IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 30 OF 2008

BETWEEN: **STATE**

A N D: **RONIKA DEVI**

Counsel: Mr. M. Korovou for State
Mr. J. Waqainabete for Accused

Sentencing: 14th March 2014

SENTENCE

---

1. Ms. Ronika Devi, you stand convicted for one count of "Manslaughter" contrary to Section 198 and one count of "Infanticide" contrary to Section 205 of the Penal Code, upon your own plea of guilty to the said charges and admission of Summary of Facts.

2. The Information filed by the Director of Public Prosecution is as follows:

COUNT 1

Statement of offence

MANSLAUGHTER: contrary to Section 198 of the Penal Code, Cap 17.

Particulars of the Offence

RONIKA DEVI on the 21st day of January, 2008 at Nausori in the Central Division unlawfully killed **TANISA PRATAP**.

COUNT 2

Statement of offence

INFANTICIDE: contrary to Section 205 of the Penal Code, Cap 17

Particulars of the Offence

RONIKA DEVI on the 21st day of January, 2008 at Nausori in the Central Division caused the death of her child who was under the age of twelve months at the time, by drowning her in the Rewa River, but at the time of the act the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child.

3. It has to be noted that the existing two charges have been framed against you by the Director of Public Prosecutions when you appeared before this court for a re-trial as directed by their Lordships of the Court of Appeal (Case No: Criminal Appeal No. AAU0008 of 2009). The initial information contained two counts of 'murder' contrary to Section 199 and 200 of the Penal Code Cap 17. You had pleaded 'NOT GUILTY' to both charges after the arrangement, but pleaded 'GUILTY' to 'manslaughter' in respect of both counts. After a full trial before assessors, you were found 'guilty' to both counts of murder. The learned trial judge had sentenced Ms. Devi to life imprisonment on both counts and fixed a minimum term of 20 years imprisonment. The appeal, which resulted in a retrial was against that conviction and the sentence.

4. The admitted Summary of Facts can be summarised as follows. On 21st of January 2008, you had taken your two daughters, Tanisa Pratap (1 year and 9 months old) and an unnamed baby girl (20 days old) to Suva City after your husband failed to return home with diapers to the small daughter. You had decided to drown yourself and two daughters at the Rewa River. Then you had gone back to Nausori by a bus, after waiting in Suva for about 1 hour. You had waited at Nausori bus stand until it became dark before walking towards the river.

5. Later, in darkness, you had gone to the river with the two small girls and when you reached the water level to your knee level, you had dropped the 20 days old unnamed daughter to the water. After you reaching the water level to your chest height, you had put your elder daughter, Tanisa Pratap, under water and held her inside the water until she stopped struggling. After waiting there for a while and making sure that both the daughters are dead, you had come out of the water and gone to your brother's house in Nabua.

Even though you had spent the whole night at your brother's house, you had not told him what you did to the two daughters.

6. On 22nd January 2008, the following day, your brother had given you some money to go home. Instead of going home, you had once again gone to Suva City. Your husband, one Dharmendra Pratap, had located you when you were sitting in front of McDonalds and taken you to the Police Station. You admitted to police that you had drowned your two daughters in Rewa River and in fact showed the police where you did so. The dead bodies of the two small girls were recovered while being floating in the river. The post mortem examination reveals that the cause of death of both girls is Asphyxia due to drowning. Upon your arrest, you had admitted drowning the two girls in Rewa River on 21st January 2008 during the cautioned interview as well.

7. The maximum sentence for the offence of manslaughter is life imprisonment. (Section 201 of the Penal Code) The tariff for this offence ranges from a suspended sentence to 14 years imprisonment. It was said in **Kim Nam Bae v State** Criminal Appeal No. AAU0015 of 1998 S that:

> *"The cases demonstrate that the penalty imposed for manslaughter ranges from a suspended sentence where they may have been grave provocation to 12 years imprisonment where the decree 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."*

8. In the case of **Vilimoni Navamocea v The State** Criminal Appeal No. AAU0002 of 2006, their Lordships of the Court of Appeal said that:

> (17) *There can be no more serious offence that one which needlessly takes away the life of an innocent person. In other crimes the court will have seen and heard the victim and been able to assess the horror of what he or she has experienced. In manslaughter cases that is, of necessity, impossible. Yet utter devastation to the victim's family will be inevitable. How can an offence which results in taking an innocent life be sentenced less severely that an offence of violence which does not?*
>
> *(18) We suggest that, in all cases of manslaughter where the death is the result of a deliberate infliction of violence in the course of committing another offence such as robbery in which grave violence was anticipated and any form of weapons used, the court should use a starting point of between ten and fourteen years imprisonment.*

