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

CRIMINAL APPEAL NO. AAU0009OF 2006
& AAU0039 OF 2006
(High Court Criminal Case No. HAC014 of 2004)

BETWEEN: **ARNEEL CHANDRA GOUNDAR**
and JAMES SANJAY GOUNDAR

Appellants

AND : **THE STATE** *Respondent*

Coram: **Ward, President**
Ellis, JA
Penlington, JA

Hearing: **Tuesday 9th June 2007**

Counsel: **I Khan for the appellants**
N Nand for the respondent

Date of Judgment: **Monday 25th June 2007**

JUDGMENT OF THE COURT

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[1] On 31 January 2006 at the Lautoka High Court, the appellants were convicted of murder by Connors J following the unanimous opinions of the assessors. On 7 February 2006 they were sentenced to life imprisonment and the judge recommended a minimum term of 15 years.

[2] They both appeal against conviction and sentence.

[3] The original grounds of appeal have been amended and counsel for the State objects that the amended grounds were not filed in accordance with the Rules, that he has filed submissions directed at the previous grounds only and has not had sufficient time to file submissions in response to the amended grounds. We note that the amended grounds effectively traverse the same issues and we are grateful to Mr Nand for agreeing to deal with the amended grounds by oral submission. We therefore formally give leave to file the amended grounds and note the earlier grounds are not being pursued.

[4] The background to the case can conveniently be described by some of the agreed facts as set out in the summing up by Connors J:

> "... those facts are that the first accused, Arneel Goundar, was legally married to the deceased on 31 March 2003 and secondly that after the marriage the deceased stayed with her sister, Kiran Joylesh and the husband Jitendra Kumar at Wiaruku, Ra, pending the Hindu religious marriage scheduled for December 2003. Thirdly, that at the time of her death the deceased worked as a machinist with Elliot's Garment factory at Rakiraki town. Fourthly that about 2.00am on the 28th September 2003, the first accused and Jitendra Kumar reported at Rakiraki Police Station that the deceased was missing. Fifthly that the deceased's body was discovered floating face downwards inside the Dociu floodgate chamber by one Neori Senivau and his fellow cane cutters around 11.00pm on the 27th September 2003. Sixthly that at the time the deceased's body was found, the hands, legs and neck were tied with raffia twine whilst the head was covered with a plastic bag. Seventhly, Dr Lusiana Boseiwaqa on the 29 September 2003 conducted an autopsy on the deceased at Lautoka Hospital mortuary and the post mortem report is ... that the death of the deceased was caused by asphyxia due to strangulation."

[5] Both appellants made statements to the police under caution in which they admitted their involvement in the murder. The admissibility of those statements was challenged in a trial on the voir dire and the judge ruled they were admissible.

[6] The grounds of appeal relate to the manner in which the judge ruled in the trial within a trial and also the direction he gave to the assessors in respect of the admissions in his summing up.

[7] During the interviews of each appellant, the appellant's father was allowed to speak to his son. The conversations were in earshot of the officers and they recorded part of the conversation.

[8] In the case of the first appellant, the record of interview includes the following:

> "(7.45 pm. Interview suspended as I was told by Inspector Arun that suspect's father wants to see him. 7.46pm Suspect's father came and he spoke to suspect asking him "Did you people murder Anju?" (in Hindi) and suspect said 'yes" (in Hindi) 7.47pm Suspect's father left and I again reminded the suspect that he was still under caution in Hindustani.)"

[9] At that time the appellant had already made the following statements in the interview:

> Q.55 - What was the conversation between you two (Appellant and co-accused) this time?
>
> A. - I told him that Anju had come and was talking nonsense and that I will meet her again and if she did not agree to my words then I will do something that she would never be seen again.
>
> Q56 - What did you mean by saying that she would never be seen again?
>
> A. - That I will kill her and take her and throw her somewhere.

Q57 - What did James say to this idea?

A - James told me not to worry and that he will be together with me.

After his father had left he fully admitted his part.

[10] Similarly, the note of the interview of the second appellant records:

> "At 1920 hrs, the interview of suspect James Sanjay Gounder has been suspended for his father Sharda Gounder to see him and spoke to his father and told him he is involved in a murder of one girl, Anju and also requested his father to bring his clothes and jacket. At 1928hrs, his father Sharda Gounder left the interview office."

