

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 356 OF 2018S**

**STATE**

**VS**

**VILIAME RAIBULU RATOTO**

**Counsels : Ms. S. Swartzika for State**

**Ms. T. Kean for Accused**

**Hearings : 24 and 25 August, 2020.**

**Sentence : 4 September, 2020**

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**SENTENCE**

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1. On 24 August 2020, the following information was put to the accused, in the presence of his counsel:

*“Count 1*

*Statement of Offence*

**MANSLAUGHTER: Contrary to section 239 of the Crimes Act 2009.**

*Particulars of Offence*

***VILIAME RAIBULU RATOTO on the 16<sup>th</sup> day of September, 2018 at Kanace Road, Nasinu in the Central Division, drove a motor vehicle registration number “EVENTS” along Kanace Road in a manner that caused the death of ARCHANA AMRITA CHAND and at the time of driving, the said VILIAME RAIBULU RATOTO was reckless as to the risk that his conduct would cause serious harm to another.***

**Count 2**

**Statement of Offence**

**MANSLAUGHTER: Contrary to section 239 of the Crimes Act 2009.**

**Particulars of Offence**

**VILIAME RAIBULU RATOTO on the 16<sup>th</sup> day of September, 2018 at Kanace Road, Nasinu in the Central Division, drove a motor vehicle registration number "EVENTS" along Kanace Road in a manner that caused the death of ANJULA CHAND and at the time of driving, the said VILIAME RAIBULU RATOTO was reckless as to the risk that his conduct would cause serious harm to another.**

**Count 3**

**Statement of Offence**

**BREACH OF ZERO ALCOHOL LIMIT: Contrary to section 105 (1) (b) and 114 of the Land Transport Act, 1998.**

**Particulars of Offence**

**VILIAME RAIBULU RATOTO on the 16<sup>th</sup> day of September, 2018 at Kanace Road, Nasinu in the Central Division, drove a motor vehicle registration number "EVENTS" along Kanace Road whilst there was present in 100 milliliters of his blood, a concentration of 1562.2 milligrams of alcohol which was in excess of the prescribed limit.**

**Count 4**

**Statement of Offence**

**DISOBEDIENCE OF LAWFUL ORDERS: Contrary to section 202 of the Crimes Act, 2009.**

**Particulars of Offence**

**VILIAME RAIBULU RATOTO on the 10<sup>th</sup> of July, 2018 at Nasinu Magistrate Court, in the Central Division, being given an order by the Nasinu Magistrate Court to be disqualified from driving for 6 months, disobeyed the said order by driving a motor vehicle registration number "EVENTS" on the 16<sup>th</sup> day of September, 2018 along Kanace Road."**

2. The charges were read and explained to the accused, and he said, he understood them. He then pleaded guilty to all the counts.

3. The prosecutor then read the following summary of facts to court:

**“BRIEF BACKGROUND:**

*The accused in this matter is VILIAME RAIBULU RATOTO, 32 years old of Khalsa Road, Newtown, Nasinu, Sound Engineer.*

*The first victim in this matter is ANJULA CHAND (deceased) 35 years old of Cunningham Stage 1, Domestic Duties.*

**OFFENCE:**

**Counts 1 and 2**

*At around 7 am on the morning of the 16<sup>th</sup> of September 2018, the accused VILIAME RATOTO was drinking (alcohol) Joskies with his friends at Newtown, Nasinu. The accused and his four friends drank 48 cans of (alcohol) Joskies till 12 pm that day.*

*The accused then at around 12 pm went home and decided to hand over his company vehicle registration “EVENTS”. The accused was accompanied by his friends namely Waise and Eiki. The accused was driving vehicle registration “EVENTS” whilst being intoxicated along Kanace Road at 70 km/ph when the said vehicle he was driving went off road and hit a crossing sign and then hit a mango tree.*

*After hitting the mango tree, the vehicle accused was driving spun and hit the complainants ANJULA CHAND (deceased) and ARCHANA AMRITA CHAND (deceased) who were walking along Kanace Road, Nasinu.*

*As the complainants were walking on the footpath along Kanace Road, Nasinu vehicle registration “EVENTS” driven by the accused collided with the complainants and as a result of the collision the complainants were thrown across the road.*

*Thereafter the complainants were rushed to the hospital where ARCHANA AMRITA CHAND had died the same day and ANJULA CHAND had died on the 19<sup>th</sup> of September 2018 (3 days later).*

