

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case. No. HAC 014 of 2021

BETWEEN : **THE STATE**

A N D : **PAUL ELIJAH SORBY**

Counsel : Mr. J. Nasa for the State.
Mr. S. Heritage for the Accused.

Dates of Hearing : 24, 25, 26, 27, 28 February, 2025

Closing Speeches : 07 March, 2025

Date of Judgment : 07 March, 2025

Date of Sentence : 26 March, 2025

SENTENCE

1. In a judgment delivered on 7th March, 2025 this court found the accused guilty and convicted him of three counts of manslaughter and two counts of dangerous driving occasioning grievous bodily harm as charged.
2. The brief facts were as follows:
 - a) In the evening of 19th April 2018, the accused and some others drank grog from 8 pm until midnight. Thereafter, they drank beer. Once the beer was finished, the accused drove his red twin cab, registration no. HT438, from Lomawai village to Naidovi to buy more.

- b) They were unable to buy any, so they headed back to Lomawai village. At around 4 am on the Batiri Queens Highway, the vehicle driven by the accused went onto the lane of the oncoming vehicle, registration number JM229, and collided head on.
 - c) The force of the collision was such that the driver of the oncoming vehicle and two passengers in that vehicle died almost instantly. Furthermore, two other passengers in the same vehicle sustained grievous bodily harm, and they were hospitalized for some time.
 - d) The accused was arrested and subjected to a breathalyzer test, which showed 41 micrograms of alcohol in his breath, exceeding the legal limit of 37 micrograms. The accused was caution interviewed and charged.
3. Both counsel filed written sentence and mitigation submissions for which this court is grateful.
 4. The counsel for the accused presented the following mitigation and personal details about the accused:
 - (a) The accused is a first offender;
 - (b) He is 63 years of age;
 - (c) Retired Military Officer;
 - (d) Active member of the community/church and youth group;
 - (e) Had cooperated with the police during investigation;
 - (f) Has always been a kind and generous person;
 - (g) Charges were hanging over his head for the last 7 years;
 - (h) Seeks the leniency of the court;
 - (i) Has learnt his lesson, promises to lead a crime free life;
 - (j) Has medical conditions.

TARIFF

5. The maximum penalty for the offence of manslaughter is 25 years imprisonment. The accepted sentencing regime for the offence of manslaughter is a sentence between 5 years to 12 years imprisonment, depending on the circumstances of the offending with the powers of a suspended sentence available to the sentencing court under section 26 (2) (a) of the Sentencing and Penalties Act (*see Samuela Vakaruru vs. The State, criminal appeal no. AAU 094 of 2014 (17 August, 2018)*). At the present time there is no tariff for homicide by motor vehicle.

6. The maximum penalty for the offence of dangerous driving occasioning grievous bodily harm falls under section 97 (4) of the Land Transport Act. The maximum fine for this offence is \$2,000.00 or 2 years imprisonment and disqualification from driving for 12 months.

AGGRAVATING FACTORS

7. The following aggravating factors are obvious:
 - a) Driving without regard to road users

The accused drove his twin cab in a manner that had put all the road users and the passengers in his twin cab at risk.

 - b) Intoxication

The accused was intoxicated yet he drove his vehicle that early morning.

 - c) Victims were vulnerable

All the victims were vulnerable, unsuspecting and helpless.

d) Prevalence of the offence

There has been a notable increase in motor manslaughter and dangerous driving cases by drivers who do not obey road rules.

e) Safety on the road

The victims were supposed to be safe in the car they were travelling but this was not to be due to the reckless driving of the accused.

8. Whilst there is no specific tariff for homicide by a motor vehicle due to varying degree of facts and culpability, however, I am guided by the Court of Appeal in *Jessica Hill v. State, criminal appeal no. AAU109 of 2015 (10 August 2018)* the offender after pleading not guilty was sentenced to 7 years imprisonment with a non-parole period of 5 years.
9. In the case of *Jessica Hill* (supra), the Court of Appeal upheld the sentence of 7 years imprisonment for manslaughter and made a pertinent comment from paragraphs [62] to [64] about reckless drivers:

[62] Road accidents cause immense human suffering. Every year, a considerable number of people are killed and seriously injured. This represents a serious economic burden. It is understandable that cases of serious driving offences causing death are referred to courts by the DPP in the form of Manslaughter because he considers that the prescribed sentence and tariff for Causing Death by Dangerous Driving is unduly lenient.

[63] Motor manslaughter cases cause particular difficulty for sentencers. By definition, it is one which always gives rise to extremely serious harm. Understandably this often leads to calls from victims' families, and from the wider community, for tough sentencing. On the other hand, an offender sentenced for causing death by reckless driving did not intend to cause death or serious injury, even in the extreme case where he or she deliberately drove for a prolonged period with no regard for the safety of

others. Therefore, the sentencing should strike an appropriate balance between the level of culpability of the offender and the magnitude of the harm resulting from the offence.

