

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 22 of 2015

STATE

v.

WATI APENISA

Counsel: Ms. S. Kant for the State
Ms. M. Tarai (L.A.C.) for the accused.

Dates of hearing: 20 Feb, 12 April, 1 & 14 May, 11 & 25 June, 2015

Date of Sentence: 17 June, 2015

SENTENCE
Infanticide

1. The accused entered an unequivocal plea of guilty to one count of infanticide before this Court on 14th July, 2015. She had originally been charged with murder of her newborn baby until the State reduced the charge on representations from her counsel.

2. The charge particularizes that on the 8th November 2014 in the Lau Group, Southern Division, she willfully caused the death of her newborn baby under the age of 12 months by disposing of it inside a pit toilet when at the time the balance of her mind was disturbed by reason of her suffering from severe depression.
3. The accused lived in Moala in the Lau Group, she was a housewife aged 38 years at the time. In the morning of the 8th November 2014 while she was attending to household duties, her baby was suddenly born in a bathroom. Neighbours saw the accused leave the bathroom and drop the baby into the pit toilet and close the lid before she returned to the bathroom.
4. The accused was a widow with 7 children between the age of 3 and 19 years. She had been educated to Form 1 but had to finish her education because of family financial constraints.
5. The accused had become pregnant with this child during a relationship she had with a married man who was a farmer aged 44. He knew of the pregnancy.
6. A post mortem was conducted on the baby and the findings were that the child was “full term newborn” but further findings were impossible because of putrefaction of the body.
7. When interviewed under caution by the Police she said that she had killed her baby because she feared the anger of her relatives that she a widow with children had had an affair with a married man also with children.
8. The accused was psychiatrically examined by order of the Court by a medical officer at St. Giles Hospital (a specialist psychiatric

institution). The detailed report provided to the Court evidences a thorough examination of the circumstances and background of the accused, and concludes after a discussion of a comprehensive interview of the patient, that although she is fit to plead to the charge she was affected by “severe depression” at the time of the offence.

9. Counsel for the accused has provided detailed written submissions in mitigation. Reference is made to her two eldest children who are studying in Viti Levu and to her younger children in Moala to where she wishes to return. She has a mother who is sickly and partially blind and counsel reminds the Court that she has been totally co-operative with the authorities during the investigation process.
10. The penalty for this offence is as if it were an offence of manslaughter which means the maximum is a term of 25 years and the tariff would be between a suspended sentence and 12 years imprisonment. However non-custodial sentences are the usual penalties for this offence: suspended sentences, community service or probation are common.
11. Of course it is a tragedy that the life of a newborn should be extinguished within minutes through no fault of its own but that must be balanced against the welfare of the mother, a mother who was uneducated, unsophisticated and with no obvious web of support
12. As Goundar J. said in **Teruia Eketi** HAC 28/2011(Lbs):

“I take into account your social circumstances. Unlike women in urban centres, you did not have access to proper health care and support during pregnancy. Women in rural communities no doubt

lack basic health care and support. They are vulnerable to offending associated with childbirth due to their disadvantaged background”.

13. The effect of lack of support and desperation on a woman carrying a child which she perceives to have been conceived in disgrace is profound and the subject of many a psychological treatise. It is not for this Court to discuss it but to recognize it.
14. This accused was in a deprived unsupporting rural environment, having 7 children and a sickly elderly mother to care for. All consideration must be given to her welfare and to her rehabilitation.
15. A custodial term would serve no purpose either for her or for public expectation.
16. This Court orders that she live in her home village of Moala and be on probation for a period of two years. It is also ordered that she be under the supervision of a welfare officer from the Social Welfare Department who visits Moala periodically. All conditions pertaining to her bail hitherto are removed.



At Suva
17 July, 2015

A handwritten signature in black ink, appearing to read "P. K. Madigan".

P. K. Madigan
Judge