**IN THE COURT OF APPEAL, FIJI**
**[On Appeal from the High Court]**

**CRIMINAL APPEAL NO. AAU 036 of 2019**
**[In the High Court at Suva Case No. HAC 124 of 2015]**

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| **BETWEEN** | **:** | **HEM RABNEET SINGH** |
| | | ***Appellant*** |
| **AND** | **:** | **STATE** |
| | | ***Respondent*** |
| **Coram** | **:** | **Prematilaka, RJA** |
| **Counsel** | **:** | **Appellant in person** |
| | **:** | **Dr. A. Jack for the Respondent** |
| **Date of Hearing** | **:** | **01 July 2022** |
| **Date of Ruling** | **:** | **04 July 2022** |

# RULING

[1] The appellant had been charged in the High Court at Suva with a single count of murder of Shaleshni Lata contrary to sections 237 of the Crimes Act No. 44 of 2009 and giving false information to a public servant contrary to section 201 (a) of the Crimes Act of 2009 committed on 01 July 2015 at Sigatoka in the Western Division.

[2] The appellant represented by counsel had pleaded guilty to the information and was convicted on 08 March 2018 and sentenced on 14 March 2018 to life imprisonment for murder with a minimum serving period of 17 years and 01 year in prison for giving false information to a public servant; both to be served concurrently.

[3] The appellant appealed against conviction and sentence in person on 16 April 2019 and was late by about a year and a half. Both he and the state had tendered written submissions for the hearing before a single judge.

[4] The factors to be considered in the matter of enlargement of time are (i) the reason for the failure to file within time (ii) the length of the delay (iii) whether there is a ground of merit justifying the appellate court's consideration (iv) where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed? (v) if time is enlarged, will the respondent be unfairly prejudiced? (vide **Rasaku v State** CAV0009, 0013 of 2009: 24 April 2013 [2013] FJSC 4 and **Kumar v State; Sinu v State** CAV0001 of 2009: 21 August 2012 [2012] FJSC 17).

[5] These factors are not to be considered and evaluated in a mechanistic way as if they are on par with each other and carry equal importance relative to one another in every case. Generally, where the delay is minimal or there is a compelling explanation for a delay, it may be appropriate to subject the prospects in the appeal to rather less scrutiny than would be appropriate in cases of inordinate delay or delay that has not been entirely satisfactorily explained. No party in breach of the relevant procedural rules and timelines has an entailment to an extension of time and it is only in deserving cases where it is necessary to enable substantial justice to be done that breach will be excused [vide **Lim Hong Kheng v Public Prosecutor** [2006] SGHC 100)]. In practice an unrepresented appellant would usually deserve more leniency in terms of the length of delay and the reasons for the delay compared to an appellant assisted by a legal practitioner.

[6] The delay of this appeal is very substantial. The appellant has not explained the delay in an affidavit. However, in a document filed seeking extension of time he had stated that he was not sufficiently educated to file an appeal and was awaiting the Legal Aid Commission to come to his aid as reasons for the delay. This is not a satisfactory explanation. Many an appellant in person do file formal or informal appeal papers or at least dispatch communications of some form to the Court of Appeal Registry indicating their intention to appeal convictions and/or sentences in timely manner. Awaiting formal legal assistance well beyond the appealable period too is equally not an acceptable explanation. Nevertheless, I would see whether there is a **real prospect of success** for the belated grounds of appeal against conviction and sentence in terms of merits [vide **Nasila v State** [2019] FJCA 84; AAU0004.2011 (6 June 2019]**.** The

respondent has not averred any prejudice that would be caused by an enlargement of time.

[7] The grounds of appeal numbering 24 urged on behalf of the appellant against conviction and sentence are given by the State as follows. The appellant agreed at the hearing that the table below represents his grounds of appeal.

