

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

CRIMINAL CASE NO: HAC 85 of 2020

STATE

V

JOLAME CHARLES VUNISA

Counsel: Ms. Pai for the State
Ms. Taukei of LAC for the Accused

Date of Sentence Hearing: 18 September, 2024
Date of Sentence: 4th of October 2024

SENTENCE

- [1]. JOLAME CHARLES VUNISA, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offence:

COUNT ONE

Statement of Offence

MANSLAUGHTER: Contrary to Section 239 (a), (b) and (c) (ii) of the Crimes Act 2009.

Particulars of Offence

JOLAME CHARLES VUNISA on the 23rd day of September 2019, at Namoli, Lautoka, in the Western Division, being reckless as to the risk that his conduct would cause serious harm, killed **PENI GUSUIVALU**.

- [2]. On the 16th of July 2022 information was filed against the on one count of Murder and was amended to one count of Manslaughter and filed on 4th of September 2024. The amended information was read out to the accused and after advice of Counsel the accused pleaded guilty to the same.
- [3]. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. The Court found that you fully understood the nature of the charge against you and the consequences of your guilty plea. Matter was adjourned to the 18th of September 2024 for Summary of facts.
- [4]. Thereafter, the State filed the summary of facts on 27 April 2023. The summary of facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the count of **Manslaughter** in the Information, the said count which was proved on the Summary of Facts was agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the charge of **Manslaughter**.
- [5]. Jolame Charles Vunisa, I now proceed to pass **sentence** on you.
- [6]. The Summary of Facts filed by the State was as follows:

Brief Background

1. *The accused in this matter is Jolame Charles Vunisa, 31 years old of Matawalu village, Ba, Stevedore at Fiji Ports Authority.*
2. *The victim in this matter is Peni Gusuivalu (deceased) 24 years old of Namoli, Lautoka, and unemployed.*
3. *The accused is the older biological brother of the deceased.*
4. *The incident occurred in Namoli Village, Lautoka.*

Offence

5. *On the 23rd of September 2019 the deceased was at home in Namoli sniffing glue in his bedroom. This was witnessed by his mother who confirmed that the accused snatched the small tin of glue from her hand.*
6. *The accused got angry at the deceased because he was sniffing glue inside the house. The accused was in the living room of the house when he could smell the glue from the deceased bed room. The accused picked up the ice cream cone box and lit it with fire. The accused then walked towards to the deceased bedroom, and threw the empty ice-cream cone box through the window into the deceased room.*
7. *Moments later, black smoke was seen coming from the room where the deceased was. The accused then broke the door of the bedroom and removed the deceased from the room.*
8. *The accused then pour water onto the deceased body to put the fire out.*

9. *The deceased was thereafter conveyed to Lautoka Hospital where he was admitted as he had sustained 35% open flame burns. A medical report dated 24th of September 2020 is attached herewith showing the extent of the burns on his body.*
10. *The deceased was hospitalized for 2 months where he received treatment at CWM hospital for his burns.*
11. *However, on 26th of November 2020, the deceased died as he had suffered Bilateral Pulmonary Embolism due to immobilization.*
12. *A post mortem was conducted by Doctor James Kalougivaki and he concluded that the condition directly leading to death was;*
 - *Bilateral Pulmonary Emboli*
 - *Immobilization*
 - *History of 35% open Flame burns*
 - *Ischemic heart disease*

Caution interview

The accused was arrested and interviewed under caution on the 28th of November 2020. The accused made full admissions in his caution interview and charge statement

- [7]. *Jolame Charles Vunisa, you have admitted to the above Summary of Facts and taken full responsibility for your actions.*
- [8]. *Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:*
 4. — *(1) The only purposes for which sentencing may be imposed by a court are —*
 - (a) to punish offenders to an extent and in a manner which is just in all the circumstances;*
 - (b) to protect the community from offenders;*
 - (c) to deter offenders or other persons from committing offences of the same or similar nature;*
 - (d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*
 - (e) to signify that the court and the community denounce the commission of such offences; or*
 - (f) any combination of these purposes.*

[9]. Furthermore, Section 4(2) of the Sentencing and Penalties Act provides that a Court must consider the following factors when sentencing an offender:

(2) In sentencing offenders a court must have regard to —

(a) the maximum penalty prescribed for the offence;

(b) current sentencing practice and the terms of any applicable guideline judgment;

(c) the nature and gravity of the particular offence;

(d) the offender's culpability and degree of responsibility for the offence;

(e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;

(f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

(g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;

(h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;

(i) the offender's previous character;

(j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and

(k) any matter stated in this Decree as being grounds for applying a particular sentencing option.

