

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 360 OF 2015S

STATE

vs

WAME KUBUISAVUSAVU WAQAVANUA

Counsels : Mr. M. Vosawale for State
Ms. A. Tuiketei and Mr. E. Navuda for Accused
Hearings : 9, 10, 11, 12, 15 and 16 April, 2019.
Summing Up : 18 April, 2019.
Judgment : 23 April, 2019.
Sentence : 26 April, 2019.

SENTENCE

1. On 9 April 2019, the following information was put to you, in the presence of your counsel:

"Statement of Offence

MURDER: *Contrary to section 237 (a), (b) and (c) of the Crimes Act of 2009.*

Particulars of Offence

WAME KUBUISAVUSAVU WAQAVANUA *between the 23rd day and the 24th day of November 2015 at Raiwai, Suva in the Central Division murdered WATISONI ROKOSAWA".*

2. On 23 April 2019, in a judgment delivered by the court, it found you not guilty of murder, but found you guilty of the lesser offence of the manslaughter of the

deceased. It acquitted you of the offence of murder, but convicted you on the lesser offence of manslaughter.

3. The brief facts of the case were as follows. It was a tragedy both for the deceased and the accused's family. Both families live in the Raiwai area of Suva. The accused was aged 55 years, married with 3 children aged 20, 19 and 17 years old, on 23 November 2015, the date of the incident. He was a retired military officer of the Republic of Fiji's Military Force. He had spent his life in the military since 1987. The deceased, on the other hand, was a 22 year old young person in the Raiwai area. It appeared, his parents and family also lived in the area.
4. This case demonstrated once again the evils of alcohol. Early morning on 23 November 2015, after 3 am, the deceased and Mr. Tikiko Delai (PW1) found themselves drunk and walking along Kia Street and Leys Road, Raiwai. The two were friends and belonged to a local rugby club. Mr. Delai had returned from a nightclub in Suva. It appeared the deceased consumed liquor from somewhere. According to police, 20 cars are normally broken into in the Kia Street/Leys Road area per month. The police said most families in the area lived in fear, as a result of the above.
5. The accused had bought his family a Mitsubishi Pajero, registration number DQ 452. On Sunday, 22 November 2015, he parked the vehicle in Leys Road, before he went to sleep at 9.00 pm. After 3 am on 23 November 2015, the deceased, in his drunken state, smashed and broke the accused's front left door glass car window. The accused was fast asleep in his house, at the time. His house was nearby. He was awoken by his nephew, who told him about the above. The accused went down to the road to investigate. He met Mr. Delai (PW1) and the deceased. He asked them as to whether or not they knew who broke into his vehicle.

6. The accused said they denied the same. This was happening between 4 am and 5 am early Monday morning, when most families were still asleep. In fact, Mr. Delai (PW1) and the deceased lied to him. Mr. Delai and the deceased were still walking around the Kia Street/Leys Road area at the time, while the accused went back to sleep. He was later suddenly awoken by his wife, as she saw someone looking into his broken car. The accused went to the road again to investigate. He picked up a tree branch on his way to the road. He saw the deceased breaking into his car, presumably to steal.
7. Accused said, he wanted to do a citizen arrest. He hit the deceased's head with the tree branch. The deceased fell on the tarsealed Leys Road and was unconscious. Accused said he wanted to weaken the deceased, to enable him to arrest him. The police were called. The deceased was taken to Raiwaqa Police Station and locked in the cell. On 23 November 2015 at 1.49 pm, he was taken to CWM Hospital for medical examination and treatment. He died on 24 November 2015 at 10.45 pm, as a result of serious brain injuries. The accused had been tried of the murder of the deceased, but had been acquitted of the same, but found guilty and convicted of the lesser offence of the manslaughter of the deceased.
8. In **State v Arthur James Kamoe Moore**, Criminal Case No. HAC 114 of 2010S, High Court, Suva, I said the following, "Manslaughter" is a serious offence. It carries a maximum sentence of 25 years imprisonment. However, case laws in Fiji seemed to show that penalties for manslaughter range from a suspended prison sentence to 12 years imprisonment. Sentences in the upper range were reserved for cases where the degree of violence was high and the provocation given was minimal. Sentences at the lower end of the scale were reserved for case where the violence used was minimal and the provocation given was in the extreme; see **Kim Nam Bae v The State**, Fiji Court of Appeal, Criminal Appeal No. AAU0015 of 1998S; **The State v Frances Bulewa Kean**, Criminal Case No. HAC 037 of 2007S, High Court, Suva; **State v Amali Rasalusalu**, Criminal Case No. HAC 003 of 2003, High Court, Suva. The actual sentence passed will depend on the mitigating and aggravating factors".
9. The aggravating factors in this case were as follows:

- (i) **Loss of a person's life.** The life of a person is always precious. By your offending, you have unnecessarily taken away a young person's life.
- (ii) As a result of the above, you had caused heartache and sadness to the deceased's family. They continue to grieve of the loss of their loved one.
- (iii) By your offending, you had shown no regard to the deceased's right to life.

