

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

CRIMINAL APPEAL NO AAU0011 OF 1999S
(High Court Criminal Case No. HAC015 of
1997)

BETWEEN: ENELE CAMA

Appellant/Applicant

AND: THE STATE

Respondent

Coram: Reddy, P
 Kapi, JA
 Sheppard, JA

Hearing: Wednesday, 26 February 2003, Suva

Counsel: Appellant in Person
 Mr G. H. Allan for the Respondent

Date of Judgment: Friday, 28 February, 2003

JUDGMENT OF THE COURT

On 16 April 1998, the Appellant was convicted on a count of murder following a trial lasting several days before Pain J., and three assessors. Two of the

three assessors found the Appellant guilty of murder, the third not guilty of murder but guilty of manslaughter. Pain J. accepted the advice of the majority, convicted the Appellant accordingly and imposed the mandatory sentence of life imprisonment.

In October 2001, the Appellant applied for leave to appeal out of time from the decision of the High Court. The application was heard by a single Judge of this Court, (Eichelbaum, JA). The learned Judge having regard to the gravity of the offence and the fact that the Appellant was not represented, granted the application for extension of time.

On 7 May 2002, Eichelbaum J refused the Appellant leave to appeal under Section 21(1)(b) of the Court of Appeal Act. Under Section 35(3) of the Court of Appeal Act, the Appellant has asked that his application for leave be determined by a full bench of this Court.

Under Section 21(1)(b), leave is required to appeal, on any ground involving a question of fact or mixed questions of fact and law or any other ground which "appears to be a sufficient ground of appeal to the Court".

The facts can be briefly stated.

On Saturday, 21 October, 1995 the Appellant and Timoci Vula ("the deceased") had been drinking during the day. In the evening they went to Miss Savu's home, and an argument developed and the Appellant stabbed the deceased. The argument arose over some groceries which Miss Savu had bought that went missing. She saw the Appellant take a kitchen knife, apparently from her kitchen and asked him to give the knife back, but the Appellant refused. Words were exchanged between the deceased and the Appellant, and the deceased pulled the accused by the singlet. The witness followed them outside but did not see what happened outside. She saw the deceased lying on the ground, unconscious and tried to revive him. She found he was bleeding from a gash in his head. He was taken to hospital but died shortly afterwards.

A police constable gave evidence that the following morning he located the Appellant and under caution asked whose knife was used in the stabbing to which the accused said that it was Miss Savu's. The accused gave the knife to the officer. The hospital medical officer who first attended the deceased on admission gave evidence that the deceased suffered a single stab wound above the left ear.

On 22 October, 1995 the Appellant told the police that he had taken the kitchen knife "in case someone do something to me" when he would stab that person. He said that the deceased came over to him and threw a punch, which did not connect. He then pulled the deceased by the shirt, the shirt tore and then the

Appellant stabbed the deceased with the knife once. When formally charged with the murder of the deceased the Appellant said that he had done this because he was drunk and did not mean to kill the deceased. The statements were not challenged.

A pathologist gave evidence that the wound had penetrated the dura and had gone into the left temporal lobe of the brain. The total depth of penetration from the point of entry was about 4.5 cm. The pathologist said that it would have required considerable force to cut through the skull. In his opinion death was caused by loss of blood, internal and external, from the wound.

At the end of the prosecution case the Appellant elected to give evidence. In his evidence he said that the deceased had punched him once, and then grabbed his t-shirt. He was scared when the deceased started pulling him outside. He said the only thing that he could think about was how to get away. "When I came to my senses (the deceased) was lying on the ground". The accused then realized he had a knife in his hand. He said that he did not know that he had stabbed the deceased, and that he had not intended to stab him, and did not intend to stab him in the head. The Appellant did not call any witnesses.

Following the addresses, there was discussion in chambers between the Judge and Counsel, with accused present. Significantly, Counsel for the Appellant

accepted that provocation had not been raised and was not available. At the end of that discussion the trial Judge said:-

"I intend to direct the only issue is intent or malice aforethought. If that is proved it is murder, if not proved it is manslaughter."

We are not surprised that that is how the learned trial Judge and Counsel saw the case. It was run on that basis. Counsel did not seek any further directions.

The Appellant made written and oral submissions to us in support of his application. In his undated letter addressed to this Court the Appellant raises the following matters:-

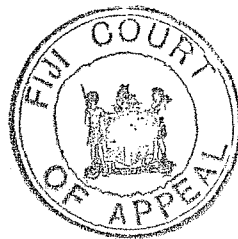
1. Failure by defence Counsel to challenge Miss Savu's evidence, particularly about the missing groceries.
2. That the Appellant was holding the knife to open a tin of meat when he and the deceased fell down together and by mistake the knife struck the deceased's head, but he did not mean to hit him.
3. That the Appellant was provoked by the deceased who grabbed his shirt and punched him.

All of the matters that the Appellant wishes to raise were questions of fact to be decided at the trial. They do not constitute arguments on appeal.

There was insufficient foundation for putting provocation to the assessors. The actions of the deceased, which was pulling the Appellant by his t-shirt, and throwing a punch that did not connect, would not have deprived the ordinary person of the power of self-control. There was ample evidence, including the Appellant's own admissions, to establish that the accused stabbed the deceased.

At the hearing, the Appellant insisted that imprisonment for life was harsh and excessive, but this is the sentence mandated by law for murder. There can be no lesser sentence.

Since the Appellant has not shown any tenable grounds of appeal we refuse the application for leave to appeal.



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Reddy, P
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Kapi, JA
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Sheppard, JA

Solicitors:

Appellant in Person
Office of the Director of Public Prosecutions, Suva for the Respondent