IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 93 of 2019

[CRIMINAL JURISDICTION]

STATE

V

CHRISTOPHER NARAYAN

Counsel	**:**	Ms. J. Fatiaki for the State Ms. S. Hazelman with Mr. A. Waqanivavalagi for the Accused
Hearing on	**:**	31 March - 03 April 2020
Summing up on	**:**	03 April 2020
Judgment on	**:**	20 April 2020
Sentenced on	**:**	15 May 2020

SENTENCE

1. Christopher Narayan, you stand convicted of the offence of manslaughter contrary to section 239 of the Crimes Act 2009.

2. You were tried before assessors for the murder of your two and a half year old daughter and for common assault on the second prosecution witness who was the deceased's mother. The assessors' unanimous opinion was that you were guilty of murder and also for common assault as charged.

3. However, this court found you not guilty of the two offences you were charged with, but instead, found you guilty and accordingly convicted you for the offence of manslaughter in relation to the first count of murder.

4. Though the trial commenced with three assessors, on the last day of the trial, on 03/04/20, one assessor was unable to attend court due to the lockdown that was in force because of COVID-19 pandemic. Therefore, the trial proceeded with two assessors as it is permitted to do so in view of the provisions of section 203(2) of the Criminal Procedure Act 2009.

5. The summing up in this case was delivered and the assessors' opinions were recorded on 03/04/20. However, since the operation of the courts was obstructed due to COVID-19 pandemic during the following two weeks, the judgment had to be delivered on 20/04/20.

6. It should be noted that paragraph 54 of the judgment was amended after it was delivered for the purpose of clarity and completeness, and the parties were informed accordingly the next day. The said paragraph before and after amendment is provided below for the purpose of record;

> ***Initial paragraph***
> "As already discussed, the medical evidence led in this case suggests that there were multiple injuries noted on the external body of the deceased apart from the fractures noted in the right lower jaw and the ribs. These fractures no doubt would have caused immense pain. The deceased was unable to eat solid food due to the fracture in her jaw. PW4 said that the internal bleeding was mainly due to the injury to the liver and not seeking medical attention. Given these circumstances and also the timeline established through the medical evidence in this case, there is no way for the accused and also for PW2 for that matter, not to be aware of this condition of the deceased in the evening on 04/03/19 and to realize that the deceased needs immediate medical attention. I am mindful of the evidence given by the accused regarding the conduct of the deceased on 04/03/19 and the evidence of the second defence witness. I am unable to accept the defence evidence which suggests that the deceased did not show any sign of severe pain or distress that night."
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> ***Amended paragraph***
> "As already discussed, the medical evidence led in this case **establishes** that there were multiple injuries on the external body of the deceased **and**

that there were multiple bone fractures. These fractures no doubt would have caused immense pain **to the deceased**. The deceased was unable to eat solid food due to the fracture in her jaw. PW4 said that the internal bleeding was mainly due to the injury to the liver and not seeking medical attention. Given these circumstances and also the timeline established through the medical evidence in this case, there is no way for the accused and also for PW2 for that matter, not to be aware of this condition of the deceased in the evening on 04/03/19 **(at least by 8.00pm)** and to realize that the deceased need**ed** immediate medical attention**; irrespective of the manner in which the deceased sustained those injuries and irrespective of whether the accused is responsible for those injuries or not**. I am mindful of the evidence given by the accused regarding the conduct of the deceased on 04/03/19 and the evidence of the second defence witness. I am unable to accept the defence evidence which suggests that the deceased did not show any sign of severe pain or distress that night."

7. Briefly, the facts of this case were as follows. The deceased was two and a half years old (two years and five months) at the time of her death. You were her biological father and the biological mother was the second prosecution witness ("PW2"). PW2 and you were separated for some time due to a dispute, but during the time material to this case the two of you were living together with the deceased and another daughter of PW2 who was younger to the deceased. You were the head of the household.

