

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 086 OF 2015S

STATE

vs

MIKAELE SALUSALU

Counsels : Mr. S. Vodokisolomone for State
Ms. L. Ratidara for Accused
Hearings : 4 and 25 September, 2015
Sentence : 15 October, 2015

SENTENCE

1. On 4 September 2015, in the presence of your counsel, you pleaded guilty to the following information:

Statement of Offence

MANSLAUGHTER: Contrary to section 239(a), (b) and (c)(ii) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MIKAELE SALUSALU on the 6th day of February 2015, at Wainiyavu Village, Namosi, Navua in the Southern Division, engaged in a conduct namely hitting, punching and pushing **SUWANI LIMANITODONU** thereby causing his death, and at the time of engaging in that conduct, **MIKAELE SALUSALU** was reckless as to a risk that his conduct will cause serious harm to **SUWANI LIMANITODONU**.

2. The brief facts of the case were as follows. On 6 February 2015, the deceased was aged 59 years old, and a farmer in Namosi, Navua. The accused was 24 years old, and residing with his parents in the same village the deceased resided in. The accused reached class 8 level education, and was a dalo and yaqona farmer. It was rumoured in the village that the deceased was practicing “witchcraft”, by dancing naked towards the village grave, in a river, when there was a full moon. The accused had previously seen the deceased doing the above in a nearby river four times.
3. The accused’s father had suddenly being taken ill. The accused suspected it was the result of the deceased practicing witchcraft. On 6 February 2015, at about 3am, the accused saw the deceased dancing naked in a nearby village river, and he was facing the village grave. It was a full moon night. The accused was returning from drinking grog with friends. He got a bamboo stick, walked towards the deceased in the river, and struck his back repeatedly with the stick. He also repeatedly punched the deceased on the ribs, stomach and back. He later pushed the deceased wherein he fell on a stone. He later left the scene. The deceased, as a result of the accused’s assault, suffered massive internal injuries and later died on 12 February 2015.
4. The court then checked with defence counsel to see that the accused is admitting to all the elements of “manslaughter”, as contained in the information. Defence counsel, on behalf of his client, admitted that on 6 February 2015, the accused repeatedly hit the deceased’s back with a bamboo stick, and repeatedly punched him in the ribs, stomach and back and then pushed him wherein he fell on a stone (ie. engages in conduct). Defence Counsel also admitted, on behalf of the accused that, “the above conduct” by the accused caused serious internal head and body injuries to the deceased, that lead to his death on 12 February 2015, and he was reckless as to a risk that the above conducts will cause serious harm to the deceased. As a result of the above, the court found the accused guilty as charged, and convicted him accordingly.
5. In **State v Arthur James Kamoe Moore**, Criminal Case No. HAC 114 of 2010S, High Court, Suva, I said 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*”

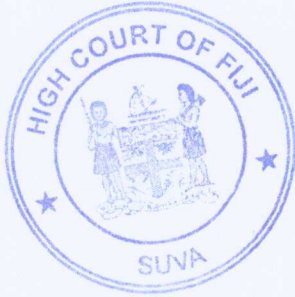
Rasalusalu Criminal Case No. HAC 003 of 2003, High Court, Suva. The actual sentence passed will depend on the presence or otherwise of strong mitigating and/or aggravating factors..."

6. The aggravating factors in this case, were as follows:
 - (i) The use of extreme violence to resolve a problem. In this case, you suspected that the deceased practiced witchcraft on your father, and as a result, in your view, he became sick. There was no scientific proof that the deceased's alleged witchcraft caused your father's sickness. Yet, you used this as an excuse to assault the deceased. At the material time, you saw him dancing naked in a river towards the village grave, under the full moon. You then went to him with a bamboo stick, hit his back repeatedly and punched him repeatedly on the ribs, stomach and back and pushed him wherein he fell on a stone. As a result, you caused him serious internal injuries, wherein he died five days later. Your violence was uncalled for. You should have reported the deceased to the police. For your violence, you will have to lose your liberty to atone for your crime;
 - (ii) By offending against the deceased, you have showed utter disregard to his right as a human being, and especially so, his right to life;
 - (iii) By your offending, you have caused sadness and heart-ache to his family.

7. The mitigating factors, were as follows:
 - (i) At the age of 24 years, this is your first offence;
 - (ii) Although you pleaded guilty to the charge approximately 6 months after first call in the High Court, you nevertheless saved the court's time;
 - (iii) You have been remanded in custody from 19 February 2015, approximately 8 months ago.

8. I start with a sentence of 6 years imprisonment. I add 2 years for the aggravating factors, making a total of 8 years imprisonment. For being remanded in custody for 8 months, I deduct the same from the 8 years, leaving a balance of 7 years 4 months imprisonment. For being a first offender, I deduct 1 year 4 months, leaving a balance of 6 years imprisonment. For pleading guilty, I deduct 2 years, leaving a balance of 4 years imprisonment.

9. Mr. Mikaele Salusalu, for the manslaughter of Mr. Suwani Limanitodonu on 6 February 2015, at Namosi in the Southern Division, I sentence you to 4 years imprisonment, with a non-parole period of 3 years imprisonment, effective forthwith.



Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for Accused : **Legal Aid Commission, Suva.**