9. The maximum punishment for the offences of Infanticide is also imprisonment for life. The tariff ranges from a non-custodial sentence with counselling or hospital orders. (**State v Kesaravi Tinaratu Tumuri** *[2002] FJHC 6; HAC 0008 2001 S (5th September 2002)*. In the case of **Tumuri** *(supra)* Madam Justice Shammem (as she was then) said that;

> *"The tariff for Infanticide in Fiji and in other Commonwealth countries, is a non-custodial sentence with counselling or hospital orders."*

10. It is quite clear that the sentencing practice in Fiji regarding the offences of 'manslaughter' and 'infanticide' is well settled. The issue arises when the accused claims the defence of "diminished responsibility" as it is a relatively new statutory defence which emerged in this jurisdiction with the introduction of the Crimes Decree 2009. The learned defence counsel claims that *"... the fact that the mental capacity at the material time of the commission of the offence should not be neglected and should be reflected in sentencing the offender."* Thus, he urges that this is a fit and proper instance for the accused to rely on diminished responsibility for her acts.

11. In the case of **State v Ro Livini Radininausori**; *Criminal Case No. HAC 015 of 2006*, Madam Justice Shameem (as she was then) made the following observations:

> *This case is a clear example of the inadequacy of our laws relating to the killing of babies by their mothers. The law of infanticide requires evidence of post-natal mental illness. Experience tells us that many such cases arise not as a result of mental illness, but as a result of social failure – failure to accept mothers who give birth out of wedlock, failure to provide care to such mothers and babies, and failure to ensure that the fathers of such babies take equal responsibility for the birth and upbringing of their children. The killing of babies by their mothers, sadly common in Fiji, is an indictment on society. I have said before and I will continue to say, that the law should be reformed to define the offence of infanticide and murder to include the defence of diminished responsibility. That has been the step taken in other jurisdictions as a result of the injustice which results from the restricted definition of infanticide.*

12. Addressing this much awaited need of the criminal justice system, Section 243 of the Crimes Decree No. 44 of 2009 recognised "Diminished responsibility" as a statutory defence. Section 243 (1) states;

> *243. — (1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute*

murder, is at the time of doing the act or making the omission which causes death in such a state of abnormality of mind (whether arising from a condition of arrested or retarded development of mind or inherent causes or induced by disease or injury) as substantially to impair—

(a) the person's capacity to understand what the person is doing; or
(b) the person's capacity to control the person's actions; or
(c) the person's capacity to know that the person ought not to do the act or make the omission —
the person is guilty of manslaughter only.

13. See 243 (1) is conceptually similar, irrespective of the different wording, when compared to Section 2 of the English Homicide Act 1957. It reads;

Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

A person who but for this section would be liable, whether as a principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.

14. Section 2 (1) of the English Homicide Act 1957 was substituted by Section 52 (1) of the Coroners and Justice Act 2009. It reads as follows;

(52) (1) In section 2 of the Homicide At 1957 (c. 11) (persons suffering from diminished responsibility), for subsection (1) substitute-

"(1) A person ("D") who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which-
arose from a recognized medical condition,

(b) substantially impaired D's ability to do one or more of the things mentioned in subsection (1A), and
(c) provides an explanation for D's acts and omissions in doing or being a party to the killing.

(1A) Those things are-
to understand the nature of D's conduct;
to form a rational judgment;
to exercise self-control.

(1B) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D's conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct."

15. A line of English authorities shows the approach of the courts when dealing with the instances where the defence of 'diminished responsibility' was claimed.

16. One of the first decisions on 'diminished responsibility' is **Regina v Byrne**; *[1960] 2. Q.B. 396*. Lord Chief Justice Parker elaborated the term 'Abnormality of mind' and differentiated it with 'defect of reason' in the M'Naughten Rules in the following manner.

"Abnormality of mind," which has to be contrasted with the time-honoured expression in the M'Naughten Rules "defect of "reason," means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the ability to exercise will power to control physical acts in accordance with that rational judgment. The expression "mental "responsibility for his acts" points to a consideration of the extent to which the accused's mind is answerable for his physical acts which must include a consideration of the extent of his ability to exercise will power to control his physical acts.

