

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. HAC 179 of 2017

STATE

V

SEMI BATI

Mr. A. Singh for the State
Miss J. Singh (L.A.C.) for the accused

Date of Hearing : 9, 12 November 2018
Date of Sentence: 16 November 2018

SENTENCE

- 1.] On the 6th November 2018 in this Court, the Accused entered a plea of guilty to a charge of murder, contrary to section 237 of the Crimes Act 2009.
- 2.] The charge particularised that he did murder Akeneta Kelea (his mother) on the 8th September 2017 at Lautoka.
- 3.] The facts of the case are that on the 8th September 2017 at about 6pm both the accused and his mother (the deceased) were by the roadside of Queen's highway Navutu, Lautoka, selling mangoes. An argument developed and the accused pushed his mother into the path of oncoming vehicles. She was hit by a vehicle and sustained injuries, which resulted in her death on arrival at the Lautoka Hospital. A post mortem report

revealed multiple traumatic injuries and a rupture of the aorta. She was 47 years old.

- 4.] The accused tried to flee the scene but was stopped by a farmer standing nearby. He was arrested by the Police and on being questioned admitted the offence.
- 5.] In mitigation it is submitted that the accused is 26 years old, unemployed and single. He had been living with his mother and stepfather until the tragic incident.
- 6.] Ever since he was young, his educational and social welfare had been provided for him by Pacific Counseling and Social Welfare because his family had rejected him because of his sexual orientation, which they disapproved of.
- 7.] He has a clear record and has been in remand for 6 months, awaiting this sentence.
- 8.] The mandatory penalty for murder is a term of life imprisonment and that indeed is the sentence I impose. The Court does however have to a discretion to impose a minimum term before a pardon may be considered.
- 9.] In exercising this discretion I adopt this Court's discussion of relevant factors to be taken into consideration cited in the case of **Rokete** HAC84.2009 where reference was made to the UK Criminal Justice Act 2003, the Schedule 21 of which lists factors which may be relevant in this exercise.
- 10.] The Act is not mirrored by any legislation in Fiji, and of course the UK Act does not apply here but its provisions are very helpful.

11.] The Schedule provides factors to be considered, such as:-

- An intention to cause harm rather than to kill
- Any abnormality of mind on the part of the offender, lowering his degree of culpability
- Whether he was provoked (for example by prolonged stress)
- Whether the offender acted to any extent in self defence
- Belief by the offender that the murder was an act of mercy
- The age of the offender.

12.] The State charged the accused with murder on the basis of extreme recklessness. That is the States prerogative, but this Court opines that had the matter gone to trial, a lesser verdict of manslaughter may well have been found. That will be a factor in determining the minimum sentence.

13.] Also to be considered is the fact that he was alienated from his family because of sexual orientation issues, leading to a prolonged period of stress, which culminated at the time of the incident in a fierce dispute over mango sales.

14.] The accused has been medically examined by psychiatrists at Fiji's only hospital for the mentally impaired and their finding is that he is not of unsound mind, he understood the seriousness of his actions and their consequences.

15.] In consideration of all these factors, the Court decides that the accused will serve a minimum term of 12 years before he can be considered for a pardon.

16.] Following the decision of the Court of Appeal in *Balekiyuva* [2016]FJCA 16, (per Calancchini P.) there is no necessity to take the time spent in remand into account.

17.] Orders

1. The accused is sentenced to life imprisonment
2. He is to serve 12 years of that term before he can be considered for pardon.



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P.K. Madigan

Judge.

High Court Lautoka