[64] A factor that courts should bear in mind in determining the sentence which is appropriate is the fact that it is important for the courts to drive home the message as to the dangers that can result from dangerous driving on the road. It has to be appreciated by drivers the gravity of the consequences which can flow from their not maintaining proper standards of driving. Motor vehicles can be lethal if they are not driven properly and this being so, drivers must know that if as a result of their driving dangerously a person is killed, no matter what the mitigating circumstances, normally only a custodial sentence will be imposed. This is because of the need to deter other drivers from driving in a dangerous manner and because of the gravity of the offence. [**R v Cooksley** (supra)].

10. Section 17 of the Sentencing and Penalties Act states:

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

11. I am satisfied that the five offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence for the five offences.

12. Considering the objective seriousness of the offences committed, I select 5 years imprisonment (lower range of the tariff) as the starting point of the

aggregate sentence. The sentence is increased by 2 years for the aggravating factors.

13. The accused is a first offender who has come to court with a clean record, therefore, he receives a discount for good character and other mitigating factors, (character references included). The sentence is reduced by 1 year. The interim aggregate sentence is now 6 years imprisonment.
14. From the court file it is noted that the accused has been in remand for 20 days, in accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced as a period of imprisonment already served. The final aggregate sentence is 5 years, 11 months and 10 days imprisonment.
15. Counsel for the accused has urged this court to consider a suspended sentence. Unfortunately, given the circumstances, and the seriousness of the offences committed, and the culpability of the accused, a suspended sentence will not meet the ends of justice. Furthermore, under the law, this court cannot suspend a sentence which is more than three years. I also note that the accused is asking this court to consider the injuries he suffered to be taken as a mitigating factor. Since the injuries resulted from his own actions, this court has not regarded this component as a mitigating factor.
16. This case is another example of reckless driving that resulted in catastrophic consequences due to the accused's failure to adhere to traffic rules. The accused should not have been driving while intoxicated. His actions demonstrated a wanton disregard for the safety of other road users.
17. Having considered section 4(1) of the Sentencing and Penalties Act and the serious nature of the offences committed compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter

offenders and other persons from committing offences of the same or similar nature.

18. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand, this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason.
19. In this regard I have taken into consideration the principle stated by the Court of Appeal in *Paula Tora v The State* AAU0063.2011 (27 February 2015) at paragraph 2 Calanchini P (as he was) said:

[2] The purpose of fixing the non-parole term is to fix the minimum term that the Appellant is required to serve before being eligible for any early release. Although there is no indication in section 18 of the Sentencing and Penalties Decree 2009 as to what matters should be considered when fixing the non-parole period, it is my view that the purposes of sentencing set out in section 4(1) should be considered with particular reference to re-habilitation on the one hand and deterrence on the other. As a result the non-parole term should not be so close to the head sentence as to deny or discourage the possibility of re-habilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent. It must also be recalled that the current practice of the Corrections Department, in the absence of a parole board, is to calculate the one third remission that a prisoner may be entitled to under section 27 (2) of the Corrections Service Act 2006 on the balance of the head sentence after the non-parole term has been served.

20. The Supreme Court in accepting the above principle in *Akuila Navuda v The State* [2023] FJSC 45; CAV0013.2022 (26 October 2023)] stated the following:

Neither the legislature nor the courts have said otherwise since then despite the scrutiny to which the non-parole period has been subjected. The principle that the gap between the non-parole period and the head sentence must be a meaningful one is obviously right. Otherwise there will be little incentive for prisoners to behave themselves in prison, and the advantages of incentivising good behaviour in prison by the granting of remission will be lost. The difference of only one year in this case was insufficient. I would increase the difference to two years. I would therefore reduce the non-parole period in this case to 12 years.

21. Considering the above, I impose 4 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and also meet the expectations of the community which is just in the circumstances of this case.
22. Mr. Sorby, you cannot be forgiven for what you have done. Your recklessness has resulted in the tragic loss of three innocent lives. Undoubtedly, the families have lost beloved members because of your actions, while two victims sustained grievous bodily harm. The horrific accident you caused while under the influence of alcohol serves as a sad indictment – one that society cannot tolerate.
23. This court will be failing in its duty if a custodial sentence were not imposed. Think of the pain and suffering endured by the grieving family – a lifelong scar and source of regret. This tragedy could have been avoided if you had exercised prudence, good judgment, restraint, and common sense. No amount of regret or repentance will bring back the victims.
24. I am satisfied that the term of 5 years, 11 months and 10 days imprisonment does not exceed the total effective period of imprisonment

that could be imposed if the court had imposed a separate term of imprisonment for each offence.

25. In summary, the accused is sentenced to 5 years, 11 months and 10 days imprisonment as an aggregate sentence for three counts of manslaughter and two counts of dangerous driving occasioning grievous bodily harm with a non-parole period of 4 years to be served before the accused is eligible for parole. In addition to the above, the accused is fined \$1,000.00 in default 6 months imprisonment and he is disqualified from holding a driver's licence for 12 months after release from the Corrections Centre.
26. 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge



At Lautoka

26 March, 2025

Solicitors

**Office of the Director of Public Prosecutions for the State.
Messrs Iqbal Khan and Associates for the Accused.**