Assuming that the jury are satisfied on the balance of probabilities that the accused was suffering from "abnormality of "mind" from one of the causes specified in the parenthesis of subsection, the crucial question nevertheless arises: was the abnormality such as substantially impaired his mental responsibility for his acts in doing or being a party to the killing? This is a question of decree and essentially one of the jury. Medical evidence is, of course, relevant, but the question involves a decision not merely as to

whether there was some impairment of the mental responsibility to the accused for his acts but whether such impairment can properly be called "substantial," a matter upon which juries may quite legitimately differ from doctors.

17. **Byrne's** decision was followed by the Privy Council decision of **Elvan Rose**; *[1961] A.C. 496*. Lord Justice Tucker delivering the Judgment of court said that;

> *Their Lordships respectfully accept this interpretation of the words "abnormality of mind" and "mental responsibility" as authoritative and correct. They would not, however, consider that the Court of Criminal Appeal was intending to lay down that in every case the jury must necessarily be directed that the test is always to be the borderline of insanity. There may be cases in which the abnormality of mind relied upon cannot readily be related to any of the generally recognised types of "insanity".*

18. In the case of **Stephen Francis Chambers**, [1983] Cr. App. R. (s) 190, a ten years imprisonment for a man, who admitted stabbing his wife to death for twenty three times in the chest and arms in the presence of their child, while suffering from an anxiety depressive condition, was reduced to 8 years imprisonment on the basis of 'diminished responsibility'. Justice Leonard made the following remarks on the principles of sentencing in such situations.

> *"In diminished responsibility cases there were various courses open to the judge. If the psychiatric recommended and justified it, and there were no contrary indications, he would make a hospital order. Where a hospital order was not recommended, or was not appropriate, and the defendant constituted a danger to the public for an unpredictable period of time, the right sentence will be in all probability one of life imprisonment. In cases where the evidence indicated that the accused's responsibility for his acts was so grossly impaired that his decree of responsibility for them was minimal, then a lenient course would be open. Provided there was no danger of repetition of violence, it would usually be possible to make such an order as would give the accused his freedom possibly with some supervision. There would be cases in which there is no proper basis for a hospital order, but in the accused's responsibility is not minimal. In such a case the judge should pass a determine sentence of imprisonment, the length of which would depend on two factor: his assessment of the degree of the accused's responsibility and his view as to the period of time if any for which the accused would continue to be a danger to the public."*

19. **Paul Joseph Yates** *[2001] Cr. App. R (S) 124* was a case where a father was charged for manslaughter of a three month old baby by shaking. The English Court of Appeal reduced the sentence of 7 years imprisonment to 5 years saying that it is 'manifesting excessive'. It was held by Lord Justice Roch that;

> *"It was accepted that apart from the two occasions when the appellant had shaken the baby, he had been a normal and loving father. The cases which had been cited indicated that the appropriate sentence for manslaughter of a baby was, save in the most exceptional cases, one of immediate imprisonment and that the range of sentences was between two and five years' imprisonment, and occasionally higher when there was evidence of persistent cruel conduct. In the present case there was no evidence of remorse. The Court was persuaded that the sentence was manifestly excessive and that the appropriate sentence would have been five years' imprisonment."*

20. The cases of **Bashford** *(1988) 10. Cr. App. R. (S) 359*; **Brannan** *(1995) 16. Cr. App. R. (S) 766*, **R v Theresa Anne Derekis** *[2004] EWCA Cr. 2729; [2005] 2 Cr. App. R. (S) 1 and Cordice [2002] EWCA Cr. 1506* have similar features of Yates (supra) in the sentencing mechanism.

21. **R. v Paul *Turner*** *[2001] EWCA Cr. 1331; [2002] 1 Cr. App. R. (S) 50*, is a case which discussed whether a 'custodial sentence is inevitable in the cases of manslaughter of babies. The appellant himself had an impairment of intellectual and social functioning when he committed manslaughter of his 5 weeks old baby, who died of 'shaken baby syndrome'. It was held by Justice Hallett that:

> *"The overwhelming view of the medical witnesses was that custody was entirely inappropriate for the appellant. The question was therefore whether a custodial sentence was inevitable given the duty of the court to do everything in their power to protect young children. The sentence judge had an extremely difficult task to perform. He properly reminded himself of the duty of courts to do their utmost to protect the most vulnerable in society. The Court could not disagree with his comment that parents could not escape their responsibility for their actions by relying on their own problems. This did not mean that in every tragic case where a child was killed a custodial sentence was inevitable. There would be exceptional sentences. The question for the Court was whether or not this was one of them. In the Court's judgment it was. The appellant lacked the mental capacity to appreciate the consequences of his actions and intended no harm to his daughters. His responsibility for his actions was significantly diminished. He was an unusual young man with very considerable*

problems. He was himself vulnerable and in need of protection. The Court felt in the usual circumstances that it could take the exceptional course of quashing the sentence of detention in a young offender institution and substituting a community rehabilitation order for three years with a condition of treatment."

