

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 310 OF 2017S

STATE
vs
EPELI TALAKUBU

Counsels : **Mr. E. Samisoni and Ms. J Fatiaki for State**
Mr. J. Rabuku for Accused
Hearings : **16, 17, 18, 21, 22 and 23 October, 2019.**
Summing Up : **24 October, 2019.**
Judgment : **25 October, 2019.**
Sentence : **31 October 2019.**

SENTENCE

1. In a judgment delivered on 25 October, 2019, you were found guilty of the manslaughter of Masi Kalaro on 8 October 2017, at Nasinu, in the Central Division, contrary to section 239 of the Crimes Act 2009; and criminally intimidating Samuela Tabuavou at the same place and time, contrary to section 375(1)(a)(i) and (iv) of the Crimes Act 2009.
2. The brief facts of the case were as follows: The accused and the deceased were brother-in-laws. The accused is in a defacto relationship with the deceased's youngest sister, Ms. Salacielli Molidegei (DW 2). The accused was previously married with 3 young children, but is now with DW 2 and they have a 3 year old son. The deceased was also married with 3 young children. On 8 October 2017, the accused was 47 years old, while the deceased was 41 years. The deceased and accused were neighbors at Batiniwai Settlement, and were

very friendly with each other. Their houses were approximately 3 to 5 meters apart from each other.

3. On 8 October 2017, a Sunday, the deceased, his wife, the accused, his wife, Samuela Tabuavou (PW1), his wife and Kaminieli Matayabone (PW2) were drinking in the accused home. They started after 11 am and consumed Woodstock liquor and 3 carton of long neck Fiji gold beer. They were all related to each other, and the drinking party went on for about four to five hours. At the start of family party, they were all friendly to each other. Towards the end of the drinking party, all were very drunk. Towards the end of the party, they had an argument. As to the cause of the argument, the prosecution and defence had different versions.
4. Suffice to say the argument centered around the accused's and DW2's young son. The upshot of this argument was that the deceased wanted to take a bucket containing 6 full long neck bottles of Fiji gold beer to his house to drink. The accused tried to stop him by grabbing the bucket, but instead grabbed a beer bottle, which broke. In the struggle between the two over the bucket of beer, the accused stabbed the deceased in the chest. The deceased suffered a serious injury to his chest, resulting in excessive blood loss, leading to his death at 5.35pm on the same afternoon.
5. After trial, the Court found that the accused stabbed the deceased in his left chest, resulting in him suffering serious injuries and excessive loss of blood, leading to his death on 8 October 2017, at 5.35pm. The Court found that he either intended to cause the deceased serious harm or was reckless in causing the same. He was found guilty of the manslaughter of the deceased.
6. In **State v Viliame Ratoa**, Criminal Case No. HAC 173 of 2010S, High Court, Suva, I said the following:
“...“Manslaughter” is a serious offence, and carries a maximum sentence of 25 years imprisonment. The tariff for manslaughter in Fiji is a suspended prison sentence to a sentence of 12 years imprisonment. Sentence in the upper range were reserved for cases where the

degree of violence was high, and the provocation minimal. Sentence in the lower range were reserved for cases where the violence used was minimal, while the provocation was extreme. The tariff covers a very wide set of varying circumstances which will attract different sentences, depending on its own set of facts: Kim Nam Bae v The State, Criminal Appeal no. AAU 0015 of 1998S, Fiji Court of Appeal; The State v Francis Bulewa Kean, Criminal Case No. HAC 037 OF 2007S, High Court Suva; The State v Tomasi Kubunavanua, Criminal Case No. HAC 021 of 2008, High Court, Suva. Of Course, the actual sentence will depend on the aggravating and mitigating factors...”

