

IN THE FIJI COURT OF APPEAL
CRIMINAL APPEAL NO. 4 OF 1987

Between:

PAILATO NAINI Appellant

- and -

STATE Respondent

The Appellant In Person
Ms. Nazhat Shameem for the Respondent

Date of Hearing: 27 October 1989

Delivery of Judgment: 27 October 1989

JUDGMENT OF THE COURT

This is an appeal against sentence of 10 years' imprisonment imposed on the appellant by the High Court Sitting at Lautoka for the offence of manslaughter contrary to Section 198 of the Penal Code Cap 17. The appellant was charged with murder but the trial judge concurred with the unanimous opinion of the 3 assessors that the accused was only guilty of manslaughter and he convicted him accordingly.

The grounds of appeal are as follows:-

- "(i) *that the sentence imposed upon me was wrong in principle having regard to the unanimous opinion of the assessors and the finding of the learned trial Judge that I was provoked into committing the offence of which I was found guilty.*
- (ii) *that the sentence imposed upon me is harsh and excessive having regard to all the circumstances of the case."*

Brief facts of the case are as follows. The appellant, a casual labourer is about 50 years of age. He had been living with the deceased as his defacto wife since 1985. On 12 February 1989 they had an argument at a rubbish dump in Lautoka. The deceased used some insulting and abusive words. She allegedly threw a small knife at him but the appellant ducked it. He then picked up a cane knife. The deceased started running away but tripped and fell. Then, according to the appellant himself he ran to her and "chopped" her head. The appellant struck her several times with the knife inflicting wounds to various parts of the body. A workman at the dump also saw the appellant striking the deceased whilst she was running away. He asked him to stop but the appellant told him to keep away. The appellant was also seen stabbing the deceased on the back with a smaller knife after she collapsed. The wound at the side of the head measured 28 cm and was brain deep. She died from the injuries she received. The appellant also stabbed himself with a butcher's knife and was admitted to the Lautoka Hospital with cuts to his throat. He was treated and discharged a week later. He was represented by counsel at the trial.

The appellant was convicted in 1987 for an Act with Intent To Cause Grievous Harm. For this he was bound over. In passing sentence on 13/2/89 the trial judge observed as follows:

"This is a most serious offence committed with a knife. I take into account all that has been said on his behalf, including his past record and the fact that he has been in custody since February 1988. In all these circumstances the minimum sentence I feel able to pass is one of 10 (Ten) years imprisonment."

The only matter that the appellant urged upon us at the hearing of this appeal was that we should take into account his age.

Ms Shameem for the Director of Public Prosecutions submitted that the sentence was by no means excessive having regard to the fact that the appellant had inflicted a total of 25 wounds on the deceased, even though the provocation was not that serious. She referred us to the decision in Rami Sami v. Reginam 21 F.C.A. 12 in which case the appellant killed his wife by inflicting 4 knife wounds on her in response to a very high level of provocation. The Court of Appeal substituted a 12-year prison term for that of life imprisonment.

Having regard to the serious and persistent nature of the assault on a female with a lethal weapon in circumstances where the degree of provocation cannot be regarded as being too high, we are satisfied that the sentence of 10 years imprisonment was neither wrong in principle nor manifestly excessive.

The appeal is therefore dismissed.

Sir Timoci Tuivaga
President, Fiji Court of Appeal

Sir Ronald Kermode
Judge of Appeal

Sir Moti Tikaram
Judge of Appeal