*As the accident report was received, PC Binay had then attended to accident scene, drew the rough sketch plan and later drew the fair sketch plan. Herein attached and marked as “A” is the Rough Sketch Plan together with the fair sketch plan.*

*The accused person was arrested and taken to Nabua Police Station where a breathalyzer test was conducted by PC 3114 Waisea. Upon being tested for alcohol it was noted that the accused had 71 micrograms of alcohol present in his blood that was beyond the prescribed limit of 35 micrograms in 100 milliliters. Herein attached and marked as “B” is the Breath Test Analysis Certificate.*

*The post mortem of the deceased ANJULA CHAND was conducted by Dr Avikali Mate on the 20<sup>th</sup> of September 2018. The deceased ANJULLA CHAND according to the Post Mortem Report had suffered Intracranial Haemorrhage, Severe Traumatic Brain Injury and Multiple Skull Fractures. According to Dr Mate external cause of the*

*above injuries was as a result of a fatal road accident. Herein attached and marked as "C" is the Post Mortem Report.*

*The post mortem of the deceased ARCHANA AMRITA CHAND was conducted by Dr Avikali Mate on the 18<sup>th</sup> of September 2018. The deceased ARCHANA AMRITA CHAND according to the Post Mortem Report had suffered Haemopricardium and Ruptured Right Atrium. The significant cause of death noted by Dr Mate was multiple skull fractures, multiple traumatic injuries and extensive subarachoid haemorrhage. According to Dr Mate external cause of the above injuries was as a result of fatal road accident. Herein attached and marked as "D" is the Post Mortem Report.*

*The accident scene was photographed by PC 5345 Seru Ravia on the 16<sup>th</sup> of September 2018. Herein attached and marked as "E" is the photographic booklet of the accident scene.*

### **Count 3**

*The accused VILIAME RATOTO on the 16<sup>th</sup> of September 2018 drove vehicle registration "EVENTS" whilst being under the influence of 71 micrograms of alcohol in 100 milliliters of breath which is equivalent to 1562.2 milligrams of alcohol in 100 milliliters of blood whilst having a Provisional Drivers License. On the above date the accused possessed a provisional license no. 394927. Herein attached and marked as "F" is a copy of the Provisional License.*

### **Count 4**

*On the 10<sup>th</sup> day of July 2018, the following sentences were imposed on the accused VILIAME RATOTO in case no. CF 124 of 2018:*

- a) For count 1 – penalty of \$100 in default 5 days imprisonment.*
- b) For count 2 – penalty of \$200 in default 5 days imprisonment.*
- c) Compulsory disqualification of driving license for 6 months.*

*Despite the order imposed for compulsory disqualification of driving license for six months, the accused disobeyed the order by driving vehicle registration no. "EVENTS" on the 16<sup>th</sup> day of September 2018 which fell within the six month period of suspension. Herein attached and marked as "G" is the Sentence dated 10<sup>th</sup> July 2018.*

### **CAUTION INTERVIEW AND THE CHARGE:**

*The accused was then interviewed under Caution on the 17<sup>th</sup> day of September 2018 by interviewing officer PC 4255 Binay.*

*The accused gave his answers voluntarily and on his own free will in his caution interview.*

*The accused VILIAME RATOTO in his caution interview admitted in question and answer 28 and 29 that he had started drinking Joskies at 7 am on the 16<sup>th</sup> of September 2018 and stopped drinking at 12 pm.*

***The accused admitted that he had driven vehicle registration “EVENTS” on the 16<sup>th</sup> of September 2018 at around 12.15 pm in question and answer 47.***

***The accused further admitted in question and answer 56 to 62 that he was driving at 70kmph along Kanace Road and that he had lost control of the vehicle whilst driving on the date and time of the incident. Herein attached and marked as “H” is the caution Interview of the accused.***

***The accused was formally charged on the 18<sup>th</sup> of September 2018 by PC 5420 Apenisa where in question and answer 11, the accused admitted that he had driven the said vehicle under the influence of alcohol and as a result a life was lost. Herein attached and marked as “I” is the Charge Statement of the accused.”***

Prosecution Exhibit A to I had not been attached hereto, as a matter of convenience, but the same can be found in the court record.