[10]. I have duly considered the above factors in determining the **sentence** to be imposed on you.

[11]. In terms of Section 239 of the Crimes Act No. 44 of 2009 ("Crimes Act"):

A person commits an indictable offence if —

(a) the person engages in conduct; and

(b) the conduct causes the death of another person; and

(c) the first-mentioned person —

(i) intends that the conduct will cause serious harm; or

(ii) is reckless as to a risk that the conduct will cause serious harm to the other person.

The offence of Manslaughter in terms of Section 239 of the Crimes Act carries a maximum penalty of 25 years imprisonment.

[12]. In the case of ***Kim Nam Bae v. The State* [1999] FJCA 21; AAU 0015 of 1998S (26 February 1999)**, the Fiji Court of Appeal held as follows;

"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."

[13]. It can be noted from the above case, that the Court of Appeal had observed that the penalty imposed for Manslaughter ranges from a suspended sentence to 12 years for different Manslaughter cases. Thus, the case of *Kim Nam Bae* (supra) seems to be only making an observation on the range of sentences which were pronounced by the courts in Manslaughter cases, rather than establishing a tariff for the offence.

[14]. In ***State v. (Viliame) Ratoa* [2012] FJHC 922; HAC173.2010S (8 March 2012)**; His Lordship Justice Salesi Temo held:

*"Manslaughter" is a serious offence, and carries a maximum sentence of 25 years imprisonment. The tariff for manslaughter in Fiji is a suspended sentence to a sentence of 12 years imprisonment. Sentences in the upper range were reserved for cases where the degree of violence was high, and the provocation minimal. Sentences in the lower range were reserved for cases where the violence used was minimal, while the provocation was extreme. The tariff covers a very wide set of varying circumstances which will attract different sentences, depending on its own set of facts: ***Kim Nam Bae v The State, Criminal Appeal No. AAU 0015 of 1998S, Fiji Court of Appeal; The State vs Francis Bulewa Kean, Criminal Case No. HAC 037 of 2007S, High Court, Suva; The State v Tomasi Kubunavanua, Criminal Case No. HAC 021 of 2008, High Court, Suva.*** Of course, the actual sentence will depend on the aggravating and mitigating factors."*

[15]. In ***State v. (Luke) Nasetava* [2022] FJHC 2; HAC310.2019S (14 January 2022)**; His Lordship Justice Temo has discussed how Judicial Officers have approached sentencing in several cases of Manslaughter .

- [16]. In the case of **State v. Dumukoro [2016] FJHC 199; HAC27.2014 (23 March 2016)**; His Lordship Justice Vincent Perera having considered and analysed 21 sentencing decisions in Manslaughter cases stated “From the above decisions I have perused, it is evident that this court has been inclined towards selecting a starting sentence of 5 years imprisonment or above for the offence of Manslaughter. In majority of the cases, the court has taken 5 years as the starting point.”
- [17]. Accordingly, Justice Perera held “.....since this court has been more favorable towards selecting 5 years as the starting point, I am inclined to form the view that the tariff for the offence of Manslaughter under Section 239 of the Crimes Decree (Act) should be 5 years to 12 years imprisonment.”
- [18]. I am inclined to agree with the above tariff of 5 years to 12 years imprisonment proposed by Justice Perera for the offence of Manslaughter . **In State v. Seniceva & Others [2017] FJHC 481; HAC26.2016 (29 June 2017); State v. Naimoso & Others [2018] FJHC 345; HAC095.2016 (27 April 2018); and State v. (Asenaca) Baulawamafi [2023] HAC 71 of 2022 (7 June 2023)**; I followed the same tariff for the offence of Manslaughter .
- [19]. In determining the starting point within a tariff, the Court of Appeal, in **Laisiasa Koroivuki v State [2013] FJCA 15**; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:
- “In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”*
- [20]. In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Jolame Charles Vunisa, I commence your sentence at 5 years imprisonment for the offence of Manslaughter .
- [21]. The aggravating factors are as follows:
- (i) By lighting and throwing an empty burning cone box into the room where your brother was, you showed utter disregard to his safety and his life.
 - (ii) The deceased was your younger brother. The two of you are biological siblings. Thus there is a domestic relationship between the two of you.

As such, you should have protected and safeguarded the deceased. Instead you have breached the trust expected from you.

