

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

**CRIMINAL APPEAL NO. AAU 0034 OF 2016**  
(High Court Action No: HAC 137 of 2014 Ltk)

**BETWEEN** : AMINIO TURAGAVA  
*Appellant*

**AND** : THE STATE  
*Respondent*

**Coram** : Chandra, RJA

**Counsel** : Mr T Lee for the Appellant  
Mr S Babitu for the Respondent

**Date of Hearing** : 24 April, 2019

**Date of Ruling** : 14 June, 2019

**RULING**

[1] The Appellant was charged with one count of murder contrary to section 237 of the Crimes Act, 2009.

- [2] After trial, the Appellant was convicted on 15<sup>th</sup> February 2016 on the learned Trial Judge concurring with the unanimous opinion of the Assessors and was sentenced on 15<sup>th</sup> March 2016 to life imprisonment with a non-parole term of 15 years imprisonment.
- [3] The Appellant has filed an application seeking leave to appeal out of time together with an affidavit setting out the reasons for the delay in filing the appeal.
- [4] The delay in making his application is over 1 year and 2 months and therefore there is a substantial delay. In his affidavit he has stated that he expected his Counsel to lodge his appeal in time but had later realized on being informed by his family members that the appeal had not been lodged. He had thereafter sought the assistance of the Legal Aid Commission to make his application.
- [5] Since there has been a substantial delay and the explanation given is not satisfactory, it is necessary to consider whether there is merit in the grounds of appeal advanced on his behalf.
- [6] The grounds of appeal are as follows:
1. That the learned trial Judge was erroneous in law by not properly directing the assessors on which fault element the State was relying on for the charge of murder contrary to section 237 of the Crimes Act.
  2. That the learned trial Judge erred in law and fact by not properly and adequately directing the assessors on the lesser charge of manslaughter thus causing an unfair and unbalanced summing up.
  3. That the learned trial Judge caused a grave miscarriage of justice to convict the Applicant in erroneously stating in the judgment that Applicant's unlawful act of jumping on the deceased's head caused her death.
  4. That the learned Trial Judge was erroneous in law and fact when assessing the issue of intention to kill in his judgment.

- [7] The Appellant had been in a de-facto relationship with the deceased and had been living separately after a dispute in relation to which a Domestic Violence Restraining Order was in operation. He had visited his de facto wife to force her to withdraw the Court case that was to be called on the day of the incident. A series of violent activities, followed by an argument, has lasted for a considerable period of time. The deceased had fallen on the ground when the Applicant had punched her head. Thereafter he had kicked the deceased on the head. He had carried the deceased on his shoulder and left her near a bush. The deceased was pronounced dead on admission to hospital. The pathologist who conducted the postmortem attributed her death to subarachnoid hemorrhage caused by blunt force. In the cautioned interview, the Applicant had admitted punching and kicking the deceased head three to four times.
- [8] In the first ground of appeal the Applicant has taken up the position that the learned trial Judge had not adequately directed the Assessors on which fault element the State was relying on. It has been submitted that the learned Judge had at paragraph 22 stated that the Prosecution was running its case on the basis that the accused intended to kill his de facto partner and also that he was reckless as to causing his death. The Assessors were directed to concentrate on these fault elements, and thereafter the learned Judge had described what a reckless act would be.
- [9] The Respondent submits that the learned trial Judge's directions were clear regarding the fault element by citing paragraph 54 of the summing up where the learned Judge had stated that the prosecution was running its case on intention. But in the rest of the paragraph there is no explanation as to how intention has to be considered.
- [10] The Respondent also takes up the position that no prejudice has been caused as the information was clear and the evidence showed that the Applicant had the intention of killing the deceased.
- [11] In his judgment the learned trial Judge has considered the evidence in detail and has arrived at the conclusion that the Applicant had the intention to kill and that the evidence supported that position.
- [12] In view of this position there is no merit in this ground.

- [13] The second ground of appeal is to the effect that the learned Trial Judge failed to adequately direct the Assessors on the lesser charge of manslaughter.
- [14] The learned trial Judge had in the summing up at paragraphs 24, 25, 82 to 84 dealt with the lesser charge of manslaughter adequately and therefore there is no merit in this ground.
- [15] In the third ground of appeal the Applicant takes up the position that the learned trial Judge had erroneously stated in his judgment that the Applicant's unlawful act of jumping on the deceased's head caused her death.
- [16] The pathologist in his evidence had ruled out the possibility of the cause of death of the deceased having fallen on the hard surface when punched by the Applicant. In his caution interview which was cited by the learned Judge in his judgment at paragraph 17, the Applicant had admitted kicking the deceased on her head several times.
- [17] It was the pathologist evidence that death was due to blunt force being used on the neck and the head regarding which there was evidence by other witnesses and the admission by the Applicant.
- [18] In those circumstances no prejudice was caused to the Applicant by the learned Judge stating that the Applicant jumping on the deceased's head caused the death as it was the Applicant's acts which caused the death of the deceased. There is no merit in this ground.
- [19] The fourth ground of appeal is on the basis that the learned trial Judge erred in law and in fact when he concluded that the Applicant had the intention to kill.
- [20] After the Assessors brought in a unanimous opinion of guilt the learned Judge went on to deliver a detailed judgment where he specifically addressed the issue of intention to kill by considering the evidence that was led at the trial inclusive of the Applicant's cautioned interview statement and the charge statement, the Applicant's motive, his behavior before, during and after the incident.
- [21] The learned Judge had analysed the entirety of the evidence in arriving at his conclusion that the Application had the intention to kill. Therefore this ground has no merit.

[22] As there is no merit in the grounds of appeal advanced on behalf of the Applicant, the application for extension of time to appeal is refused.

**Orders of Court:**

Application seeking extension of time to appeal is refused.



*Suresh Chandra*

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