

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 124 of 2020

[CRIMINAL JURISDICTION]

STATE

V

SAILOSI CABENAGAUNA NAIVALURUA

Counsel : Ms. S. Tivao for the State
Ms. T. Kean with Mr. E. Sau for the Accused

Hearing on : 03 - 10 February 2021

Summing up on : 11 February 2021

Judgment on : 11 February 2021

Sentenced on : 12 February 2021

SENTENCE

1. Sailosi Naivalurua, you stand convicted of the offence of manslaughter contrary to section 239 of the Crimes Act 2009.
2. You were tried before assessors for the offence of murder. Being directed to consider the lesser offence of manslaughter as an alternative offence, the

assessors unanimously opined that you are not guilty of murder but of manslaughter.

3. Briefly, the facts of this case were as follows. The deceased was a 40 year old work colleague of yours. In the morning of 21/04/20, your mobile phone went missing while it was kept inside the changing room and you suspected the deceased. You confronted him and it appeared to you that the deceased did take your phone and he did not want to give it back. Then you went to the deceased with a cane knife and after an argument with him who was hanging empty sacks as part of his duties that day, you struck him thrice with the cane knife.
4. The first strike was delivered while you stood behind the accused and it caused a 20mm laceration. This was out of frustration because the deceased was not interested in what you tried to explain to him. Then the deceased got hold of a piece of timber and struck you twice with it. You while trying protect yourself from that attack swung the cane knife you were holding towards the deceased, twice. The second time you swung the knife, you saw your knife struck the left side of the deceased's chest and then his left forearm, and then you noticed that the deceased's left hand was missing. Subsequently, the deceased slipped and while he was sitting on the ground, you slapped him using the flat side of the cane knife and then fled the scene while the deceased was bleeding. The deceased was admitted to the hospital and he died on 23/04/20 due to loss of blood, after the doctors tried to replant the severed hand.
5. The following background information is also vital in order to have a complete picture of the relevant incident, so that your culpability could properly assessed.
6. You were 20 years old at the material time and you were on your sixth month at your workplace. You were offered a scholarship from your workplace given the fact that you had obtained the highest marks for accounting. That is how you got

the opportunity to work there. Your parents had left you and you were looking after your siblings. The deceased was about half a meter taller than you and was twice your built. You complained to the security and to the OHS Department of your workplace and also tried to get through to your supervisor regarding your missing phone. Your other workmates did not assist you or take you seriously. When you went to the security officer for the second time, you were told by the security officer to check again in the tea room which you had gone after going into the changing room with the phone.

7. When you opened the door, the first thing that you saw was the cane knife which was lying there. Then you decided to confront the deceased again and you took the cane knife with you. You said that you decided to take the cane knife with you because prior to that the deceased threatened you with a hammer not to raise any issue about the phone and you were afraid that he would use the hammer on you when you talk to him again about the phone. On one hand it appears that you took the cane knife with you as a means of boosting your courage to confront him. I heard you say in your evidence that after being threatened by the deceased you regained your courage to speak to the deceased when the (night shift) security officer came to where you and the deceased were arguing. You said that the deceased would talk to you in a kind manner in front of the others but when the two of you are alone, the situation is different. You mentioned that the deceased used to eat your lunch. On the other hand, you did intend to use that cane knife against the accused.
8. After the deceased slipped, he confessed that he took the phone, you said that you cried and told the deceased that the deceased made you hurt him by lying to you. You said that that is why you slapped him using the flat side of the cane knife. You also said that you fled from the scene leaving the deceased because you were afraid that you want be able to see your siblings again if you were apprehended and handed over to the police. I would also need to take into

account the fact that you did not in fact leave the deceased to die. When you left him the co-workers had already arrived. Therefore, I cannot conclude that you left the deceased there to die or that you expected him to die.

9. All in all, as far as your culpability in relation to this offence is concerned, I am not convinced with the prosecutor's argument that the violence extended towards the deceased by you was unprovoked. In a way, you appear to have been pushed by the surrounding circumstances to commit the offence. This of course is not a mitigating factor, but a matter to be taken into account in deciding the weight to be given to the aggravating factors.

10. As far as the harm that you have caused as a result of your conduct is concerned, your conduct had resulted in the loss of a life. You do admit that you have made a big mistake. But that mistake ended the life of a 40 year old father of five children. The deceased's wife and children lost the affection, the protection and the support as noted in the victim impact statement filed by the prosecutor. Nevertheless, I also cannot ignore the evidence of the pathologist in this case which indicated that the surgical procedure carried out in the hospital also would have contributed to the death of the deceased in the attempt to replant the severed hand. Even though the you are deemed to have caused the death in view of the provisions of section 246(2)(a) of the Crimes Act and you have admitted that your conduct substantially contributed to the death, a doubt lurks in my mind as to whether the deceased's life would have been lost if not for the attempt to replant the amputated hand. Of course there is no allegation of bad faith or lack of skills or knowledge on the part of the doctors involved in the surgery.

11. The maximum punishment for the offence of manslaughter in terms of section 239 of the Crimes Act read with section 3(4) of the Sentencing and Penalties Act 2009, 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 between 5 years and 12 years imprisonment.

12. I would select 05 years imprisonment as the starting point of your sentence.
13. The following will be considered as aggravating factors;
 - a) use of a weapon in the nature of a cane knife;
 - b) the violence you extended against the deceased subject to the above discussion including the impact of your conduct on the co-workers who had to witness a workmate's hand being amputated and profuse bleeding; and
 - c) fleeing the scene leaving the deceased who was bleeding for whatever the reason, without taking steps get the necessary medical attention to the deceased.
14. I would consider the following as your mitigating factors;
 - a) You are a young first offender;
 - b) You have cooperated with the police;
 - c) You cooperated during the trial by admitting all the elements of the offence except the fault element; and
 - d) Your conduct during the proceedings clearly indicated that you are truly remorseful.
15. Given the aforementioned aggravating factors subject to what I have highlighted in the discussion above, I would add 04 years to your sentence and would deduct 04 years and 06 months in view of the above mitigating factors. Your final sentence is therefore an imprisonment term of 04 years and 06 months.
16. You have indicated your willingness to plead guilty to the offence of manslaughter from an early stage of these proceedings. The prosecutor informed this court that you have made representations through your counsel indicating


that you are willing to plead guilty to manslaughter by way of a letter dated 17/06/20. Therefore, I would consider it appropriate to grant you a discount of one-third regarding you as an accused who had tendered an early guilty plea to the offence you are now convicted of. Accordingly, a term of 01 year and 06 months would be deducted from your interim sentence and your final sentence is an imprisonment term of 03 years.

17. I hereby sentence you to a term of 03 years' imprisonment. I order that you are not eligible to be released on parole until you serve 02 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
18. It was submitted that you have been in custody in view of this matter from 22/04/20 to 17/07/20 and then from 11/02/21. Accordingly, you have been in custody for a period of 02 months and 26 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 already served by you.
19. Taking into account the fact that you are a young first offender and the circumstances of the offending, I have decided that your sentence should be partially suspended pursuant to section 26 of the Sentencing and Penalties Act. Thus, I hereby order that your sentence should be suspended upon you serving a term of 02 years. The remaining term of 01 year is suspended for 03 years.
20. Accordingly, you are sentenced to 03 years' imprisonment with a non-parole period of 02 years. You are to serve 02 years of that sentence forthwith and the remaining term of 01 year is suspended for 03 years.
21. Considering the time spent in custody, the time remaining to be served before your sentence is suspended would be;

01 years; 09 months; and 04 days

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
Legal Aid Commission for the Accused