

**IN THE HIGH COURT OF NEW ZEALAND  
ROTORUA REGISTRY**

**CRI 2004-077-1667**

**THE QUEEN**

v

**NOOROA RAIVARU**

Hearing: 5 August 2005

Appearances: A Gordon and T Bailey for Crown  
H S Edward for Prisoner

Sentence Imposed: Manslaughter  
4 years imprisonment

Judgment: 5 August 2005

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**SENTENCING NOTES OF HEATH J**

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Solicitors:  
Crown Solicitor, PO Box 248, Rotorua  
H S Edward, PO Box 738, Rotorua

[1] Nooroa Raivaru, you appear for sentence today having pleaded guilty to a single charge of manslaughter. The maximum penalty prescribed by law for that offence is life imprisonment.

[2] The summary of facts to which you have pleaded guilty reveals a tragic situation.

[3] On Boxing Day 2004, members of the Tangimataiti family gathered together for a family reunion in Tokoroa. You had arrived with your mother and step father to participate in that gathering. You were only 15 years of age at that time.

[4] Your step father began to consume alcohol from about 11.30am that day. He continued to drink for most of the day. His behaviour deteriorated as the day wore on and as his state of intoxication increased.

[5] You were also present and drinking, apparently with either the encouragement, or at least the passive support, of your family. No doubt, what you did drink played a part in what happened the following day.

[6] At about 4am on 27 December your mother and step father became involved in an argument. Punches were exchanged. You became involved, also throwing punches. Your step father was told to leave. In doing so he continued to abuse you and your mother verbally.

[7] You became angered and agitated at your step father's aggression towards your mother and verbal abuse of you. You left the bedroom, grabbed a large carving knife and went to look for your step father.

[8] I do not intend to go into the detail of the difficult circumstances that arose that evening. I am satisfied that what confronted you involved serious provocation and it is enough for me to say that. It is unnecessary for me to put you or your mother through the pain of reciting precisely what happened.

[9] When you got outside it is unclear who lunged at whom and precisely when. However, further punches were exchanged between you and your step father before you stabbed your step father with the knife in the upper part of his chest. That stab killed your step father. You were heard to say “die, die, die” as he collapsed to the ground. Mr Edward has put a different slant on what was said, to the effect of “see what happens when you carry on, you die”.

[10] The fact is you uttered words of that type, although I accept that the way in which Mr Edward puts them places them in a less significant role on sentencing than they would otherwise do.

[11] Ms Gordon, for the Crown, read to me this morning comments from your mother. She has obviously been put through a great deal of distress. Not only has she lost her partner but she will, at least for some time, lose you, her son. She continues to love you and to provide support to you. I take into account her wishes that you be treated with some mercy. I also take account of the statement that I received today from the occupant of the home where the events occurred.

[12] Ms Gordon has pointed to the taking of human life as being the most serious of the factors to be taken into account. That is followed by the use of a weapon, in this case a large carving knife. I need to make clear to you and to others that carrying knives when going into a situation of confrontation cannot be tolerated by the Courts. What occurred in this tragic case is exactly what can occur when people take weapons, such as a knife, into volatile situations.

[13] Ms Gordon referred also to a degree of premeditation, though accepting that was subject to provocation. I have already said that I accept that you were seriously provoked on the night in question.

[14] Ms Gordon accepts that your age at the time of the offending and now at the time of sentencing, your plea of guilty on arraignment for the manslaughter charge and your previous good character ought to be taken into account in imposing sentencing.

[15] Mr Edward, on your behalf, has urged me to give significant weight to the fact that you are a young man of previous good character who was only 15 years old at the time of the incident.

[16] Mr Edward also emphasises that you fully co-operated with the Police and acknowledged your culpability and responsibility for what occurred early on. He has referred me to a reference from a Justice of the Peace who first came to know you when you were 9 or 10. That gentleman made these comments:

Nooroa, as I remember him, was a very quiet, kind and loveable child; a little nervous and hesitant at first, but very friendly and helpful when you came to know him; I felt that he had a great deal of promise and potential, provided life and circumstances could deal him a fair and equitable concession!! Unfortunately, though, this was always going to be difficult.

