

IN THE FIJI COURT OF APPEAL

CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.16 OF 1993

(High Court Criminal Case No.322 of 1992)

BETWEEN

TIMOCI KORO

APPELLANT

-and -

THE STATE

RESPONDENT

Appellant in person  
Ms R Olutimayin for the Respondent

Date and Place of Hearing: 14 August, 1996, Suva  
Date of Delivery of Judgment: 16 August, 1996

JUDGMENT OF THE COURT

The appellant was charged with murder but convicted after trial of manslaughter on the ground of provocation. He was sentenced to eight years imprisonment and appeals against that sentence.

The evidence at the trial was that he had punched the deceased to the ground and kicked him. Whilst his victim was still on the ground, the appellant picked up a large concrete block and threw it down on his face twice. He then left. The force of the blows was such that the whole structure of his victim's face from the eyebrows down was flattened and there was a matching depressed fracture to the back of the head.

The assessors were unanimously of the opinion that the appellant was guilty of murder but the learned Chief Justice

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found sufficient provocation to reduce the offence to manslaughter and convicted him accordingly. On the evidence, he found that, immediately before the attack, the deceased had been hugging and kissing a girl the appellant loved and expected to marry.

When passing sentence, the learned Chief Justice described the manslaughter as "one of the worst of its kind to come before the Court" and continued:

"Admittedly there was provocation for the act of the Accused but it was plainly not of such a nature as to require a vicious and ruthless attack to be made on the deceased.

The deceased was lying helpless on the ground after being punched and kicked but not content to stop, accused went on to grab and lift a heavy concrete slab nearby and threw it at the deceased on the ground - not only once but twice.

In a sense Accused was perhaps fortunate not have been found guilty of murder."

The appellant, who was unrepresented at the hearing, has filed lengthy and detailed grounds of appeal.

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They traversed three main topics.

1. The general matters of mitigation, in particular his remorse and aspiration to assist the family of his victim.
2. The nature of the provocation, and
3. The disparity with other sentences passed in Fiji in cases of manslaughter.

When sentencing in such a case, the court should first consider the nature of the attack. Having found provocation when reaching its verdict, the court must then reconsider it in relation to sentence and evaluate the relationship between the degree of provocation and the nature and violence of the response it provoked.

In cases where the provocation is minimal, or where it is more than minimal but the force used is grossly disproportionate, the court can allow little mitigating effect. Each case must, of course, be decided on its own particular facts and, whilst we do not feel we should attempt to formulate a scale, it is reasonable to say that the effect of the situation in which this appellant found himself was far below the most extreme provocation but was more than minimal.

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Having said that, we would accept the learned Chief Justice's description that this case was one of the worst to come before the court. It was a dreadful case of extreme violence and must call for a substantial custodial sentence.

The appellant has referred to other cases, gleaned from the newspapers, where sentences below, and often well below, eight years have been passed. Counsel for the respondent very properly cited instances of sentences for manslaughter both more and less severe.

Whilst an appellate court will always consider apparent disparity with other sentences, it is only in the most exceptional case, that it will consider altering an otherwise proper sentence. The test must always be whether, in the particular case before it, the sentence is correct and the fact others may have received sentences for similar offences that are wrong or well outside the usual range will not alter that.

In *Stroud v. R* (1977) 65 Crim App R 150, Roskill LJ pointed out:

"That... (argument)... involves the proposition where you have one wrong sentence and one right sentence, this court should produce two wrong sentences. That is a submission which this court cannot accept."

In the present case, the learned Chief Justice took into account the mitigation urged by counsel for the appellant

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including his remorse and the period already spent in custody - stated to be one year and one month. A sentence of eight years imprisonment in those circumstance clearly places this case at the upper end of the range of sentences for manslaughter of a serious kind suggested by this Court in Navitalau Rauve v. The State, Cr. App. 13/90.

Bearing in mind the nature of the provocation, the violence used and the period in custody prior to the trial, the sentence passed by the learned Chief Justice was clearly correct.

The appeal against sentence is dismissed.

*M. Casey*  
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Sir Maurice Casey  
Judge of Appeal

*G. Ward*  
.....  
Justice G Ward  
Judge of Appeal

*K. Handley*  
.....  
Justice K Handley  
Judge of Appeal