

IN THE FIJI COURT OF APPEAL

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CIVIL JURISDICTION

CRIMINAL APPEAL NO. AAU0020 OF 1994

(High Court Criminal Case No. AAU0005 of 1994)

BETWEEN

SEVULONI TORA

APPELLANT

and

THE STATE

RESPONDENT

Mr. J. Baledrokadroka for the Appellant
Mr. Dane Tuiqereqere for the Respondent

Date and Place of Hearing

: 16th May, 1995, Suva

Date of Delivery of Judgment

: 19th May, 1995

JUDGMENT OF THE COURT

On 2 November 1994 the appellant was found guilty on one count of murder and one count of rape. He was sentenced to life imprisonment on the charge of murder and nine years' imprisonment on the count of rape. The victim Loata Nuku left her home on 27 May 1993 between 9 and 10am. She was going to Narocivo Village to hold bible studies. She should have taken 45 minutes to walk from her home to Narocivo village along the beach and then inland towards Narocivo. She was due to return at 5pm but she did not.

On Monday 31 May her badly decomposed body was found beside the track to Narocivo. Some of her belongings were scattered around. She had been assaulted badly; her jaw was broken and so were a number of her ribs.

A number of people who had been in the area were interviewed, among them the appellant. In answering he said that he had been on the track collecting coconuts. He had borrowed a horse to take the coconuts back to his home. After several interviews and after being cautioned he said that he had raped and murdered the victim. He made a full and detailed statement

which he signed.

The evidence against him was substantially that contained in the statement he made. No challenge however was made to the admissibility of the statement either before the High Court or before us. There was adequate evidence in the statement on which he could be convicted. He had also been seen in the neighbourhood about the time that the murder must have taken place. Some of the details that he gave in the statement were supported by the evidence of the injuries suffered by the deceased and by the position of the body and the personal belongings that were scattered about. He was represented at the trial by Mr Baledrokadroka who also appeared before us.

On his behalf Mr Baledrokadroka put forward a number of points of appeal. First, he said that the appellant's rights under the Constitution of Fiji had been infringed. He referred to section 11(2)(c) of the Constitution; that provides:

"(2) Every person who is charged with a criminal offence:-

(c) shall be given adequate time and facilities for the preparation of his defence."

The appellant first appeared in the Magistrates' Court on 14 June 1993. The trial did not commence until 18 October 1994 some sixteen months later. Not only was that adequate time to prepare his defence, but when the case came before the High Court he was legally represented and no submission was made by his counsel that he had not had sufficient time to prepare. Had that been the case, he could have asked for an adjournment, but he did not.

Mr Baledrokadroka also submitted that there was a breach of section 11 (2)(d) which provides:

"2 Every person who is charged with a criminal offence:-

(d) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense."

Mr Baledrokadroka said that he was appointed on the 7 August, but did not get written advice of his appointment till 14 October. He had, however, appeared on behalf of the appellant in the High Court on 11 October. He made no application for adjournment on the grounds that he had insufficient time to prepare.

The appellant had suggested that his trial had been prejudiced by unfair coverage by the news media. Mr Baledrokadroka mentioned this submission but said that he expressly abandoned that allegation. There was no allegation before us that the trial had been unfairly influenced by the media.

The next point raised by Mr Baledrokadroka was that although there were 26 witnesses referred to in the District Court, only 22 or 23 witnesses were called. It appears that one of the witnesses was in Iraq. The other 2 or 3 witnesses were not called because their evidence was merely repetitive and in the view of the prosecution did not add to the case against the appellant.

There was no obligation on the prosecution to call all the witnesses whose written statements were tendered at the preliminary inquiry in the Magistrates' Court. If the appellant or his counsel had desired those witnesses to give evidence, they could have made an application to the Court, and the witness if available would have had to be produced by the prosecution. No such application, however, was made on behalf of the appellant. At the close of the case, Mr Baledrokadroka simply said that he did not wish to call any witnesses. The accused himself said he wished to remain silent.

Mr Baledrokadroka also referred to the case R v Leyland Magistrates Ex parte Hawthorn [1979] 1 All E.R.209. That however was a case in which the Prosecution failed to tell the accused of the existence of witnesses before the trial. Those witnesses were not called and the accused did not find out about them until after the trial. It was held that the police should have told the accused of the witnesses and the fact that they had not done so amounted to a breach of the rules of natural justice. That case however could not in any way assist the appellant in this case because he and his counsel obviously knew of the witnesses and had their statements which had been tendered in the Magistrates' Court.

Mr Baledrokadroka also submitted that the result of DNA testing done in New Zealand was not put forward. That DNA testing apparently did not prove anything and there was no reason for evidence of it to be given.

Nothing that has been put before us, in our view, justifies any suggestion that the appellant did not have a fair trial. The statement that he made undoubtedly formed a proper basis for his conviction. He was interviewed after he had made it by a Justice of the Peace and by a Medical Officer. He made no complaint to either of them about the way in which he had been treated by the police. He said what he had said in the statement was true.

The appeal is dismissed.

M. Kapi

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 Sir Mari Kapi
Judge of Appeal

I.R. Thompson

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 Mr Justice I.R. Thompson
Judge of Appeal

Peter Hillier

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 Mr Justice Peter Hillier
Judge of Appeal