

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 028 OF 2013LAB

**STATE**

**VS**

**SUREND CHAND**

**Counsels : Ms. P. Low for State  
Mr. A. Sen for Accused**

**Hearings : 24, 25, 26, 27 and 28 November, 2014**

**Summing Up : 1 December, 2014**

**Judgment : 1 December, 2014**

**Sentence : 9 December, 2014**

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**SENTENCE**

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1. In a judgment delivered on 1 December 2014, you were found not guilty of murdering your younger brother Jai Chand on 29 March 2013, and was acquitted accordingly. However, you were found

guilty of the lesser offence of the manslaughter of Jai Chand on 29 March 2013, and you were convicted accordingly.

2. The facts of the case had been ventilated during the trial. Briefly, they were as follows. On 29 March 2013, you were 43 years old, while the deceased, your younger brother, Jai Chand, was 35 years old. At about 1 to 1.30pm on 29 March 2013, another younger brother, Sushil Chand and a nephew, Anand Goundar visited you at your house at Naleba, Labasa. You met them, mixed some grog and drank with them. Jai Chand joined your group a while later. At about 4pm, the grog session ended, and all of you went to a neighbour's house to drink homebrew. After two to three hours, you all returned and continued drinking homebrew at your home.
3. Jai Chand asked your wife for some "chasers". There was none. He was angry and started a commotion with you. He challenged you to a fight, and in the process broke five louver blades of your window, and was very abusive to you. The two of you fought on your verandah, compound and towards the road. Jai Chand repeatedly swore at you, and yelled he would kill everybody, which included you and your family. You really didn't want to fight, and was trying to avoid the same. When you ran towards the road, Jai Chand threw stones at you. He also damaged Sushil's car with heavy stone. He smashed the wind screen and dented the body of the car. You ran towards your house, got an iron rod, and returned to the road. You struck Jai Chand four times – one on the right side of his head, and three to his stomach and right rib. His heart ruptured, and he died as a result. You were found to have done a willful act (striking deceased with an iron rod), which caused his heart to rupture leading to his death (willful act caused death), and at the time, you intended to cause him serious harm.
4. In State v Arthur James Kamoe Moore, Criminal Case HAC 114 of 2010S, High Court, Suva, I said the following, "...Manslaughter" is a serious offence. It carries a maximum sentence of 25 years imprisonment. However, case laws in Fiji seemed to show that penalties for manslaughter range from a suspended prison 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 reserved for cases where the violence used