4. The court then checked with defence counsel on whether or not the accused had admitted the above summary of facts. Counsel and the accused said, they admitted the above prosecution’s summary of facts, including the particulars of the offences in counts numbers 1, 2, 3 and 4, in the information. On the basis of the above admissions, the court found the accused guilty as charged on all counts and convicted him accordingly on those counts.
5. The prosecution then submitted that the accused had no previous criminal conviction, but had two convictions under the Land Transport Act 1998 on 10 July 2018. The first count was for “dangerous driving”, contrary to section 98(1) of the Land Transport Act 1998, and the second count was for “breach of zero alcohol limit”, contrary to section 105 (1) (a) and 114 of the Land Transport Act 1998. On the first count, he was fined \$100; on the second count, he was fined \$200. He was disqualified from driving for 6 months. The defence did not challenge the above submission.
6. The prosecution next submitted the accused’s antecedent report. It stated his name, his address at Khalsa Road, Newtown, his date of birth on 30 April 1998 and that he was married with five young daughters, aged 14, 12, 8, 6 and 4 years old. He reached Form 6 level education at Nasinu Secondary School and is working as a block layer, at present, earning \$260 per week for his family. The defence did not challenge the above submission.

7. The prosecution then submitted the Victim Impact Report. It was written by Ms. Ashika Chand, aged 31 years old, the two deceaseds' surviving sister. She said, she was absolutely devastated with the death of her two sisters. She said, their parents had passed on some years ago, and now her two sisters. She said, only she and a brother are left. She said, she was very close to her deceased sisters and they always depended on each other for emotional and social support. Now that they are gone, her whole life had changed for the worse. She said, she saw her sisters' badly injured bodies as a result of the motor vehicle accident. She was absolutely shocked. She said, she missed her sisters and ask for justice from the court. Defence counsel did not challenge the report.
  
8. On 25 August 2020, the defence presented their written plea in mitigation. They prepared well. Defence counsel said the accused was 32 years old, married with five young daughters aged 14, 12, 8, 6 and 4 years old. All the daughters are attending school, except the youngest one. She said, the accused is the sole breadwinner, working as a block layer to support his family. He earns \$260 per week. In mitigation, she said the accused is remorseful and as such, pleaded guilty to the offences. He co-operated with the police by admitting the offences when caution interviewed and charged by police. She said, the accused is a first offender on criminal matters, but admits having two previous traffic offence convictions. She said, after the incident, he went out of the vehicle to assist the victims, but was assaulted by bystanders. After the incident, he had joined the church and he apologizes to the victims' family. He asks for the court's forgiveness.
  
9. The most serious of the offences are the two manslaughter convictions. In the case of **State v Jessica Jasmine Joan Hill**, Criminal Case No. HAC 247 of 2013S, High Court, Suva (12 August 2015), I relied on the case of **State v Vilikesa Rinavuaka**, Criminal Case No. HAC 239 of 2012S, High Court, Suva, and I said the following:

***“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..."*

10. I relied on the same authorities in the case of State v John Subramani Gounder, Criminal Case No. HAC 194 of 2016S, High Court, Suva (30 January 2018). It must be noted that previous authorities had confirmed that sentences in the upper range were reserved for cases where the degree of violence was high and the provocation given was minimal. The word "violence" encompasses various forms and means, if you look at previous cases. It could include a punch, the use of a piece of timber or a weapon such as a spear, an iron rod, a cane knife, a chopper, a knife, a gun or a motor vehicle driven recklessly. All the above caused serious violence and harm to a person, leading to their deaths. In my view, the previous cases are saying that whatever the means that caused violence and harm to a person, the punishment must be the same, if the degree of violence used are high and the provocation given was minimal. In my view, the same approach must be given to motor vehicle manslaughter, as a matter of precedent and in order to protect the public.
11. "Breach of Zero Alcohol Limit", contrary to sections 105 (1) (b) and 114 of the Land Transport Act 1998, carried the following punishment. For a first offence, a maximum penalty of \$2,000 fine or 2 years imprisonment and mandatory disqualification from 3 months to 2 years. For a second offence, a maximum penalty of \$5,000 fine or 5 years imprisonment and mandatory disqualification from 6 months to 4 years imprisonment.
12. "Disobedience of Lawful Orders", contrary to section 202 of the Crimes Act 2009, carried a maximum penalty of 2 years imprisonment.

