

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 113 of 2014

STATE

V

DISIOLA KASEVU

Counsel : Mr. T. Qalinauci for the State.
: Ms. V. Diroiroid [LAC] for the Accused.

Dates of Hearing : 16, 17, 18 April, 2018
Closing Speeches : 19 April, 2018
Date of Summing Up : 20 April, 2018
Date of Judgment : 23 April, 2018

JUDGMENT

1. The Director of Public Prosecutions charged the accused by filing the following information:

Statement of Offence

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

Particulars of Offence

DISIOLA KASEVU, on the 13th day of August, 2014 at Sigatoka in the Western Division murdered her new born baby – an unnamed infant.

2. The three assessors had returned with a unanimous opinion that the accused was not guilty of the offence of Murder but guilty of the offence of Manslaughter.
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 three (3) witnesses whilst the defence called one (1) witness.
5. The prosecution alleged that in the early hours of 13 August, 2014 the accused gave birth to a full term baby boy in the bush about 150 meters away from her home. The baby was alive at the time he was born.
6. After the baby was born the accused abandoned the baby by leaving him unattended which resulted in the death of the baby.
7. The Pathologist Dr. Mate, who conducted the post mortem on the deceased confirmed that the cause of death was the excessive loss of blood due to the partial tearing or transection of the carotid artery on the right side of the baby's neck by predation from animals.
8. Dr. Zibran who had examined the accused at the Sigatoka Hospital in his professional opinion stated that the accused had an incomplete/septic abortion. The presenting complaint of the accused was per vaginal bleeding and lower abdominal pain. The accused had low blood level due to her bleeding.
9. The defence took up the position in accordance with section 244 (1) (c) of the 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.”*

10. The defence admitted all the physical elements of the offence of Murder except the fault element (mental element). According to 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.
11. The accused informed the court that she was from Biausevu Village in Nadroga, she was not married but has two children from her two previous relationships.
12. At the age of 16 she got pregnant while in Form 5, when she told the father of the child that she was pregnant he was not concerned. In respect of her second child the accused was in a relationship for one year when she fell pregnant upon telling the father of the child he was not bothered or concerned as well.
13. After her family and her mother had accepted the two children the mother of the accused and her brothers had warned her against getting

pregnant again and if she did get pregnant she will have to leave the family house.

14. There was no financial support given to the accused or her mother from her brothers who lived in the same village. She lives with her elderly mother and her 2 children. The accused earns a living by selling handicrafts.
15. As a result of her first pregnancy the accused could not continue with her education.
16. When the accused got pregnant for the third time she did not tell her mother or anyone else about her pregnancy since she was afraid of her mother and could clearly recall what she had been warned about.
17. On 12 August, 2014 the accused was 9 months pregnant she was planning to go to the hospital but it was too late, that night at about 10pm she started getting labour pain at intervals, however, from 4am on 13 August, 2014 the accused started experiencing frequent pain. The accused did not wake her mother since she was fast asleep. She went outside the house into the bush which was about 150 meters away from the village to deliver her baby.
18. When she reached the bush she sat down and gave birth, after cutting the umbilical cord with the scissors she had brought from home, the accused wrapped the baby properly with the towel she had worn. She made the baby lie on the towel and wrapped him from the legs up to the chest.

19. When she delivered the baby she came to know it was a boy. The baby did not cry, at that time she did not know whether the baby was alive or not.
20. After giving birth the accused thought about taking the baby home to her mother and explain everything to her. She tried to hold the baby and take him with her to the village but could not because she was feeling weak all over, dizzy and unable to walk. She crawled for 40 meters leaving her baby behind.
21. The accused did not see anyone, it was still dark and whilst lying down she did not call for help. Her body was weak and she could not do anything. At about 8am a lady by the name of Salaseini saw the accused.
22. After a while Salaseini and the accused's sister in law came they helped the accused go slowly home by holding her from each side. The accused told them that she had given birth and also told her mother where she had left her baby. At that time she was rushed to the Korolevu Health Centre then transferred to Sigatoka Hospital where she was admitted for 4 or 5 days.
23. The accused gave one version of her history at D(10) of her Medical Examination Form to Dr. Zibran at the Sigatoka Hospital and another version to the Police Officer in her answer to question 109 in the caution interview. The reason why the accused gave an incorrect version to Dr. Zibran was explained by the accused at Q & A 126 and 127 as follows:

“Q: 126 Were you really 3 months pregnant?”

A: No, I was 9 months pregnant.

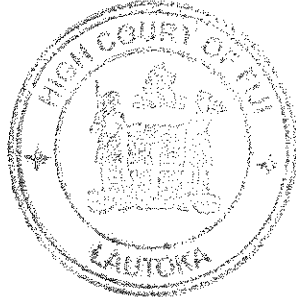
Q: 127 So you lied about your pregnancy to the doctor?”


A: Because of my unstable condition I told the doctor that I was 3 months pregnant.

24. There is undisputed evidence before this court that the experience associated with the accused pregnancy, not having fully recovered from the effect of child birth, her personal circumstances at home and lack of ante natal or post natal advice or treatment had led to her balance of mind been disturbed.
25. I am satisfied that the accused has on balance of probabilities proven to the satisfaction of this court that at the time she left her new born baby in the bush unattended her balance of mind was disturbed in accordance with section 244 (1) (c) of the Crimes Act.
26. 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.
27. I accept the evidence of the accused as truthful and reliable 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 child birth.
28. I am also satisfied on the evidence adduced in court that the accused did not intend to cause the death of her new born baby. I also direct my mind to the offence of Manslaughter and in accordance with the evidence adduced in court I am also satisfied that the accused did not intend or was reckless as to the risk that death would be caused by her conduct. This court finds the accused not guilty of this offence as well.

29. For the reasons given I overturn the unanimous opinion of the assessors. I find the accused guilty of the offence of Infanticide and I convict her accordingly.

30. This is the judgment of the court.




Sunil Sharma
Judge

At Lautoka

23 April, 2018

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.