

**IN THE COURT OF APPEAL OF TONGA**

**CRIMINAL JURISDICTION**

**AC 5 of 2014**

**NUKU'ALOFA REGISTRY**

**[CR 112 of 2009]**

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**BETWEEN : SIONE TONGA VAOMOTOU - Appellant**

**AND : REX - Respondent**

**Coram : Salmon J  
Blanchard J  
Ward J**

**Counsel : Mr O. Pouono for the Appellant  
Mr S. F. Sisifa for the Respondent**

**Date of Hearing : 31 March 2014**

**Date of Judgment: 9 April 2014**

## JUDGMENT OF THE COURT

- [1] The appellant was granted leave to appeal out of time against a sentence imposed by Shuster J of imprisonment for 16 years (with the last 2 years suspended) for the manslaughter of his wife. The jury acquitted him on a charge of murder. He had pleaded guilty to manslaughter and his successful defence to the murder charge relied upon provocation by his wife.
- [2] Although submitting that this was a bad case involving brutal violence, the Crown realistically accepts that the sentence was manifestly excessive.
- [3] The appellant and his wife had a stormy relationship and had separated. It appears that she had formed an association with another man. Under the stress of the situation the appellant went to the place where his wife was living carrying with him a cooking knife which he had sharpened. He entered the bedroom where his wife was sleeping in the early hours of the morning and stabbed her 23 times causing her death. He then went almost immediately to the police and admitted what he had done. On these facts he seems to have been fortunate in the verdict of the jury.

- [4] The appellant was a first offender. He had 2 small children then aged 6 and 4. For the purposes of sentence he was assessed by a psychiatrist as having suffered from Adjustment Disorder at the time of the offending but as being fully in remission when the assessment was carried out. A further mitigating factor was that the jury must have found that the appellant's attack on the victim was provoked by her conduct.
- [5] A case of this kind involving extreme violence presents a difficult sentencing exercise. Indeed this Court remarked more generally in *Tu'itavake v R* [2005] Tonga LR 348 at [12] that sentencing in provocation cases presents a special problem. There can be no set tariffs. Culpability must be assessed in the particular circumstances of the case. A trial judge has a broad discretion. However, as will appear, in this case the Judge's sentence was entirely insupportable and must be corrected.
- [6] In *Tu'itavake*, the Court of Appeal found helpful a review conducted by the New Zealand Court of Appeal in *R v Edwards* (NZCA, CA 371/04, 13 April 2005) arriving at sentencing ranges for a provoked killing where particular features existed. Relevant to the present

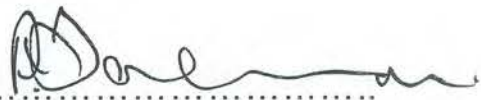


offending is a suggested sentencing range of 10 – 12 years after a contested trial where the accused has been found guilty of manslaughter committed when he or she had been carrying a knife and used great brutality in response to provocation.

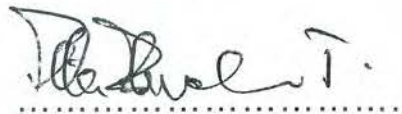
- [7] In the present case we consider that the combination of extreme violence (the use of the knife some 23 times on a sleeping woman) and the absence of provocative behaviour at the actual time of the attack require a higher starting point (before mitigating features are taken into account) beyond the 10 – 12 years range. The starting point, in our view, should be 14 years imprisonment.
- [8] But substantial credit must be given for the early confession and guilty plea, the appellant's remorse, his disordered state of mind and the fact that he was a first offender. In light of these matters we are of the view that an appropriate sentence is 10 years imprisonment.
- [9] The appellant's prospects of rehabilitation seem to be good. He is most unlikely to find himself in circumstances where there is a risk of similar or indeed any other offending. He has 2 children who will

still need his care on release. This is a proper case for some suspension of the sentence.

[10] The appeal is therefore allowed. The sentence of 16 years imprisonment is quashed. We impose in its place a sentence of 10 years imprisonment with the final 2 years suspended for 2 years.



**Salmon J**



**Blanchard J**



**Ward J**