**Grounds of Appeal**

| Ground | Origin | Reference |
|---|---|---|
| **Conviction** | | |
| Judge erred in not accepting the evidence given by the appellant without cogent reasoning | Notice of Appeal filed 116/04/2019 | 1 |
| judge erred in law when he failed to adequately put the defence version to the assessors | Notice of Appeal filed 16/04/2019 | 2 |
| Judge didn't independently analyse the evidence | Notice of Appeal filed 16/04/2019 | 3 |
| Conviction is not supported by the evidence | Notice of Appeal filed 16/04/2019 | 4 |
| Evidence adduced in court casts a reasonable doubt on guilt | Notice of Appeal filed 16/04/2019 | 5 |
| Defence overwhelmingly shows the prosecution did not discharge burden of proof | Notice of Appeal filed 16/04/2019 | 6 |
| Conviction is unsafe | Notice of Appeal filed 16/04/2019 | 7 |
| Elements of the offence not proved beyond reasonable doubt | Notice of Appeal filed 16/04/2019 | 8 |
| Charges lacked precision and detail | Notice of Appeal filed 16/04/2019 | 9 |
| Evidence only supports conviction for manslaughter | Notice of Appeal filed 16/04/2019 | 10 |
| Failed to include in his judgment that provocation was an issue | Enlargement of Time Application filed 09/09/2020 | 11 |
| Judge failed to independently analyse the evidence | Enlargement of Time Application filed 09/09/2020 | 12 |
| Defence Counsel fabricated a written confession and made him sign it | Enlargement of Time Application filed | 13 |

| | | |
|---|---|---|
| | 09/09/2020 | |
| Appellant never accepted he hit the victim more than once | Enlargement of Time Application filed 09/09/2020 | 14 |
| **Sentence** | | |
| Judge wrong in principle | Notice of Appeal filed 16/04/2019 | 15 |
| Judge considered extraneous matters | Notice of Appeal filed 16/04/2019 | 16 |
| Sentence does not confirm to values in the Constitution & therefore harsh and excessive | Notice of Appeal filed 16/04/2019 | 17 |
| Failed to consider mitigating factors when sentencing | Notice of Appeal filed 16/04/2019 | 18 |
| Mistook the facts when imposing sentence | Notice of Appeal filed 16/04/2019 | 19 |
| Wrong to take into account the nature of the offence & aggravating factors when imposing sentence. | Notice of Appeal filed 16/04/2019 | 20 |
| Sentence equates to torture & therefore is unconstitutional | Notice of Appeal filed 16/04/2019 | 21 |
| Sentence is perpetual & therefore harsh & excessive | Notice of Appeal filed 16/04/2019 | 22 |
| Non pardon period does not allow for rehabilitation | Notice of Appeal filed 16/04/2019 | 23 |
| Failed to consider mitigating factors | Enlargement of Time Application filed 09/09/2020 | 24 |

[8] The sentencing order sets out the facts as presented in the summary of facts as follows.

> *4. On the morning of 1 July 2015, you and your wife (deceased) woke up at 6.30 am. You had tea and went to your vegetable farm. Your wife prepared your children for school, and they left at 7 am. You ploughed the land at your vegetable farm from 8 am to 10.30 am and then went home. Your wife served you breakfast and later you rested. Later, you milked the cows and at 1.20 pm, you left for your farm again. Before that, your wife asked you to assist her plant some pumpkin. You later met her at the farm to plant the pumpkin.*
>
> *5. An argument erupted between the two of you at the pumpkin farm. You took a "nokonoko" stick (Prosecution Exhibit No. 5) and hit the top of her head. She fell to the ground. You then hit her right chest. Your assaults were quite forceful and it appeared she became very weak. You lifted her onto your horse's back. Then you rode your horse, and took her to Semo hill, which was a 40 minutes ride*

*through Tagitagi Road, the Queens Road and onto Semo Hill. At Tagitagi Road, she fell on the road. You lifted her to the horse again. At Semo Hill, you then pushed her from the horse's back. She hit the ground head first. You got off the horse. Then you struck your wife's forehead with the stick again. You then hit her on the chest again. Then you dragged her body and left her among the tall grasses at Semo Hill.*

