

STATE v AMALI RASALUSALU

HIGH COURT — CRIMINAL JURISDICTION

5 SHAMEEM J

3 June 2003

[2003] FJHC 109

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Criminal law — sentencing — Manslaughter — suspended sentence — tariff for manslaughter — first offender — extenuating circumstances in favor of Accused — Penal Code s 198.

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Amali Rasalusalu gave birth to a child on a remote island in Kadavu. She left the baby and the baby died because of exposure to cold. She pleaded guilty to one count of Manslaughter contrary to s 198 of the Penal Code. She had been in custody since June 2002 until the Director of Public Prosecutions reduced her charge to one of Manslaughter in May 2003. For this reason, the judge suspended her sentence for a period of 2 years. She was sentenced to 12 months' imprisonment suspended for 2 years.

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Held — (1) The tariff for Manslaughter in Fiji ranges from a suspended sentence to 12 years' imprisonment. Suspended sentences have been given in the most exceptional cases where there are extenuating circumstances in the Accused's favour and where there may have been minimal violence with a high degree of provocation.

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(2) Most cases of the killing of new-born babies fall into a separate category of "infanticide" where the mother is found to be suffering from post-partem depression. However this is not a case of infanticide. The balance of the mother's mind was not disturbed. She had given birth to four children previously and knew how to take care of children. This is not a case of an irrational and mentally disturbed killing. This is a case of negligence.

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(3) In accordance with s 29 of the Penal Code, if she reoffends in the next 2 years, she will be called back to court and may be liable to serve the term of imprisonment the judge imposed together with any further term which may be imposed for the new offence.

Sentence suspended.

Cases referred to

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R v Sainsbury (1989) 11 Crim App R (S) 533; *State v Evangaline Kiran Nair* HAC 32 of 1989; *State v Kesaravi Tinairatu Timuri* HAC 8 of 2002S, cited.

A. Vakaloloma for the Accused.

J. Waqaivolavola for the State.

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Shameem J. Amali Rasalusalu, you have pleaded guilty to one count of Manslaughter contrary to s 198 of the Penal Code. You admit to unlawfully causing the death of your new-born infant on the 18th of August 2001.

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The facts of the case, which you admit to, are that on that day after a fishing trip, you slept in a vacant house on a remote island in Kadavu and during the night gave birth to your infant outside. The baby was crying but no one came to help you. The other women thought they were hearing demons. You were very weak and did nothing to keep the child warm and sheltered. After an hour the baby stopped crying and you covered him with leaves, thinking he was dead. You left him there and told no one about the incident until a doctor saw you after the fishing trip. The post mortem report shows that the baby died because of exposure to cold.

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In your statement to the police, you said you were too weak to keep the baby warm and that you had not told anyone in the village that you were pregnant. You said that after giving birth you were frightened and ashamed and that you covered the baby because you thought he was dead.

5 The tariff for Manslaughter in Fiji ranges from a suspended sentence to 12 years' imprisonment. Suspended sentences have been given in the most exceptional cases where there are extenuating circumstances in the accused's favour and where there may have been minimal violence with a high degree of provocation. Into this category fall drunken brawls leading to a single punch and
10 a fatal fall, and cases of prolonged abuse and violence on the accused by the deceased leading to the sudden loss of self-control. Most cases of the killing of new-born babies fall into a separate category of "infanticide" where the mother is found to be suffering from post-partem depression. Non-custodial sentences are the norm for cases of infanticide, although a previous conviction for
15 infanticide might lead to a custodial sentence. In cases of infanticide, a binding-over order or a conditional discharge together with orders for counselling might be considered appropriate. (*R v Sainsbury* (1989) 11 Crim App R(s), *State v Evangaline Kiran Nair* Crim Case No 32 of 1989, *State v Kesaravi Tinairatu Timuri* Crim Case No HAC0008 of 2002S.

20 However this is not a case of infanticide. The balance of your mind was not disturbed. You had given birth to four children previously and knew how to take care of children. This is not a case of an irrational and mentally disturbed killing. This is a case of negligence.

I therefore use as my starting point 2 years' imprisonment. In your favour is
25 your personal situation. You are supporting your children by farming and fishing and I accept that you have a difficult life with little support from anyone other than your brother. Also in your favour is that circumstances forced you to give birth to your child in the bush where you got none of the assistance and support normally given to new mothers. Your personal circumstances are indeed tragic
30 and aggravated by poverty and daily struggles to feed and clothe your children. Aggravating factors are that you made no attempt to keep the child warm, and left him there although you must have known that he needed care. After making the necessary adjustments I arrive at a sentence of 12 months' imprisonment. I have treated you as a first offender because your one conviction is more than 10 years
35 old.

I now consider the question of suspension. You have been in custody since June 2002 and have remained in custody until the Director of Public Prosecutions reduced your charge to one of Manslaughter in May 2003. You have therefore already spent in custody a term equivalent to the term of imprisonment I now
40 wish to impose on you. For this reason, I suspend your sentence for a period of 2 years. You are sentenced to a term of 12 months' imprisonment suspended for 2 years. The operational period of the sentence is to run from today.

In accordance with s 29 of the Penal Code I must warn you that if you re-offend in the next 2 years you will be called back to court and may be liable
45 to serve the term of imprisonment I have just imposed on you together with any further term which may be imposed for the new offence.

Sentence suspended.