

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 36/2020
[2020] NZSC 133**

BETWEEN SAINEY MARONG
Applicant

AND THE QUEEN
Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: L L Heah for Applicant
M J Lillico for Respondent

Judgment: 24 November 2020

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] The applicant, Mr Marong, was found guilty of murdering a Christchurch sex worker. Mr Marong picked her up, drove her to the outskirts of Christchurch, and strangled her sometime thereafter. At some point, Mr Marong had sexual intercourse with his victim. There was no way to be sure whether this was pre- or post-mortem. After the murder, Mr Marong placed the victim's body in the boot of his car. The following day, he disposed of her half-naked body on the side of a rural Canterbury road, doused her in petrol and set her alight.

[2] The High Court sentenced Mr Marong to life imprisonment with a minimum period of imprisonment of 18 years.¹ Mr Marong seeks leave to appeal against the Court of Appeal’s decision dismissing his appeal and upholding that sentence.²

[3] The Court of Appeal considered that the murder met the circumstances in s 104(1)(b), (e) and (g) of the Sentencing Act 2002; that is, the murder involved calculated or lengthy planning; it was committed with a high level of brutality, cruelty, depravity or callousness; and the victim was particularly vulnerable.³ The Court accepted Mr Marong had conducted multiple internet searches on matters relevant to killing a Christchurch sex worker and avoiding detection.⁴ Further, the way he disposed of the victim’s body and the comments he made to prison officers (such as that the killing was like “hunting in the wild”) met the callousness criterion.⁵ Finally, the victim was more vulnerable than other sex workers on the street in Christchurch because she was confined in Mr Marong’s car and because she was very small in stature.⁶

This application

[4] Mr Marong challenges all three aspects of the Court of Appeal’s s 104 reasoning. He submits that the application meets the miscarriage ground for leave and that all these issues raise matters of general or public importance.

[5] First, Mr Marong submits that most of the internet searches taken into account by the Court of Appeal were not directly relevant to the way the victim was actually killed, which was by strangulation. He accepted that they may show a general unhealthy interest in death and violence, but not lengthy or calculated planning. Further, searches made relating to ways to avoid detection were made after the murder, and so did not constitute planning for the murder.

¹ *R v Marong* [2018] NZHC 748 (Mander J).

² *Marong v R* [2020] NZCA 179 (Brown, Gilbert and Dobson JJ).

³ At [30]–[31], [33] and [38].

⁴ At [30].

⁵ At [8] and [33].

⁶ At [38].

[6] Second, Mr Marong submits that the Court of Appeal should not have taken account of his actions after the killing to dispose of the body, since s 104(1)(e) refers only to whether the murder was “committed” with a high level of callousness, while other paragraphs use the more imprecise word “involved”. It cannot be said that the strangulation itself was callous to a high level. Further, the Court’s observations about the callousness of Mr Marong’s state of mind after the killing are not relevant. Rather, the focus must be on the way the killing itself was carried out.

[7] Third, Mr Marong submits that the victim’s small stature is not enough to trigger the serious consequences of s 104(1). Nor is the fact that she took a risk in trusting her clients, as this is inherent in her occupation as a street sex worker. Mr Marong seeks to differentiate this risk from that taken by essential service workers such as police officers.

Our assessment

[8] In its judgment, the Court of Appeal applied well-settled principles under s 104 to the facts. Consequently no issue of general or public importance arises.⁷ Nor, on the facts of the offending, is there any basis upon which it could be realistically suggested that a miscarriage may have occurred or is in prospect.⁸

Result

[9] The application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

⁷ Senior Courts Act 2016, s 74(2)(a).

⁸ Section 74(2)(b).