3) of the Crimes Act she may be dealt with and punished as if she had been guilty of manslaughter of the child. The maximum punishment for the offence of Manslaughter under section 239 of the Crimes Act is imprisonment for 25 years.

[7] The Court of Appeal in *Merewalesi Baleiniusiladi vs. The State*, Criminal Appeal No. AAU 0070 of 2010 reiterated the tariff for the offence of Infanticide by adopting the comments of Shameem J. in *State vs Kesaravi Tinairatu Tumuri*, Criminal Case No. HAC 008 of 2001S at paragraph 43 as follows:

*“The tariff for infanticide cases in Fiji and in other Commonwealth countries is a non-custodial sentence with counselling or hospital orders. In **R -v- Sainsbury** (1989) 11 Cr. App. R(s), Current Sentencing Practice B1-63 the English Court of Appeal quashed a 12 month custodial term for an offence of infanticide committed by a 17 year old offender, saying that of 59 cases of infanticide in 10 years, all had resulted in orders of probation or supervision or hospital orders. The court said (per Russel LJ) that while the offence was a serious one “the mitigating features, in our judgment, were so overwhelming that without any hesitation whatever we set this sentence aside for it that which we think will best serve the interests not only of this appellant but of society as well. “A 3 year probation order was substituted.*

*Similarly in Australia in **R-v-Cooper (2001) NSWSC 769**, a 21 year old offender, who pleaded guilty to infanticide, was ordered to enter into a good behavior bond for four years with supervision and probation conditions, the sentencing judge holding “that a custodial sentence would be quite inappropriate to meet the circumstances of the case.”*

*In the **Queen-v-Diseree Anne Wright** (Ca 478/00) the New Zealand Court of Appeal said that infanticide cases in New Zealand usually led to two year supervision orders.*

*This is the case in Fiji too. In **State-v- Envangeline Kiran Nair** Crim. Case NO. 32 of 1989, the offender was bound over under section 42(1) of the Penal Code to be of good behavior for 1 year.”*

- [8] The following personal details and mitigation is available to the accused:
- (a) The accused was 26 years of age at the time of the offending;
 - (b) First offender and not married;
 - (c) Co-operated with the Police during investigation;
 - (d) Remorseful;
 - (e) Acknowledging the wrongdoing and taking responsibility, the offence committed by the accused is out of character;
 - (f) Victim of cultural, social and emotional failures;
 - (g) The accused is supporting her elderly parents.
- [9] The aggravating factors are:
- (a) Premature loss of an innocent young life;
 - (b) By a person who nurtured the child during pregnancy and was the protector of that life;
 - (c) The manner in which the life was lost.

REMAND PERIOD

- [10] The accused spent about 64 days in remand that is from 28th January, 2014 to 1st April, 2014.
- [11] This was a sad case the accused has been through a lot since she became pregnant she suffered in silence without any social or emotional support her ordeal began from the time she got dumped by her boyfriend. The accused trusted her boyfriend and when she needed him

most he was not there for her. Moreover the fear of been gossiped and looked down upon by family members and fellow villagers took a toll on the accused as her pregnancy progressed. The mental agony caused by the effects of childbirth and lack of ante-natal care and support cannot be ignored by this court.

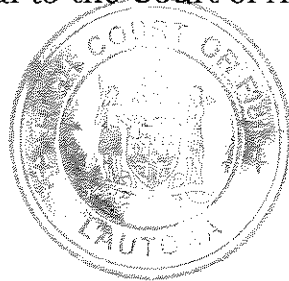
[12] However, this court would like to stress that causing the death of any human being in particular a newborn child as in this case is a very serious offence and such action cannot be condoned.


[13] Bearing in mind the mitigating and aggravating factors of this case including the remand period being a period of imprisonment already served I am of the view that the community's need to see justice been done can be achieved by a non-custodial sentence.

ORDERS

1. The accused is sentenced to 2 years imprisonment which is suspended for 3 years.*
2. The accused is to undergo counselling organized or arranged by the Department of Social Welfare, Rakiraki for 2 years with effect from today.
3. The accused is to undergo counselling as frequently as the Department of Social Welfare sees fit.
4. The counsel for the accused is to ensure that the accused is introduced to an officer at the Department of Social Welfare, Rakiraki to facilitate counselling within 7 days from today.

5. A copy of this sentence is to be forwarded to the Department of Social Welfare, Rakiraki for their information and necessary actions.
6. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

*Effect of suspension is explained to the accused.

At Lautoka

31 August, 2017

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.