

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

Criminal Appeal No. AAU112 of 2013
[High Court Case No. HAC204 of 2011]

BETWEEN : RONEEL CHAND

Appellant

AND : THE STATE

Respondent

Coram : Hon. Mr. Justice Goundar

Counsel : Ms S. Vanigi for Appellant
Mr. L. Fotofili for Respondent

Date of Hearing : 17 June 2014

Date of Ruling : 25 July 2014

RULING

[1] The appellant was convicted of murder of his wife and sentenced to life imprisonment with a non-parole period of 18 years. This is an application for leave to appeal against conviction and sentence pursuant to section 21(1) of the Court of Appeal Act.

[2] The grounds of appeal against conviction are:

- i) That the learned trial judge erred in law and fact in not directing the assessors a fair balance as between the prosecution case and the defence case hence there was a substantial miscarriage of justice.
- ii) That the learned trial judge erred in law and fact in directing the assessors very strongly/forcefully the prosecution version of evidence and not directing the assessors the defence version in a similar manner. The failure to do so denied the appellant a fair trial and a substantial miscarriage of justice.

- iii) That the learned trial judge erred in law and in fact in misdirecting himself and the assessors on the issue of circumstantial evidence in this case where the conviction depended essentially on circumstantial evidence, it was a duty on the part of the learned trial judge not just to tell the assessors that they had to be satisfied beyond reasonable doubt of the appellant's guilt but also to direct them in express terms that before they can find the appellant guilty, they must be satisfied not only that the circumstances are not consistent with his having committed the crime, but also that the facts proved are such as to be inconsistent with any other reasonable conclusion or hypothesis.
- iv) That the learned trial judge erred in law and fact in holding evidence of "dying declaration" admissible without first holding a voir dire to decide its admissibility.
- v) That the learned trial judge erred in law and fact in misdirecting himself and the assessors on the issue of "dying declaration" when he allowed the State to call evidence in support of "dying declaration".
- vi) That the learned trial judge erred in law in not adequately considering that the test for "dying declaration" evidence was "whether the deceased was under a settled and hopeless expectation of death" (as was held in the Criminal Appeal in Perry [1909] 2 KB 1967 and applied in Raj v Reginam [1968] 14 FLR 24 and State v Tirikula [2008] FJHC 45; HC 105 of 2006) whereas the evidence provided in court demonstrated otherwise.
- vii) That the learned trial judge erred in law and fact in not adequately directing/misdirecting that the prosecution evidence before the court proved beyond reasonable doubt that there were serious doubts in the prosecution case and as such the benefit of doubt ought to have been given to the appellant (full particulars would be provided upon receipt of the court record).

[3] The grounds of appeal against sentence are:

- viii) That the appellant appeals against sentence being manifestly harsh and excessive and wrong in principle in all the circumstances of the case;
- ix) That the learned trial judge erred in law and in fact in taking irrelevant matters into consideration when sentencing the appellant and not taking into account relevant considerations;

Grounds 1, 2 and 7

- [4] Grounds 1, 2 and 7 were argued together. These grounds allege that the trial judge failed to direct the assessors on the weaknesses in the prosecution's case as pointed out by the defence. Ms Vaniqi points out to the pieces of evidence, which she says creates a reasonable doubt as to the guilt of the appellant. The question whether the evidence led at the trial created a reasonable doubt requires a careful examination of the entire evidence. That question can be answered by the Full Court and not by a single judge at the leave stage. These grounds are arguable.

Ground 3

- [5] Ground 3 is an extension of the arguments under grounds 1 and 2. The contention under this ground is that the circumstantial evidence led by the prosecution did not lead to the sure conclusion of guilt. Counsel for the appellant submits that the circumstantial evidence relied upon by the prosecution was equally capable of an inference that the appellant was not guilty of the charge. This ground is arguable.

Ground 4

- [6] Ground 4 has been abandoned.

Grounds 5 and 6

- [7] Two questions have been raised under these grounds. The first question is whether a dying declaration is admissible in Fiji? This is a question of law alone and therefore leave is not required. The second question is whether the trial judge wrongly admitted the dying declaration on the facts of this case. This question is a mixed question of law and fact. These grounds are arguable.

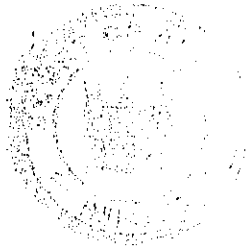
Grounds 8-9


- [8] The main contention under these grounds is that where a life imprisonment is imposed, fixing a non-parole period is unjustified because the non-parole period takes away the hope of rehabilitation for the offender. In the present case, the fixing of a non-parole period was within the discretion of the trial judge, and there has been no argument presented to show that the sentencing discretion of the trial judge to fix a non-parole period of 18 years was exercised in an error. Sentence appeal is not arguable.

Result

[9] Leave to appeal against conviction is granted.

[10] Leave to appeal against sentence is refused.




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Hon. Justice D. Goundar
JUDGE OF APPEAL

At Suva
25 July 2014

Solicitors:

Messrs. Vaniqi Lawyers for Appellant
Office of the Director of Public Prosecutions for State