



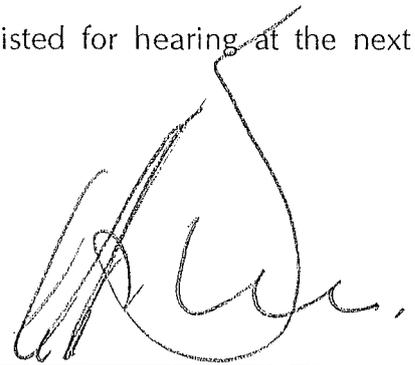
grant leave. However, after a careful perusal of the papers, partly inspired by the very helpful submissions from the Office of the Director of Public Prosecutions, it seems to us that in the light of a recent decision of this Court in Jeffrey VV Colata v The State Criminal Appeal No. AAU 0050 of 2008S and the judgment of the Supreme Court of Fiji in State v Li Jun [2008] FJSC 18, that there are three points which are possibly worthy of exploration. These are:

- (1) The summing up of the learned trial Judge may not have addressed the issue of the subjective aspect of self-defence. The subjective aspect of self-defence is a matter that the Assessors were required to consider in determining whether the defence of self-defence was made out.
- (2) Particularly in the light of the statement given by the Applicant under caution when taken together with the testimony at trial, it may be that an issue of excessive self-defence arises which might call for consideration of a verdict of manslaughter as opposed to murder.
- (3) On any view, the case against the Applicant was a strong one. Even if our concerns in relation to the absence of a direction on the subjective aspect of self-defence well-founded, there is a respectable argument that the Court of Appeal ought to consider whether notwithstanding the absence of a direction on the subjective aspect of self defence in the Applicant would inevitably have been convicted.

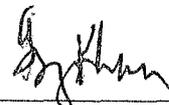
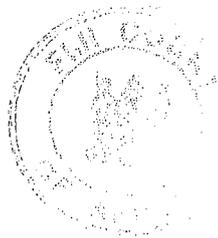
4 It seems to us that the Applicant should have leave to appeal. Secondly, it also seems to us that the Applicant and the Court would be greatly assisted if the Applicant was represented by counsel. Accordingly, pursuant to section 30 of the Court of Appeal Act, Cap 12, we are satisfied that it is desirable in the interests of justice that the Applicant should have legal aid. We are also satisfied that she has not sufficient means to enable her to obtain that aid. Accordingly, we will direct that the Applicant have legal aid.

5 Accordingly, we order:

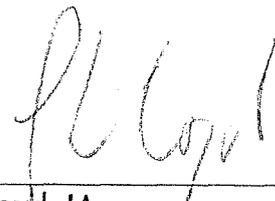
- (1) Leave to appeal against conviction limited to the issue of (a) whether the direction of the learned trial Judge in relation to self defence was correctly left to the Assessors; (b) whether the acts of self-defence were excessive and, if so, what verdicts may flow from that; and (c) if the direction in relation to self defence was not correctly left to the Assessors, whether by reason of the evidence proved at trial that no miscarriage of justice was occasioned thereby and by reason thereof, the appeal should be dismissed;
- (2) Leave to appeal against sentence refused;
- (3) The applicant to have legal aid pursuant to section 30 of the Court of Appeal Act; and
- (4) This matter be adjourned for mention at the next call over of the Court of Appeal with an expression that the matter be listed for hearing at the next sessions of the Court of Appeal.



Bruce, JA



Khan, JA



Lloyd, JA