22. In the case of **R. v Tracey Ann Lawrenson** *[2003] EWCA Criminal 1339; [2004], Cr. App. R (S) 5*, the English Court of Appeal reduced a sentence of 5 years imprisonment to 3 years on the ground of diminished responsibility. Appellant's psychiatric report said that she;

"...had been the subject of psychological abuse and was psychologically damaged. Her problems had been accentuated by a series of abusive and violent relationships. She was said to suffer from post-traumatic stress disorder, battered woman syndrome, a depressive disorder and a personality disorder."

23. In **R. v Robert James Slater** *[2005] EWCA Cr. 898; [2006] I Cr. App. R. (S) 3*, Lord Justice Auld held that;

"It was submitted that the sentence failed to give sufficient weight to the appellant's youth, his previous good character, his remorse, his plea of guilty, his state of mind, and the effect of the incident on his marriage. Assessing the form and severity of sentence in cases of manslaughter by reason of diminished responsibility was notoriously difficult. The Court was required to balance a wide variety of considerations."

Appellant's sentence of 06 years detention in a young offender's institution was brought down to four and a half by reason of diminished responsibility manslaughter. It was revealed through Psychiatric Reports that the applicant was suffering from severe clinical depression at the time of the offence.

24. Coming back to the matter in hand, I note that two doctors, Doctor Narayan and Doctor Biukoto (who are supposed to be experienced psychiatrists), offered evidence at the previous trial before assessors and formulated the opinion that Ms. Devi was "severely depressed" and agreed that the cause of the depression was her husband. Doctor Narayan had concluded that "in her situation she did what she did because it was the only way to get out". (Paragraph 37 – Devi v State – supra)

25. Mr. Keith Rowden, a registered Psychologist offered evidence before this court during the sentencing hearing. Apart from the oral evidence, Mr. Rowden submitted a comprehensive report on Ms. Devi based on the tests of

Jesness Inventory – Revised [JI-R] and Wechsler Adult Intelligence Scale Third Edition (WAIS – III) – Australian version. Mr. Rowden had obtained the following information from Mr. And Mrs. Schultz of "Operation Foundation".

> *"Prior to committing her offences, Ronika was experiencing excessive levels of social and emotional stress resulting from exposure to physical and emotional domestic violence.*
> *At the time, she committed the offences, Ronika was in all probability suffering from Extreme Severe Postpartum Depression that would have impacted on her normal behavioural predispositions."*

With this information Mr. Rowden opines that this situation 'would impact negatively on Ronika's cognitive emotional and behavioural stability at the time she committed the offences.

26. Analysing the 'mild to moderate deficient intelligence range' of Wechsler Intelligence Scale for Adults (3rd Edition) Mr. Rowden says;

> *"At the time Ronika committed the offences, it is my opinion, her problems extend beyond her low level of intellectual functioning. Her chaotic psycho-social and emotional environment, compounded by the high probability that she was suffering from Extremely Severe Postpartum Depression were pivotal in respect to her behaviour. Had Ronika been residing in a caring and supportive environment, she would in all likelihood still be caring for her children today."*

27. Commenting on the criminal propensity of Ms. Devi, Mr. Rowden says that, "in my opinion, Ronika does not pose a risk to the community" and went on to make the following remarks;

> *Her personality profile as measured on the Jesness Inventory-Revised reveals that she is a person who does not have a tendency towards engaging in criminal behaviours. Her profile indicates she has a propensity to model her behaviour on the group norm and therefore responds to the environment in which she resides. If residing in a calm, caring environment, she will in all likelihood behave in a law abiding and pro-social manner.*
>
> *During the psychological assessment, Ronika expressed sincere grief about the loss of her children. She expressed appropriate remorse for the drowning of her children, but at this point in time, she is not able to appropriately articulate why she took her children's lives. In my*

opinion, Ronika would benefit from psychological counselling to assist her to understand cognitively and emotionally the events that preceded and occurred on the day she took her children's lives.

In my opinion, Ronika does not pose a risk to the community. Should she be placed on a community based order, it would be appropriate to monitor her via a case plan that offered her a secure place of residence along with meaningful work or activity. Under such a case plan, Ronika would require long term family support to assist her in the event of any future difficulties. Such a case plan, would optimise her ability to live without engaging in any form of behaviour that would bring her to the attention of the authorities.

