

R v Sa [2004] VSCA 182 (7 October 2004) – Victorian Court of Appeal

‘Aggravated burglary’ – ‘Cautious approach to victim forgiveness’ – ‘Exposing children’ – ‘Intentionally causing serious injury’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘Physical violence and harm’ – ‘Role of apology’ – ‘Sentencing’ – ‘Victim contribution’ – ‘Victim's wishes’

Charge/s: Aggravated burglary, intentionally causing serious injury.

Appeal Type: Appeal against sentence.

Facts: The applicant and the victim, his cousin, were born in Western Samoa. They had a heated argument over the phone, in which the applicant said he would ‘chop [the victim’s] head off’. The applicant armed himself with a machete and went to the victim’s home. The applicant entered through an unlocked door and struck the victim twice with the machete to the back of the head and neck, in front of two small children. After the offence, a cultural ceremony of apology and reconciliation was performed. At sentence, the victim expressed his desire that the applicant not be imprisoned, his forgiveness of the applicant and that they now had a very good relationship. The applicant was sentenced to a total effective sentence of four years imprisonment, with a non-parole period of two years.

Issue/s: Some of the grounds of appeal included that the sentencing judge erred in that he failed to take into account the attitude of the victim and the remorse of the offender.

Decision and Reasoning: The appeal was dismissed. As per Eames JA at [38]-[40]:

‘The statement of his Honour that the attitude of the victim could not ‘govern’ the sentencing approach was consistent with the principles stated in [Skura](#). In the present case, however, there was good reason why the judge would be cautious in evaluating the weight to be given to the evidence of the victim. In the first place, he was not the only victim of the appellant’s crime; the two children also witnessed what must have been a horrifying incident, although there was no evidence of any long lasting adverse effects on the children. Crimes of violence frequently create alarm and distress to people other than the immediate victims, and in assessing the need for general deterrence a sentencing judge must have regard to the impact of crime more broadly than merely upon the immediate victim.

An additional reason for being cautious about the weight to be given to the evidence of the victim related to the nature of [the victim's] evidence. One reason why courts do not allow the wishes of the victim to determine the sentence to be imposed is that the victim might not always be able to assess what is in his or her own best interest. For example, when considering what weight to give to factors of general and specific deterrence in a case of a woman assaulted by her partner a sentencing judge would be minded to have regard to the imperatives which might motivate a battered wife to plead for leniency towards her attacker. In such circumstances the sentencing judge might be cautious about giving undue weight to such a plea for leniency.

In the present case, the victim was himself in a difficult position among other members of the Samoan community, and his acceptance of the apology might have been motivated by a range of considerations'.

The sentencing judge accepted that the ceremony was of great cultural significance and that it represented a traditional apology of the most humble and sincere kind. He further accepted that the applicant had expressed genuine contrition and remorse. These statements reflected that the sentencing judge did in fact give weight to the performance of the cultural ceremony and to the factors of remorse and forgiveness (See [43]). Eames JA was not persuaded that the weight given to these factors displayed error in the sentencing judge's approach. On the contrary, having regard to the seriousness of the offences, the sentences imposed were merciful (See [44]).