

JACK ANTHONY FRASER v STATE (AAU0024 of 2010)

COURT OF APPEAL — CRIMINAL JURISDICTION

5 MARSHALL JA

9 February 2012

10 **Criminal Law — appeals — murder — leave to appeal against conviction — leave to appeal against sentence — arguability — premeditated killing — contract killing of businessman.**

The applicant was convicted of murder and sentenced to life imprisonment, with a 16 year non-parole period. The applicant sought leave to appeal against conviction and sentence.

15 **Held –**

(1) Though the chances of success are not very high, it is at least arguable that the conviction should be set aside.

(2) It is unarguable that 16 years eligibility for parole is wrong in principle. In the opinion of the Court, it is on the low side.

20 *Timoci Ravurabota v The State*, followed.

Leave to appeal against conviction granted. Application for leave to appeal against sentence dismissed.

Cases referred to25 *Peni Mau and Mahendra Motibhai Patel* Crim App Nos AAU 39 and 40 of 2011, considered.

Ram Bali v The Queen [Privy Council] Criminal Appeal No 3 of 1958, followed.

30 *I. Khan* instructed by *Iqbal Khan & Associates* for the Appellant.

L. Vateitei instructed by *Office of the Director of Public Prosecutions* for the Respondent

35 [1] **Marshall JA.** On the 18th day of September 2006 one Kamlesh an employee of Raniga Jewellers was stabbed to death as he emerged from his vehicle at about 8.15 pm at the compound in Nadi where there was both a jewellery business and housing for those owning or employed in the business. Kamlesh’s full name is Kamlesh Narandass Nanda.

40 [2] Jack Fraser was arrested and at a first interview admitted that a business rival of Raniga Jewellers had put out a contract for the killing of Kamlesh and \$20,000 was the money offered. At this interview Jack Fraser denied murder but admitted a conspiracy to murder in which he was a “*go-between*”. When the time for holding him without charges was about to expire, police released him for half an hour and re-arrested. It seems they had new information re disposal of number
45 plates, clothing and the murder weapon. This new information was connected to Jack Fraser and his wife.

50 [3] The second statement was taken by police in the presence of Jack Fraser’s wife between 6.30 pm and 7.45 pm on 7th October 2006. During the interview Jack Fraser admits striking the blows with a knife which killed Kamlesh and arranging for one Eremasi whom he trusted to destroy or dispose of the incriminating materials at Natabua Seaside.

[4] Two others were tried before Justice Paul Madigan at Lautoka High Court in a trial with assessors. The other two were Imran Ali and Samuel Donald. On 1st April 2010 Justice Paul Madigan ruled against the State on the admissibility of the caution statement of Imran Ali and Samuel Donald. At the end of the
5 prosecution case Justice Paul Madigan ruled that Imran Ali and Samuel Donald had no case to answer and found them “*not guilty*”.

[5] With regard to Jack Fraser after a *voire dire* his statement under caution was admitted. Jack Fraser did not give evidence and was not cross examined.

[6] On 14th April 2010 the three assessors gave an opinion of “*not guilty*”.
10 Then in a written judgment, also of 14th April 2010, Justice Paul Madigan explained why he did not accept the opinion of the assessors and why he was now convicting Jack Fraser of murder.

[7] The point that is at least arguable is that in accordance with the statutory framework and the doctrine in the Privy Council case of **Ram Bali v The Queen**
15 Privy Council Criminal Appeal No 3 of 1958 as properly developed in later decisions the conviction should be set aside.

[8] I discussed these principles at length in the recent appeal of **Peni Mau and Mahendra Motibhai Patel** Criminal Appeal Nos AAU 39 and 40 of 2011. The
20 judgment was delivered on 28th October 2011.

[9] While I accept that there is arguability sufficient for leave to appeal against conviction to be granted, the chances of success are not very high.

[10] I do not limit Jack Fraser to this one ground on the appeal before the Full Court. As I have said in other cases, the Court of Appeal will sort out the grounds
25 they think are arguable and give their opinion on them. They will not do other than dismiss arguments which they consider to be unarguable and without any chance of success. This process may be described as “*winnowing the wheat from the chaff*”.

[11] There is also an application for leave to appeal against sentence. Justice
30 Madigan sentenced Jack Fraser to life imprisonment which is mandatory on a conviction for murder. He fixed the minimum period to be served before eligibility for parole at 16 years.

[12] In the recent sentence appeal of **Timoci Ravurabota v. The State** of 16th
35 November 2011, I noted that wholly premeditated killings attract a minimum in the region of twenty years. Civil society in Fiji must regard contract killings of businessmen for money as beyond the pale and totally unacceptable. I am satisfied that it is unarguable that 16 years before eligibility for parole is wrong in principle. It is on my opinion on the low side. There are powers in the Full Court of Appeal to increase “*non parole*” periods.

[13] I propose to refuse leave to appeal against sentence in this case.

Orders of the Court

[14] I order –

- 45 (1) that Jack Anthony Fraser be granted leave to appeal to the Court of Appeal against conviction.
(2) that Jack Anthony Fraser’s application for leave to appeal against sentence be dismissed.

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Leave to appeal allowed in part.