

IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No. 9 of 1978.

Between:

ILIAVI VAKACILACILA

Appellant:

- and -

REGINAM

Respondent

Mr. E. Vula for the Appellant

Mr. M. Raza for the Respondent

Date of Hearing: 4th July, 1978.

Date of Judgment: 28th July, 1978.

JUDGMENT OF THE COURT:

SPRING, J.A.

This is an appeal against the sentence of two years imprisonment imposed by the Supreme Court of Fiji sitting at Suva on the 9th January, 1978. The appellant was charged that on the 19th September, 1977 at Wailoku, Tamavua, he unlawfully killed Low Tiy thereby committing the crime of manslaughter. The appellant pleaded guilty. The facts as found by the Supreme Court may be shortly stated : On 18th September 1977 the appellant and his wife entered the shop of Low Tiy at Wailoku. The appellant purchased a bottle of milk and a bundle of dalo, although, there was some heated discussion between Low Tiy's family and the appellant as to whether the dalo had been paid for; the appellant maintained at all times that he had paid for the dalo. Subsequent to this discussion as the appellant was walking to the shop entrance with the dalo he was approached by Low Tiy who said "you have not paid for your dalo".

(2)

The appellant held the dalo in his right hand and the bottle of milk in his left hand. In a fit of exasperation or annoyance over the alleged non-payment for the dalo the appellant pushed Low Tiy, who was aged 66 and not in good health, fell backwards hitting his head on the cement floor and suffer two fractures of the skull. Low Tiy died in hospital the following day.

The learned Chief Justice found ^{that} the degree of violence was slight and that the appellant did not anticipate that his action would result in the death of the deceased but, nevertheless, held that the appellant was aware of the deceased's frailty and age and that the assault was unjustified.

Counsel for the appellant submitted that the circumstances in which the crime of manslaughter fall to be considered vary greatly; as Parker L.C.J. said in R. v. O'Neill (1967) 51 Cr. App. R. 241 at page 243 "Manslaughter is, of course, a serious offence, but the degrees of seriousness vary infinitely from a matter of life down to probation." Thomas on Principles of Sentencing in discussing the crime of manslaughter by an unlawful or dangerous act says at page 79 :

"Clearly the factor which determines the sentence is the nature of the behaviour which caused death, rather than the fact that death resulted, although the incidence of death will substantially aggravate in sentence in some cases. Where death arises accidentally from what would otherwise have been a simple assault, the approved sentence will approximate to what would have been considered appropriate for the assault if it had not had fatal consequences."

Mr. Vula in support of his submission cited the case of R. v. Mosese O'Connor Crim. Case No. 27/76

which was a decision of the Supreme Court of Fiji in which the accused had electrically wired up his car, mango tree and other trees in an attempt to prevent children and others from interfering therewith, as a result a boy of 13 was electrocuted and died. The accused pleaded guilty to the charge of manslaughter and the Court found that in the circumstances it was clear "that the accused Mosese O'Connor never contemplated that death would be the result of his foolish and dangerous act." A sentence of 18 months imprisonment, suspended for two years was imposed.

In this case under appeal the learned Chief Justice found that the appellant did not anticipate that his action would result in the death of the deceased and that the degree of violence was slight; we note in the statement made to the police the appellant said "I was shocked when he fell heavily on the ground."

As the sentences in the O'Connor case and the present one were both imposed by the learned Chief Justice we appreciate that he was in a very good position to assess the considerations applicable to each; we are of the opinion, however, that this case was little more than a common assault which unfortunately resulted in death. The wide words "by an unlawful act :..... causes the death" in Section 227 of the Penal Code made the offence here manslaughter, but we think, marginally more, than technically so. Having considered all the circumstances and submissions we are of the opinion that the sentence of two years erred on the side of severity and that 12 months imprisonment would have been a more appropriate sentence.

(4)

Accordingly, we allow the appeal and set aside the sentence of two years imprisonment and impose a term of 12 months imprisonment to run from the same date as the sentence originally imposed.

(Sgd.) T. Gould
Vice President

(Sgd.) C.C. Marsack
Judge of Appeal

(Sgd.) B.C. Spring
Judge of Appeal

28th July, 1978.