28. The cited case authorities show that the length of the sentence of imprisonment in the instances of diminished responsibility manslaughter depends on the degree of the responsibility of the accused and the period of time that the accused will continue to be a danger to the ordinary public. Psychiatric reports do play a pivotal role in assessing the accused's responsibility for his or her acts. The range of sentence does vary from hospital orders to life imprisonment with a minimum term. It has to be mindful that the three special defences enunciated to the English law, diminished responsibility, loss of control (came into operation with the abolition of common law defence of provocation – Section 54, 55, 56 of Coroners And Justice Act 2009) and suicide pact do differ from the general defences as they do not apply to all the crimes but only to the offence of 'murder' and have the effect only to reduce the criminal liability instead of absolving it entirely.

29. Coming back to Ms Devi, this court is of the view that even though she claims the defence of 'diminished responsibility' with the aid of several opinions of psychiatrists, the responsibility for her acts was not that 'grossly impaired' with the 'abnormality' of her mind. Ms. Devi still retains a substantial amount of responsibility for her acts. Therefore, this court observes that the degree of Ms. Devi's responsibility when committed the offences is just and only just suffice to seek shelter of "diminished responsibility" in terms of Section 243 of the Crimes Decree 2009.

30. If it is not for the reasons that Ms. Devi had experienced "excessive levels of social and emotional stress resulting from exposure to physical and emotional domestic violence" and suffered from "extreme severe postpartum depression", the failure of her husband to return home with baby diapers is a far fetched excuse to take two lives of innocent small girls and to rely on "diminished responsibility". On the other hand, such a claim is a serious

insult to the mothers who go through the mill with their children having high expectations of creating a better tomorrow for them.

31. Having considered the legal and factual back ground of the offending, I now proceed to determine the sentence of you to the charge of manslaughter. I take a starting point of 5 years imprisonment.

32. When considering the aggravating factors one cannot forget the brutal or cruel manner that you decided to took the lives of the two small girls. Being at the ages of 20 days and one year and nine months respectively, the two small girls are no doubt helpless and vulnerable. Though lot of serious injuries with full of blood were not to be seen, it is beyond one's imagination; pulling the two girls under water until they sized 'struggling'. These killings were extremely heinous and depraved. On the other hand, you destroyed two lives in the same course of conduct. For these aggravating features, I add 4 years imprisonment to the starting point.

33. In mitigation you averred that you are a young first offender. You were 22 years when you committed the offences. Prior to this incident, nothing is reported to say that you are a violent character. The prosecution does not dispute this. Thus, I reduce one and a half years from your interim sentence to reflect your previous good character. Now your sentence stands at seven and a half years imprisonment (7 ½ years).

34. I note you were willing to tender a plea of guilty to a charge of manslaughter even before the commencement of the previous trial and you pleaded guilty before this court on the very first day the prosecution introduced the charges of manslaughter and infanticide. Therefore, you deserve to have a reduction of a third for your plea of guilty. Now your interim sentence stands at 5 years imprisonment.

35. It is not disputed that you were in custody for almost 3 years (it is 2 years 11 months and 20 days exactly) pending the appeal of the first trial and I order to reduce that 3 years from your interim sentence of 5 years in terms of Section 24 of the Sentencing and Penalties Decree 2009.

36. Your final sentence for the offence of manslaughter is 2 years imprisonment.

37. Apart from the direct applicability of post natal mental conditions, the offending background, aggravating and mitigating factors are almost similar for the offence of "infanticide" as well. Therefore, this court is of the view that a sentence of 2 years imprisonment to the offence of 'infanticide' would reflect the gravity of your conduct.

38. Finally, in terms of Section 26 (2)(a) of the Sentencing and Penalties Decree 2009, this court has to consider whether the final sentences of 2 years imprisonment for each count, are to be suspended or not. In deciding the issue' this court wishes to consider several factors. The incident runs back to January 2008 and it is well over six years by now. You had to live with this case hanging over your head throughout this time. Out of those six years once punished for the crimes you committed. Finally and was it importantly, the psychiatrist report says that you do not pose any threat of repeating your criminal behaviour. Having considered all these aspects, this court is of the view that ends of justice would be met by suspending the sentences of 2 years imprisonment for each count.

39. Your final sentences are as follows;

1st Count of Manslaughter- 2 years imprisonment suspended for 3 years

2nd Count of Infanticide - 2 years imprisonment suspended for 3 years

40. Both sentences are ordered to run concurrently. Effects of a suspended term are explained.

J. Bandara
Judge

At Suva
Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused