IN THE COURT OF APPEAL, FIJI ISLANDS
CRIMINAL APPEAL JURISDICTION

Criminal Appeal No. AAU 0046/06
(High Court Criminal Appeal HAA)

BETWEEN:

SEREIMA KARAWA

Appellant

AND

THE STATE

Respondent

Coram: **Byrne JA**
Mataitoga JA

Counsel: **Mr. V.W.R. Vosarogo [Director/LAC] for the Appellant**
Ms K. Bavou for the Respondent

Date of Hearing: **7 February 2008**

Judgment: **12 March 2008**

JUDGMENT OF THE COURT

BACKGROUND

1. Sereima Karawa, the appellant by her Petition of Appeal dated 23 August 2006 has submitted grounds to appeal against conviction and sentence that was passed on her after trial in the High Court at Suva. It should be pointed out that these grounds have never been amended to include appeal against conviction.

2. Section 21(a) and (c) of the Court of Appeal Act Cap 12 provides as follows:

> "21 A person convicted on a trial held before the High Court may appeal under this part to the Court of Appeal –
>
> a) against conviction on any ground of appeal involving a question of law;
>
> c) with the leave of the Court of Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law"

3. When the matter was first called in this Court on 29 August 2007, counsel for the Appellant made an application to have the matter adjourned to the next session of the Court to allow the Legal Aid Commission [LAC] to finalise its decision on the appellant's application to be represented by them. The Court agreed and listed the case before the Acting President for review on 2 October 2007. There were two further adjournments before it was finally listed for hearing on 7 February 2008.

Appeal Grounds

4. At the hearing of the appeal on 7 February 2008, Mr. Vosarogo for the appellant, submitted that his client was ' challenging the finding that she had the necessary intent to commit murder' – paragraph 2.5 Appellant's submission

5. The Appellant, through counsel, submits that his client is not alleging misdirection, rather '*that the direction by the Judge* ***lacked a proper and adequate assessment of the evidence*** *that would have mitigated the mental prerequisite of intent necessary for conviction of murder contrary to section 199 and 200 of the Penal Code, Cap 17.'*

6. Counsel for Appellant submitted there were inadequacies in the direction of the learned trial Judge. They have set these out fully in paragraph 4.4 to 4.16 of the Appellant's written submission.

7. Before considering the issues raised by the Appellant, it would assist the court's determination if the relevant passage in the trial Judge's summing up is quoted in full:

> *" However, you must also go on to consider the offence of infanticide, that is whether at the time of killing the child, she was mentally unbalanced as a result of childbirth or lactation. Dr. Yvonne Entiko of the St. Giles Hospital gave evidence. She tendered the report of Dr. Shish Narayan the Consultant Psychiatrist at St. Giles Hospital which concluded that the accused on admission did not show any psychotic symptoms, and was mentally well. However Dr. Entiko in her evidence did differ from this report. She said that when the accused was admitted at the hospital for 14 days in July 2004 the accused said she sometimes had hallucinations and heard voices. The doctor found her to be distraught although she tried to appear composed, but she was orientated to three spheres, place, person and time which suggested that she was not cognitively impaired. Otherwise she functioned normally, nor was her reasoning impaired. In her opinion the accused was not suffering from post-partem depression. She was released without any medication. Her focus had been on the accused's fitness for trial and her condition at the time of birth was not known to the psychiatrists, who had to rely on the accused's and other family member's accounts of what had occurred at birth".[Page 25 CR]*

8. It is the above direction that the Appellant submits was '*inadequate in that it failed to properly and sufficiently attend to the details of infanticide'* [Para 5.1 Appellant's submission]

9. In the view of the Court the above summing-up was correct in law.

10. The appellant's submission in this appeal is that the directions of the trial Judge should have '*expanded a bit more on how the circumstances that the appellant was living in may be relevant to her state of mind or the development of the imbalance of her*

mind causing her to act the way she did.' [paragraph 4.9 Appellant submission]

11. The appellant further submits '*that the court should have treated her social circumstances as a ground on which symptoms the accused was exhibiting could infer as creating the imbalance of mind necessary to mitigate the offence of murder to infanticide' [paragraph 4.10 Appellant's submission]*

12. Similar arguments were advanced before this court in ***Ilibera Verebasaga v. The State, Criminal Appeal No: AAU 042 of 2000.*** On that occasion the court held:

> *' In summing up the Judge gave the assessors the definition of infanticide, from which it is self evident that what is required is at the time of her act the balance of the appellant's mind was disturbed because she had not fully recovered from the effects of childbirth. The Judge chose not to put any gloss on or give a further explanation of those provisions nor did the nature of the case require it. A Judge is free to explain to the jury that the purpose of the legislation creating the offence was to afford women mitigation from consequences of murder where the balance of their minds had been disturbed through childbirth, but it is not obligatory for judges to give such an explanation. Normally counsel would make the point anyway. Counsel cited a passage from Smith & Hogan's Criminal Law (6th Edn,362) rehearsing a number of reasons why infanticide should be considered less reprehensible than other forms of homicide. Without doubting the correctness of that proposition, we do not accept it was necessary for the Judge to explain the nature of the offence to the assessors in such terms.'*
> [emphasis added]

13. We are unable to agree with the proposition advanced by the appellant. We reaffirm the position of this court as stated in ***Ilibera Verebasaga*** (supra), namely, that it is not necessary for the Judge to explain to assessors the nature of the offence of infanticide in the manner suggested by the appellant.

14. We uphold the Judge's summing up. We dismiss the appeal against conviction.

Sentence

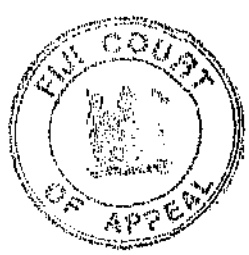
15. After conviction the appellant was sentenced to life imprisonment under section 200 of the Penal Code Cap 17. That sentence is fixed by law. We cannot vary it. It is proper.

16. However, the court has considered whether there exist circumstances that would allow the court to fix a minimum term of imprisonment to be served under section 33 of the Penal Code Cap 17. This section provides:

> *Where any offence in any written law prescribes a maximum term of imprisonment of ten years or more, including life imprisonment, any court passing sentence for such offence may fix the minimum period which the court considers the convicted person must serve.*

17. We adopt the approach of this Court in ***Mohammed Yunus and Mohammad Sayad Khan v. The State [2004] AAU 008/2004.***

18. Having considered the appeal ground against sentence contained in the appellant's letter dated 23 August 2007 to the court, we would fix a minimum term of 7 years imprisonment. It is so ordered.



Byrne JA

Mataitoga JA