IN THE FIJI COURT OF APPEAL

Criminal Appeal No. 12/1990

32

BEFORE THE HON JUSTICE MICHAEL M HELSHAM
PRESIDENT OF THE FIJI COURT OF APPEAL

AND THE HON SIR MOTI TIKARAM
RESIDENT JUDGE OF APPEAL

AND THE HON SIR MARI KAPI
JUDGE OF APPEAL

FRIDAY THE 6TH DAY OF MARCH, 1992 AT 2.40 P.M.

BETWEEN: JOSEPH NARAYAN APPELLANT

-v-

STATE RESPONDENT

MR JOSEPH NARAYAN IN PERSON

MR I MATAITOGA
MS L LAVETI FOR THE STATE

O R D E R

34

On the 1st of May, 1990, the appellant in this matter was convicted of manslaughter. He had pleaded guilty and was sentenced to 10 years imprisonment by a judge of the High Court. He has appealed against the severity of that sentence to this Court. The matter itself is a most unfortunate one.

The deceased was the appellant's daughter. She was 4 years old at the time of her death. It seems that the appellant took an aversion to her because she did not look like a child of his. He had previously accused his wife of having an affair with a neighbour and whether this had anything to do with his views is conjecture. What is known is that he treated the deceased in a way that can be described only as bestial.

There are many other adjectives in fact that could be used but it is sufficient to say that he was guilty of cruelty the like of which can hardly be imagined.

The girl died on the 1st of April, 1989. The post-mortem showed that she had died of anaemia and malnutrition. On the morning of that day, the appellant had assaulted her. That assault does not seem to have been the immediate cause of death. It probably brought on a seizure or reaction that because of her emaciated condition precipitated her demise. Anyway the charge was manslaughter.

The accused had made no attempt to hide the way in which he had treated the deceased - treatment which apparently had gone on over a considerable amount of time. The way that he treated her was well-known to his family and apparently to others. It is a matter of great regret that it had not been brought to the notice of some authority; not only it might have been able to prevent the death of the deceased but might also have been able to provide some treatment that might have been of assistance to the appellant.

The learned trial judge had received the plea, had all the facts before him and a plea for leniency was made by the appellant before the judge imposed the sentence that he did. We do not believe that anything material in addition to that has been put before us today except that we have discovered that the age of the appellant at the moment is now 32.

As we have decided that the sentence was excessive, it is incumbent for us to attempt to indicate why. It is difficult to put a precise reason either for the fixing of the term of imprisonment or for interfering with it. Here, we have given full weight to the fact that an experienced judge fixed the sentence that he did. However we have taken into account the following matters:-

(1) the age of the accused;

(2) the fact that this was his first offence;

(3) the fact that this crime must surely be unique and it is not able to be judged by reference to other cases;

(4) the public revulsion against the particular incident here will, we feel, be satisfied by a long term of imprisonment;

(5) we do not believe that the sentence here must be imposed to have some sort of deterrent effect;

(6) the Director of Public Prosecutions has formed the view that the sentence imposed was not consistent with that imposed in other cases of manslaughter and has furnished us with a list of authorities which we feel ought to offer us some guidance. (We are grateful to that assistance.)

In all the circumstances, we feel that the sentence should be reduced to 7 years and we will make the necessary orders accordingly.

The formal order would be to allow the appeal to quash the sentence of 10 years and in lieu thereof impose the sentence of 7 years.

PRESIDENT

for FIJI COURT OF APPEAL