

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 239 OF 2012S

STATE

vs

VILIKESA RINAVUAKA

Counsel : Mr. M. Delaney for State
Accused in Person
Hearings : 2 May, 26 June, 18 July and 1 August, 2014
Sentence : 21 November, 2014

SENTENCE

1. On 2 May 2013, in the presence of your counsel, Mr. Naipote Vere, you pleaded guilty to the following information:

Statement of Offence

MANSLAUGHTER: *Contrary to section 240 of the Crimes Decree No. 44 of 2009.*

Particulars of Offence

VILIKESA RINAVUAKA on the 30th day of June 2012 at Baulevu, Nausori in the Eastern Division, made an omission, in that he breached his duty to control vehicle registration number DX 708 which he was in charge of, an omission which caused the death of BARBRA GOLEVA GREEN.

2. The summary of facts, as read by the prosecution on 26th June 2014, were as follows:

- “...1 In the morning of the 30 June 2012, Vilikesa Rinavuaka (“the accused”) drove vehicle Toyota Hilux Reg No. 708 accompanied by his wife, Laisa Rokovaka, and five children namely Ranadi (then aged 11 years), Jed (then aged 9 years), Fiona (then aged 8 years), Derrick (then aged 4 years) and Barbra (then aged 2 years and now deceased) away from the family residence in Feeder Road, Wainisasa, Baulevu.
- 2 The vehicle approach to the residence is an uphill slope, unpaved dirt track with a steep fall off on the right hand side. The 12 photographs enclosed in the Disclosures show the location described.
- 3 The accused was taking his family to Nausori for various sporting activities. Shortly after starting out, the accused and his family returned to the family residence in the said vehicle in order to retrieve raincoats for the family members. The accused parked the vehicle near to the residence but left the ignition key in place and the engine still running. The accused and his wife together with Ranadi, Jed and Derrick got out of the vehicle and entered their residence. The accused went to get his mobile phone from his bedroom and his wife went to fetch the raincoats. Fiona and Barbra (deceased) remained in the front cabin of the vehicle unaccompanied.
- 4 The child Jed, was with his mother and having been given a raincoat got back into the vehicle. The accused’s wife was putting a raincoat on her child Ranadi who alerted his mother to the moving vehicle. The accused had just come out of the house and together with his wife ran after the vehicle as it rolled backwards down the slope away from the house.
- 5 The vehicle for some unknown reason had rolled backwards down the driveway slope away from the residence and off the steep fall off, turning over and ending up on its right hand side. Two children were pulled out of the vehicle unharmed. The child Barbra however, was trapped underneath the vehicle and was killed immediately by the impact and weight of the vehicle upon her body.
- 6 The fire authority reached the location shortly after and tried to rescue and revive Barbra but the child was already deceased.

- 7 The cause of death was, “a subluxation (sic) of the 2nd and 3rd Cervical Vertebrae and fracture of the left mandible” according to the Post Mortem which is a broken neck and left jawbone.
- 8 The vehicle had been serviced the day before the incident.
- 9 The accused was interviewed under caution on the 2 July 2012 and voluntarily gave a statement to the interviewing officer. The accused was later charged on the 9 July 2012.
- 10 The Accused had a duty to the deceased under section 241 Crimes Decree 2009 as referred by Section 240 (c) (i). The accused was in breach of that duty as a result of his omission to ensure that the deceased was at all times protected and kept safe when left alone in the said vehicle without his or his wife’s supervision or presence. The omission caused the death of the deceased.
- 11 The accused had no criminal conviction in Fiji...”
3. The matter was adjourned to 10 and 18 July 2014, to enable you and your counsel to discuss the summary of facts and indicate to the court, whether or not you agree to the same. You appeared to agree to the facts, but your counsel appeared not to do so. You terminated your counsel’s contract, and indicated to the court that, you have waived your right to counsel and would like to represent yourself. With leave, your wish was granted by the court, because it appeared your counsel failed to adhere to your instructions.
4. On 18 July 2014, you told the court that you have admitted the prosecution’s summary of facts, and that you have also admitted the particulars of offence contained in the information. The court checked with you to see that the elements of manslaughter, contained in the information, were agreed to and accepted by you. The court found that you understood the allegation against you, and that you had freely and voluntarily admitted the offence. As a result, the court found you guilty as charged, and convicted you accordingly.
5. “Manslaughter”, as a criminal offence, is still considered by society and the law makers of this country as a serious offence, and thus had prescribed a maximum sentence of 25 years imprisonment (see section 240 of the Crimes Decree 2009). In the repealed Penal Code,

