

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

Criminal Case No. HAC 333 of 2018

BETWEEN : STATE

AND : RATU SEMI KABAKABA DEGEI

Counsel : Ms S Lodhia & Mr Z Zunaid for the State
Ms L David for the Accused

Date of Hearing : 26 March 2019

Date of Sentence : 24 May 2019

SENTENCE

[1] Ratu Semi Kabakaba Degei, you have pleaded guilty to the following charges:

Count 1 - Manslaughter contrary to section 239(a) & (b) (c) (ii) of the Crimes Act 2009.

Count 2 - Dangerous driving occasioning grievous bodily harm contrary to sections 97(4)(c) & 114 of the Land Transport Act 1998.

Count 3 - Driving a motor vehicle whilst there is present in the blood a concentration of alcohol in excess of the prescribed limit contrary to sections 103(1)(a) & 114 of the Land Transport Act 1998.

- [2] After hearing you and your counsel, the Court is satisfied that your guilty pleas are informed and unambiguous. The Court accepts your guilty pleas and convicts you of all three charges.
- [3] I now pronounce your sentence. The facts upon which I base your sentence are as follows.
- [4] The incident occurred on 24 August 2018 at around 7.30 am. The victims were innocent pedestrians walking on the footpath along the Kings Road near Nakasi when you lost control of your vehicle and drove onto the footpath killing one person and seriously injuring the other. After the impact the vehicle landed in a drain next to the footpath. You got out of the vehicle disoriented and started to walk towards the main road when your spouse got hold of you. The incident occurred closed to your home. You requested your spouse to accompany you to a police station.
- [5] You surrendered yourself at Nakasi Police Station. At around 9.30 am, a police officer conducted a breathalyzer test on you. The test result showed that you had 50 micrograms, that is, 110 milligrams of alcohol in 100 millilitres of breath. The prescribed limit is 80 milligrams in 100 millilitres of blood. You exceeded the limit by 30 milligrams.
- [6] Around 5 pm the same afternoon, you were interviewed under caution by the police. You offered to explain your conduct in your statement to the police. You said that the previous night you were at Navuso, Naitasiri attending a funeral of a relative. After the funeral you consumed kava and liquor with your friends. You left Navuso in the early hours to return home without sleep or rest.
- [7] By the time you were close to your home, the Kings Road was already busy with early morning traffic and public. You lost control of your vehicle and drove from the left to the right lane and then onto the footpath before hitting two pedestrians.

- [8] The two victims are Rajesh Chand and Kazal Kalpana Kumari. They were on their way to catch a public transport to go to work that morning. Both were neighbours living at Salim Street in Nakasi. They were also work colleagues. They were employees of RC Manubhai.
- [9] Rajesh was walking ahead of Kazal when the impact occurred. When he realized a vehicle was heading towards them, he called out Kazal's name to alert her. Those were the last words of Rajesh. He was killed instantly by the impact. Kazal was knocked out unconscious with serious injuries to her leg. Before the impact a witness saw a speeding vehicle. Independent vehicle test ruled out any mechanical defects in the vehicle.
- [10] Rajesh was 32 years old and a single father. He was separated from his spouse and living with his widowed mother and a young child (a daughter). He was their only source of financial support. Rajesh sustained serious injuries to his upper left body. His left arm and ribs were fractured. His lungs collapsed due to blood clots in the chest. The impact was fatal for him. He died at the scene.
- [11] Kazal is 26 years old. Although she survived the impact she sustained injuries to her head, elbow and leg. Her right leg was fractured. She was hospitalized for eight days. She required daily care and support for a period of time. She is now able to walk but limps. She broke up her relationship with her fiancé because she did not want to be a burden on her partner. She is still receiving orthopaedic treatment to fully recover.
- [12] You are 30 years old and married with three children – one son and two daughters. All your three children are under the age of 7 years. Your spouse is a registered nurse.
- [13] You are a member of the Territorial Force with Fiji Army and a farmer by profession. You own a farm in Seaqaqa, Vanua Levu growing yaqona, cassava and cash crops for a living. You earn about \$200.00 per week by selling crops.

[14] Your character before the incident is exemplary. You have contributed significantly to the community by involving in various community projects. You coach youths Martial Art and rugby. You are involved in community projects for sugar cane farming in your province of Macuata, Vanua Levu. Your character witnesses have described you as a loving family man and a good human being.

[15] I have no reservation that it is out of character for you to disobey the law. However, you made a conscious decision to go behind the wheel of a motor vehicle after drinking alcohol and without sleep or rest. You may not have intended to cause serious harm to anyone but you were reckless as to the risk that your conduct will cause serious harm to someone. You were aware of that risk, but you did not care. You drove your motor vehicle in a speed while intoxicated and killed one person while seriously injuring the other.