7. The aggravating factors in this case were as follows:

- (i) **Extreme violence was used to resolve a problem.** In this case, the court found you guilty of the manslaughter of the deceased, which meant it was accepted that you stabbed the deceased with a broken beer bottle, which caused him serious injuries leading later to his death. This incident occurred while you and your extended family were having a drinking party, which went on for approximately 4 to 5 hours. Woodstock liquor and 3 cartons of long neck Fiji gold beer were consumed. You were all drunk and you were all enjoying yourselves. However an argument involving your young son erupted, leading to the incident. Extreme violence was used by you to resolve a problem. This is not on. Arguments must always be resolved in a peaceful manner. As a result of what occurred, you must accept that you will have to be punished.
- (ii) **Unnecessary loss of life.** As a result of your offending, the deceased had lost his life. A family had lost a father, a husband and a bread winner. I had read the victim’s impact report, which you had not challenged, which depicts a family of 3 young children and a widow, trying to make ends meet, without the support of the deceased. Their world had been thrown upside down. Although you had been remorseful for your actions, it will do nothing to alleviate their life problems.
- (iii) By offending against the deceased, you had shown no regard to his right to life, his right to a happy family life and his general human rights.

8. The mitigating factors were as follows:
- (i) You are 49 years old, and you have not offended in the last 10 years;
 - (ii) You are obviously remorseful for what had occurred. In the “i-taukei cultural context”, you had accepted what you had done and had apologized in the traditional manner to the deceased’s family. You were and now part of the deceased’s family, through your defacto-wife and your young son, “Tukai”. The deceased’s extended family had accepted your traditional apology. The deceased’s mother and elder sister had accepted your apology and spoke highly of you. That attests to the forgiving nature of the deceased’s family. You had done the honorable thing of apologizing to the deceased’s family, and I take note of the same.
 - (iii) Your employer at Ecolumber Timber Yard in Nausori spoke highly of you. Workwise, you are a hardworking person, and people depend on you as a foreman. In your family life, people also spoke highly of you. Generally speaking, those around you spoke highly of you. But, as with others, your inability to handle alcohol, had unfortunately brought you to this court.
 - (iv) You had been remanded in custody for approximately 5 months, while awaiting trial.
9. I will deal first with the offence of manslaughter, and later with criminal intimidation, as it is the more serious of the two.
10. On the manslaughter conviction, I start with a sentence of 5 years imprisonment. I add 3 years for the aggravating factors, making a total sentence of 8 years imprisonment. I deduct 5 months for time already served while remanded in custody, leaving a balance of 7 years 7 months imprisonment. I deduct another 1 year 7 months for not offending in the last 10 years, leaving a balance of 6 years imprisonment. I deduct another 3 years for the traditional reconciliation, leaving a balance of 3 years imprisonment. On the manslaughter conviction, I sentence you to 3 years imprisonment.

11. Should I suspend the sentence? Alternatively, should I partly suspend part of the sentence? In my view, the circumstances surrounding this case, and especially the traditional reconciliation between the parties, calls for a partly suspended sentence. That, in my view, will advance the justice of this case. On the manslaughter conviction, the 3 years prison sentence is to be served as follows:
- (i) 1 year immediate prison sentence;
 - (ii) the balance of 2 years prison is to be suspended for 3 years, effective from the date of his release from the 1 year prison sentence.
12. On the criminal intimidation conviction, I sentence you to 6 months imprisonment. This sentence is concurrent to the sentence on the manslaughter conviction.
13. The summary of your sentences are as follows:
- (i) **Manslaughter:**
 - (a) You are sentenced to 3 years imprisonment, to be served in the following way:
 - (I) 1 year imprisonment to be served forthwith;
 - (II) The remaining 2 years imprisonment is suspended for 3 years from the date of your release after serving the above 1 year imprisonment;
 - (ii) Meaning of suspended sentence explained to the accused.
 - (iii) **Criminal Intimidation:**
 - (a) You are sentenced to 6 months imprisonment, and this is concurrent to the sentence on the manslaughter conviction.

14. You have 30 days to appeal to the Court of Appeal.



Solicitor for the State :
Solicitor for the Accused :

Salesi Temo
JUDGE

Office of the Director of Public Prosecution, Suva.
Mr. J. Rabuku, Barrister & Solicitor, Suva.