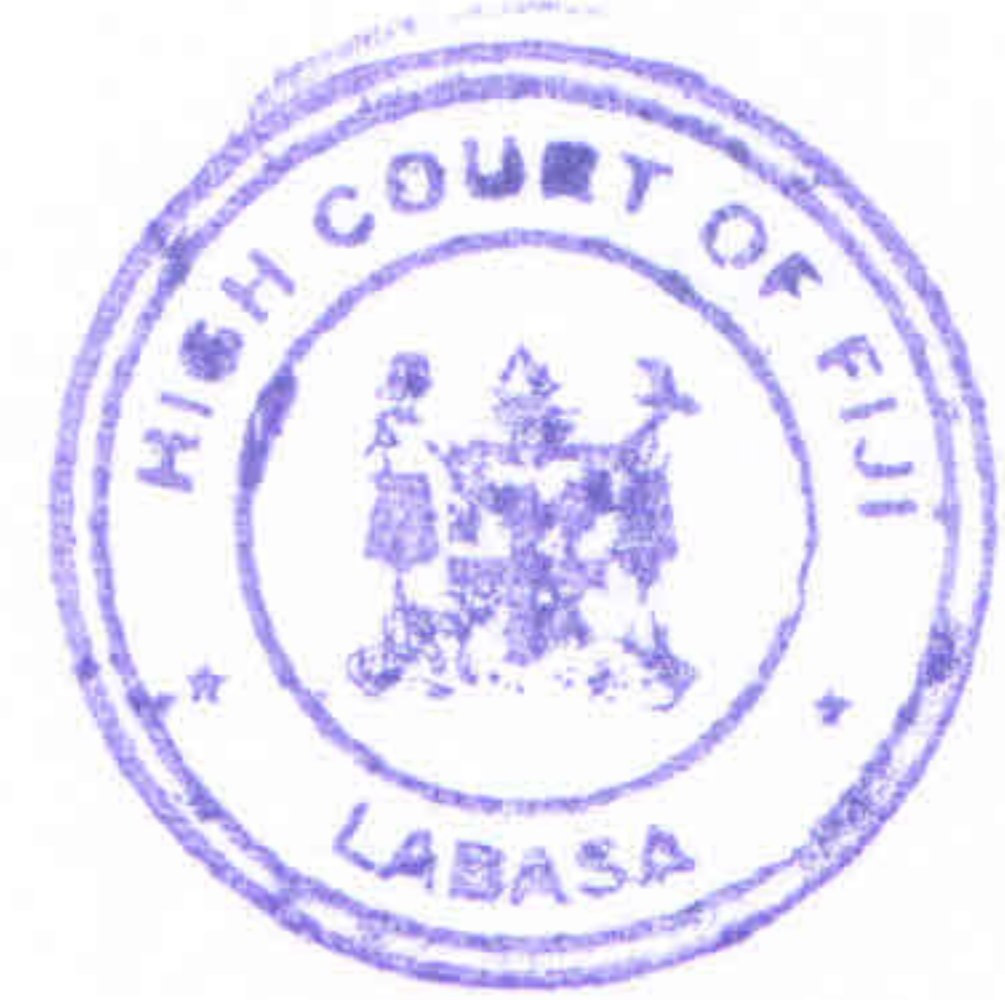
was minimal and the provocation given was in the extreme; see Kim Nam Bae v The State; Fiji Court of Appeal, Criminal Appeal No. AAU0015 of 1998S; The State v Frances Bulewa Kean, Criminal Case No. HAC 037 of 2007S, High Court, Suva; State v Amall Rasalusalu, Criminal Case No. HAC 003 of 2003, High Court, Suva. The actual sentence passed will depend on the mitigating and aggravating factors,..."

5. The aggravating factors, in this case, were as follows;
  - (i) Jai Chand, your younger brother, had unnecessarily lost his life as a result of your offending. Although Jai Chand was very abusive to you prior to your offending, the injuries to you as shown in your medical report [Defence Exhibit No. 1], was not that serious so as to demand a lethal response with an iron rod being used on him four times.
  - (ii) It was totally unnecessary for you to use the iron rod to resolve the problem that you faced on the day, when a few minutes earlier, you called for police assistance, who responded to the same, and arrived a few minutes after your offending.
  
6. The mitigating factors were as follows:
  - (i) At the age of 43 years old, this was your first offence;
  - (ii) You co-operated with the police during their investigation;
  - (iii) A farmer, married with three children and the sole bread-winner;
  - (iv) Was remanded in custody for 20 days from 3 April 2013 to 23 May 2013.
  
7. I start with a sentence of 5 years imprisonment. I add 3 years for the aggravating factors, making a total sentence of 8 years imprisonment. I deduct 2 years for the mitigating factors, leaving a balance of 6 years imprisonment.
  
8. Surend Chand, for the manslaughter of your younger brother Jai Chand, I sentence you to 6 years imprisonment, with a non-parole period of 4 years imprisonment.
  
9. I am not suspending the sentence, to make it known to the public that, human life is not a matter to play around with, by using an iron rod to settle a dispute. Those who intent to cause others serious

harms, run the risk of a custodial sentence, if they are found guilty of manslaughter. This case is a warning to other would-be offenders.



**Salesi Temo**  
**JUDGE**



**Solicitor for the State** : **Office of the Director of Public Prosecution, Labasa.**  
**Solicitor for the Accused** : **Maqbool & Company, Solicitors, Labasa.**