

IN THE FIJI COURT OF APPEAL
Criminal Jurisdiction
CRIMINAL APPEAL NO. 8 OF 1978

LEMEKI LAWARUA NASAU Appellant

v.

REGINAM Respondent

S. Matawalu for appellant
T. Fa for respondent

Hearing: 4th July, 1978

Judgment : 28th July, 1978

JUDGMENT OF THE COURT

MARSACK J.A.

This is an appeal against sentence of two years' imprisonment passed on the appellant on conviction of manslaughter by the Supreme Court sitting at Lautoka on 7th February 1978.

The facts may be shortly set out. The appellant is the father of a 17-year-old girl named Anaseini. On the evening of 8th September 1977 the appellant found his daughter coming out of a cane-field; when he questioned her she said she had been with one Isimeli in the sugar cane. The appellant then struck his daughter. Her mother took the girl into the house; the husband followed and went on hitting the girl. The mother tried to intervene but the appellant struck her also and she went outside.

The striking and kicking of Anaseini went on at intervals for a considerable time; the weapons used, according to the appellant's statement, being his belt and a broom. He would not allow her to receive medical attention. The girl died the following morning. The post-mortem examination disclosed injuries to her head, face and neck, her body and her lower limbs. The examining doctor attributed her death to the head injury received.

The appellant was first charged with murder on 12th September 1977; but on 25th October 1977 the charge was reduced to one of manslaughter and the hearing took place on that basis. On 6th February 1978 the appellant pleaded guilty to manslaughter before the Supreme Court at Lautoka and was sentenced to two years' imprisonment. It is against that sentence that this present appeal is brought.

At the outset it must be stated that the reduction of the charge from murder to manslaughter is somewhat difficult to understand. It is well understood, on the authority on Lee Chun Chuen v.R. (1963) A.C. 220 at p.231, that to justify the reduction of the charge

from murder to manslaughter on the ground of provocation, the loss of self-control must be both actual and reasonable and retaliation must be proportionate to the provocation. It could well be expected that a father would be angry to find that his daughter had been in the /though this does not directly appear in evidence - sugar-cane with a man even if -/he had reason to suppose that sexual intercourse might have taken place; but it cannot be said that this was reasonably sufficient to cause a man to beat his daughter at intervals over a period, with such violence as to cause her death; and, moreover to refuse her the medical assistance that might have succeeded in saving her life.

Accordingly we are in full agreement with the learned trial Judge when he says in his judgment:

"There was here an act of deliberate violence - deliberate none the less though it was unpremeditated - for which a charge of murder might well have been sustained."

Be that as it may, this must necessarily be treated as a case of manslaughter. The provisions of section 23(3) of the Court of Appeal Ordinance empower this Court, on an appeal against sentence, to increase the sentence if it thinks that a more severe sentence should have been passed. On the facts proved it seems to the Court that an

increase of the sentence of two years may well have been justified.

However, looking at this case in the Fiji context, Crown counsel specifically stated, in the course of his argument, that in his submission the sentence of two years' imprisonment was in all respects a proper one; and as, accordingly, counsel for the appellant was not called on to reply to this aspect of the matter, this Court feels, with reluctance, that it should not take it upon itself to increase the sentence in all the circumstances of the case. Taking into account all matters which had been urged on behalf of the appellant we are firmly of the opinion that the sentence imposed errs on the side of undue leniency rather than of severity. For these reasons the appeal is dismissed.

(Sgd.) T. Gould
Vice President

(Sgd.) C.C. Marsack
Judge of Appeal

(Sgd.) B. Spring
Judge of Appeal