

BETWEEN DEAN EDWARD HEEMI

Applicant

A N D THE QUEEN

Respondent

Coram: Richardson J (presiding)
McMullin J
Barker J

Hearing: 29th and 30th October 1981

Counsel: M.A. Bungay for Appellant
C.H. Toogood for Crown

Judgment: 30th October 1981

(ORAL) JUDGMENT OF THE COURT DELIVERED BY BARKER J

Dean Edward Heemi seeks leave to appeal against a sentence of 2 years' imprisonment, imposed on him in the High Court at Wellington on 11th September 1981, following his conviction for manslaughter. Heemi and his de facto wife, Gillian Anne Jamieson, faced trial on a charge of murder. Both were acquitted of murder but convicted of manslaughter. Miss Jamieson was sentenced to 50 hours' community service and 2 years' probation; there is no appeal against her sentence.

The facts which emerged in evidence at the trial and from the very full statement which Heemi made to the Police, can be summarised as follows:

Heemi, Miss Jamieson and their child lived for over a year in a state unit in Richmond Grove, Moera. The deceased, Mrs Mercury, and her children lived next door. The deceased was a very large woman, said by the pathologist to have weighed 16 stone; she had certain medical problems and was apparently prone to violent outbursts. There was some history of harrassment of the applicant and his family by the deceased. Neighbours confirmed in evidence that the deceased was given to anti-social behaviour.

On 28th May 1981, at about 4.45 p.m., the deceased attacked Miss Jamieson with a bucket. The sentencing Judge was satisfied that this attack by the deceased on Miss Jamieson was unprovoked. He described it as a severe attack from a large and powerful woman and noted that there had been previous episodes of provocation from the deceased. Heemi reacted angrily when Miss Jamieson came to him bleeding. He rushed out of his house with a large piece of firewood; he broke a window in the deceased's house; he entered the deceased's property and hit her with the wood on the back of the head; he also punched her in the face. The deceased and the applicant fell onto the concrete driveway. As the deceased lay on the ground, Miss Jamieson kicked her; she was wearing light slippers. Heemi and Miss Jamieson returned to their house and Miss Jamieson telephoned the Police.

The evidence of the pathologist was that the injuries to the deceased's head did not fracture the skull; there were no signs of bleeding within the skull. However, the pathologist

was of the view that the head injuries were of sufficient severity to have made the deceased groggy, if not unconscious. He found that the deceased had inhaled blood into her lungs and she died of asphyxiation. He considered the deceased's first injuries from blows to the side of the head and to the top of the head would, in combination, have interfered with her consciousness and her ability to appreciate and react to a situation of danger. These blows, of themselves, would not have been fatal but they affected the deceased so that the next group of injuries she suffered created the mechanism by which she died. This second group of injuries comprised blows to the nose and mouth which combined to produce a profuse haemorrhage; there followed a massive inhalation of blood into the lungs which proved fatal.

The Judge was satisfied that the death resulted from what he called a somewhat unusual combination of factors and it was not something which might normally have been expected. He accepted, as obviously did the jury, that Heemi did not intend to kill the deceased; nor was there any provocation in the "legal sense" which might have justified what he did. The Judge considered that Heemi was responsible for a death arising from his forceful attack on the deceased, although she had offered some provocation in what the Judge described as "the ordinary sense".

The Judge noted that both Heemi and Miss Jamieson left the deceased in an injured state and that she died shortly thereafter. Mr Bungay disputes that Heemi abandoned the

deceased and submitted that Heemi assumed she "would be all right". Heemi said in evidence that all he had wanted to do was to "scare her a bit".

Heemi received a favourable probation report. He is aged 21. He comes from a good family. During a brief association with a motorcycle gang, he sustained a number of convictions, including one for burglary for which he received Periodic Detention. Since he formed his association with Miss Jamieson in 1978, he has adopted a quiet, stable lifestyle. Employed as a freezing worker, he spent off-season time repairing motor vehicles and breeding dogs. The Probation Officer's assessment of him was of a "responsible and law-abiding member of the community". This assessment was accepted by the Judge.

The Judge considered that in this tragic incident in which the deceased lost her life, Heemi took the law into his own hands and used a degree of force which was beyond the bounds of reason, the bounds of social norms and the bounds of law. He considered that, having regard to the form of the attack and Heemi's leaving the deceased in an injured state, he had no alternative but to impose a sentence of 2 years' imprisonment. The Judge was well-placed to assess the facts, having presided over the trial over several days.

Sentences for manslaughter can and do vary enormously. Indeed, the crime of manslaughter can range from near murder to near accident. Sentences imposed in other cases with

different facts are only of limited assistance in assessing a proper sentence.

However, where a life has been taken after an assault, even an assault for which there was provocation, the Court has upheld sentences of imprisonment. For example, in R v. Raumati (Judgment 6th August 1980), the appellant was sentenced in the High Court to 3 years' imprisonment for manslaughter; there had been a belligerent attack on a drunken man; the appellant himself had been drinking and had suffered some provocation; the sentence was reduced to 2 years' imprisonment.

In R v. Dellow (Judgment 6th September 1979), the Court did refer to other sentences for manslaughter and said:

"But of course the circumstances of the death itself must be the most important consideration in sentencing."

Having given careful consideration to everything submitted to us by Mr Bungay, we are quite unable to hold that this sentence was manifestly excessive. We agree with the Judge that this was an attack in which considerable force was used, and where the applicant took the law into his own hands. The facts surrounding the attack were fully in the mind of the sentencing Judge who had heard all the evidence. He was very well-placed to form his own assessment of these facts.

Accordingly, leave to appeal against sentence must be and is refused.

R. D. Barker J.