[11] In that case the appellant had already described being present when his co-accused killed the deceased. After speaking to his father, he continued with the interview in that vein. At a subsequent interview he admitted being more directly involved.

[12] Mr Khan submits that the intervention of the father in each case amounted to an inducement sufficient to render the subsequent statements involuntary and therefore inadmissible.

[13] It is trite law that if a statement is induced by statements made to the accused it is not admissible. The question for the court is whether the words were capable in the circumstances at the time, including the identity of the person saying them, of being an inducement and, if so, whether they did in fact so induce the admission.

[14] A study of earlier cases demonstrates that the boundary between words that can be held to be an inducement and those that are not is often difficult to ascertain. In the case of *Cleary v R* [1963] 48 Cr App R 116 Finnemore J referred to some such cases. On the one hand an exhortation by the accuseds' mother "Now be

good boys and tell the truth" was not held to amount to an inducement whilst cases where the words used "You had better tell the truth" or "It will be better for you to tell the truth" were inducements.

[15] We consider that a mere exhortation to tell the truth or request to say what happened cannot amount to an inducement such as to render the statement involuntary but a similar remark coupled with some additional factor suggesting that the accused will benefit from doing so may amount to such an inducement.

[16] In the case of the first appellant, his father simply asked a question that the interviewing officers could have asked without objection. It was simply asking for an answer on an issue of fact. There was no element of inducement.

[17] In the case of the second appellant he is recorded as having volunteered to his father that he was involved, as he had already told the police.

[18] We do not consider that there was any reason for the judge to find that those statements were induced by the presence of the father and he was correct to find the interviews admissible. Counsel for the appellants suggests that the judge had a duty to deal with the possibility of inducement once there was evidence of the fathers' visits. Had there been evidence of statements which could reasonably have led to such a conclusion the judge might have taken the initiative to deal with it if the accused are unrepresented but, in the present case, they were both represented.

[19] The second ground of appeal refers to the direction he then gave to the assessors. It is correct that, once the statements of admission were before the assessors, it is a matter of fact for them whether they were voluntary or induced.

[20] In his summing up, the learned judge did not refer to the question of inducement. That would appear to be because it had not been suggested in the evidence before

the assessors. The judge did, however, direct the assessors correctly on how they should assess the admissions given in the caution interviews.

[21] It is suggested by the appellants that he should have included a reference to the possibility of the father's presence having induced the admissions. We do not accept there was such an obligation on the judge. The question by the father of the first appellant is clearly such that it is incapable of amounting to an inducement. The learned judge did remind the assessors of the evidence of the witnesses to that meeting. Similarly there was no evidence of the actual words spoken by the father of the second appellant neither was there any evidence that the appearance of the father had changed the nature of the confession the appellant was already making at the time.

[22] The appeals against conviction fail.

[23] The only submission regarding sentence is that the length of the minimum period is too harsh. We do not consider there is any merit in that. This was a cold blooded murder of a person who had every right to believe the appellant would protect her and look after her. We see no reason to interfere.

[24] However, we note that the judge sentenced in the following terms;

> "Accordingly you are each sentenced to imprisonment for life and with respect to each of you I recommend that you serve minimum terms of 15 years in jail."

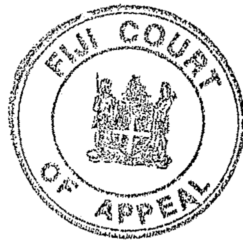
The terms of section 33 of the Penal Code permitted the judge, when ordering life imprisonment, to recommend the minimum period he considers the prisoner should serve. However, that power was strengthened by the Penal Code (Penalties) (Amendment) Act, No 7 of 2003 so the judge may now "fix the minimum period".

[25] We quash the order recommending the minimum period and substitute an order that each shall serve a fixed minimum term of fifteen years.

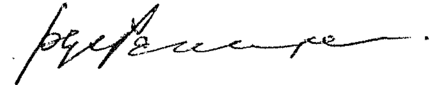
[26] **Result**:

Appeals against conviction and sentence dismissed. We fix the minimum period the appellants shall serve at fifteen years.

Ward, President



Ellis, JA



Penlington, JA

Solicitors:

Iqbal Khan & Associates, Lautoka for the appellants
Office of the Director of the Public Prosecutions, Suva for the Respondent