

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 433 of 2018

[CRIMINAL JURISDICTION]

STATE

V

KELEPI DURI TAUTAUMACALA KOLINISAU

Counsel : Mr. M. Vosawale for the State
Ms. B. Malimali for the Accused

Hearing on : 14 - 29 October 2019

Summing up on : 30 October 2019

Judgment on : 31 October 2019

Sentenced on : 20 November 2019

SENTENCE

1. Kelepi Duri Tautaumacala Kolinisau, you stand convicted of the offence of manslaughter contrary to section 239 of the Crimes Act 2009.
2. Early morning on 02/09/18, you being a Special Constable attached to the Fiji Police Force, were a member of the Drugs Operations Team. Your team leader (the second accused who was acquitted) received a call from another police officer seeking

assistance. Accordingly, your team went to Carnarvon Street where you were required to transport two males including the deceased and a female who were drunk and another female who was sober, to Totogo Police Station.

3. The aforementioned four civilians travelled on the back tray of the vehicle which was a twin cab. The evidence revealed that you were initially traveling on the said back tray and the deceased and the other male were trying to punch you. You were said to be tapping their hands away. The vehicle had to be stopped on one occasion to seek assistance from other police officers to calm down the aforementioned group of four civilians. It was also revealed that the said group, especially the female who was intoxicated swore at the police officers.
4. When the vehicle reached the car park of Totogo Police Station, your team leader was escorting the deceased from the vehicle towards the charge room and you escorted the other male. While you were escorting this person, he punched you on the nose and as a result there was bleeding from your nose.
5. Thereafter the deceased tried to assault your team leader and the said team leader held the deceased by the neck and pushed the deceased onto the ground. You then slowly walked to the deceased and you stomped the deceased on his stomach and kicked him on the hip. The deceased was admitted to the hospital on the following day and it was diagnosed that the deceased's duodenum was ruptured and that the pancreas was damaged. The deceased died on 11/10/18 and the aforementioned stomping and kicking by you, substantially contributed to the death of the deceased.
6. 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 *Vakaruru v State* [2018] FJCA 124;

AAU94.2014 (17 August 2018) the Court of Appeal concluded that the sentencing tariff for the offence of manslaughter should be 5 to 12 years imprisonment.

7. It is submitted that you are 28 years old. You are married and you have three children. Your counsel submits that your wife is pregnant. You have studied up to Form 6 and you have joined the Fiji Police in 2011.
8. I take 05 years imprisonment as the starting point of your sentence.
9. At the time of committing the offence, you were dealing with the deceased as a special constable in the Fiji Police Force. In my view, for all purposes in relation to this case and in the eyes of the public you were a police officer even though your counsel argued that a special constable is not a police officer.
10. The position you held as a special constable in the Fiji Police is relevant in this sentencing process in two respects.
11. On one hand, given the said position you held in the Fiji Police at the time of the incident and when you dealt with the deceased, you were in a position of authority and trust. Therefore, there was a breach of trust on your part.
12. On the other hand, you came into contact with the deceased that morning because of the said position you held. You had to deal with the deceased who appear to have been heavily intoxicated because you were performing your duties in maintaining law and order that morning, and not by your own choice. As a result, you had to put up with the swearing by the deceased and his group, and you were being punched at by the deceased and the other male while you were traveling with them in the vehicle. Finally you were assaulted by the other male in the said group which

resulted in you bleeding from your nose. Then the deceased tried to assault your team leader. You had to go through all this because you acted in your capacity as a special constable in the Fiji Police Force.

13. Therefore, I would not consider it appropriate or fair to simply consider your position of authority and trust in order to substantially enhance your sentence in view of the breach of trust that is reflected in your actions on the morning in question.
14. Your conduct no doubt constitutes an offence, the offence of manslaughter. However, given the above discussion, it is clear that you were led by your anger which was formed as a result of the circumstances that you were subjected to that morning. The evidence does not suggest any other reason for you to stomp and kick the deceased who was lying on the ground.
15. In view of the above, I would consider breach of trust as an aggravating factor, but I would only add 02 years to your sentence in view of same. For the manner in which you assaulted the deceased, I would add a further one year. The total number of years added to your sentence in view of the aggravating factors would be 03 years.
16. I would consider the following as mitigating factors to deduct 03 years of your sentence;
 - a) You are a first offender; and
 - b) You acted under a certain degree of provocation as I have explained above.
17. Your final sentence is therefore an imprisonment term of 05 years. I hereby sentence you to a term of 05 years' imprisonment. I order that you are not eligible to be released on parole until you serve 03 years and 04 months of that sentence pursuant

to the provisions of section 18 of the Sentencing and Penalties Act. In addition to the aggravating and mitigating factors, I have considered your personal circumstances in fixing the above non-parole period.


18. Your counsel submitted that this court should consider the rights of your children in determining your punishment in this case and to make special orders to enable your children to visit you while you are serving your sentence. You are not the only convicted person who is a father and having children and I do not find any special reason to treat this case as an exceptional case. Moreover, regulating the time and the manner a prisoner is allowed to be visited while in prison is entirely a matter for the Commissioner of Prisons. Therefore, I would decline to make any special order as requested by your counsel in this regard.
19. I note that you have been in custody for a period of 01 month and 18 days. In view of the provisions of section 24 of the Sentencing and the Penalties Act, the said 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.
20. Accordingly, you are sentenced to 05 years' imprisonment with a non-parole period of 03 years and 04 months. Considering the time spent in custody, the time remaining to be served is as follows:

Head sentence - 04 years; 10 months; and 12 days
Non-parole period - 03 years; 02 months; and 12 days
21. The non-parole period fixed in this case is fixed as two-thirds of your term of imprisonment so that the Commissioner of Prisons is able to release you based on remission on account of your good behaviour upon you serving two-thirds of your sentence provided that the parole board is not constituted. In the event the parole

board is constituted by the time you have served two-thirds of your sentence, in view of the provisions of section 48(1)(d) of the Prisons and Corrections Act, your release or discharge would be subject to the decision of the said parole board.

22. Thirty (30) days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
Pacific Chambers for the Accused