THE QUEEN v LEONARD CHENE

HIGH COURT OF SOLOMON ISLANDS
(Commissioner J Lewis)

Criminal Appeal Case No. 313 of 2006

Hearing: *15th September 2006*
Judgment: *19th September 2006*

Ronald Talasasa for the Prosecution
Ms. Emma Garo for the Defendant

JUDGMENT

Commissioner Lewis: The appellant pleaded guilty and was convicted and sentenced before the Magistrates Court at Honiara to a charge in that he on 20 February 2006 did cause Grievous Harm to Doris Kava contrary to the provisions of section 226 of the Penal Code. He now appeals against sentence.

The facts reveal that the attack on Ms. Kava was most serious moreover it was with a weapon. Nevertheless the Magistrate concluded that he was authorized to impose sufficient sentence on Mr. Chene so as to be able to satisfy the requirements of section 208 of the penal code.

The Appellant appears to have filed his notice of appeal personally. The appeal grounds are as follows:

1. *the sentence imposed too excessive (sic).*
2. *mitigation also not allowed to be presented before sentence given.*

Ms. Emma Garo, counsel for the appellant submitted that the magistrate failed to extend mercy and that the sentence was out of line with other recent sentences and manifestly excessive.

The victim and the appellant had been together living as husband and wife since 1995 – a period of about 11 years. They had a child together, now aged about 7 years. The appellant was desirous of marriage with Ms. Kava but he told the Magistrate that her parents and relatives would not permit her to marry him.

The appellant in a handwritten document which he handed to the Magistrate, said that he wanted to leave her and get on with his wife but that

she would not allow him to **'let go of her'.** This caused him personal stress trauma and confusion.

The appellant told the Magistrate that he was going from his house to his mother's village when he chanced upon the victim who told him that she was coming to tell him that their relationship was all over and as she said that she pointed out a man standing nearby whom she said was her new boyfriend.

The appellant told the magistrate that he was carrying a knife and when she told him that their relationship was at an end he lifted the knife and attacked her, overwhelmed as he was with the news and thinking to himself of feeling sorry for himself for all the *"previous years that I have wasted by waiting for the chance to marry her and also all the money that I have wasted on her... I was in shock. .... When I lift the knife and hit her with it.... I had a sudden loss of self control."* Although it is a temptation to conclude that they were rather selfish thoughts I proceed on the basis that it was jealousness not selfishness which motivated his revenge.

Ms. Garo put, quite properly, that the facts before the Magistrate support powerful mitigation and almost all the circumstances support mitigation. I agree with Ms. Garo – but the real question is while he may have been provoked and outraged by what he heard, was his reaction such as to afford him less than the sentence which the Learned Magistrate imposed. I think not.

In this case what the Appellant did was brutal and inflicted the gravest kind of injury on a slightly built, unarmed and defenceless woman who had come to him to frankly end their relationship.

The injuries are described and were described to the Magistrate –

- lacerations to the frontal region of her scalp 10cm long and 3.8cm deep.
- laceration across the dorsum of her right hand severing her extensor tendons (x2) and her metacarpals 11 and 111 (openfractures or cut through the bones).
- laceration over the right shoulder about 7cms long x 1cm deep.
- lacerations across the right arm outer aspect about 7cms long and x 1.5cms deep.
- Laceration at the root of the neck on the Right side about 6cm long x 3mm deep and 1.0 wide.

She was hospitalized for about two weeks. She suffered greatly and her injuries required painful surgical correction.

As a consequence of the injuries, the scarring and disfunction with which she is left will remain with her to some degree for a long time perhaps for her lifetime.

The Magistrate understood the injuries. He acknowledged and referred to it. Not only that having conclude that the offending attracted an appropriate 4 and a half years but reduced the sentence he would otherwise have imposed by one year to 3½ years on the basis of the mitigating factor placed before him.

In my opinion the magistrate took every factor into account which he needed to in fixing penalty. He accepted the mitigating factors referred to and he gave appropriate weight to, the facts, the effects of the injuries on the victim, the early plea of guilty by the defendant, (after substitution of a charge) the reconciliation between the parties, and the genuine remorse shown by the defendant. He took into account the matters personal to the defendant advanced in mitigation.

Counsel for both sides placed before me a number of authorities by way of comparative sentences. I have to say, even if one were to receive a detailed schedule containing fine detail about each sentenced prisoner, comparative sentences do not assist the Court very much in the end because almost every matter which comes before the Court is different to the next in the subtlest of ways, for example the existence of prior relevant convictions, whether there was an early plea and so on.

In the end the question remains: was this sentence manifestly excessive? I do not think so. It is and has been clear law across the sentencing world for a very longtime that:

> *"it must appear that some error has been made in the sentencing discretion. If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed and the appellate Court may exercise its own discretion in substitution for his..."* ***House v The King (1936) 55 CLR 499 per Dixon, Evatt and McTiernan JJ at 505.***

I am satisfied that the Learned Magistrate was not in error in arriving at the sentence which he judged was appropriate on the material before him.

The Appeal is dismissed.

THE COURT