

**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

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**JUDGMENT**

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[1] The Director of Public Prosecutions charged the accused by filing the following amended information:

**Statement of Offence**

**MURDER**: contrary to section 237 of the Crimes Act No. 44 of 2009.

### **Particulars of Offence**

**SULITA LIVEMA**, on the 23<sup>rd</sup> day of January 2014 at Nakorovou Village, Mataso, Ra, in the Western Division, delivered a newborn child in a bathroom and then dumped the said newborn child in a nearby pit-toilet, which caused death, and at the time the said **SULITA LIVEMA** either intended or was reckless as to causing the death of the said newborn child.

- [2] The three assessors had returned with a unanimous opinion that the accused was not guilty of Murder but guilty of the offence of Infanticide. On the evidence before the court it was open to the assessors to reach such a conclusion.
- [3] I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
- [4] The prosecution called eleven (11) witnesses whilst the defence called one (1) witness.
- [5] The Prosecution alleges that in the early hours of 23 January, 2014 the accused gave birth to a full term baby boy in her bathroom. In the bathroom the accused opened the tap so that when she gave birth there would not be any blood on the floor and also the sound of the tap water would drown the noise of the baby's cries after birth. The baby was alive at the time he was born.
- [6] After the baby was born the accused dumped the baby inside a pit toilet which resulted in the death of the baby and at that time the accused intended to cause the death of the newborn baby.

[7] The Pathologist Dr. Kalougivaki, who conducted the autopsy on the deceased confirmed that the substantial cause of death was Asphyxia due to drowning.

[8] On 24 January, 2014 Dr. Tigarea examined the accused at the Nanukuloa Health Centre the professional opinion of the Doctor was that the accused had a normal post-partum delivery.

[9] Thereafter on 25 January, 2014 the accused was examined by Dr. Seduadua at the Rakiraki Hospital the professional opinion of the Doctor was that the accused did not have any post-natal depressive symptoms. After three months of the commission of the offence the accused was seen by a Psychiatrist Dr. Wasson whose opinion was that it was highly likely the accused was well at the time of the alleged offending.

[10] The Defence took up the position in accordance with section 244 (1) (c) of Crimes Act that:

*“(b)...*

*(c) at the time of the act or omission the balance of her mind was disturbed by reason of –*

*(i) her not having fully recovered from the effect of giving birth to the child; or*

*(ii) the effect of lactation consequent upon the birth of the child; or*

*(iii) any other matter, condition, state of mind or experience associated with her pregnancy, delivery or post-natal state that is proved to the satisfaction of the court.”*

[11] The defence admitted all the physical elements of the offence of Murder except the fault element (mental element). According to the defence the

accused did not intend to cause the death of her newborn baby since her balance of mind was disturbed by reason of not having fully recovered from the effect of child birth and her experience associated with her pregnancy and delivery.

- [12] The accused informed the court that in 2014 she had an Indo Fijian boyfriend who impregnated her. When she informed her boyfriend about her pregnancy she was dumped by him. The accused did not tell anyone about her pregnancy and also did not attend any ante-natal clinic since she was ashamed of her pregnancy.
- [13] After getting labour pains she went to the bathroom it was a very painful experience the accused felt very weak and the sole of her feet were painful. Furthermore at the time of delivery she had fallen on the floor of the bathroom and was unconscious for a few minutes when she regained consciousness she saw the baby on the floor.
- [14] The accused stated that since she was confused and not in the right state of mind as a result of giving birth she dumped the baby in the pit toilet.
- [15] During pregnancy she could not eat, she was thinking about her pregnancy. The accused was ashamed since she was carrying an Indo Fijian child and because of this her parents would be ashamed as well and the whole village will talk bad about her. In the caution interview the accused informed the Police Officer of this as well.
- [16] Furthermore the accused did not receive any social or emotional support during her pregnancy and this being her first child she did not also receive any ante-natal advice or care as well. The prosecution witnesses in particular PW1, PW2, PW3 and PW7 informed the court that in the

Itaukei village an unmarried young girl getting pregnant brings shame and embarrassment not only to herself but her family as well.

- [17] It is obvious from the evidence that the accused was suffering in silence from the time she got pregnant.
- [18] I am satisfied that the accused has on balance of probabilities proven to the satisfaction of this court that at the time she dumped her newborn child in the pit toilet her balance of mind was disturbed in accordance with section 244 (1) (c) of the Crimes Act.
- [19] The Medical Report of the accused dated 25 January, 2014 states that the accused did not suffer from post-natal depression and the Psychiatric Evaluation Assessment Report although conducted three months after the alleged offending states that it is highly likely that the accused was well at the time of the offending. Both the reports do not take into account the circumstances of the accused pregnancy and delivery, lack of social or emotional support and the effect of child birth as required by section 244 (1) (c) of the Crimes Act.
- [20] The prosecution has not been able to disprove beyond reasonable doubt that the accused balance of mind was not disturbed at the time of the alleged offending.
- [21] I accept the evidence of the accused as truthful and reliable to the extent that her balance of mind was disturbed as a result of her pregnancy, delivery, lack of social and emotional support and not having fully recovered from the effects of childbirth.

[22] I also direct my mind to the offence of Manslaughter and in accordance with the evidence adduced in court I am satisfied that the accused is not guilty of this offence as well.

[23] In view of the above I agree with the unanimous opinion of the assessors and I find the accused guilty for the offence of Infanticide and I convict her accordingly.

[23] This is the judgment of the Court.



**At Lautoka**

18 August, 2017

  
**Sunil Sharma**  
**Judge**

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**