

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

T.103/94

THE QUEEN

v

TERESA MOANA MANA

Hearing: 28, 29, 30 November 1994
Charge: Wounding with intent to injure.
Counsel: M. Sturm for Crown
B.R. Northwood for Prisoner
Sentenced: 19 December 1994
2 years supervision with conditions

SENTENCE OF PENLINGTON J

Teresa Moana Mana,

You appear for sentence on one charge of wounding with intent to injure. You were convicted by a jury at a three day trial in Auckland at the end of November.

The immediate background was as follows. As at 9/10 December of last year you and your husband were living at your brother's place instead of your own home at Papakura. On 9 December you and your husband went out. You left your infant son, James, in the charge of your brother. First of all you went

to your sister's place where some alcohol was consumed. You then went to a nearby tavern where further drink was consumed. At the tavern you considered that your husband wanted to start a fight because of his attitude. You became frightened of him.

You left the tavern on your own and went to a nearby club. You stayed at the club for two or three hours. You then left there and returned to your brother's place. There you found a mess in the kitchen. Your infant son was not there. Enquiries revealed that your husband had been there earlier and taken your son with him.

At this stage you obtained a knife and set off after your husband. You caught up with him. He had the baby. You asked your husband to give the baby back to you. He kept telling you to go away. You reached out for the baby, Again he pushed you away. At this stage you cut your husband's hand. You then fell to the ground. You next wounded him on the left knee and then as he moved away from you, you still asking him to return the child and he being not prepared to listen to you, you wounded him twice in the back.

The police were very soon on the scene. You admitted to the police officers that you had stabbed your husband. In the view of one of the police officers you were too intoxicated to be interviewed.

As the result, an interview was not conducted until about 11.30 pm later that day.

The Crown contended that you were the aggressor. Your defence was self defence. You alleged a preemptive strike. You accepted that your husband had not physically abused you. On the other hand, you considered that in the circumstances existing you were entitled to act in self defence. To that end you called expert opinion evidence to the effect that you were suffering from the battered women syndrome and the post traumatic stress disorder.

Having presided at the trial and heard all the evidence I am satisfied on both the lay and opinion evidence that the relationship between yourself and your husband over a period of time from before you were married through until the time of this offending was a battering relationship.

That notwithstanding, in my view it was properly open to the jury to find that even if you believed that your husband was going to give you a hiding because of all that had happened in the past the force which you used was excessive and not reasonable in the circumstances. In other words, in my opinion the verdict which the jury reached was a proper one on the evidence. The jury by its verdict negated self defence, and of course I am bound by that verdict.

Pending sentence your husband was asked for a victim impact statement. In that statement he claims to have been afraid and upset as the result of your offending. I am bound to say that I

am somewhat sceptical about your husband's complaint as contained in that statement given all the other evidence.

I also note that he was asked for material for an emotional harm report and he responded by saying that your offending had not had any adverse effects on him and he declined to give any further details. That was consistent it seems with his attitude at the trial where he exercised his legal right not to give evidence. I think that what is reported in the emotional harm report is nearer to the truth of the matter.

Having regard to the injuries which you inflicted I am bound to find that your offending involved serious violence. That is not contested by your counsel.

That being so, by virtue of s.5 of the Criminal Justice Act I am required to send you to prison unless there are circumstances special to the offence or you the offender.

Your counsel in his most helpful submissions to me this morning has contended that there were special circumstances. The Crown on the other hand contends that there were not.

Before me is a most comprehensive pre sentence report and an extensive psychological report from the psychologist who gave evidence at your trial. I have carefully read all the written material that is before me.

Having presided at the trial I have reached the conclusion that your crime would not have been committed had it not been for a combination of factors on that night; your intoxicated condition, your husband's act of taking the baby; his refusal to give the baby back to you, the batterings which you had received over many years from him, and the anger and frustration which welled up inside you because of his conduct on the night.

I am satisfied that you were suffering from the battered women syndrome at the time of your offending and that that is a reason special to the offence and special to you, the offender. Even if I am wrong as to the former I have no doubt that it is special to you, the offender.

I agree with your counsel that on the evidence it seems that you finally snapped. You took a stand. What you did was wrong and you know that. But it is well recognised that persons suffering from the condition which you were suffering do act in that way. What it did was to break the cycle of violence.

I have then to look at your background to see what I should do with you. I note you have some minor convictions. I am going to ignore them.

I see that you are 36 years of age. There are three children; the baby and as well two teenagers.

I also note that you came from a large family where there was abuse. You lost your mother when you were only 9 years of age and then you saw your father over-indulging in alcohol.

I note from the pre sentence report that your children have been severely affected by the strife which has existed in your home over a long time. To your credit you have kept a good home and you have had your children as a central feature of your living.

Your husband has been counselled in the past for his violent propensities. It seems that that counselling has not been effective. I, of course, have no power in relation to him today. I do note that he is here in Court and can hear what I say. All I say to him is that he too should contemplate the sort of help which I think you need.

You are an intelligent person. In my opinion, with proper guidance by way of counselling, treatment and a determined effort on your part, I believe that you can be guided into a situation in which there is no likelihood of reoffending. You need to get away from your propensity to drink alcohol and you need to lead a new life.

While you have committed a serious offence for which the normal punishment is usually imprisonment, I am satisfied that as far as this case is concerned you should not be sentenced to a full time custodial sentence because of all the circumstances of the case, including the special circumstances which I have found. I want

you to understand that the Court is being merciful to you. Its giving you a chance to take stock of your position and to be helped. I believe you have the ability to make the most of that chance with suitable guidance and help. I am confident that if you are guided by the wisdom of others, this unfortunate incident in your life will be behind you and that you will find happiness for yourself and your children which has eluded you for a long time. If you do not take notice of those who are prepared to help you, it is inevitable in my view that you will find yourself back here. That should not occur and I believe you have got the ability to see that it will not occur.

Accordingly, the sentence of the Court is that you be sentenced to supervision for a period of 2 years. The supervision will be subject to the normal statutory conditions and, as well, to the following special condition:

1. You are to be assessed for alcohol abuse and to undertake any treatment for this condition which is deemed necessary as directed by your probation officer.
2. You are to establish and maintain contact with a relevant support group or undertake a course within the community in order to enhance your self esteem, provide a wider perspective of life, and build on your abilities and attributes as directed by your probation officer.

3. You are to undertake a course in counselling with a psychologist from the Justice Department or any other qualified counsellor as directed by your probation officer.

Stand down.

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P.G.S. Penlington J