

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 113 of 2014**

**STATE**

**V**

**DISIOLA KASEVU**

**Counsel** : Mr. T. Qalinauci for the State.  
: Ms. V. Diroiroi [LAC] for the Accused.

**Dates of Hearing** : 16, 17, 18 April, 2018  
**Closing Speeches** : 19 April, 2018  
**Date of Summing Up** : 20 April, 2018  
**Date of Judgment** : 23 April, 2018  
**Date of Sentence** : 27 April, 2018

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**SENTENCE**

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1. In a Judgment delivered on 23 April, 2018 this court found the accused guilty for the offence of Infanticide contrary to section 244 (1) of the Crimes Act.
2. The brief facts were as follows:
3. The accused who was 41 years of age living in the interior of Nadroga got pregnant out of wedlock, when she got pregnant she did not tell her mother or anyone about her pregnancy since she was afraid of her

mother and her brothers. She had been warned that if she got pregnant again she will have to leave the family house.

4. In the early hours of 13 August, 2014 the accused gave birth to a full term baby boy in the bush about 150 meters away from her house. After giving birth the accused tried to hold the baby and take him with her to the village but she could not because she was feeling weak all over, dizzy and unable walk. She crawled for 40 meters leaving her baby behind.
5. The baby died due to excessive loss of blood as a result of the partial tearing of the carotid artery on the right side of the baby's neck due to predation by animals.
6. Both counsel have filed helpful written sentence submissions for which the court is grateful.
7. When a woman is found guilty of the offence of Infanticide in accordance with section 244 (3) of the Crimes Act she may be dealt with and punished as if she had been guilty of manslaughter of the child. The maximum punishment for the offence of Manslaughter under section 239 of the Crimes Act is imprisonment for 25 years.
8. The Court of Appeal in *Merewalesi Baleiniusiladi vs. The State, Criminal Appeal No. AAU 0070 of 2010* reiterated the tariff for the offence of Infanticide by adopting the comments of Shameem J. in *State vs. Kesaravi Tinairatu Tumuri, Criminal Case No. HAC 008 of 2001S* at paragraph 43 as follows:

*“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 Russel 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 year old offender, who pleaded guilty to infanticide, was ordered to enter into a good behavior 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 behavior for 1 year.”

9. The following personal details and mitigation is available to the accused:
- (a) The accused was 41 years of age at the time of the offending;
  - (b) First offender and never married but single mother to two children;
  - (c) Co-operated with the Police during investigation;

- (d) The accused seeks the forgiveness of the court and is remorseful;
- (e) Acknowledges the wrongdoing and takes responsibility, the offence committed by the accused was out of character;
- (f) Victim of cultural, social and emotional failures;
- (g) The accused is supporting her two children and elderly mother from whatever she earns as a handicraft seller being an average of \$60.00 per week;
- (h) The accused promises not to reoffend she has learnt her lesson and also seeks the leniency of the court.

10. The aggravating factors are:

- (a) Premature loss of an innocent young life;
- (b) By a person who nurtured the child during pregnancy and was the protector of that life;
- (c) The manner in which that life was lost.

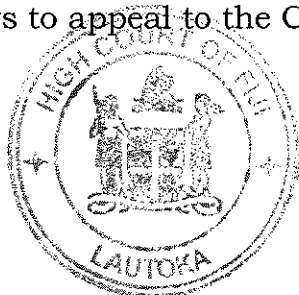
11. This is yet another sad case where an accused has suffered in silence without any social or emotional support from her family. Her ordeal began from the time she got pregnant. The accused is also a victim of a failed relationship when she needed the father of her child most he was not there for her. Moreover the fear of been chased out of the family home also took a toll on the accused as her pregnancy progressed. The mental agony caused by the effects of childbirth and the lack of ante-natal and post natal care and support cannot be ignored by this court.


12. However, this court would like to stress that causing the death of any human being in particular a newborn child is a very serious offence and such action cannot be condoned.

13. Bearing in mind the mitigating and aggravating factors of this case I am of the view that the community's need to see justice been done can be achieved by a non-custodial sentence.

### **ORDERS**

1. The accused is sentenced to 2 years imprisonment which is suspended for 3 years.\*
2. The accused is to undergo counseling organized or arranged by Empower Pacific.
3. The number of counseling sessions required is to be determined by the Counselor at Empower Pacific.
4. The counsel for the accused is to ensure that the accused is introduced to a Counselor at the Empower Pacific within 7 days from today.
5. A copy of this sentence is to be forwarded to the Director, Empower Pacific for his or her information and necessary action.
6. 30 days to appeal to the Court of Appeal.



  
**Sunil Sharma**  
**Judge**

\*Effect of suspension is explained to the accused.

**At Lautoka**

27 April, 2018

### **Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**