

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

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 065 OF 2008**

**STATE**

**-v-**

**SETEFANO NAUSU**

**Date of Hearing:** 6<sup>th</sup> July 2009

**Date of Sentence:** 7<sup>th</sup> July 2009

**Counsel:** Ms N. Tikoisuva for State  
Ms S. Vaniqi for Accused

**SENTENCE**

[1] Setefano Nausu, you have freely and voluntarily pleaded guilty to the following offences contained in the Amended Information:

**FIRST COUNT**

### **Statement of Offence**

**LARCENY FROM PERSON**: Contrary to Section 271 of the Penal Code, Act 17.

### **Particulars of Offence**

SETEFANO NAUSU on the 27<sup>th</sup> day of April 2008, at Coloisuva, in the Central Division, stole \$30.00 cash from KRISHNA KUMAR f/n Bhan Kumar.

### **SECOND COUNT**

#### **Statement of Offence**

**MANSLAUGHTER**: Contrary to Sections 198 and 201 of the Penal Code, Act 17.

#### **Particulars of Offence**

SETEFANO NAUSU on the 27<sup>th</sup> day of April, 2008 at Coloisuva, in the Central Division, by an unlawful act, caused the death of SAROJINI LATA SINGH d/o Sarju Prasad.

### **THIRD COUNT**

#### **Statement of Offence**

**ROBBERY WITH VIOLENCE**: Contrary to Section 293(1)(b) of the Penal Code, Act 17.

#### **Particulars of Offence**

SETEFANO NAUSU on the 27<sup>th</sup> day of April, 2008 at Coloisuva, in the Central Division, robbed ASHOK KUMAR s/o Ram Samujh of a vodaphone mobile valued at \$350.00 the property of ASHOK KUMAR s/o Ram Samujh and immediately before such robbery did use personal violence on the said ASHOK KUMAR s/o Ram Samujh.

- [2] Initially, you were charged with robbery with violence on count one and murder on count two. Upon representation to the Director of Public Prosecutions, the charges on those counts were reduced to larceny and manslaughter, respectively. You pleaded guilty to the amended charges at the first reasonable opportunity.
- [3] You are convicted of all three counts contained in the Amended Information.
- [4] The facts are that on the early hours of 27<sup>th</sup> April 2008, Krishna Kumar and his wife, Sarojini Lata, went to Colo-i-Suva to supply bread to the villagers. The couple was in the bakery business. While their vehicle was parked at a village, you snatched \$30.00 from a container kept inside the vehicle and fled. You were drunk. Krishna Kumar chased you but you managed to escape after assaulting him. You threw a stone at Krishna Kumar's vehicle. The size of the stone was about the same size as your fists. The stone smashed the glass window before hitting Sarojini Lata who was sitting at the passenger's seat. Sarojini Lata was seriously injured. She started bleeding from her nose, mouth and ears. She was taken to the hospital where she was pronounced dead. She died of the injuries sustained by the impact of the stone that hit her.
- [5] You then flagged down a taxi driven by Ashok Kumar. You grabbed Ashok Kumar by his shirt and punched him on his head. You grabbed his mobile phone. A by stander intervened. You fled the scene. The mobile phone was recovered.
- [6] I take into account the matters said in mitigating on your behalf by your counsel.

- [7] You are 32 years old and single. You have attained up to Form 5 education. You live with your elderly parents. You support your parents and other siblings.
- [8] You have eight previous convictions since 2002. Your last conviction was on 16 August 2007 for act with intent to cause grievous harm. You received a suspended sentence for that offence. You committed the offences in this case while serving a suspended sentence for an offence involving violence. You are not entitled to any credit for good character. Your conduct calls for a deterrent sentence.
- [9] Krishna Kumar and Sarojni Lata were in a business of providing service to the public. They were decent hardworking couple. Supplying early morning bread to the public was part of their daily routine work.
- [10] Similarly, Ashok Kumar, the taxi driver, was a public transport provider.
- [11] The safety of people who provide services to the public should not be overlooked. Society cannot condone any act of violence towards public service providers because the public are at the risk of losing vital services if the providers are not protected.
- [12] Ms Vaniqi has referred to the cases of ***State v. Bainivalu*** Cr. Action HAC 002J of 2003S and ***State v. Tawake*** Criminal Case No. HAC 010 of 2003L for guideline.
- [13] In ***Bainivalu***, a term of two years imprisonment was imposed on one count each of robbery with violence and manslaughter, to be served concurrently, after the

court took into account the young age of the offender, the fact that minimal violence was used and that the offender had entered a guilty plea after spending 12 months in remand.

- [14] In ***Tawake***, the court imposed a term of four years imprisonment for manslaughter and a term of two years imprisonment for robbery with violence, to be served concurrently, after the court took into account that the offender was 20 years old at the time he committed the offence and that by the time he was sentenced on a plea of guilty he was married with a child and had obtained IT qualifications and was working for a hotel.
- [15] There is no fixed starting point for the offence of manslaughter. The sentences range from a suspended sentence to 12 years imprisonment (***Kim Nam Bae v. State Cr. App. No. AAU0015 of 1998S***).
- [16] Suspended sentence has been imposed in cases where the provocation by the deceased was grave (***State v. Shakuntala Devi Criminal Case No. HAC 001/2001***) or where the violence was minimal (***State v. Samuela Neimila & Anr. Criminal Case No. HAC 0011 of 1998L***).
- [17] I do not consider this case to fall in the category of the lower range of manslaughter. Nor do I consider the killing to be of its worst kind to attract a sentence on the high range. I assess your culpability by looking at your overall conduct. The offences were committed in a state of intoxication and while you were serving a suspended sentence for an offence involving use of violence. You have been persistent in your criminal pursuit. You showed total disregard for the

safety of your victims who were public service providers. The cash taken from Krishna Kumar was not recovered. You threw a stone at Krishna Kumar's vehicle knowing the vehicle was occupied. You must have used considerable force because the stone smashed the glass window and killed Sarojni Lata instantly. These matters aggravated your offending.

- [18] The mitigating factors are your early guilty plea, remorse and personal circumstances. On count three, the mobile phone was recovered and the complainant was not physically injured.
- [19] You have spent one year and three months in remand. You entitled to a reduction in your sentence to reflect the period you were in remand.
- [20] Taking all these matters into account, I sentence you to one year imprisonment for larceny from person (count one), five years imprisonment for manslaughter (count two) and two years imprisonment for robbery with violence.
- [21] I bear in mind that I do not take away from you any prospect for reform. Since the offences formed part of one transaction, I order that you serve all the terms concurrently. I make no order to activate your suspended sentence because I have considered the fact as an aggravating factor to increase your sentence.
- [22] Any recovered property to be returned to its owner.

Daniel Goundar  
**JUDGE**

At Suva  
7<sup>th</sup> July 2009

**Solicitors:**

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