

IN THE FIJI COURT OF APPEAL  
CRIMINAL JURISDICTION  
CRIMINAL APPEAL NO. 3 OF 1994  
(High Court Criminal No.2 of 1994)

BETWEEN:

RAFAELE VUI APPELLANT

-and-

THE STATE RESPONDENT

Applicant in Person  
Miss Razia Shafiq for the Respondent

Date and Place of Hearing : 9 May 1996, Suva  
Date of Delivery of Judgment : 17 May 1996, Suva

JUDGMENT OF THE COURT

On the 8th February 1994 the Appellant, who was represented by Mr. Kohli, pleaded guilty to a charge of manslaughter. He was sentenced to a term of imprisonment for 5 years. The appellant now appeals against the severity of that sentence, upon the grounds that he has 3 young children who are being looked after by his elderly parents; his parents because of their age and health are not adequately able to look after his children; that the children aged 5, 6 and 7 years respectively were witnesses to the fatal assault but "... were not brought up to the Court to witness in my case"; and "that I have a farm (Yaqona farm) which is the financial income to my family."

The back ground to this tragedy which resulted in the death of the appellant's wife and the 3 young childrens' mother may be briefly summarized as follows.

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Early on the morning of the 8th October 1993 the appellant went to work on his nearby farm. Later that same morning the appellant's wife asked two of the children to fetch water from a nearby stream. When the appellant became aware of what his wife had asked the children to do he questioned her; then slapped and punched her; then when she fell over continued to punch her; then dragged her to a nearby dalo plantation and kicked her; then when she lost consciousness poured water over her. To his credit he then sought medical help for his wife but sadly she was already dead.

A post mortem examination was carried out by Dr. K.P. Singh a Consultant Pathologist, who reported on his external examination of the deceased as follows:-

- "(1) Hematoma measuring 3.5cm x 3.0cm on the forehead with a 1.0cm long incised, evrtical wound in the centre. The hematoma is located 1.0cm above the inner border of the Left eyebrow.
- (2) Hematoma measuring 4.0 x 3.5cm on the Right forehead, 1 cm above the outer half of the Right eyebrow.
- (3) Hematoma 2.0 x 2.0cm, left forehead extending up to the outer half of the Left eyebrow.
- (4) Hematoma 4 x 2cm on the Right Zygomatic region.
- (5) Area of bruising with surrounding hematoma measuring 3.5 x 2.0cm Right arm anterior aspect. 7.5cm below the Right shoulder joint.

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- (6) *Skin abrasion, linear, horizontal, measuring 2.0cm long extending laterally from the lateral wall of the Right orbit.*
- (7) *Area of skin abrasions measuring 4.5 x 2.0cm on the right forearm, posterior aspect, 3cm below the elbow.*
- (8) *Skin abrasion 2.5 x 0.5cm right olecranon region.*
- (9) *Area of skin abrasions measuring 4.5cm x 4.0cm Left midthigh, postero - laterally."*

In mitigation Mr. Kohli submitted that the appellant had slapped his wife; that as a result she complained of a head ache; and that the appellant "... was shocked when he realised that his wife had died from slap." He further submitted that "now accused left with - three children 5, 6 and 7. Accused lost a person beloved to him. Loss of wife - sufficient punishment. Realized his mistake."

The extensive injuries sustained by the deceased as described in detail by the Pathologist do not support the submission by Counsel that they were caused by a slap. Rather the summary of facts which was not challenged by the appellant described a brutal and sustained attack by the appellant against his defenceless wife. There is no evidence whatever that could in any way be regarded as provocation.

In imposing sentence the learned Chief Justice referred to the deceased's head injuries which resulted from a brutal

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assault by the husband on his wife; and that there was no excuse for an assault of such intensity. He went on to describe the appellant as abrogating to himself the right to treat his wife with "reckless cruelty" and "inhuman behaviour" which conduct he said the Courts cannot countenance for whatever reasons. He also quite correctly took into account the appellant's plea of guilty and that he had been in custody for a period of 4 months.

In our opinion the learned Chief Justice has correctly described the facts and the principles to be applied by the Courts in dealing with such cases. However, he also indicated that "Domestic Violence is on the increase in this country and is becoming a chronic social problem". If that is the position then it may well be necessary for the Courts to give notice that in future more severe punishment is likely to be imposed in domestic violence cases particularly where manslaughter is involved.

The appellant has presented an eloquent plea in mitigation in support of his appeal. Principally he refers to his anxiety for the welfare of his 3 young children; his remorse at being responsible for the death of his wife; and his acceptance that for the rest of his life he will have to live with this realization of responsibility for his loss of a wife and for his childrens' loss of a mother.

However, the facts of this case, in our opinion, demanded a deterrant sentence. As was stated by this Court in Aipote Koroi v. The State F.C.A. Criminal Appeal No. 4 of 1988 - "Sentences in Fiji for manslaughter have generally ranged from 9 months to 6 years.....". The term of 5 years imprisonment is therefore within the range of sentences normally imposed for offences of manslaughter.

We find that the sentence of 5 years imprisonment was in all the circumstances neither manifestly excessive nor wrong in principle. Consequently the appeal is dismissed.

However, we are concerned with the possible plight of the appellant's young children who are indeed innocent victims of his wrongdoing. We therefore propose to direct the Registrar to request the Director of Social Welfare to look into the childrens' situation and render any necessary assistance including the furnishing of a report to the Commissioner of Prisons if the Director deems it proper.

*Moti Tikaram*  
 .....  
 Sir Moti Tikaram  
President, Fiji Court of Appeal

*M. G. Cassey*  
 .....  
 Sir Maurice Cassey  
Judge of Appeal

*J. D. Dillon*  
 .....  
 Justice J. D. Dillon  
Judge of Appeal