

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE NO. HAC 85 OF 2016

BETWEEN : STATE

AND : AVINAASH KAMAL

Counsel : Mr S Seruvatu for State
: Ms P Reddy for Accused

Date of Hearing : 21st – 23rd August, 2019

Date of Summing Up : 24th August, 2019

Date of Judgment : 24th August, 2019

Date of Sentence : 18th September, 2019

S E N T E N C E

- [1] The Accused stands convicted of manslaughter after trial. I now pronounce his sentence. I have a duty to explain to him and the public the sentence.
- [2] The facts upon which I sentence are as follows.
- [3] The incident occurred on 2 December 2015 at Sabeto, Nadi. The deceased is the Accused's father. At the time of the incident, the Accused was 18 years old. His father was in his early forties.
- [4] On the morning of 2 December 2015, the father and son had an argument regarding the son not assisting with any household chores. The Accused in anger lifted a burning kerosene stove and threw it at his father. The father was set ablaze inside the house. He ran outside and other family members helped him to put off the blaze. The victim's both

legs and elbows were burnt. He sustained third degree burn injuries to his legs. Third degree is the most serious burn injuries. The victim was hospitalized for nearly forty day.

[5] On 17 January 2016, the victim passed away at the hospital. The primary cause of death was clots in the vessel that pumps blood from the heart to the lungs. This condition was triggered by other medical conditions such as pneumonia and septicaemia, conditions caused as a result of the third degree burn injuries.

[6] Manslaughter is punishable by 25 years imprisonment. There is no established tariff for manslaughter but in *Bae v State* [1999] FJCA 21; AAU0015u.98s (26 February 1999) the Court of Appeal gave the following guidance:

We have been referred to several cases of sentence on manslaughter in the High Court as well as in the Court of Appeal to enable us to determine the correct range of sentence for this type of offence. With respect, this is the correct approach that should be taken by the courts. The task of sentencing is not an exact science which is capable of mathematical calculation. This is particularly so with manslaughter where the circumstances and the offender's culpability can vary greatly from case to case. An appropriate sentence in any case is fixed by having regard to a variety of competing considerations. In order to arrive at the appropriate penalty for any case, the courts must have regard to sentences imposed by the High Court and the Court of Appeal for offences of the type in question to determine the appropriate range of sentence.

The cases demonstrate that the penalty imposed for manslaughter ranges from a suspended sentence where there may have been grave provocation to 12 years imprisonment where the degree of violence is high and provocation is minimal. It is important to bear in mind that this range covers a very wide set of varying circumstances which attract different sentences in different manslaughter cases. Each case will attract the appropriate sentence within the range depending on its own facts.

[7] The verdict for manslaughter is based on the unlawful and deliberate assault on the victim using a burning kerosene stove. The court found that the Accused was aware of the substantial risk of serious harm that his conduct will cause and that he was unjustified to take that risk. According to the admitted facts the Accused in anger threw the burning stove at his father after an argument with him. In his caution interview, the Accused said his father swore at him. He has not disclosed the actual words that his father used to swear at him.

- [8] The victim was an authority figure in the family. He raised the Accused and supported him. There is no suggestion that he was not a responsible father. The evidence is to the contrary. The Accused was not a responsible son. The argument on the day in question was regarding the son not being responsible and the father quite rightly took an issue with that. Even if the victim had sworn at his son, the reaction to that provocation by the Accused was disproportionate and unjustified.
- [9] The offence involving family violence is objectively serious. The actual conduct of the Accused that eventually led to the victim's death is equally serious. The victim endured pain and suffering for 46 days before he succumbed to the injuries.
- [10] I consider the following as the aggravating factors:
- The Accused breached the trust of his father when he assaulted him by throwing a burning stove at him.
 - The pain and suffering of the victim was prolonged.
 - The offence constitutes family violence.
- [11] The Accused is now 22 years, unemployed and resides with his mother and siblings. Counsel for the Accused submits that the Accused was young and immature and that he did not realize the consequences of his action in that moment when he threw burning kerosene stove at his father. He is a first time offender.
- [12] I consider the following as the mitigating factors:
- The young age of the Accused at the time of the offence, that is, he was 18 years old.
 - The Accused is a person with previous good character.
 - The slight provocation offered by the victim for the Accused to lose his temper and react in the way he did on the day of the incident – there is no evidence that the Accused has violence tendency towards his family or others.
- [13] The remand period is about 1 month. I make a downward adjustment to reflect the period in sentence.
- [14] A comparable case is *State v Rarawa* - Sentence [2015] FJHC 755; HAC29.2014 (12 October 2015) where a young offender after trial was sentenced to 4 years imprisonment

for manslaughter for setting his sister alight and killing her after a domestic argument in which the sister swore at the brother. In that case, Madigan J said at [7]:

It is an aggravating factor that this was a case of domestic violence. The spirit of the Domestic Violence Decree would preclude a suspended sentence being passed for the offence of manslaughter in a domestic violence context.

[15] I endorse the above remarks. The courts must not be seen to be condoning family violence. The courts must denounce and deter any form of family violence.

[16] Taking all these matters into account I sentence the Accused to 4 years' imprisonment. The State does not support fixing a non-parole period. I accept that submission. The Accused is not a violent serious offender to be 'warehoused' to protect the public from him. The offence he committed was a single episode of family violence at the age of 18 years. The prospect of rehabilitation is high. I decline to fix a non-parole period.



A handwritten signature in black ink, appearing to read 'Daniel Goundar', written over a dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused