

**REGINA .V. MARTIN TALU****High Court of Solomon Islands  
(Palmer CJ)****Criminal Case No. 402 of 2004****Date of Hearing: 4<sup>th</sup> July - 6<sup>th</sup> July, 13<sup>th</sup> July, 15<sup>th</sup> July 2005****Date of Judgment: 9<sup>th</sup> August 2005****Date of Sentence: 30<sup>th</sup> September 2005***H. Kausimae for the Crown**D. Hou for the Defendant*

**Palmer CJ:** Although this case after trial had been reduced from murder to manslaughter, it was still a serious case as it resulted in the tragic loss of the life of the victim. An unresolved argument over some money and tape recorder, relatively minor in nature and could easily have been resolved at the outset if both parties had been more understanding and tolerant of each other's needs and concerns.

A number of cases have been referred to for comparison purposes and to assist this court reach an appropriate sentence.

R. v. John Waiwai<sup>1</sup>. The defendant was found guilty of manslaughter on the basis of provocation following trial on a charge of murder. He had killed his wife during a domestic dispute. He was a man of previous good character and had lost his family and employment. Sentenced to 3 ½ years.

R. v. Ben Tungale, Brown Beu, Nelson Oma, James Sala, Louise Lipa, Charles Meaio and John Teti<sup>2</sup>, all the defendants were tried for murder but were acquitted and only Ben Tungale, Brown Beu, Nelson Oma and James Sala convicted of manslaughter. The remaining defendants were convicted of common assault. The sentences imposed by the court ranged from 3 ½ years to 5 years. No weapon was used in that case.

R. v. Banisi<sup>3</sup>, the defendant was found guilty of manslaughter after a trial in relation to murder. There had been a confrontation between two groups and the deceased was struck by the defendant with a stick on the head. He was sentenced to 3 ½ years.

R. v. Kwaimani<sup>4</sup>. The defendant pleaded guilty to a charge of manslaughter for kicking the deceased once which resulted in his death. The defendant was a young man with a family, of good character and had paid compensation. He was sentenced to imprisonment for 3 ½ years.

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<sup>1</sup> (unreported) HCSI-CRC 41-94, 9<sup>th</sup> June 1995.

<sup>2</sup> HCSI-CRC 12-97 7<sup>th</sup> May 1997

<sup>3</sup> Criminal Case No. 37 of 1999

<sup>4</sup> HCSI-CRC 3-97

R. v. John Toleni<sup>5</sup>. The defendant was acquitted of murder and found guilty of manslaughter. He was intoxicated when he stabbed the deceased on the back with a knife. The defendant was sentenced to 4 years imprisonment.

I have referred to the above cases to highlight the possible range of sentences for manslaughter where initially a murder charge had been proffered but for one reason or another, such as in this case, where provocation had been established on the evidence and the charge reduced to manslaughter.

Whilst in such instances it cannot be denied that a life had been taken, the circumstances warranted conviction on a lesser charge, malice aforethought, a necessary ingredient for murder, having been negated. Sentences for manslaughter however do carry a maximum of life imprisonment. Each fact of each case has to be looked at in turn. Where weapon(s) are used, the offence committed in a group and or is alcohol related, where there is element of planning or deliberateness involved and is repeated, the range of sentences will increase accordingly.

In **R. v. Wiseley Shem Tuita**<sup>6</sup>, the defendant was also initially charged for murder but later convicted of manslaughter on the grounds that there was evidence which showed he did not have the necessary intent through intoxication. His Lordship Wood CJ convicted him of manslaughter and sentenced him to 7 years imprisonment. The victim had been stabbed with a diving knife which he had with him. Alcohol and a weapon played a part in that offence. In **R. v. John Teo'ohu**<sup>7</sup> again a murder charge had been reduced to manslaughter following trial. Alcohol played a part and a weapon (knife) was used. The defendant had acted provocatively to an old woman and had been confronted then by the victim and other men. The learned Chief Justice accepted that compensation had been paid and imposed sentence of six years.

In contrast in terms of the level of seriousness, this case must fall below those two cases referred to where sentences of 7 and 6 years had been imposed.

There is no evidence to suggest that the defendant was the aggressor of the tragic events that night. He had actually walked past undetected wearing some sort of hood on his head but was spotted as he was walking away and confronted. In spite of that he did not return immediately until he was sworn at. There is no evidence to suggest that the screw driver he had that night was specifically to attack the victim with. He explained it was something he noticed in the trousers he was wearing that day and so used it.

I note he has some previous convictions but the facts of this case are such that those previous convictions can be ignored and I do so in this case.

I note this defendant has not from the outset denied what happened. He admitted to using the screw driver from the day he was arrested and cooperated with police right through. He did not deny use of the screw driver at his trial. I give credit for his remorse, he regrets what has happened and I accept that compensation in custom to facilitate reconciliation has been performed by his

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<sup>5</sup> HCSI-CRC 183-04

<sup>6</sup> HCSI-CRC 1-85, 11<sup>th</sup> March 1985

<sup>7</sup> [1990] SILR 265

family with the family of the victim enabling peace and harmony to be restored. I take into account his youth as well.

I am satisfied a sentence of three years is appropriate in the circumstances.

**Court Order:**

1. **Impose sentence of 3 years for manslaughter.**
2. **The period spent in custody to be taken into account.**

**THE COURT**