

IN THE COURT OF APPEAL, FIJI ISLANDS
ON AN APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0001/00S
(High Court Case No. HAC010/99)

BETWEEN: : EPARAMA SOGOTUBU - Appellant

AND : THE STATE - Respondent

Coram : The Rt. Hon. Sir Maurice Casey, Presiding Judge
The Hon. Sir Rodney Gallen, Justice of Appeal
The Hon. Mr. Justice John E. Byrne, Judge of Appeal

Hearing : Wednesday, 16 May 2001

Counsel : Appellant in Person
J.K. Naigulevu, Director of Public Prosecutions
for the Respondent

Date of Judgment : Thursday, 24 May 2001

JUDGMENT OF THE COURT

On the 1st of November 1999 the Appellant pleaded guilty to manslaughter in the High Court at Suva contrary to Section 201 of the Penal Code, arson contrary to Section 317(a) of the Penal Code and assault occasioning actual bodily harm contrary to Section 245 of the Penal Code.

On the charge of manslaughter he was sentenced to 8 years imprisonment, on the charge of arson 8 years imprisonment and on the charge of assault 6 months imprisonment. The first two sentences were concurrent and the third sentence consecutive giving an effective term of 8½ years imprisonment.

He submits to this Court that the sentences passed on him were excessive.

The facts of the case are as follows:

The Appellant is 42 years old and is married and has one child.

Josaia Sela and Anaseini Wati were a couple who lived in a wooden and iron house situated by the village jetty in Nasilai Village in Rewa. The house had only one door with no windows and the floor was covered with mud and dry leaves. The couple had three children. On the 28th of March 1999 four of the children of Anaseini Wati's sister (Seni Adi Soroivai) lived with the couple. One of these children was the deceased John Sidney Lagere Singh, aged four years.

The Appellant lived in the same settlement and was known to the couple. The Appellant is Josaia Sela's elder brother who lived with his wife Sulita Wati and their child 10 metres from the couple's house across the jetty.

On 20th March 1999, at about midday, Seni Adi Soroivai mother of the deceased left for Suva leaving the deceased and the other children with Anaseini Wati. At 5.30 p.m. Josaia Sela left to go fishing and returned at midnight.

At about 10 p.m. on the same day the Appellant returned to the village under the influence of liquor. He went to his house and picked up a muscle training bender and went to his brother Josaia Sela's house. On arrival he found the door locked from inside. He knocked loudly at the door which was then opened and the Appellant told the child Koto Talala to waken her mother which she did. The Appellant went inside the house holding the muscle training bender and then shouted at Anaseini Wati. An argument developed between the two during which the Appellant questioned Anaseini Wati about previous family disputes. He then

struck Anaseini Wati several times with the muscle training bender on her hand, waist, leg and upper thigh causing her pain and injuries containing of swelling to the right leg, haematoma on left hip and haematoma on left upper arm.

In the meantime all of the children in the house except the deceased were awakened, frightened and ran out of the house. Later Anaseini Wati ran out of the house and hid herself in a dalo patch near the house. Her neighbour Lite Tadulala heard her cries of pain, came to her rescue and carried her inside the house where Anaseini Wati and the children remained for the rest of the night.

Jay Singh, elder brother of the deceased was also home and witnessed everything. He decided to remain in the house with John Sidney Lagere Singh who was fast asleep. He closed the door when the Appellant left.

After a while the Appellant returned to the house with a gallon of benzine. He forced open the door of the house and poured the benzine near a naked lamp or lantern which caught fire. Jay Singh told the Appellant that the deceased, his younger brother, was still sleeping inside the house. The Appellant told him to leave or he would be burnt. Jay Singh then left. The house was completely burnt down with the deceased asleep inside. The Appellant fled from the scene. The house and the deceased could not be saved by the villagers. The Police recovered the charred body of the deceased the next day.

On 21st March 1999 the Appellant was interviewed under caution by the Police and admitted the offences of arson and assaulting Anaseini Wati. He however stated that he had no knowledge that the deceased was asleep in the house.

A post-mortem was conducted by Dr. Murli Krishna on the deceased on 22nd March 1999 at the CWM Hospital, which found the deceased died of 100% burns with charring of the body.

The house of Josaia Sela valued at \$3,827.00 and personal belongings valued \$1,827.00 were completely burnt. Seini Adi Soroivai and her children lost personal items worth approximately \$2,000.00.

In his written submissions to this Court the Appellant on a number of times claims that he was provoked into committing the offences because of the alleged negligence of the Police Department not helping him as Headman (Turaga-ni-Koro) of the village help keep the village crime and drug free. Even if this were true, and we have only the Appellant's word for it, this could not possibly excuse the behaviour of the Appellant on the 20th of March 1999.

In our view also it matters not whether the Appellant sprayed the house with benzine, as stated originally by the trial judge but later corrected, or poured the benzine near a naked flame which he admitted. His actions can only be described as those of a reckless man who had deliberately taken a quantity of alcohol after which he confronted Anaseini Wati.

The Appellant has a long criminal history including one conviction of robbery with violence in 1988. His last conviction was in 1990 and the trial judge took this into account.

In Navitalai Rauve v. The State Crim. App. No. 13 of 1990 this Court stated, "However, we note that punishment in Fiji for manslaughter of a serious kind has normally ranged from 7 to 10 years imprisonment depending on the degree of gravity". The Court then imposed a sentence of 10 years imprisonment for manslaughter but added, "This is not to suggest that a sentence exceeding 10 years cannot be justified in a manslaughter case of the gravest kind".

The trial judge considered this case of the gravest kind, and we agree.

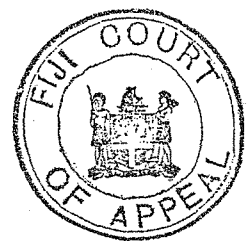
Accordingly the appeal cannot succeed and it is dismissed.

M. Casey

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Sir Maurice Casey
Presiding Judge

R. J. Gallen

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Sir Rodney Gallen
Justice of Appeal



John E. Byrne
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Mr. Justice John E. Byrne
Judge of Appeal

Solicitors:

Appellant in Person

Office of the Director of Public Prosecutions, Suva for the Respondent