As Mr Edward has said to me these proved, regrettably, to be prophetic words.

[17] I am going to take account when sentencing you, however, the promise and potential to which this man referred in the hope that through re-integrative and rehabilitative programmes you can realise that potential in the future. It is important for you and for society that you do so.

[18] Mr Edward submitted, and I accept, that the provocation was significant. He has pointed also to the report from Dr Tapsell, suggesting a difficult relationship with your step father arising, in part, from jealousies expressed by him about your closeness to your mother.

[19] As a result you were clearly protective of your mother. That desire to protect her, regrettably, resulted in a disproportionate use of force with a weapon when this incident occurred and led to the tragic death of your step father.

[20] In imposing sentence, I must hold you responsible and accountable for what you have done, endeavour to promote in you a sense of responsibility for the harm, denounce the conduct in which you were involved but also assist in your rehabilitation and re-integration into the community.

[21] I have to take account of the gravity of the offending. Any offending carrying a life imprisonment maximum term is the most serious of our criminal offending. I must take into account, however, the general desirability of consistency in sentencing and impose the least restrictive outcome available in the circumstances.

[22] I agree with many decisions of the Courts to which I have been referred that emphasise the need for a consistent approach to like cases.

[23] The authorities I regard as arising from sufficiently similar circumstances to justify comparison<sup>1</sup> indicate that, for an offence of manslaughter, involving the aggravating factors to which I have referred, the appropriate starting point is between 5 and 7 years imprisonment.

[24] Bearing in mind the maximum penalty of life imprisonment, the nature of this particular attack and the degree of premeditation, albeit reduced by the provocation involved, I assess an appropriate starting point at 7 years.

[25] However, you are entitled to significant credit for your early guilty plea, which I note was entered at the earliest time that a charge of manslaughter was put to you.

[26] I also give significant weight to your age at the time of offending. It is sad to see a young person saddled with such a serious conviction when starting off in life but that, regrettably, is the consequence of your own action.

[27] You are also entitled to some credit for your previous good record and for what I accept is the remorse you have shown.

[28] The guilty plea itself should, in my view, attract a credit of 2 years. Other mitigating factors should together provide a credit of a further one year. In saying that, I put particular weight on your age and the need to give you a proper opportunity to rehabilitate yourself.

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<sup>1</sup> *R v Nia Nia* (High Court, Gisborne, T021803, 18 October 2002), *R v O'Sullivan* (CA340/93, 15 December 1993), *Solicitor-General v Kane* (CA154/98, 23 September 1998) and *R v Rawiri* (High Court, Auckland, T014047, 16 September 2002)

[29] It follows that the sentence of imprisonment that I impose on you is one of 4 years.

[30] No minimum non-parole period has been sought by the Crown. I agree it is unnecessary in this case and no minimum sentence will be imposed. That means you will become eligible for parole after serving one-third of your sentence. However, that does not mean you will be released then. You will need to earn parole after one-third of your sentence.

[31] I make a recommendation that those responsible for your custody attempt to have you put on a programme while in prison, preferably the "Straight Thinking" programme, which will enable you to come out of prison a much better person and someone equipped to deal with the problems you face in life.

[32] I am concerned that someone of your age not be placed in a situation where you may find yourself mingling with older criminals who may lead you further astray. No Judge wants to see that. A young person has a better chance of rehabilitating than older people. I want to make sure you have the full opportunity to rehabilitate. I therefore, make a recommendation that you be held in a secure youth facility rather than in a prison. If room is available I would prefer to see you held in the Youth Justice prison at Manurewa but you will appreciate that the competing priorities for beds in a unit such as that are for those responsible for it to determine rather than for me. I can only make my comments available to them.

[33] Mr Raivaru, I hope that you will take advantage of the programmes that are available while you are in prison. I accept that you show remorse. I hope that you come out as somebody who can make a significant contribution to society and not get in trouble again.

[34] Stand down.