Chapter 17, the maximum penalty for manslaughter was life imprisonment (see section 201 of the Penal Code)

6. Despite the above change in the legislation, the law and tariff on manslaughter is still the same, as when I said in **State v Milika Videj**, Criminal Case No. HAC 068 of 2009S, High Court, Suva, the following, “...Manslaughter is a serious offence. It carries a maximum sentence of life imprisonment. However, case laws in Fiji seemed to show that penalties for manslaughter range from a suspended sentence to 12 years imprisonment. Sentences in the upper range were reserved for cases where the degree of violence was high and the provocation given was minimal. Sentences at the lower end of the scale were often reserved for cases where the violence used was minimal and the provocation given was in the extreme: see Kim Nam Bae v The State, Fiji Court of Appeal, Criminal Appeal No. AAU0015 of 1998S; The State v Frances Bulewa Kean, Criminal Case No. HAC 037 of 2007; State v Amali Rasalusalu Criminal Case No. HAC 003 of 2003, High Court, Suva. The actual sentence passed will depend on the presence or otherwise of strong mitigating and/or aggravating factors...”

7. In this case, the aggravating factors, were as follows:
 - (i) You were grossly negligent as a parent when you did not turn off the vehicle engine when you went to get your mobile phone in the house, when your deceased child, aged 2 years at the time, was in the car. This set in motion a chain of events that unfortunately led to her death.

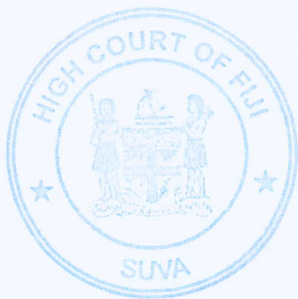
8. The mitigating factors were as follows:
 - (i) At 44 years old, this is your first offence;

 - (ii) Although you pleaded guilty to the offence 1 year 9 months 5 days after first call, you nevertheless saved the court's time. I also take note of your advice to your sacked counsel of your need to plead guilty. In my view, you did better than your former counsel, Mr. Naipote Vere. He simply did not advance your interest in this case. He was leading you in the wrong direction by been unnecessarily aggressive to the court. You rescued yourself by terminating his service, and your written plea in mitigation was much more effective than the one he prepared.

 - (iii) You have lost your 2 year old daughter. As you stated in your plea in mitigation, you have suffered mentally and physically since her passing. I agree with you that a child should not pre-decease their parent. In your case, it had occurred, and I understand from your written plea in mitigation, the pain and suffering you are going through. Your

health has suffered. Your work has suffered. In the daily struggle of life, you are trying to put food on the table, for your wife and nine young children (three adopted), aged between 19 and 3 weeks old. It appears to the court that, you have been punished from the day your daughter died, and to today, and beyond. Losing your 2 year old daughter is a punishment in itself, and I can see this on you, when continually appear in court. In my view, justice and mercy calls for a non-custodial sentence.

9. I start with a sentence of 2 years imprisonment. I add 1 year for the aggravating factors, making a total of 3 years imprisonment. I deduct 18 months from the 3 years for the mitigating factors, leaving a balance of 18 months imprisonment.
10. Mr. Vilikesa Rinavuaka, I now formally sentence you to 18 months imprisonment, suspended for 2 years.
11. Meaning of suspended sentence explained to accused.



Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **In Person.**