

whether reduction of conviction for murder to manslaughter was justified based on the evidence.

*Criminal law - murder 373
-provocation
Courts - Trial judge's role,
Solomon Islands - Courts
Penal Code §197*

IN THE FIJI COURT OF APPEAL
Criminal Jurisdiction
CRIMINAL APPEAL NO. 59 OF 1981

appellant sought reduction of conviction for murder to manslaughter because of provocation.

Between:

TAWANE

APPELLANT

-and-

R E G I N A M

RESPONDENT

E. Vula for the Appellant.
K.R. Bulewa for the Respondent.

Date of Hearing: 20th November, 1981.

Delivery of Judgment: 20th November, 1981.

JUDGMENT OF THE COURT

SPRING, J.A. (Orally)

We have considered carefully the arguments advanced by counsel for appellant urging upon this Court that the conviction for murder imposed by the High Court of the Solomon Islands upon the appellant should be set aside and a conviction for manslaughter substituted therefor. We have read the transcript of evidence; considered the relevant sections of the Penal Code of the Solomon Islands; and studied the judgment of the learned Chief Justice.

Under section 197(a) of the Penal Code, for the conviction of murder entered against appellant to be reduced to one of manslaughter, the provocation given by the person killed must be such extreme provocation as to deprive the appellant of the power of self control. The word "extreme" is a relative term and in our opinion must at least to a great extent be decided by comparing the nature of the provocation with that of the retaliatory act.

The learned Chief Justice after reviewing the whole of the evidence and considering all other matters urged upon him by learned defence counsel including the history of events and the fact that appellant's brother had been stabbed to death said :

"Indeed I also find that I am sure that it was not the conduct or words of the deceased that caused the accused to act as he did. It was his lust for revenge"

The learned Chief Justice concluded by saying :

"I therefore find that the matter in extenuation urged under section 197(a) and section 198 of the Penal Code is a matter I can be sure should be excluded."

We remind ourselves and bear in mind that the learned Chief Justice, who was the sole judge of fact in this trial, not only saw and heard the witnesses, but also is more familiar, than this Court, with the local conditions, social attitudes and customs of Solomon Islanders.

For these reasons we are in agreement that this appeal fails and it is dismissed accordingly.

Chabbeared

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Judge of Appeal

[Signature]

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Judge of Appeal

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Judge of Appeal