

IN THE SUPREME COURT OF NEW ZEALAND

**SC 28/2007
[2007] NZSC 46**

SIONE TAU ULUAKIOLA

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: C Wilkinson-Smith for Applicant
J C Pike for Crown

Judgment: 22 June 2007

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant has sought leave to appeal against the Court of Appeal's dismissal of his appeal against his conviction for murder of his wife. The jury decided against reducing the verdict to one of manslaughter, rejecting the applicant's claim to the partial defence of provocation.

[2] Before the Court of Appeal it was submitted that the jury should have been directed that the applicant had a personal characteristic that could be taken into account under s 169 of the Crimes Act 1961, namely that he was of Tongan ethnicity which, it was said on his behalf, made him especially sensitive to his wife's

particular behaviour towards him. The Judge had considered that he must apply the law as it was stated in *R v Tai*.¹ The Court of Appeal found it unnecessary to address whether *Tai* still remains authoritative because, in agreement with the trial Judge, it said that there was in fact no foundation in the admissible evidence for the claimed special characteristic. The only expert witness put forward by the defence had been a Tongan educationalist and linguist who was not qualified to say, as the Judge put it, how much more vulnerable, if at all, Tongan men might be to insults going to their lack of education or to loss of their role as fathers than men of other ethnicities in New Zealand.

[3] That finding of a lack of evidential foundation is so plainly correct that there is no possibility that the proposed appeal can succeed on the provocation ground.

[4] The only other point raised for the applicant concerns an obvious mistake made in a questionnaire given to the jury. The Court of Appeal considered, rightly in our view, that, given the terms of the Judge's summing up, this would not have confused the jury and that there was no resulting risk of a miscarriage of justice.

Solicitors:
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¹ [1976] 1 NZLR 102.