

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 247 OF 2013S

**STATE**

**vs**

**JESSICA JASMINE JOAN HILL**

**Counsels** : Mr. T. Qalinauci and Mr. A. Paka for State  
Mr. R. Vananalagi for Accused

**Hearings** : 4, 5 and 6 May, 2015

**Summing Up** : 7 May, 2015

**Judgment** : 7 May, 2015

**Sentence** : 12 August, 2015

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**SENTENCE**

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1. In a judgment delivered on 7 May 2015, the court found you guilty and convicted you on the following information :

**COUNT ONE**

***Statement of Offence***

**MANSLAUGHTER**: Contrary to section 239 of the Crimes Decree No. 44 of 2009.

***Particulars of Offence***

**JESSICA JASMINE JOAN HILL** on the 24<sup>th</sup> day of May, 2013 at Nasinu in the Central Division, drove a motor vehicle with registration number FB 073 along

Nokonoko Roundabout in a manner that caused the death of **SEREANA LESI PRATAP**, and at the time of driving, the said **JESSICA JASMINE JOAN HILL** was reckless as to the risk that her conduct would cause serious harm to another.

### COUNT TWO

#### *Statement of Offence*

**DANGEROUS DRIVING OCCASIONING GRIEVOUS BODILY HARM** : Contrary to section 97 (4)(c) and section 114 of the Land Transport Act 35 of 1998.

#### *Particulars of Offence*

**JESSICA JASMINE JOAN HILL**, on the 24<sup>th</sup> day of May, 2013 at Nasinu in the Central Division, drove a motor vehicle with registration number FB 073 along Nokonoko Roundabout, which was involved in an impact occasioning grievous bodily harm to **JOKAPECI BALE**, and at the time of the impact **JESSICA JASMINE JOAN HILL** was driving in a manner dangerous to another person or persons.

### COUNT THREE

#### *Statement of Offence*

**FAILURE TO UNDERGO BREATH ANALYSIS UPON DIRECTION OF A POLICE OFFICER** : Contrary to section 103(1)(b) and section 114 of the Land Transport Act 35 of 1998 and section 103(1A) of the Land Transport (Amendment) Decree No. 74 of 2012.

#### *Particulars of Offence*

**JESSICA JASMINE JOAN HILL**, on the 25<sup>th</sup> day of May, 2013 at Nasinu in the Central Division, upon being required by a police officer namely **CPL 3472 Seniloli** to undergo breath analysis, failed to provide a sufficient specimen of breath in such a way for the said analysis to be carried out and satisfactorily achieved.

2. The brief facts of the case were as follows: The female deceased, Sereana Lesi Pratap, was aged 38 years old on 24 May 2013. She was returning from a school concert and dinner at Laucala Bay at about 11pm on 24 May 2013. She was driving a motor vehicle registration no. VM 385. Inside the car in the front passenger seat was her daughter, Natasha. Behind the driver was Natalia, in the middle was Jokapeci Bale, and then Safaira Tiko (PW2) beside the

left rear door. They returned via Grantham Road, the bailey bridge, up Nokonoko Road, and around the roundabout connecting Ratu Dovi Road and Nokonoko Road.

3. The deceased was driving VM 385 from Nokonoko Road, round the roundabout towards the Nadera side. Suddenly the loud speeding noise of a car was heard by PW2 and Sakeo Wainui (PW1), coming from Nokonoko Road. According to PW1, he saw the car speeding from Nokonoko Road, on the wrong side of the road, and “flew” towards the roundabout approaching it on the wrong side. The car (black in colour) landed and bounced up again and landed again on the side of the concrete middle of the roundabout. The deceased’s car, VM 385 was positioned travelling towards the Nadera side, in front of the black car, registration no. FB 073.
4. The black car then speed towards VM 385, and with its front, smashed into the driver’s door of VM 385, and part of its right rear door. The force of the impact pushed VM 385 off the roundabout, over the footpath, over a drain and onto a concrete retaining wall. The black car’s front was “glued” to the right side of VM 385’s driver’s door, and part of the right back door. It also went off the roundabout, and over the footpath. The black car was driven by the accused, and there was no passenger therein. In VM 385, there was the driver and four other girls, who were allegedly knocked unconscious, as a result of the accident. Sereana Lesi Pratap, who was driving VM 385 at the time, suffered massive brain, liver and other injuries, and died at the scene. Jokapeci Bale (PW8) was knocked unconscious and suffered a fractured jaw, a fractured cheek bone and other injuries. She regained consciousness in CWM Hospital after the accident.
5. The accused when she came out of the car, smelt heavily of liquor. She was taken by police to Nabua Police Station to be tested for drunk driving. At Nabua Police Station, Corporal 3472 Seniloli, on 25 May 2013, requested the accused to provide a sample of her breath for analysis on the Dragger Alcotest 7110 machine. The accused failed to provide a sample of her breath for analysis on the dragger machine. A police investigation was carried out. On 27 May 2013, the accused appeared in the Nasinu Magistrate Court charged with the offences contained in the Information.
6. On the first count of “manslaughter”, I said the following in **State v. Vilikesa Rinavuaka**, Criminal Case No. HAC 239 of 2012S :

