

**IN THE HIGH COURT OF FIJI AT SUVA**

**CASE NO: HAC. 207 of 2016**

**[CRIMINAL JURISDICTION]**

**STATE**

**V**

**SAMSON ROBINESH SHRI LAL**

**Counsel** : Ms. J. Fatiaki and Ms. B. Kantharia for State  
Mr. L. Qetaki & Ms. L. Ratidara for Accused

**Hearing on** : 05<sup>th</sup>-15<sup>th</sup> February 2018

**Summing up on** : 16<sup>th</sup> February 2018

**Judgment on** : 20<sup>th</sup> February 2018

**Sentence on** : 21<sup>st</sup> February 2018

**SENTENCE**

1. Samson Robinesh Shri Lal, you stand convicted of the offence of manslaughter contrary to section 239 of the Crimes Act 2009.
2. On 28/05/16 you unlawfully killed Lamuel Franklin Dass ("deceased") who was 48 years old. You and the deceased were friends. According to your cautioned interview statement, the deceased started punching you because he got angry when you tried to stop him from touching your mother-in-law's thighs. This happened inside your mother-in-law's house and you said in your evidence that before you came to her house both of you have been drinking alcohol and the deceased was more drunk than you. When the deceased was punching you, you

picked a knife and pointed at the deceased. You kept on pointing the knife at the deceased knowing that the deceased was drunk and was coming towards you. The deceased sustained an injury on the left side of the lower chest. This wound continued between the 8th and 9th rib cage causing more incised wounds on the deceased's spleen. You were aware of a substantial risk that your conduct will cause serious harm to the deceased and having regard to the circumstances known to you, it was unjustifiable for you to take that risk and engage in your aforementioned conduct.

3. I have concluded that your conduct was not a reasonable response in the circumstances of this case to defend yourself from the deceased. Provocation is not a defence for the offence of manslaughter but is a relevant factor when it comes to sentencing. Your cautioned interview bears evidence of provocation by the deceased. Violence on your part as reflected by the evidence against you is minimum.
4. Your counsel had submitted that you are 46 years old; you are self-employed as a handicraft seller; you are in a *de facto* relationship and you have a son from that relationship.
5. 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 *State v Dumukuro* [2016] FJHC 199; HAC27/2014 (23 March 2016) this court noted that the tariff for the offence of manslaughter is 5 to 12 years imprisonment.
6. Your counsel had requested this court to consider imposing a non-custodial sentence. The reason your counsel gave for making that request was that you have applied for a visa to go to Australia in order to look after your mother. The said reason or any other circumstance in this case does not justify imposing a non-custodial sentence.

7. I take 05 years imprisonment as the starting point of your sentence.
8. I consider the following as aggravating factors;
  - a) Use of a knife as a weapon; and
  - b) The deceased was vulnerable as a result of intoxication.
9. Considering the above aggravating factors, I add 03 years to your sentence. Now your sentence is 08 years imprisonment.
10. I consider the following as your mitigating factors;
  - a) You have no previous convictions;
  - b) The evidence of minimum violence on your part and the provocative conduct by the deceased; and
  - c) According to the facts as established by the prosecution, your conduct was not the sole or the principal cause of death.
11. In view of the above mitigating factors, I deduct 03 years of your sentence.
12. I hereby sentence you to an imprisonment term of 05 years. I order that you are not eligible to be released on parole until you serve 03 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
13. Section 24 of the Sentencing and the Penalties Act reads thus;

*"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*
14. You have been held in custody for a period of 67 days. The period you were in custody shall be regarded as a period of imprisonment already served by you in view of the provisions above. I hold that the period to be considered as served should be 02 months.

15. Accordingly, you are sentenced to 05 years imprisonment with a non-parole period of 03 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head sentence - 04 years and 10 months

Non-parole period - 02 year and 10 months

16. 30 days to appeal to the Court of Appeal.



Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.  
Solicitors for the Accused: Legal Aid Commission, Suva.