

IN THE FIJI COURT OF APPEAL
CRIMINAL APPEAL NO.7 OF 1989

Between:

RAM PRATAP Appellant

- and -

STATE Respondent

Mr. Sohan Singh for the Appellant
Mr. I. Wikramanayake for the Respondent

Date of Hearing: 9 August 1989

Delivery of Judgment: 22 August 1989

JUDGMENT OF THE COURT

This is an appeal against sentence on the ground that it is harsh and excessive. The Appellant also contends that the sentence passed on him is not in conformity with the trend of punishment in similar cases.

The Appellant was sentenced to 3 years imprisonment by the Suva High Court on 9 May 1989 for the offence of manslaughter contrary to Section 198 of the Penal Code Cap. 17.

The brief facts of this case are as follows:-

On the night of 15 July 1988 the deceased and his companion had a few drinks at the Grand Pacific Hotel and from there they proceeded to the Bali Hai Night Club for a dance. He

was not allowed in because he was wearing flip-flops. He therefore decided to first go to his home in Fletcher Road which he did in a taxi driven by the Appellant. He was accompanied by his friend. The deceased led the Appellant to various places in and around Vatuwaqa. The taxi fare came to \$3. On finally alighting from the taxi the deceased did not pay his fare and instead proceeded to assault the Appellant who was still then seated in the driver's seat. The Appellant on being assaulted got off the car with a knife with the intention of scaring the deceased. In the process he stabbed the deceased in the left chest inflicting a wound which though not immediately fatal proved to be so later. After being stabbed the deceased ran away from the scene. The Appellant pursued him for some distance but returned to the car and drove off with the deceased's companion. Next morning the deceased was found dead behind his house in Fletcher Road. On being interviewed by the police the Appellant admitted that he used the knife and even produced it to the police. He was arrested on 19 July 1988 and charged with murder. He was remanded in custody until 6 September 1988 when the charge was reduced to manslaughter. He was then released on bail. He pleaded guilty to the manslaughter charge on 8 May 1989 and was sentenced on 9 May 1989. He has been in prison since then.

In sentencing the Appellant the learned trial judge observed inter alia as follows:-

"I accept that taxi drivers especially those who drive at night are sometimes subjected to abuse and even violence and that the incidents of such assaults are a matter for concern by the courts.

But there is no suggestion that the accused had been earlier attacked on a previous occasion or that he actually feared for his life when he was assaulted by the deceased who was obviously drunk at the time.

Indeed the accused's counsel even suggested that the deceased might have learnt a salutary lesson from the incident.

It is noteworthy that the accused not content with having stabbed the deceased pursued him for some distance thereafter.

A man has been killed for the sake of \$3. The accused at the time was carrying a lethal weapon which he used with fatal consequence in circumstances that cannot have indicated self-defence.

This court has said on previous occasions that accused persons cannot lightly assume to be provoked or afraid so as to justify the use of a lethal weapon whether to scare an attacker or "teach a lesson".

And this court can only view with grave concern the statement of counsel for the accused that lethal weapons such as knives, are commonly carried in motor vehicles.

Not only is the public-carrying of an offensive weapon such as a knife a criminal offence but as this case so vividly demonstrates its accessibility often leads to its indiscriminate use in the resolution of disputes.

After giving the most anxious consideration to the facts of this case and in particular the matters urged by the accused and his counsel in mitigation this court is of the view that a custodial sentence is inevitable.

The accused is sentenced to 3 years imprisonment."

Mr. Sohan Singh who also appeared for the Appellant in the Court below submitted that the knife in question was an ordinary one and it was kept in the taxi for innocent purposes, for example slicing fruits, etc. He said that this was explained to the Court but unfortunately the explanation was not recorded. Mr. Wikramanayake of the Director of Public Prosecutions' Office was not in a position to dispute Mr. Sohan Singh's contention. The Appellant's counsel also argued that the incident was an isolated one involving a single act of retaliation by a frightened driver and that the chase which the Appellant gave was merely to scare the deceased. He referred also to 2 manslaughter cases where a single unpremeditated act of violence with a knife or other weapon caused death and in both of these cases a suspended jail sentence was imposed by the High Court.

