

**IN THE COURT OF APPEAL, FIJI**  
**APPELATE JURISDICTION**

**CRIMINAL APPEAL NO. AAU 0082 of 2016**  
**(High Court HAC 298 of 2013)**

**BETWEEN** : **KAMELI BOLA**

***Appellant***

**AND** : **THE STATE**

***Respondent***

**Coram** : **Chandra RJA**

**Counsel** : **Mr. L Raisua for the Appellant**  
**Mr. M D Korovou for the Respondent**

**Date of Hearing** : **15 June 2018**

**Date of Ruling** : **31 July 2018**

**RULING**

- [1] The Appellant was charged with one count of manslaughter contrary to section 239 of the Crimes Act, 2009.
- [2] The Appellant pleaded guilty and was convicted for the offence for which he was charged.

- [3] On 6<sup>th</sup> August 2015, the Appellant was sentenced to seven years imprisonment with a non-parole period of 6 years.
- [4] The Appellant filed a document in the Court of Appeal on 18<sup>th</sup> July 2016 setting out grounds of appeal against sentence.
- [5] Thereafter having engaged Counsel the Appellant filed a notice seeking leave to appeal out of time against sentence. An amended notice of appeal was also filed setting out the following grounds:
1. That the learned Judge erred in law and in fact, when he took into account irrelevant factors to aggravate the offence.
  2. That the learned Judge erred in law and in fact when he did not properly consider the Appellant's remorse as a mitigating factor.
  3. That the sentence of 7 years imprisonment with a non-parole period of 6 years imprisonment was manifestly harsh and excessive considering the entire circumstances of the case.
- [6] The Appellant filed an affidavit setting out the reasons for the delay which the Respondent stated was acceptable and therefore the delay in considering the grounds of appeal for extension of time would not arise.
- [7] The Appellant had been employed as a Bouncer at a Night Club. At about 11 p.m. the deceased had walked towards the toilet in the Night Club and the Appellant had followed him. They had a verbal exchange outside the toilet where according to the Appellant the deceased had taunted him in a homosexual way, whereupon he had punched the deceased on the left cheek jaw bone area. The deceased had fallen on the concrete floor, and had been unconscious. The Appellant had tried to revive him, but to no avail, and had died soon after being taken to Hospital.

[8] In an appeal against sentence, the principles that are generally followed have been set out in **Kim Nam Bae v The State** Criminal Appeal No.AAU0015 as follows:

*“Whether the trial judge made one of the following errors:*

- (i) Acted upon a wrong principle;*
- (ii) Allowed extraneous or irrelevant matters to guide or affect him;*
- (iii) Mistook the facts’*
- (iv) Failed to take into account some relevant consideration.”*

[9] It was argued on behalf of the Appellant that the learned trial Judge by stating that the Appellant had a fiduciary duty to protect the patrons of the club as an aggravating factor and thereby fell into error as the Appellant had only a duty of care to the deceased and not a fiduciary duty. The Respondent on the other hand has argued otherwise. Further, that the learned Trial Judge had considered the loss of life as an aggravating factor which was already subsumed in the offence for which the Appellant was charged with. The Respondent argues that the provocation in this case was minimal and therefore there was no error.

[10] In **Ratoa v State** [2017] FJCA 14; AAU14.2012 (23 February 2017) a case where a single punch had resulted in death the Accused was sentenced to 6 years imprisonment. In that case also there was a certain amount of provocation which was somewhat minimal.

[11] In view of the decision in **Ratoa** (supra) I would consider this ground advanced by the Appellant as being arguable.

[12] The second ground of appeal is that the learned trial Judge failed to take into account that the Appellant was remorseful and the third ground of appeal was that the sentence was harsh and excessive.

[13] It was submitted that the Appellant had tried to revive the deceased when he fell and thereafter though not in the first instance, but when the charge was amended to manslaughter had pleaded guilty.

[14] The learned trial Judge had considered the plea of guilty and given a discount on that account, but had not taken into account the question of remorse. It is arguable whether that question should have been given consideration and consequently whether the sentence was excessive in those circumstances.

[15] In those circumstances I would grant leave on the question of whether the sentence was harsh and excessive.



A handwritten signature in blue ink, appearing to read "S. Chandra", is written over a horizontal line.

Hon. Justice S. Chandra  
**RESIDENT JUSTICE OF APPEAL**