*6. You returned home at 2.30 pm. When your children returned from school, they told you their mother was not at home. Then you pretended that she was missing, knowing very well that you had killed her. At 7 pm, you lied to police that your wife was missing. You also lied to your family and friends that your wife was missing. The police investigated the matter. You were caution interviewed by police on 9, 10, 11, 12 and 13 July 2015 (5 days). During the interviewed, you admitted killing your wife by hitting her repeatedly with a "nokonoko" stick. A post mortem done on your wife's body on 10 July 2015. According to the post-mortem report (Prosecution Exhibit No. 4), she died as a result of multiple skull fractures and severe traumatic head injuries caused by blunt force trauma. You were taken to the Sigatoka Magistrate Court on 14 July 2015 charged with murdering your wife and giving false information to police.*

***01st to 06th and 12th grounds of appeal.***

[9] All these grounds seem to question the conduct of the trial and the manner in which the trial judge had dealt with evidence at the trial.

[10] There was no evidence led as there was no trial. Trial was not required as the appellant pleaded guilty.

[11] Therefore, these grounds are totally misconceived and frivolous.

***07th & 08th grounds of appeal***

[12] I do not see any merits in the assertion that the conviction is unsafe and the elements of the offence have not been proved. From the summary of facts one can gather sufficient material to support the elements of murder and therefore the conviction is not unsafe.

[13] These are frivolous complaints.

***09th ground of appeal***

[14] There is nothing wrong in the charge as reproduced at the sentencing order in terms of particulars, details or precision. This appeal ground is devoid of any merits.

***10th and 11th ground of appeal.***

[15] Having perused the summary of facts I am convinced that provocation was not an issue and therefore it is a wrong proposition to say that the evidence only supported a conviction for manslaughter [see **Masicola v State** [2021] FJCA 176; AAU073.2015 (29 April 2021) for a detailed discussion on the aspect of provocation in a guilty plea)]

***13th ground of appeal***

[16] The pith and substance of the appellant's complaint appears to be that the defense counsel forced or misguided him into enter the guilty plea.

[17] The trial judge had taken all the precautions to make sure that the plea was voluntary and devoid of any duress as evidenced from the following paragraphs in the sentencing order.

> *7. The court then checked with you, through your counsel, on whether or not you are agreeing to the prosecution's summary of facts, and whether or not, you are admitting all the elements of the offences of "murder" and "giving false information to a police officer". Through your counsel, you admitted repeatedly hitting your wife on the head, forehead and chest with a "nokonoko" stick (Prosecution Exhibit No. 5) (conduct); and the above conduct caused serious head injuries to your wife, leading to her death (conduct causes the death of the deceased). Through your counsel, you admitted that when you did the above conduct, you intended to cause your wife's death (count no. 1). On count no. 2, through your counsel, you admitted giving the police false information on the disappearance of your wife. On the basis of the above admissions, I found you guilty as charged on count no. 1 and 2, and convicted you accordingly on those counts.*
>
> *8. The matter was then adjourned to 13 March 2018, to enable your counsel to prepare your plea in mitigation, and for the parties to prepare their sentence submissions. I have noted that you are a first offender. I have noted your antecedent history. I have also noted your well prepared written plea in mitigation.*

[18] From 08th March to 14th March 2018 there was ample time for the appellant to make an application to withdraw from his counsel and/or to withdraw the plea of guilty. The counsel (numbering two) appearing for the appellant appear to have made impressive submissions in mitigation. There is not even a hint that they had any reason to coerce the appellant to plead guilty to murder. The Supreme Court in **State v Samy** [2019]

FJSC 33; CAV0001.2012 (17 May 2019) had usefully made some pertinent remarks on the role of the defense counsel and the trial judge *vis-à-vis* a guilty plea. See **Masicola v State** (supra) too**.**

[19] In any event, a trial counsel's conduct cannot be made the basis of a ground of appeal without following the procedure laid down in **Chand v State** [2019] FJCA 254; AAU0078.2013 (28 November 2019).

