

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 137 of 2017
(High Court Action No. HAC 67 of 2014)

BETWEEN : LIVAI LINO
Appellant

AND : THE STATE
Respondent

Coram : Chandra, RJA

Counsel : Ms S Nasedra for the Appellant
Mr S Babitu for the Respondent

Date of Hearing : 1 August, 2019

Date of Ruling : 27 November, 2019

RULING

- [1] The Appellant was charged with one count of murder contrary to Section 237 of the Crimes Act, 2009.
- [2] He was found guilty as the Assessors unanimously opined that he was guilty and the learned High Court Judge concurred with the opinion of the Assessors.
- [3] The Appellant was convicted and sentenced on 22nd August 2017 to life imprisonment and to serve a minimum period of 17 years before being eligible for pardon.
- [4] He filed a timely notice of appeal setting out the following ground of appeal against conviction:

“That the learned trial Judge erred in law and in fact in not adequately assessing and/or consider the defence of mental impairment as per Section 28(1) of the Crimes Act, in light of:

- (a) The evidence of Dr Biukoto stating that he was unsure whether the Appellant could or could not control his conduct at the material time*
- (b) That contradictions between the evidence given in terms of the reports given in evidence by Dr Biukoto and his evidence of being unsure as to whether the Appellant could or could not control his conduct at the material time.”*

- [5] The deceased was standing in front of the Navakari Dairy and Bakery Shop, when suddenly the Appellant had taken the kitchen knife he had with him and stabbed the deceased in the right side of the chest and fled from the scene. The deceased had been rushed to Nadi Hospital where he had succumbed to his injuries. The accused was 27 years old, unemployed and had been a former patient of Saint Giles Hospital and had been spending most of his time roaming around Nadi town.
- [6] The Appellant had not given evidence at the trial. But the defence had taken up the defence of mental impairment in terms of Section 28(1) of the Crimes Act.
- [7] It was submitted on behalf of the Appellant that the medical evidence given by Dr. Biukoto had been to the effect that he was not sure whether or not the Appellant could

control his conduct at the material time. On that basis it was argued that the learned Trial Judge had failed to adequately assess and consider the defence of mental impairment. The learned Trial Judge had stated in his summing up that the defence of mental impairment was not available to the defence.

- [8] In the submissions of the State, it is submitted that the learned trial Judge had in his summing up referred to 3 reports provided by the psychiatrist and that the reports had established limbs (a) and (b) of section 28(1). The issue was that the Doctor could not confirm limb (c) of Section 28(1) which is to the effect that the Appellant was unable to control the conduct.
- [9] In view of this position it may be necessary to consider the entirety of the Doctor's evidence and the psychiatrist's reports that were made available at the trial.
- [10] Therefore, I would leave it to the Full Court to consider this position in relation to the ground of appeal relied upon by the Appellant.

Orders of Court:

Leave to appeal against conviction is granted.



Hon. Justice Suresh Chandra
RESIDENT JUSTICE OF APPEAL