*“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)*

*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 Videi, 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. On the second count of “dangerous driving occasioning grievous bodily harm”, the maximum sentence applicable is a \$2,000 fine or a 2 years prison sentence, with a 12 months disqualification from driving (sections 97(4) (c) and 114 of the Land Transport Act 1998).
8. On the third count of “failure to undergo a breath analysis upon the direction of a police officer”, the maximum sentence applicable, for a first offence, is a \$2,000 fine or a 2 years prison sentence, with a mandatory disqualifications from driving from 3 months to 2 years (sections 103(1)(b) and 114 of the Land Transport Act 1998 and section 103(1A) of the Land Transport (Amendment) Decree No. 74 of 2012).
9. In this case, the aggravating factors, were as follows:
  - (i) A person driving a motor vehicle on any Fiji road is in charge of an instrument capable of unleashing extreme violence on other road users, if he or she is not careful. It is equivalent to a person walking down the street, with a loaded pistol in his or her hand. One wrong or careless move will result in an innocent bystander being seriously

wounded or killed. In this case, you drove your motor vehicle, at the material time, with extreme recklessness and with no regard whatsoever for the safety of other road users. You sped along Nokonoko Road, obviously at a very high speed, went onto the wrong side of the road, and collided with the deceased's vehicle. The deceased, who was driving her car, at the time, was correctly and legally navigating the Nokonoko Road/Ratu Dovi Road roundabout. The deceased suffered massive brain, liver and other injuries, as a result of your reckless act. She died at the scene. All the four girls travelling with the deceased in her car, were knocked unconscious, as a result of your reckless act. One of them, Jokapeci Bale, suffered a fractured jaw and cheek bone. You smelt heavily of liquor when you were apprehended. The degree of violence you unleashed on other road users, at the time, was in the high, and there was no provocation at all.

- (ii) Through your offending, you had deprived the deceased's husband of a wife, their two daughters a mother, and you have caused this family a lot of heartache and sadness. They are paying for your reckless driving on 24 May 2013 with the loss of a wife and mother. You must therefore not complain when your liberty is taken away to pay for your crime. In addition to the above, Jokapeci Bale, also suffered with a fractured jaw and cheek bone.
- (iii) Your offending cost the deceased's family \$80,000 worth of property damage, when their Toyota Camry V6 model appeared written off. The deceased's daughter's medical bills came to about \$2,000. So your offending had not only caused emotional sufferings to the deceased's family, it had also caused them financial loss.
- (iv) As had been mentioned above, you smelt heavily of liquor when apprehended. You refused to co-operate with police in carrying out a breath analysis test, hence the charge in count no.3. Obviously, you were drunk when you were driving at the material time. This appeared to be an important factor in causing you to drive recklessly at the material time.

10. The mitigating factors in this case were as follows:

- (i) At the age of 28 years, this was your first offending;

(ii) This case had been hanging over your head since 27 May 2013, that is, in the last 2 years 3 months, and that in itself, was a punishment in itself;

(iii) You are an accountant by profession, and was married in December 2014.

11. On the "manslaughter" charge (count no.1), I start with a sentence of 6 years imprisonment. I add 3 years for the aggravating factors, making a total of 9 years imprisonment. I deduct 1 year for being a first offender, leaving a balance of 8 years imprisonment. I deduct another 1 year for the other mitigating factors, leaving a balance of 7 years imprisonment. On count no.1, I sentence you to 7 years imprisonment.

12. On the "dangerous driving occasioning grievous bodily harm" charge (count no.2), I sentence you to 9 months imprisonment, and you are disqualified from driving for 12 months, effective forthwith.

13. On the "failure to undergo a breath analysis upon the direction of a police officer" charge (count no.3), I sentence you to 9 months imprisonment, and you are disqualified from driving for 2 years, effective forthwith.

14. The summary of your sentences are as follows:

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|-------|---|---|--|
| (i)   | Count No. 1 - Manslaughter  | : | 7 years imprisonment.  |
| (ii)  | Count No. 2 - Dangerous Driving<br>Occasioning Grievous<br>Harm                             | : | 9 months imprisonment, and<br>disqualified from driving for<br>12 months, effective forthwith. |
| (iii) | Count No.3 - Failure to undergo<br>Breath Analysis upon<br>Direction of a police<br>officer | : | 9 months imprisonment, and<br>disqualified from driving for<br>2 years, effective forthwith.   |

15. Because of the principle of totality of sentencing, I direct that all the above sentences to be made concurrent to each other, that is, a final sentence of 7 years imprisonment. The disqualification period in count no.2 and 3 are to be made consecutive to each other, that is, a total disqualification period of 3 years, effective forthwith.
16. Ms. Jessica Jasmine Joan Hill, for the “manslaughter of Mrs. Sereana Lesi Pratap” (count no.1), “driving dangerously causing Jokapeci Bale grievous bodily harm” (count no.2) and “failing to undergo a breath analysis when required by a police officer” (count no.3), I sentence you to 7 years imprisonment, with a non-parole period of 5 years imprisonment, effective forthwith. In addition, you are disqualified from driving any motor vehicle for a period of 3 years, effective forthwith. You are to surrender your driving license immediately.
17. This sentence is a warning to all those who drive recklessly on our roads, and cause death to others.



  
**Salesi Temo**  
**JUDGE**

**Solicitor for State**  
**Solicitor for Accused**

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**Office of the Director of Public Prosecution, Suva.**  
**R. Vananalagi, Barrister & Solicitor, Suva.**