13. In this case, the aggravating factors were as follows:
- (i) **Reckless Driving Attitude.** The facts of this case clearly demonstrated a reckless attitude towards the driving of motor vehicles in this country. The accused obtained his provisional driving license on 23 July 2017. On the date of the incident on 16 September 2018, the accused had been driving for approximately 1 year 1 month 24 days. He did not have a full driver's license at the time. Yet, the facts show a complete disregard for the driving rules in this country. On 10 July 2018, 2 months 6 days before the incident, the accused was convicted in the Nasinu Magistrate Court for "dangerous driving", and "breach of zero alcohol limit". He was fined a total of \$300 and disqualified from driving for 6 months. That meant he was not allowed to drive any motor vehicle on 16 September 2018. Yet the facts showed he disregarded the above court orders. He drank liquor from 7 am to 12 pm on 16 September 2018. He chose to drive a motor vehicle while being absolutely drunk. By doing so, he broke the Nasinu Magistrate Court order mentioned above. He made a conscious choice to break the above orders. He drove the motor vehicle at 70kmp/h on Kanace Road. Any driver would know that such a speed is reserved for the highway, not Kanace Road, which is normally busy with pedestrians, in a highly populated area. By doing the above acts, that is, driving a motor vehicle at 70kmp/h on Kanace Road, while highly intoxicated and been legally banned from driving, he was unleashing a high degree of violence on the community, who had not provoked him. He was clearly exhibiting a reckless driving attitude towards the community, and he must not complain when he is punished according to law. His negative driving attitude was clearly an aggravating factor.
  - (ii) **The loss of two lives from the same family.** Because of the accused's negative driving attitude, he had taken away, not one, but two lives from the same family. One was 26 years old, and the other was 35 years old. You have caused untold misery to this family. You had shown no regard to the two deceaseds' right to life, as embodied in our 2013 Constitution. The deceaseds had suffered very severe injuries which led to their deaths. They are now dead, but you are still alive. You must not complain, when you are punished for your crimes.
  - (iii) By offending against the two deceaseds, you had deprived them of their right to life. You have caused heartache and sadness to their families.



14. The mitigating factors were as follows:
- (i) Although you pleaded guilty approximately 1 year 11 months after first call in the High Court, you nevertheless saved the court's time.
  - (ii) You had been remanded in custody for approximately 3 months, awaiting trial.
  - (iii) Although you had no previous criminal convictions, you had two previous convictions on traffic matters.
  - (iv) You co-operated with police when caution-interviewed and formally charged, by admitting the offences.
15. I will start with the more serious offence of manslaughter (count no. 1). I will start with a sentence of 6 years imprisonment. I add 5 years for the aggravating factors making a total of 11 years imprisonment. I deduct 3 months for time already served while remanded in custody awaiting trial, leaving a balance of 10 years 9 months. I deduct 3 months for no previous criminal convictions and 6 months for co-operating with police, leaving a balance of 10 years imprisonment. For pleading guilty, although after 1 year 11 months, I deduct 1 year, leaving a balance of 9 years imprisonment. On count no. 1 (manslaughter), I sentence you to 9 years imprisonment.'
16. On count no. 2 (manslaughter), I repeat the above process and sentence. On count no. 2, I sentence you to 9 years imprisonment.
17. On count no. 3 (breach of zero alcohol limit), I sentence you to 2 years imprisonment, and disqualified from driving for 4 years.
18. On count no. 4 (disobedience of lawful order), I sentence you to 1 year imprisonment.
19. The summary of your sentences are as follows:
- (i) Count No. 1 Manslaughter - 9 years imprisonment.
  - (ii) Count No. 2 Manslaughter - 9 years imprisonment.
  - (iii) Count No. 3 Breach of Zero Alcohol Limit - 2 years imprisonment, and disqualified from driving for 4 years.
  - (iv) Count No. 4 Disobedience of Lawful Order - 1 year imprisonment.

20. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, making a final sentence of 9 years imprisonment.
21. Mr. Viliame Raibulu Ratoto, for the manslaughter of Ms. Archana Amrita Chand and Ms. Anjula Chand on 16 September 2018, at Nasinu in the Central Division, including you “breaching the zero alcohol limit” and disobeying the Nasinu Magistrate Court order of 19 July 2018, I sentence you to 9 years imprisonment, with a non-parole period of 8 years imprisonment, effective forthwith. In addition, you are disqualified from driving for the next 4 years.
22. Pursuant to Section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner that is just in all the circumstances, to protect the community from reckless drivers like you, to deter other would-be reckless drivers and to signify that the court and the community denounce your offendings on 16 September 2018 at Nasinu in the Central Division.
23. You have 30 days to appeal to the Court of Appeal.



  
**Salesi Temo**  
**JUDGE**

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