

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. AAUOO60 OF 2007

BETWEEN : MOHAMMED SHAFIL KHAN *Appellant*
AND : THE STATE *Respondent*

BEFORE THE HONOURABLE JUDGE OF APPEAL MR JUSTICE
JOHN E. BYRNE

Counsel : Appellant – In Person
: Mr P. Bulamainaivalu & Fili for the
Respondent

**Date of Hearing
& Ruling** : 10th October 2007

R U L I N G

[1] On the 30th of August 2004 the Appellant pleaded guilty in the High Court of Lautoka to the crimes of **Abduction, Unnatural Offence** and **Murder**. The facts as outlined by the trial Judge in his sentencing remarks of the 23rd of September 2004 were that on the 16th of January 2003

when the Appellant was 13 years of age, his victim Ashwini Mala Sharma was 7 years of age.

- [2] It is not necessary to refer in any detail to the offences and to the learned Judge's remarks on Sentence. The Court's concern today is to consider whether Leave to Appeal against the conviction and sentence should be granted to the Appellant. When the matter first came before me on the 10th of September 2007, in view of the facts and comments of the trial Judge, I thought it advisable that a psychological report be obtained on the Appellant, dealing particularly with the question of whether he was fit to plead to the charges.
- [3] The Court has now received a copy of the psychological report from the Medical Superintendent of St. Giles Hospital in respect of the examinations by the hospital of the Appellant. It concludes with these words:

"In other words Mohammed Shafil was aware of his actions and as such he should be held responsible for his actions. He is fit to plead".

- [4] The Appellant applied to this Court on the 6th of June 2007 for leave to appeal his conviction. This was after a

lapse of about 3 years and 2 months and in breach of Section 26 of the Court of Appeal Act Cap 12. The time prescribed for entering an appeal in that section is 30 days from the date of conviction.

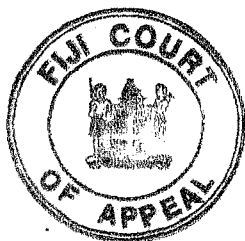
- [5] I am satisfied, both after reading the trial Judge's remarks on Sentence and particularly today the psychiatric report on the Appellant that he was properly convicted and sentenced to the mandatory term of life imprisonment under Section 200 of the Penal Code.
- [6] In the case of a juvenile however as the learned Judge pointed out in his remarks, Section 200 has to be read with Section 33 of the Penal Code which provides:

"Where an offence in any written law prescribes a maximum term of imprisonment of 10 years or more, including life imprisonment, any court passing sentence for such offence may fix a minimum period which the court considers the convicted person must serve".

The effect of Section 33 read with Section 200 and Section 31(1) of the Juveniles Act (Cap 56)

therefore is that a juvenile convicted of murder maybe sentenced to detention for life but need not be. The Court may impose any term of detention once having first concluded that there is no other suitable way of dealing with the Accused. The learned Judge concluded that after considering the seriousness of the offences, the aggravating features and the matters put to him in mitigation, he found it impossible to exercise his discretion and impose a lighter sentence than that provided in Section 200.

[7] In so doing I find that the Judge committed no error and that his Sentence must stand. The result is that this application for leave to appeal out of time is refused.



John E. Byrne
[John E. Byrne]
JUDGE OF APPEAL

At Suva

10th October 2007