- (iii) The burning cone box has resulted into the victim to sustained 35 % burns which is confirmed in the post-mortem examination conducted by Dr. Kalougivaki and the post mortem report submitted to Court, the cause of death was bilateral pulmonary emboli, immobilization, history of 35 % open flame burns and ischemic heart disease.
- (iv) An Unprovoked attack even though the deceased was sniffing glue inside the room. There was no physical provocation by deceased towards you at the time incident. The deceased had not used any violence on you personally.

[22]. Considering the aforementioned aggravating factors, I increase your sentence by a further 4 years. Now your sentence is 9 years imprisonment for the offence of Manslaughter .

[23]. Jolame Charles Vunisa, in mitigation you have submitted as follows:

- (i) That you fully co-operated with the Police when you were taken in for questioning and fully admitted the offence in your caution interview notes and subsequently charged instead of trying to circumvent the course of justice.
- (ii) You have submitted that you are truly remorseful of your actions which resulted in the death of the deceased. Your mother and a spiritual counsellor has provided character references and confirmed that you have forgiven each other.
- (iii) That you entered a guilty plea at a very early stage of these proceedings after the initial charge was amended.
- iv) You are a first offender with previous good character

[24]. Jolame James Vunisa, I accept that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine and the fact that you have you have sort forgives from your mother who has also provided character reference for you confirming that you have forgiven each other`. Accordingly, considering these mitigating factors, I deduct 1 year from your sentence. Now your sentence would be 8 years imprisonment.

[25]. Jolame James Vunisa, I accept that you entered a guilty at a very early stage of these proceedings. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a further discount of 2 years and 6 months. Now your sentence would be 5 years and 6 months imprisonment.

- [26]. Jolame, you are a first offender as confirmed by State Counsel and of previous good character. For that I would grant you a further discount of 3 months. Your sentence is now years and **5 years and 3 months**.
- [27]. Jolame, you are now 31 years of age. You are single and employed earning \$400.00 a week supporting your mother, brother, sister in law, and their children.
- [28]. You are the eldest of all your siblings. The deceased was younger than you five siblings. The deceased and you lived with your mother together with your other brother and sister in law. in Namoli Village, Lautoka.
- [29]. Your mother has provided character evidence for you confirming that before your younger brother the deceased passed away, you had sought forgiveness from the deceased and both of you had forgiven each other. Your mother has confirmed that you are a youth member within your church group serving the areas around Matawalu. The Spiritual Counsellor has provided character references confirming the same.
- [30]. Thus she said that as a single mother to four boys losing one is a heartbreak. However she said that she is not ready for another of her sons to be taken away from given the experience she encountered with the deceased. Accordingly to her the accused is a strong child and has grown to be their sole breadwinner for their family. She said that one of her son has left her and she is asking the court not to take another one away from her
- [31]. [Jolame Charles Vunisa, I have considered all the material submitted on your behalf in mitigation. However, the fact remains that due to your actions the precious life of another human being has been sadly taken away. During sentencing, this Court has to also consider the nature and gravity of the particular offence and your culpability and degree of responsibility for the offence.
- [32]. Accordingly, I sentence you to a term of 5 years' and 3 months imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I fix your non-parole period as 3 years' imprisonment.
- [33]. Section 24 of the Sentencing and Penalties Act reads thus:
- "If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*
- [34]. You were arrested for this case and produced in the Lautoka Magistrate's Court on 22nd of April, 2020 and remanded into custody. You have remained

in custody until you were granted bail in the High Court on the 16th of July 2020. Accordingly, you have been in custody for about a period of 2 months and 24 days. The period shall be regarded as period of imprisonment already served by you. I have decided to deduct a total of **3 months** as time already served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

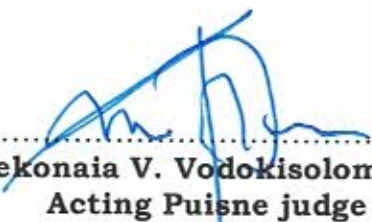
[35]. In the result, your sentence is as follows:

Head Sentence - 5 years and 3 months imprisonment.

[36]. Considering the time you have spent in remand, the time remaining to be served is 5 years imprisonment.

[37]. **Jolame James Vunisa** you are to serve a term of - 5 years imprisonment with a Non-parole period - 3 years

[38]. 30 days to appeal to the Court of Appeal.


.....
Sekonaia V. Vodokisolomone
Acting Puisne judge

4th day of October 2024



Solicitors

Office of the Director of Public Prosecutors for the State
Office of the Legal Aid of the Legal Aid Commission