IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 33 OF 2003S
(High Court Criminal Action HAC 2/1999L)

BETWEEN:

JOSATEKI SOLINAKOROI

Appellant

AND:

THE STATE

Respondent

Coram: Barker, JA
Kapi, JA
Scott, JA

Date of Hearing: Wednesday, 2 March 2005

Counsel: Appellant in person
Mr. K. Tunidau for the Respondent

Date of Judgment: Friday, 4 March 2005

JUDGMENT OF THE COURT

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[1] The Appellant was charged with one count each of murder, robbery with violence and unlawful use of a motor vehicle. It was said that on the evening of Saturday 12 September 1998 he had assaulted and robbed Ram Chandar Naicker (the victim) and then drove away in the victim's motor car. The State's case was that the victim died some days later of the injuries inflicted upon him during the assault.

[2] Following a trial before Townsley J and assessors, the Appellant, who was represented throughout by Mr. Anu Patel, was found guilty of murder and unlawful use of a motor vehicle but not guilty of robbery with violence. The trial judge accepted the unanimous opinion of the assessors.

[3] Most of the basic facts were agreed. The Appellant gave an unsworn statement to the Court in which he reiterated what he had told the police in his cautioned interview statement which had been admitted in evidence without objection.

[4] The Appellant's account was that on the evening in question he and his cousin Ulaiasi met the victim at a local shop. The victim invited them to accompany him to Saweni Beach and to drink there. Both the Appellant and Ulaiasi were already under the influence of drink. At Saweni Beach the victim asked the Appellant to leave the motor car. Shortly after Ulaiasi got out of the car and began to walk away. When asked by the Appellant why he was leaving, Ulaiasi told the Appellant that the deceased had wanted to "fuck my arse". Ulaiasi then went away.

[5] The Appellant told the Police and the Court that he was so upset by what Ulaiasi had told him that he pulled the victim out of the motor car and punched him to the ground. He then took various items of jewellery from him and drove away in his car. The next morning, when he awoke, he found the jewellery and it was "then that I knew I had done something the previous night". He hid the jewellery at home where it was later recovered.

[6] At about 1a.m. on the morning of Sunday 13 September, a Police Officer found the victim lying unconscious and bleeding at Saweni Beach. He was taken to Lautoka Hospital. There he was visited by his brothers as he lay in the recovery

ward. His face was swollen and he was bleeding from the right ear. He was in a coma.

[7] On about 14 September the victim was flown by helicopter from Lautoka to the CWM Hospital in Suva. Upon arrival in Suva he was still in a coma. He had a tube inserted into his trachea. His face was bruised. A CT scan was taken and revealed contusions not warranting surgical intervention. He was however put on a ventilator.

[8] On his second day at the CWM the victim showed some improvement but "performed poorly" whenever removed from the ventilator. He then developed a chest infection. He was operated on to improve his breathing. Next he sufferred a massive bleeding in his gastric intestinal tract. On 30 September he died.

[9] On 1 October a post mortem examination was carried out. The cause of death was given as : "Haemorrhage and tissue necrosis involving the brainstem and cerebellum; death contributed to by bleeding from stomach and bilateral pneumonia". Dr. Marewenviti Biribo told the Court that the cause of death was secondary brain injury and associated complications.

[10] At the close of the prosecution case Mr. Patel raised two questions which called for a ruling. The first was whether the defence of provocation was available to the accused so as to reduce the offence from murder to manslaughter (see Penal Code - Cap 17 – Sections 203 & 204). A second question involving the application of Section 206 of the Penal Code was not pursued.

[11] After hearing submissions from both counsel the Judge ruled that the defence of provocation was not open for consideration by the assessors. The basis of his

ruling was first, that the words to which the Appellant had taken objection were not addressed to a person in any one of the statutory degrees of relationship to the Appellant set out in Section 204 of the Penal Code. Secondly, he ruled that the words were not uttered in the presence of the Appellant. In our view the ruling was correct. We add that although the words complained of were undoubtedly distasteful we do not consider them to have been of such a violently provocative character as to be capable of providing extenuation (see Holmes v. Director of Public Prosecutions [1946] AC 588, 600). Following delivery of the Judge's ruling the Appellant gave his unsworn statement.

[12] Although the record of Mr. Patel's closing address to the assessors is somewhat sparse it appears that apart from drawing the attention of the assessors to a number of inconsistencies and other unsatisfactory features of the prosecution's evidence the main thrust of his submissions was that malice aforethought had not been proved beyond reasonable doubt. Mr. Patel referred in particular to the fact that there was nothing to suggest that the assault on the victim had been planned.

[13] The Appellant (who represented himself in this Court) was given leave to appeal out of time on 24 November 2003. The grounds of appeal are contained in three documents dated August 2003 and November and December 2004. The Appellant's contentions may be summarised as follows:

(i) He was under the influence of liquor and "was not in a state of mind to realise the outcome of what [he] did".

(ii) He did not intend to harm or kill the deceased.

(iii) The negligent manner in which the deceased was treated in hospital caused or contributed to his death.

[14] On the question of intoxication the Judge correctly directed the assessors that evidence of drunkenness which renders an accused person incapable of forming the specific intent essential to constitute the crime charged must be taken into consideration with the other facts proved in order to determine whether or not the accused had such intent. He also explained that evidence of drunkenness falling short of this and merely establishing that the mind of the accused was affected by drink, so that he more readily gave way to some violent passion, does not rebut the presumption that a person intends the natural consequences of his acts. (see DPP v. Beard [1920] AC 479; 14 Cr App R 159). The first ground of appeal fails.

[15] On pages 18 and 19 of his summing-up the Judge directed the assessors that they had to be satisfied that malice aforethought had been proved before they could find the Appellant guilty of murder. The Judge also explained that malice aforethought may consist of no more than the knowledge by the Appellant that an act will probably cause grievous harm to some person although such knowledge is accompanied by indifference whether grievous bodily harm is caused or not. In our opinion the Judge correctly directed the assessors on the meaning and effect of Section 202 of the Penal Code and accordingly the second ground of appeal also fails.

[16] The final question, which was whether the victim's death was the result of his medical care falling below such a standard so as to invoke the provisions of Section 206 (a) was not pursued by Mr. Patel. While the manner in which the prosecution presented its medical evidence in this case was in many respects highly unsatisfactory, we find nothing in the evidence to suggest that the deceased was not medically treated in good faith and with common knowledge and skill. The final ground of appeal also fails.

RESULT

The appeal is dismissed.

R.D. Barker

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Barker J.A.

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Kapi J.A.

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Scott J.A.

Solicitors:

Appellant in Person

Director of Public Prosecutions, Suva for the Respondent