

IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

CRIMINAL APPEAL NO. 5 OF 1993

(Lautoka High Court Cr. Case No. 2 of 1993)

BETWEEN:RAM SAMI f/n Marrimuttu

Appellant

-and-

THE STATE

Respondent

Mr M.N. Sahu Khan for the Appellant*Mr I.F. Wikramanayake* for the RespondentDate of Hearing: 9th May, 1994Delivery of Judgment: 11th May, 1994JUDGMENT OF THE COURT

The Appellant was originally charged with attempted murder but he pleaded not guilty to that charge but guilty to an act intended to cause grievous harm contrary to section 224(a) of the Penal Code. This plea was accepted by the prosecution and the High Court convicted the Appellant accordingly after the facts as outlined by prosecution were accepted by him.

After the Appellant's antecedents were recorded and upon hearing the submissions in mitigation by Dr Sahu Khan the Appellant's counsel, the learned Judge (Sadat J.) adjourned the case for two days to consider his sentence.

On 30th April, 1993 the Court imposed on the Appellant a sentence of 3 years imprisonment. It is from this sentence that the Appellant appealed to this Court by letter from prison contending that the punishment meted out to him was harsh and excessive bearing in mind all the circumstances of the case including his own background. By virtue of section 21(1)(c) of the Court of Appeal Act a person convicted before the High Court can appeal only "with the leave of the Court of Appeal against the sentence passed on his conviction unless the sentence is one fixed by law". It was, therefore, necessary for the Appellant to obtain leave before he could proceed with his appeal. The Appellant's counsel has since applied for leave which we have granted.

The written grounds of appeal as submitted by Messrs Sahu Khan and Sahu Khan are as follows:

- "[1] *That the Learned Trial Judge had failed and/or neglected to adequately and/or properly consider, and/or give sufficient weight to the the degree and/or gravity of provocation involved in all the circumstances of the case.*
- [2] *That the Learned Trial Judge had failed and/or neglected to give adequate and/or proper weight to the plea of guilty on the part of the Defendant in all the circumstances of the case.*

- [3] *That the sentence passed by the Learned Trial Judge is not consistent with sentences passed in cases of similar nature and therefore wrong in principle.*
- [4] *That in any event the sentence is harsh and excessive having regard to all the circumstances of the case."*

All relevant facts and circumstances of the case and the reasons for the nature and quantum of sentence passed appear in the learned Judge's own words and we can do no better than quote them here:

'....No doubt the accused has been convicted of a very serious offence and he has shown remorse by pleading guilty. The maximum sentence for this offence is life imprisonment, with or without corporal punishment.

The accused and the complainant Satya Nand, are known to each other. They came from the same area and in fact, on the day of the offence were cutting sugar cane in the same gang. The accused was going to harvest cane that morning. He had a sugar cane knife with him. He forgot his gloves and was returning home for the gloves. While returning he heard his wife talking in a loud voice saying - "why did you come here again, you go away from here or else I will tell my husband". Upon hearing this the accused ran to his house and he saw Satya Nand running in the sugar cane field. The accused asked his wife about this. The wife stated that Satya Nand wanted to have sexual intercourse. The accused got very angry and went to the place where Satya Nand was harvesting sugar cane. Satya Nand denied going and talking to his wife. The accused then struck Satya Nand twice on his head with the cane knife inflicting very serious injuries as stated in the medical report. Satya Nand was taken to Tavua Hospital then transferred to Lautoka Hospital. He was unconscious for eleven days. He got permanent injuries as - loss of left ear, deafness in that ear, facial injuries, injuries to his limbs. I think it is fair to say that Satya Nand is very fortunate that he was not killed.

There is no doubt the accused was provoked and got very angry. Provocation is no defence in these circumstances but the Court certainly has taken into account in passing sentence. I have fully taken into account the eloquent

submissions in mitigation made by Dr. Sahu Khan on behalf of the accused. I have fully taken into account the fact that accused has pleaded guilty and has been in custody for about two weeks. One must remember that sugar cane knife must never be used in settling disputes. They are very dangerous weapons. Here the accused did not go and look for the knife to attack Satya Nand but he already had the knife in his hand as he was going to harvest sugar cane. I accept that accused had received some provocation.

The accused is 38 years old and a family man with young children. His farm is under debt. He has previous convictions involving violence but they are more than ten years old and this is very much in accused's favour.

In the case of Ramji Lal Sharma V. R FCA Criminal Appeal No. 55 of 1983 the Court dismissed an appeal against a four year prison sentence where the appellant had completely severed victim's hand below the elbow with a cane knife.

In the instant case the injuries received by Satya Nand are extremely serious and as I have stated he is lucky to be alive.

I consider custodial sentence is called for.

In all the circumstances the minimum sentence I feel able to pass is one of 3 (Three) years imprisonment.'

In our view each of the arguments advanced in this Court on behalf of the Appellant was taken into consideration by the sentencing Judge as is clear from the above quotation.

Mr Sahu Khan laid great stress on provocation and its mitigating effects. He complained that the trial Judge had not given sufficient weight to the gravity of the provocation. Whilst we accept that this was a case of serious provocation, provocation was only one of the matters the learned Judge was required to take into account. We are satisfied that he did give

sufficient consideration to all the matters that ought to have been taken into account.

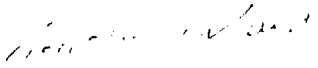
We find no reason to differ from the trial Judge either on his observations or on the quantum of sentence imposed. Indeed there can be no justification for interfering with the sentence.

A sentence of 3 years for an offence carrying a maximum of life imprisonment, for inflicting a grievous bodily injury with a lethal weapon in circumstances which nearly caused the death of the victim cannot be considered either manifestly excessive or wrong in principle notwithstanding the element of serious provocation.

This appeal is therefore dismissed.



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Sir Moti Tikaram
President, Fiji Court of Appeal



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Justice Gordon Ward
Judge of Appeal



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Justice I.R. Thompson
Judge of Appeal