

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

Criminal Case No.: HAC 051 of 2018

BETWEEN : STATE

AND : MARVIN RAY KETENILAGI

Counsel : Ms S Lodhia for the State
Mr D Toganivalu for the Accused

Date of Hearing : 17 - 19 February 2020

Date of Sentence : 26 February 2020

SENTENCE


- [1] Any conduct that takes away the life of an innocent person must be denounced in the strongest term. In other crimes the court will have seen and heard the victim in order to assess the impact of the crime but in manslaughter cases that is not possible because the loss is a human life. The impact of loss of a life is borne by the victim's family. They will have to live only with the memories, never to see the victim again.
- [2] Shri Chand was a 56-year old male with a pre-existing heart condition. His arteries were clogged and he had previously suffered from a heart attack. On 25 January 2018 at around 3.30am, the offender saw Mr Chand at Regal Lane – a no through road between the Suva Handicraft Centre and the Westpac building in the city. Mr Chand was in a company of a male child inside a taxi when the offender got into an argument with him for bringing a child out at that time of the night and at that particular location. Mr Chand was a taxi driver and separated from his spouse at the time. He was looking after his friend's child when the friend went to work.

- [3] The offender was 39 years old at the time of the offence. He is now 41 years of age. He was a medical doctor until he was terminated from his employment after he was charged in this case. He was married with three children but is separated from his spouse. His teenage children are living with their mother and schooling in Labasa.
- [4] On the night the incident occurred the offender was on his way to the bus stand to return home after clubbing with his friends. He drank substantial alcohol that night but in his evidence he said that he was capable of making decisions despite being drunk.
- [5] The attack on the victim was unprovoked. The offender claimed that the victim became abusive and aggressive when he questioned him regarding the presence of a child with him at that time of the night and at that particular location where the incident occurred. This claim was contrary to the evidence of the witnesses who said that it was the offender who was abusive and aggressive, not the victim. It seems the offender relentlessly pursued the victim because he was not willing to accept the presence of a child with an adult male at that time of the night. He did not want to accept that the victim was the guardian of the child. The confrontation ended into a violent attack on the victim.
- [6] It is clear that both the victim and the child was traumatized by the actions of the offender. Both were distressed to a point that they could not speak. The victim was chased and punched in the chest and jaw. He tried to deflect the attack by running away but the offender pursued him until some *iTaukei* youths came to his rescue and chased the offender away. By the time the attack stopped the victim was restless, shaken and weak. He lost consciousness shortly after the attack while driving his vehicle to the police station with a police officer and the child inside the vehicle. He was taken to the hospital in a police vehicle and administered a CPR at the emergency ward. The CPR was called off at around 4.50am by the supervising doctor as there was no sign of life.
- [7] Post mortem examination revealed multiple traumatic injuries to the victim's jaw, chest, knees and liver. These injuries significantly contributed to the victim's primary cause of death, which was a severe coronary artery disease. The medical evidence was that the multiple traumatic injuries led to the victim's heart not to function properly leading to his

death. The offender was convicted for hastening or accelerating the victim's death by using physical violence.

- [8] The subjective circumstances of the offender has very little mitigating value. The only mitigating factor is that he is a first time offender. In his sentencing address the offender expressed remorse for his actions but the apology is late.
- [9] Senseless use of physical violence on innocent victims are becoming too prevalent in our community. In many cases, alcohol is significantly contributing to the violent behavior of the offender. Alcohol is not an excuse but an aggravating factor. The courts have a duty to protect the community from anti-social behavior arising from the use of alcohol.
- [10] The maximum penalty prescribed for manslaughter is 25 years' imprisonment. Sentences can range from a suspended sentence to 12 years' imprisonment depending on the nature and degree of violence used (*Kim Nam Bae v State* Cr App No. AAU0015 of 1998S). When physical violence is used to take away a human life, a prison sentence is inevitable, unless there is a special circumstance present.
- [11] Based on the facts of this case I assess the offender's moral culpability to fall in the middle range of the tariff. The purpose of sentence is to punish the offender, denounce his conduct and deter others.
- [12] Remand period is about two months, for which I make a downward adjustment.
- [13] Marvin Ray Ketenilagi, for the reckless killing of Shri Chand, I sentence you to 6 years' imprisonment with a non-parole period of 4 years.




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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Toganivalu & Valenitabua for the Accused