The cases were:-

- (i) R. v. Vir Singh - Labasa Criminal Case No.6 of 1982 in which a 2-year suspended sentence was passed, and
- (ii) State v. Tomasi Waqanivalagi - Criminal Case No.53 of 1988. In this case an innocent person was struck and injured on the head when the accused threw a piece of timber in the direction of on-coming people. The victim later died. A 2-year prison sentence was imposed but it was suspended for two years.

Mr. I. Wikramanayake contended that the sentence was neither manifestly excessive per se nor unjustifiably disparate from the normal

run of sentences passed in similar cases. He submitted that an appellate court therefore should be slow to intervene. He cited the judgment of this Court in Opate Koro v. The State, Criminal Appeal No. 4 of 1988 in support of his contention. He however very rightly conceded that the Appellant's culpability was very minimal.

It appears to us that in deciding to impose an immediate custodial sentence the learned trial judge was influenced by 3 factors:-

- (a) The assumption that the presence of the knife in the taxi per se constituted an offence of publicly carrying an offensive weapon.

There is nothing in the record that justifies this view. We are therefore inclined to accept the defence contention that the knife was there for innocent purposes.

- (b) That "...the accused not content with having stabbed the deceased pursued him for some distance thereafter".

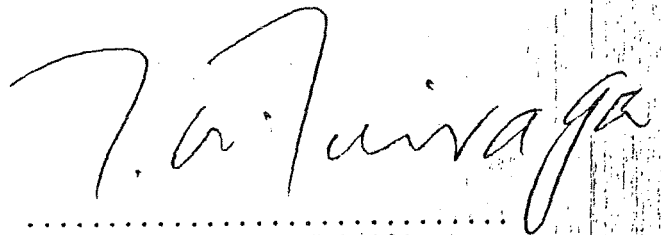
In our view the circumstances surrounding the chase ought not to be viewed as an independent factor in assessing sentence but viewed as part of the totality of events on the night in question which arose directly from a sudden and an unprovoked attack on an innocent person carrying out his own lawful business. It is clear that the appellant was actuated by reasonable apprehension for his own safety and could not be said to have acted in a manner which was entirely unreasonable in the whole circumstances of the case. It was unfortunate that the one single blow upon the deceased landed in an area which ultimately proved to be fatal.

- (c) That "there was no suggestion that the accused had been earlier attacked on a previous occasion or that he feared for his life when he was assaulted by the deceased who was obviously drunk".

Whilst there is evidence on record to support the view that the deceased may have been under the influence of drink there is nothing to suggest that he was actually drunk. To deny mitigation to the appellant merely because he had not been earlier attacked on a previous occasion appears to us to be somewhat harsh in the light of public knowledge of the notorious fact that taxi drivers have been frequently robbed, assaulted and seriously injured by passengers in the recent past.

Bearing in mind that the Appellant is a first offender, that he has consistently shown remorse and that his culpability was indeed minimal, we are of the opinion that in all the circumstances of the case an immediate custodial sentence of 3 years imprisonment was manifestly excessive.

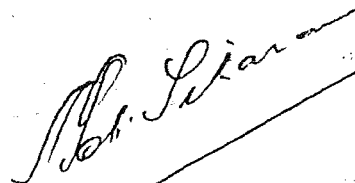
Whilst we appreciate that each case depends on its own particular facts and no two cases are alike in all respects, we are of the view that some consistency of approach in sentencing is also desirable. We therefore allow the appeal, set aside the sentence of 3 years imprisonment and in lieu thereof impose a sentence of two years imprisonment suspended for two years. In doing so we have also borne in mind that the Appellant has spent a total of over 5 months in custody either as an accused awaiting trial or as a prisoner.



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SIR TIMOCI TUIVAGA
PRESIDENT



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SIR RONALD KERMODE
JUSTICE OF APPEAL



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SIR MOTI TIKARAM
JUSTICE OF APPEAL