10. The mitigating factors were as follows:

- (i) At the age of 59 years, you had not offended in the last 10 years.
- (ii) You had been remanded in custody from 27 November 2015 to 18 December 2015, approximately 1 month.
- (iii) The unfortunate nature of your problem started as a result of the deceased's behaviour. You were fast asleep in your house with your family at 3 am in the early morning of Monday, the 23 November 2015. You and your family live in an area which experiences 20 car break-ins per month, according to the Raiwaqa Police Station police. As a result of this, most families in the area live in fear of their properties and lives been endangered. The deceased, in his drunken state, saw fit to break into your car, your hard earned possession. You were awoken from your sleep and went to investigate. You met Mr. Delai (PW1) and the deceased and checked with them. They lied to you in that they said they did not know who broke into your car. Both knew it was the deceased who broke into your car. Later they taunted you by laughing at you, when you were sitting in front of your house. You later went to sleep and was suddenly awoken by your wife, who saw the deceased again breaking into your car. You wanted to do a citizen arrest. You had earlier called the Raiwaqa Police, but they came and went. You went to the road with a tree branch. You committed manslaughter to effect the citizen arrest. What happened to you and the deceased was a tragedy to both of you two.
- (iv) You have served the country well in your service in the regular force of the Republic of Fiji Military Force (RFMF) since 1987. You retired as Sergeant 27231. You have put your life on line in serving your country on ten (10) overseas tours of duty, that is, in the United Nations Interim Force

in Lebanon (UNIFIL) in 1990, 1991, 1997 and 1998; in the Multinational Forces and Observers (MFO) in Sinai, Egypt in 1994 and 1995; United Nations Mission in East Timor in 2000, 2002, 2003 and 2004; United Nations Mission Assistance in Iraq in 2006, 2008 and 2011 to 2013 and in the United Nations Disengagement Observers Forces in the Golan Heights in Syria in 2014 and 2015. You had been decorated with 9 medals.

11. On the manslaughter conviction, I start with a sentence of 3 years imprisonment. I add 2 years for the aggravating factors, making a total of 5 years imprisonment. For time already served while remanded in custody, I deduct 1 month, leaving a balance of 4 years 11 months imprisonment. For not offending in the last 10 years, I deduct 11 months, leaving a balance of 4 years imprisonment. For the other mitigating factors, I deduct 1 year, leaving a balance of 3 years imprisonment. For the manslaughter conviction, I sentence you to 3 years imprisonment.
12. Should the sentence be suspended? On the particular facts of this case, the Raiwaqa Police gave evidence that the Kia Street/Leys Road area was a crime prone area. It appeared at the time of the incident on 23 November 2015, families in the area were living in fear of their properties being damaged and lives endangered. The police said, it was common for 20 cars to be broken into by lawless youths in the area. In their plea in mitigation, defence counsel said, the accused's family's house in Raiwai was continually stoned and his family harassed when this incident arose. He was thereby forced to re-locate to Nadi to avoid the above. It appeared people did not want to wait for the court process to resolve the problem, but preferred to take the law into their own hands.
13. Yes, a young person's life had been unnecessarily taken away by the accused's unlawful act. However, the unfortunate incident started as a result of the deceased's criminal acts of smashing the accused's front left door car window and

trying to steal therefrom, while being heavily intoxicated. The accused was trying to do a citizen arrest, at the time. He was trying to arrest the deceased. He had earlier informed the Raiwaqa Police Station about the matter, but the police came and left the crime scene. His complain came to no avail. In the service of his country, this man had faced some of the most volatile violent areas of the world, only to come home to see his property and family been attacked. In my view, the public should not be discouraged from doing a citizen arrest, so long as the force used to arrest suspect, are reasonable and within the bounds of the four corners of the law. In my view, the accused was seriously provoked by the deceased, when he broke into and damaged his car.

14. Given the above, and the distinguished record in his serving the country through his role as a regular soldier in the Fiji Military Forces from 1987, I suspend his 3 years prison sentence for 3 years from today, effective forthwith.
15. In summary, for the manslaughter of Mr. Watisoni Rokosawa between 23 and 24 November 2015, at Raiwai Suva in the Central Division, I sentence you, Mr. Wame Kubuisavusavu Waqavanua to 3 years imprisonment, suspended for 3 years from today, effective forthwith.
16. Meaning of suspended sentence explained to the accused.
17. You have 30 days to appeal to the Court of Appeal.




Salesi Temo
JUDGE

Solicitor for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : Ms. A. Tuiketeki, Barrister & Solicitor, Suva.