[20] This appeal ground lacks any merits.

***14th ground of appeal***

[21] The appellant seems to contradict what the summary of facts state which he had admitted unequivocally. His cautioned interview also had shown that he hit the deceased several times (*vide* paragraph 06 of the sentencing order and the summary of facts this court examined) as corroborated by multiple injuries seen at the post mortem examination.

[22] This ground of appeal has no merits.

[23] The guidelines for a challenge to a sentence in appeal are that the sentencing magistrate or judge (i) acted upon a wrong principle or (ii) allowed extraneous or irrelevant matters to guide/affect him or (iii) mistook the facts or (iv) failed to take into account some relevant consideration (vide **Naisua v State** CAV0010 of 2013: 20 November 2013 [2013] FJSC 14; **House v The King** [1936] HCA 40*;* (1936) 55 CLR 499, **Kim Nam Bae v The State** Criminal Appeal No.AAU0015 and **Chirk King Yam v The State** Criminal Appeal No.AAU0095 of 2011). For a ground of appeal untimely preferred against sentence to be considered arguable at this stage (not whether it is wrong in law) on one or more of the above sentencing errors there must be a real prospect of its success in appeal.

***15th to 17th and 19th ground of appeal (sentence)***

[24] The appellant has not demonstrated any sentencing error. The sentence for murder is mandatory life sentence. The trial judge had no discretion in that. 17 years of minimum serving period, given the brutality of the manner in which the appellant had acted towards the deceased, cannot be said to be harsh and excessive. The judge had not considered any extraneous matters either in fixing the minimum serving period. Neither had he mistaken the facts which were considered as presented by the prosecution and admitted by the appellant.

[25] These grounds of appeal are not really destined to succeed in appeal.

***18th and 24th ground of appeal***

[26] Contrary to what the appellant submits, the trial judge had indeed considered mitigating factors at paragraphs 8, 11 and 12 of the order in fixing the minimum serving sentence.

[27] I see no merits in the appellant's complaint.

***20th ground of appeal***

[28] I do not see anywhere in the sentencing order where the trial judge had considered the nature of the offence and aggravating factors when imposing the mandatory sentence or the minimum serving period. His remarks at paragraph 10 are in relation to the life imprisonment.

[29] As already pointed out life sentence for murder has been prescribed by the legislature and the sentencing judge had no say in that matter. There need not be any aggravating features to attract the life imprisonment for murder. It is the statuary sentence for murder. The judge has said as much at paragraph 9, 12 and 13 of the order.

[30] There is no merits in the appellant's argument.

***21st ground of appeal***

[31] Life imprisonment prescribed by the legislature for murder does not amount to torture. Nor is it unconstitutional. In any event, this is not the forum to raise such an argument. I see no merits in this ground of appeal.

***22nd ground of appeal***

[32] Whether it is harsh or otherwise, life sentence is the one and only sentence for murder and the trial judge had no choice but to impose that sentence. Thus, this is a ground of appeal sans any merits.

***23rd ground of appeal***

[33] It is argued by the appellant that non-pardon (meaning minimum serving period), does not allow for his rehabilitation.

[34] There is no provision to impose a non-parole period in the case of murder. As indicated at paragraphs 9, 12 and 13 of the sentencing order minimum serving period would indicate the period at the end of which a pardon could be considered by His Excellency the President under the Constitution. It is an executive action and not part of the judicial discretion.

[35] As I have already indicated above 17 years of minimum serving period given the brutality of the appellant's acts cannot be said to be an obstacle to his rehabilitation either. In any event rehabilitation of offenders could be done and is indeed being done inside Correction Centers.

**Order**

1. Enlargement of time to appeal against conviction and sentence is refused.

COURT OF APPEAL FIJI

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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL