

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION

Crim. Case No: HAC 012 of 2006

STATE

v.

LEIONA LATU

Hearing: 14<sup>th</sup> August 2006

Sentence: 14<sup>th</sup> August 2006

Counsel: Mr. W. Kuruisaqila for State  
Ms B. Malimali for Accused

SENTENCE

Leiona Latu, you have pleaded guilty to the offence of failing to supply the necessities of life to your baby. On the 7<sup>th</sup> of February 2006 at the University of the South Pacific, being charged with the duty to provide for your new born baby, you failed to supply her with the necessities of life, without lawful excuse, causing the life of that baby to be endangered.

The facts are that you are a 23 year old Tongan national, pursuing a double major in mathematics and computing at the USP. You were living with your guardians

123-62

at the USP, and before your arrival here you became pregnant. You concealed your pregnancy from your guardians. Your labour pains began on the night of the 7<sup>th</sup> of February, and you went to the USP ladies ablution block with a pair of scissors. You delivered the baby into the pan, cut the umbilical cord with the scissors and placed the baby in a waste disposal bin. You discharged the placenta into the toilet and went back to your quarters and slept. At 3.30am a fellow student discovered the baby and called security. The baby was taken to hospital. It survived and you are now taking care of it. You told the police that you had wanted to get rid of the baby because you are not married, you feared social ostracism and you thought your education would be hindered.

In mitigation you gave evidence. Your parents divorced when you were a baby and you led a difficult life as a child, being shunted from one relative to another. Your guardian gave evidence that you led a rigid and highly disciplined life and that your aunts were harsh with you. You were allowed no contact with your mother.

You became pregnant as a result of a single act of sexual intercourse with a boy you met at a grog party. Clearly you are distressed and remorseful about this incident.

There are no sentencing guidelines on cases of this nature. Cases of infanticide invariably led to non-custodial sentences because the accused is suffering from a mental illness at the time she killed her baby. Further, cases of infanticide show that the circumstances leading to

the killing of the child are more often social than psychological - factors such as lack of family support, poverty, ignorance of options available to mothers, fear of social ostracism, and rejection by the father of the child. These are not psychological factors which might lead to a finding that the accused is mentally ill. They are social factors pointing to the lack of access in many women's lives to support and strength at the most difficult time of childbirth. And so a child dies. But the law recognizes only mental illness as a reason to reduce the charge from murder to infanticide, and some women are forced to face murder charges with their mandatory sentence of life imprisonment. This is an area of the law which might warrant reform.

In this case the child did not die and you are taking care of it. It is a fortunate end to what might have become a tragedy in your life. However, the circumstances of the birth of your child are similar to those involved in cases of infanticide, and the public interest factors for sentencing are the same.

The first is of course the need to protect the lives of children. The second is to ensure that other women do not use such extreme measures to deal with such a crisis in their lives. The third is to recognize that you have been in one sense a person deserving of pity rather than punishment. And the fourth is to recognise that you have learnt to be a mother to the very child who is the subject of this charge.

The maximum sentence for the offence under section 233 is three years imprisonment.

I believe that the tariff for such an offence, in the absence of serious aggravating factors, should be probation for a period of 1 to 2 years. The younger the accused the longer the period of probation should be. Probation orders are a recognition of the fact that the defendant requires social support and specialized counseling. It recognizes the need to keep both child and defendant safe from any other acts of offending or violence. And it recognizes the role of the State in cases where the welfare of the vulnerable is concerned. In cases of infanticide, probation orders have been common. I imposed such an order in State v. Taraiyosa Joan Motubula Crim. Case HAC 001 of 2004S. Such orders were also imposed either in addition to or instead of a suspended sentence in State v. Kesaravi Tinairatu Timuri HAC 8/2000S; R v. Lewis (1989) 11 Cr. App. R(s) 577 and R v. Sainsbury (1989) 11 Cr. App. R(s) 533.

In this case also a probation order is appropriate. You have agreed to it. I order probation for 2 years under the Probation of Offenders Act under the supervision of the Probation Officer Suva. You must remain at the University of the South Pacific under the guardianship of Olivetti Kaifoto and Ilifileti Tovo and must not change your address for the next 2 years. The supervising officer is the Chief Magistrate Suva. You must attend any counseling sessions organized by your Probation Officer. If you fail to abide by these conditions you will be liable to be sentenced for this offence.

A copy of this sentence is to be given to the Probation Officer Suva and to the Officer-in-charge Suva Magistrates' Court forthwith, together with the summary of facts and mitigation.

Nazhat Shameem  
**Judge**

At Suva  
14<sup>th</sup> August 2006