8. According to the evidence led in this case, it was established that, by 8.00pm on 04/03/19, the deceased had sustained multiple injuries on her external body and multiple bone fractures. She had a fractured jaw and her ribs were fractured on three places. She had a difficulty to eat given the fractured jaw. Given the fractures on the ribs which she had sustained approximately between 2.00pm and 8.00pm that day, she had internal bleeding which finally led to her death around 2.00am the following morning. It was evident that the two and a half year old deceased had endured immense pain and suffering at least from 8.00pm on 04/03/19 until she succumbed to those injuries around 2.00am the following day.

9. The evidence did not establish beyond reasonable doubt that you are responsible for causing those injuries to her. However, it was established beyond reasonable doubt that, you being the deceased's father and also the head of the household and being aware of the deceased's condition on 04/03/19 as stated above, did not take steps for her to receive the necessary medical intervention. Given the proven facts of this case an irresistible inference could be drawn that you were reckless as to the risk of causing serious harm to the deceased by the conduct of yours on 04/03/19.

10. It is submitted by your counsel in the mitigation submissions filed on your behalf that you are 30 years old. You are separated from your wife (who is not PW2) and you have two children who are 06 years and 10 years old. Prior to being arrested for this matter, you have worked as a taxi driver and have also engaged in private business.

11. As the learned prosecutor had quite correctly pointed out in her sentencing submission, the primary purpose of sentencing you for this offence should be the denunciation of your conduct.

12. Your sentence should also serve as a deterrent, a lesson, for the parents out there that they should not let their offspring, who are born into this world due to choices they make, go through what the deceased in this case had to.

13. PW2 gave birth to the deceased because of the choices PW2 and you made in life. It was not the deceased's choice nor was her fault to be born into this would. The two and a half year old deceased deserved to be protected, loved and cared for as any other toddler. Her death caused due to the aforementioned injuries and the other external injuries found on her body during the post mortem examination, do not suggest that the deceased had received that protection, that love and that care.

14. In terms of section 239 of the Crimes Act read with section 3(4) of the Sentencing and Penalties Act 2009, the maximum punishment for the offence of manslaughter is 25 years imprisonment. In the case of ***Vakaruru v State*** [2018] FJCA 124; AAU94.2014 (17 August 2018) the Court of Appeal concluded that the sentencing tariff for the offence of manslaughter should be between 5 years and 12 years imprisonment.

15. I would select 05 years imprisonment as the starting point of your sentence.

16. The following will be considered as aggravating factors;
    a) the fact that the deceased was only two and a half years old at the time of her death; and
    b) the fact that you let the deceased suffer for around 06 hours due to the aforementioned severe injuries until she bled internally to death.

17. The only mitigating factor in this case is the fact you are a first offender. The other factors mentioned in the written submissions filed in mitigation on your behalf are your personal circumstances.

18. Given the aforementioned aggravating factors, I would add 03 years to your sentence and would deduct 01 year in view of the fact that you are a first offender. Your final sentence is therefore an imprisonment term of 07 years.

19. I hereby sentence you to a term of 07 years' imprisonment. I order that you are not eligible to be released on parole until you serve 05 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act. I have considered the overall circumstances of your offending and your personal circumstances in fixing the above non-parole period.

20. It was submitted that you have been in custody in view of this matter since 11/03/19. Accordingly, you have been in custody for a period of 01 year, 02 months and 04 days. In view of the provisions of section 24 of the Sentencing and the Penalties Act, the said period you were in custody shall be regarded as a period already served by you.

21. Accordingly, you are sentenced to 07 years' imprisonment with a non-parole period of 05 years. Considering the time spent in custody, the time remaining to be served is as follows;

    Head sentence – 05 years; 09 months; and 26 days
    Non–parole period – 03 years; 09 months; and 26 days

22. Thirty (30) days to appeal to the Court of Appeal.

Vinsent S. Perera
JUDGE

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