

IN THE COURT OF APPEAL, FIJI ISLAND
AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. AAUOO44 OF 2007

BETWEEN : TANIELA LAQENI Applicant
AND : THE STATE Respondent

BEFORE THE HONOURABLE JUDGE OF APPEAL MR JUSTICE
JOHN E. BYRNE

Applicant : In Person
For the Respondent : P. Bulamainaivalu
Date of Hearing & Ruling : 14th September 2007

R U L I N G

- [1] The Applicant applies for Leave to Appeal out of time against a sentence of 8 years imprisonment imposed on him by the High Court at Lautoka on the 7th of November 2005.
- [2] The Applicant was convicted unanimously on the opinion of three assessors of the manslaughter of his wife.

- [3] At his trial he was represented by a private lawyer and states that the reason why he did not appeal within the 30 days period prescribed by the Court of Appeal Act was because his parents who had financed his defence at his trial could not afford to engage a private lawyer to conduct an appeal for him. He knew at the time of his conviction that legal aid might be available for him on an appeal but preferred to engage a private lawyer. He stated that his parents were now able to afford to pay for any appeal if this Court granted him leave to appeal out of time. He also said that fellow-inmates in the prison had told him that private lawyers were more competent than those from legal aid. I of course cannot comment on that, except perhaps to say that there is an old saying "**one must cut one's coat according to the cloth**". I expect that probably many members of the community would like to own a Rolls Royce motorcar but considerations of economics will prevent this for most of those aspirants. They will have to transport themselves in somewhat cheaper vehicles.
- [4] Even if I were disposed to grant the application on this ground, which in the circumstances I am not, I consider that the delay of 18 months is much too long given the frequent statements of this Court that its rules must be obeyed. A delay of even up to 6 months in choosing private counsel might be justified, although not necessarily in this case, but anything beyond 6 months is in my judgment unreasonable, given the availability of legal aid. I therefore reject this ground.

- [5] The Applicant should have applied for legal aid in my view at least no later than 6 months after his conviction but he chose not to.
- [6] There is in this case an even more important reason for rejecting this application and that is the seriousness of the offence. The facts are described by the learned Judge on pages 2, 3 and 4 of his sentencing remarks. The post mortem report showed that the Applicant caused extensive injuries to his wife. He had used extreme force in punching and kicking her. Apart from lacerations, bruises and a ruptured left eyeball, the victim suffered extensive internal injuries. I shall not recite them here except to say that her lungs had collapsed and the pleural cavity contained 1.5 litres of blood. In the abdominal cavity, the doctor reported that there was a large subdiaphragmatic tear laceration of the liver with haemoperitoneum with 1 litre of blood escaping into the abdominal cavity. As the Judge said, **“The injuries to your wife were massive”**. The doctor also gave evidence that these were injuries inflicted by a blow with a soft object, the Applicant’s fist and feet. He concluded that the cause of death was multiple rib fractures, rupture of the liver, haemothorax and haemoperitoneum.
- [7] It is clear as the Judge said, that the Applicant gave his wife **“an awful beating and nothing under no circumstances and**

no provocation could justify a man doing that to a woman but even more so to a husband doing that to his wife or a father doing that to the mother of his child." As the Judge said, and I agree, it was appalling behaviour.

[8] The Applicant is well educated. He is a trained school teacher and holds a Diploma in Education. He is a Christian and practising Methodist with one child, at the time of trial 5 years of age. He is continuing his studies and doing further studies at the University of the South Pacific in Education.

[9] I took him to be an intelligent and articulate person who has now lost his employment as a school teacher. He has also lost the opportunity to join the British Army which was something that he wished to do. The learned Judge took these matters and others into account in considering his sentence. He also considered the sentencing range for manslaughter and quoted from the Fiji Court of Appeal Judgment in Kim Nam Bae v. The State Criminal Appeal AAUOO15 of 1985 where the Court considered the range of sentences appropriate for manslaughter at page 4 of its Judgment. He quoted two paragraphs from the Judgment which are worth repeating here :

"The task of sentencing is not an exact science which is capable of mathematical calculation. This particularly so with manslaughter where the circumstances and

the offender's culpability can vary greatly from case to case. An appropriate sentence in any case is fixed by having regard to a variety of competing considerations. In order to arrive at the appropriate penalty for any case, the Courts must have regard to sentences imposed by the High Court and the Court of Appeal for offences of the type in question to determine the appropriate range of sentence.

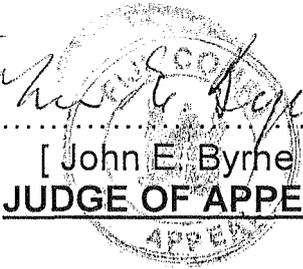
The cases demonstrate that the penalty imposed for manslaughter ranges from a suspended sentence where there may have been grave provocation to 12 years imprisonment where the degree of violence is high and provocation is minimal. It is important to bear in mind that this range covers a very wide set of varying circumstances which attract different sentences in different manslaughter cases. Each case will attract the appropriate sentence within the range depending on its own facts."

[10] A study of Court of Appeal decisions on the appropriate penalties for manslaughter shows that the range goes from suspended sentences to 12 years imprisonment. It would be

only in a most exceptional case that a suspended sentence would be imposed.

[11] Apart from the very serious nature of the injuries caused to his wife there were some other factors which the learned Judge took into account namely the Applicant's failure to take his wife to a hospital on the night of the assault. He could have taken her to either the Lautoka, Nadi or Sigatoka hospitals and the Judge considered this to be an aggravation demanding a further term of imprisonment. I agree. The learned Judge recognised that when the Appellant realised that his wife had died he attended the Sigatoka Police Station immediately and admitted to most of the assaults and conduct alleged.

[12] In my judgment the learned Judge considered all the relevant factors in arriving at a sentence of 8 years imprisonment and I find he committed no error which would warrant my giving leave to appeal to the Full Court in this case. The application for Leave to Appeal out of time is refused.


[John E. Byrne]
JUDGE OF APPEAL


At Suva

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