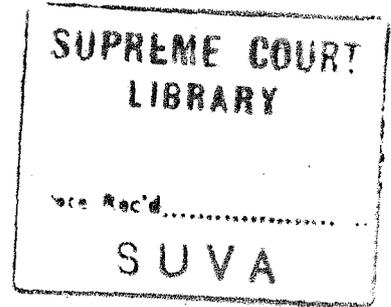


IN THE FIJI COURT OF APPEAL

CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 15 OF 1990  
(Criminal Case 13 of 1990)



BETWEEN:

WAISEA KALOUMAIRA

Appellant

and

STATE

Respondent

*Appellant in Person*  
*Mr J. Naigulevu for the Respondent*

Date of Hearing: 14th August, 1992  
Delivery of Judgment: 30TH SEPTEMBER, 1992

JUDGMENT OF THE COURT

This is an appeal against sentence only.

On the 12th of July 1990 the Appellant was convicted and sentenced by the High Court (Jesuratnam J.) at Suva as follows:

- 1st Ct. - Manslaughter - 10 years imprisonment
- 2nd Ct. - Unlawful use of motor vehicle - 4 months imprisonment.
- 3rd Ct. - Restaurant breaking, entering and larceny - 18 months imprisonment.

All three sentences were ordered to run concurrently with effect from 25th October 1989, the date on which the Appellant

was remanded in custody. The effective sentence imposed on the Appellant was therefore only 10 years.

The Appellant complains that the sentence of 10 years is too harsh and excessive.

As the Appellant has not effectively received any additional punishment on Counts 2 and 3 in the sense that the sentences passed on him on those two counts have been absorbed by the 10-year sentence on the manslaughter charge, we do not find it necessary to deal with the Appellant's submission in respect of the punishments relating to the lesser counts. The sentences on those 2 counts have already been served and in any event the trial judge could not be faulted on his assessment of punishments in respect of those counts.

The real question for determination is whether the 10-year sentence for manslaughter was, in the circumstances, manifestly harsh and excessive.

The facts giving rise to the charge and sentence are briefly as follows.

On the night of 21st October 1989 the Appellant with three others stole a car from Lami and proceeded to Navua with the intention of robbing Sakura Restaurant. They in fact broke and entered the Restaurant and stole from it liquor to the value of \$63.00; but before they could complete their overhaul they noticed someone outside so they ran out of the Restaurant. Three of them got into the stolen car but the Appellant was given a chase and caught by a young man by the name of Frederick Wise. In the ensuing struggle the Appellant struck Wise several times with a kitchen knife he (the Appellant) had taken from Sakura Restaurant. Wise died as a result of the multiple stab wounds inflicted on him. The Appellant was charged with murder but was convicted of manslaughter. In assessing the sentence the trial judge took into account everything that was urged upon him by the Appellant's counsel. Having done that the judge observed -

"I also agree that the dominant intention of the first accused in wielding his knife wildly in the darkness of the night was to extricate himself from the hold and grip of the deceased and get into the waiting car where his three comrades had already got in. However in the interests of society I cannot overlook the resultant brutal killing of a public-spirited citizen who had the civic right to arrest an offender who was running away after committing a serious crime. I also cannot ignore that the first accused was the architect and master-mind behind the entire operation."

The sentencing Court was entirely justified in concluding that the Appellant was the master mind behind the criminal enterprise embarked upon by a group of persons. The Appellant's background also shows that he had been leading a life of crime. On the night in question he was determined to make good his escape at any cost from a pre-planned and interrupted robbery.

We have taken into account the Appellant's plea for leniency and his claim that he is feeling remorse for what he did. However, we do not feel that we will be justified in reducing his sentence.

The punishment imposed on him properly reflects the gravity of the offence, the serious circumstances in which it was committed and also the need to protect the public against further offences by the Appellant.

Although the sentence of 10 years is on the upper side of the normal tariff for serious cases of manslaughter in our view it was well merited in this case.

This appeal is, therefore, dismissed.

*Michael Helsham*  
.....  
Justice Michael Helsham  
President, Fiji Court of Appeal

*Moti Tikaram*  
.....  
Sir Moti Tikaram  
Justice of Appeal

*Mari Kapi*  
.....  
Sir Mari Kapi  
Justice of Appeal