

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 106 OF 2019**

**STATE**

**-v-**

**ERONI VAQEWA**

**EMONI SAUKIWERE**

Counsel: Mr R. Mohammed with Ms R. Uce for Prosecution

Mr S. Nath for 1st Accused  
Mr M. Anthony for 2<sup>nd</sup> Accused

Date of Judgment: : 14 July 2023

Date of Sentence : 31 July 2023

**SENTENCE**

1. Mr Eroni Vaqewa and Mr Emoni Saukiwere (offenders) were charged with one count of Murder contrary to section 237 of the Crimes Act 2009.
2. After trial, they were each convicted of Manslaughter contrary to Section 239 of the Crimes Act No. 44 of 2009.
3. The brief facts of the case are that the offenders are brothers. They were drinking alcohol at night at a bus stop on Korovutu with their wives and the deceased. The deceased was already drunk when they first met. While drinking, the deceased poured alcohol on Vaqewa's music box and then on the two wives of the offenders. Being

provoked by the acts of the deceased, the offenders punched the deceased in the face and the head. To avoid further assaults, the deceased ran across the highway and ran into a nearby feeder road. The offenders pursued them. The deceased fell near a concrete post hitting his head causing injuries. The deceased was rushed to the hospital by a police vehicle and was pronounced dead at the hospital. The pathologist attributed the cause of death to the extensive brain damage and extensive haemorrhage within the skull, caused by blunt force trauma.

4. The maximum penalty for Manslaughter is 25 years' imprisonment. Under the Penal Code, the maximum penalty was life imprisonment. Under the Crimes Act, the maximum punishment was reduced to 25 years' imprisonment.
5. The sentencing tariff remains the same despite the reduction in the maximum sentence. The sentencing tariff for Manslaughter ranges from a suspended sentence to 12 years' imprisonment. Sentences in the upper range are reserved for cases where the degree of violence is high and the provocation minimal. The sentences in the lower range are reserved for cases where the degree of violence was minimal, while the provocation is extreme.
6. In *Kim Nam Bae v State Cr App No. AAU0015 of 1998S* the Court observed that

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.

7. In assessing the culpability, the courts must have regard to the degree of violence used to cause the death of the deceased. The degree of violence is somewhat considerable although the offenders had not used any weapon. The offenders had punched the deceased in the most vulnerable part of the body and made the drunken deceased run in the dark. The brain damage and extensive haemorrhage substantially contributed to the death of the deceased. The mother lost his only son as a result of the tragedy. The offenders did not take any action to take the deceased to the hospital when he was lying unconscious with serious injuries.

8. The deceased offered provocation by pouring alcohol on the music box and the two wives of the offenders in a public place and in front of their husbands.
9. Having considered the culpability of the offence and the loss of a young human life, I pick five years as the starting point. I have also considered the act of provocation in deciding this starting point.
10. It is aggravating that the offenders committed this offence under the influence of alcohol. They have breached the trust of the deceased who was a close friend of the offenders. I increase the sentence by one year for aggravating factors to arrive at an interim sentence of six years.
11. I have considered the mitigation submission filed by your Counsel.

Mr Eroni Vaqewa

Mr. Vaqewa is 39 years of age. He is married with two children. He is a subsistent farmer and the sole breadwinner of the family. He has been cooperative with the police. He has sought forgiveness from deceased's mother which has been granted. He was actively engaged in social and religious activities in the village. He has no previous convictions. He has maintained a clear record over the past 39 years of his life. I deduct one year to arrive at a sentence of five years imprisonment. He had spent approximately two years in remand. His remand period is deducted to arrive at a sentence of three (3) years.

12. Mr Emoni Saukiwere

Mr. Saukiwere is 35 years of age. He is married with three children. He is a farmer / labourer and the sole breadwinner of the family. He has been cooperative with the police. He has sought forgiveness from the deceased's mother which has been granted. He has no previous convictions and maintained a clear record over the past 35 years of his life. I deduct one year to arrive at a sentence of five years imprisonment. He had spent approximately two months in remand. His remand period is deducted to arrive at a sentence of four (4) years and ten (10) months.

13. The Counsel for Mr. Saukiwera has drawn Court's attention to two cases decided by this Court and argues that since the facts of those cases are mostly similar to the present one, the offenders should be given lenient sentences in a similar manner.
14. I would not agree. The sentencing is an individualized exercise that turns on the facts of each case. In *State v Singh* [2018] FJHC 362 (2 May 2018), the first case referred to by the learned counsel, the accused was charged with Manslaughter and not with Murder whereas in the present case the offenders were charged with Murder and reduced that charge to one of Manslaughter by Court as a matter of policy. In the second case, *State v Miramia* [2015] FJHC 823 (27 October 2015), the deceased, who was addicted to alcohol and smoking, was the de-facto partner of the accused. She had been a battered wife and committed the offence when the violence became intolerable in a domestic setting. In view of that, I am not convinced that the circumstances of those cases are similar to the present case warranting such lenient sentences.
15. The offenders have no previous convictions and chances of rehabilitation are high. Having considered your age and rehabilitation potential, a non-parole period of two years is warranted in this case.
16. **Summary**

Mr. Eroni Vaqewa is sentenced to an imprisonment term of three (3) years with a non-parole period of two (2) years.

Mr Emoni Saukiwera is sentenced to an imprisonment term of four (4) years and ten (10) months with a non-parole period of two (2) years.

30 days to appeal to the Court of Appeal.



Aruna Aluhge

Judge

At Lautoka

31 July 2023

Solicitors:

- Office of the Director of Public Prosecution for State
- Nath Lawyers and Millbrook Hills Law Partners for Defence