[16] In assessing the objective seriousness of your offending I take into account the maximum penalty prescribed for the offences. They are as follows:

1. Manslaughter – 25 years’ imprisonment.
2. Dangerous driving occasioning grievous bodily harm - \$2000 fine/2 years’ imprisonment and disqualification for 12 months.
3. Driving a motor vehicle whilst there is present in the blood a concentration of alcohol in excess of the prescribed limit - \$2000 fine/2 years’ imprisonment and mandatory disqualification for 3 months to 2 years.

[17] There is no specific tariff for homicide by a motor vehicle. I have been referred to two similar cases in which the offenders were convicted of manslaughter by driving a motor vehicle while intoxicated. Both were contested cases. In *State v Hill* - Sentence [2015] FJHC 583; HAC247.2013S (12 August 2015), the offender was sentenced to 7 years’ imprisonment with a non-parole period of 5 years, while in *State v Gounder* - Sentence [2018] FJHC 33; HAC194.2016S (30 January 2018), the offender was sentenced to 8 years’ imprisonment with a non-parole period of 7 years. In the case of *Hill*, the Court of Appeal upheld the sentence of 7 years’ imprisonment for manslaughter and said at [62]-[64]:

- [62] Road accidents cause immense human suffering. Every year, a considerable number of people are killed and seriously injured. This represents a serious economic burden. It is understandable that cases of serious driving offences causing death are referred to courts by the DPP in the form of Manslaughter because he considers that the prescribed sentence and tariff for Causing Death by Dangerous Driving is unduly lenient.
- [63] Motor manslaughter cases cause particular difficulty for sentencers. By definition, it is one which always gives rise to extremely serious harm. Understandably this often leads to calls from victims' families, and from the wider community, for tough sentencing. On the other hand, an offender sentenced for causing death by reckless driving did not intend to cause death or serious injury, even in the extreme case where he or she deliberately drove for a prolonged period with no regard for the safety of others. Therefore, the sentencing should strike an appropriate balance between the level of culpability of the offender and the magnitude of the harm resulting from the offence.
- [64] A factor that courts should bear in mind in determining the sentence which is appropriate is the fact that it is important for the courts to drive home the message as to the dangers that can result from dangerous driving on the road. It has to be appreciated by drivers the gravity of the consequences which can flow from their not maintaining proper standards of driving. Motor vehicles can be lethal if they are not driven properly and this being so, drivers must know that if as a result of their driving dangerously a person is killed, no matter what the mitigating circumstances, normally only a custodial sentence will be imposed. This is because of the need to deter other drivers from driving in a dangerous manner and because of the gravity of the offence. [*R v Cooksley* (supra)].(*Hill v State* [2018] FJCA 123; AAU109.2015 (10 August 2018) per Aluthge JA).

[18] I endorse and adopt the above guidelines. I think on the facts of this case a custodial sentence is appropriate for the purpose of general deterrence. The courts have a duty to protect the public from drunk and reckless drivers. In the present case you were not only drunk but tired due to sleep deprivation. Speed was also involved. You created a dangerous situation and you took the risk of causing serious harm to other road users. It is this conduct that the court denounces.

[19] A widowed mother will never see her son again and a young child will now grow up without a father. The physical and emotional harm that you have caused to Rajesh's family is enormous. I consider the following as aggravating factors:

1. Pedestrians were put at risk at a busy time of the day.
2. One pedestrian sustained fatal injury while the other sustained serious injury to her leg.
3. There was a degree of speeding involved before the impact.
4. The level of intoxication was high.
5. There was a degree of sleep deprivation.

[20] I consider the following as mitigating factors:

1. Previous good character.
2. No history of bad driving.
3. Voluntary surrender to police immediately after the incident.
4. Cooperation with the police.
5. Early guilty plea consistent with admission to police.
6. Expression of genuine remorse.
7. Apology to the victims or their family in open court.
8. Saving court's time and resources.

[21] I give a one third discount for the early guilty plea, genuine expression of remorse and saving the court's time and resources. After adjusting the sentence for aggravating and mitigating factors, I sentence you as follows:

1. Manslaughter – 4 years' imprisonment.
2. Dangerous driving occasioning grievous harm – 12 months' imprisonment and 6 months disqualification from driving.
3. Driving a motor vehicle whilst there is present in the blood a concentration of alcohol in excess of the prescribed limit – 3 months' imprisonment and 12 months disqualification from driving.

[22] All sentences are made concurrent. The total effective sentence is 4 years' imprisonment and 12 months disqualification from driving. I have made a downward adjustment to your sentence to reflect the two months you had spent in custody on remand. The prospect of rehabilitation is high. I decline to fix a non-parole period.

[23] Thirty (30) days to appeal.



A handwritten signature in blue ink, appearing to be "D. Goundar", written over a horizontal line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Office of Legal Aid Commission for the Accused