

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 23 OF 2012

STATE

-v-

ALENA MAUSA

Counsel: Mr A. Datt for the State
Ms L. Volau with Ms Manueli for Accused

Date of Judgment: 12th February, 2018

Date of Sentence: 19th February, 2018

SENTENCE

1. Alena Mause, you were charged with Murder contrary to Section 237 of the Crimes Act. You pleaded not guilty to the charge. After a fully defended trial, Assessors found you guilty of Murder as charged.

2. The Court overturned the opinion of Assessors and accepted that at the time of the offence the balance of your mind was disturbed by reason of multiple stresses you were subjected to during your pregnancy and found you guilty of Infanticide. You were convicted for Infanticide accordingly.

3. You have had a difficult time during pregnancy. Your first partner deserted you after the birth of your first child. After that, your elder brother supported your first child. You became pregnant again as a result of a sexual encounter with a young man whom you had had a short relationship. This young man too deserted you making you pregnant. Your elder brother was not happy at your pregnancy and refused to support if you gave birth to another child. You were depressed and, fearing the displeasure of your elder brother on whom you were financially dependent, you concealed your pregnancy from your family and villages. You did not go to an ante-natal clinic. On the 7th January, 2012, you gave birth to a baby boy in the toilet and wrapped him up in a towel and threw him in the river. After the delivery, you were hospitalized for two days and upon being discharged from hospital you were interviewed by police under caution. You admitted killing the baby. The psychiatrist who evaluated you found that you were a mother who lacked adequate social and economic support and guidance during pregnancy. The Court found that at the time of the offence the balance of your mind was disturbed by reason of multiple stresses you were subjected to during pregnancy.

4. The maximum penalty for Infanticide is the same as that of Manslaughter [sections 244(3) of the Crimes Act], i.e, 25 years' imprisonment. In *State v Kesaravi Tinairatu Tumuri* (Criminal Case No. HAC 008 of 2001S) Her Ladyship Justice Shameem said the following:

“The tariff for infanticide cases in Fiji and in other Commonwealth countries is a non-custodial sentence with counseling or hospital orders. In R -v- Sainsbury (1989) 11 Cr. App.R(s), Current Sentencing Practice B1-63 the English Court of Appeal quashed a 12 month custodial term for an offence of infanticide committed by a 17 year old offender, saying that of 59 cases of infanticide in 10 years, all had resulted in orders of probation or supervision or hospital orders. The court said (per Russell LJ) that while the offence was a serious one “the mitigating features, in our judgment, were so overwhelming that without any hesitation whatever we set this sentence aside for it that which we think will best serve the interests not only of this appellant but of society as well.” A 3 year probation order was substituted.

Similarly in Australia, in R -v- Cooper (2001) NSWSC 769, a 21 years old offender, who pleaded guilty to infanticide, was ordered to enter into a good behaviour bond for four years with supervision and probation conditions, the sentencing judge holding “that a custodial sentence would be quite inappropriate to meet the circumstances of the case.”

In the Queen -v- Diseree Anne Wright (Ca 478/00) the New Zealand Court of Appeal said that infanticide cases in New Zealand usually led to two year supervision orders. This is the case in Fiji too. In State -v- Evangeline Kiran Nair Crim. Case No. 32 of 1989, the offender was bound over under section 42(1) of the Penal Code to be of good behaviour for 1 year.”

5. Recently, the Court of Appeal in **Merewalasi Baleiniusiladi** Criminal Appeal No: AAU 0070 of 2010 (High Court Case No: HAC 042 of 2009) at paragraph 43 adopted the above comments of Shameem J.
6. The aggravating factors in this case are that you took life of an innocent and highly

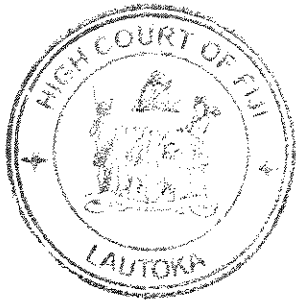
vulnerable infant when everybody expected you as his mother to protect and nurture the baby from the beginning. The manner, in which this young innocent life was lost, was also an aggravating factor.

7. However you have demonstrated strong mitigating factors. You are a first and young offender being 25 years old at the time of the offence. You are a single mother of two children. You have learnt a good lesson and promised not to do such a mistake again. You were repentant and begging for mercy of this court. The psychiatrist said how remorseful you were after this incident. Having learnt a lesson from this incident you were determined to give birth to another child. You have cared and nurtured this child for the past 3 years.
8. You cooperated with police and admitted your wrongdoing at the caution interview soon after arrest. From the beginning you were prepared to admit the offence of Infanticide. However, the DPP decided to prosecute you for Murder due to lack of psychiatric evidence as to your state of mind at the time of the offence.
9. You are from a poverty-stricken, socially disadvantaged family background. Social, economic and familial factors contributed to this offence. However, those factors should not be legitimate grounds to justify taking away the life of an innocent and highly vulnerable infant.
10. Having said that, I accept the submissions made by the State and your Counsel, that this is a case for a non-custodial sentence. The purpose of this sentence should be rehabilitation. A punitive term of imprisonment for someone who has already been subjected to deprivation, social disadvantage and mental agony caused by multiple stresses is not warranted.

11. Considering the aggravating and mitigating factors, I sentence you for two years' imprisonment suspended for two years.

12. After this unfortunate incident, you seem to have understood the responsibility of motherhood and shown ability to raise a child with care. Having considered the report and evidence of the psychiatrist I would not make further orders for counseling or probation.

13. If at any time during the operational period of suspended sentence of imprisonment, you commit another offence punishable by imprisonment, you are guilty of an offence.



Aruna Aluthge

Judge

At Lautoka

19th February, 2018

Solicitors: Director of Public Prosecution for State
Legal Aid Commission for Accused