

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

CRIMINAL APPEAL NO. AAU 112 OF 2011
(High Court HAC 23 of 2011)

BETWEEN : **ROHIT KHAN** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Chandra RJA**

Counsel : **Mr. J. Savou for the Appellant**
Ms. P. Madanavosa for the Respondent

Date of Hearing : **3 March 2016**

Date of Ruling : **2 August 2016**

RULING

- [1] The Appellant was charged with one count of the offence of Murder contrary to section 237 of the Crimes decree No. 44 of 2009 and one count of the offence of acting with intent to cause grievous harm contrary to section 255(b) of the Crimes Decree No.44 of 2009.

[2] The Appellant pleaded guilty to the charges and was convicted.

[3] The Appellant was sentenced (a) for murder – life imprisonment with a minimum period of 15 years; (b) Act with intent to cause grievous harm to 4 years.

[4] The amended ground of appeal was on sentence –

“That the learned Trial Judge erred in principle and also erred in exercising his sentencing discretion to the extent that 15 years non-parole or minimum period was excessive in view of the Appellant’s guilty plea, mitigating factors and his remand period”.

[5] The right of appeal against sentence is dealt with in Section 21(1)© of the Court of Appeal Act which provides:

*“A person convicted on trial before the High court may appeal under this Part to the Court of Appeal-
(c) with the leave of the Court of Appeal against the sentence passed on his conviction unless the sentence is one fixed by law.”*

[6] The Appellant was convicted of murder and the penalty for murder in terms of section 237 of the Crimes Decree is a mandatory sentence of imprisonment for life, with a judicial discretion to set a minimum term to be served before pardon may be considered.

[7] The present appeal was argued on the ground of the imposing of a minimum period when there is a sentence of life imprisonment.

[8] It was further argued on behalf of the Appellant that the mandatory life imprisonment for murder is fixed by law but not the judicial exercise of discretion which may or may not be exercised in a particular case.

[9] It was also argued that an Appellant's right to petition the Mercy Commission in terms of section 119 of the Constitution is affected by the minimum term imposed on his sentence.

[10] Counsel for the Appellant cited the obiter dictum of Calanchini P in the Court of Appeal in Abdul Aziz v. The State Criminal Appeal No.AAU 112 of 2011 (13 July 2015) :

"[6] The provisions of section 18 of the Sentencing Decree will have general application to all sentences, including where life imprisonment is prescribed as a maximum sentence unless a specific sentencing provision excludes its application. In my judgment a sentencing court is not expected to select either a non-parole term or a minimum term when sentencing for murder under section 237 of the Crimes Decree. As a result any person convicted for murder should be sentenced in compliance with section 237 of the Crimes Decree. For the same reason the discretion given to the High court under section 19(2) of the Sentencing Decree, being an enactment of general application, does not apply to the specific sentencing provision for murder under section 237 of the Crimes Decree.

[7] It should be noted that under section 119 of the Constitution any convicted person may petition the Mercy Commission to recommend that the President exercise a power of mercy amongst others granting a free or conditional pardon or remitting all or part of a punishment. Therefore the right to petition the Mercy Commission is open to any person convicted of murder even when no minimum term had been fixed by the sentencing judge in the exercise of his discretion".

[11] In Aziz's case, no minimum term was fixed when the accused was sentenced to life imprisonment whereas in the present case a minimum period was fixed.


[12] In view of the issues raised in this case it would be necessary to consider the effect of the provisions of the Sentencing and Penalties Decree in relation to the offence of Murder in terms of section 237 of the Crimes Decree in greater detail. The issue raised by the Appellant regarding his sentence is arguable.

[13] Leave to appeal is granted on the ground of appeal regarding the Appellant's sentence.

Orders of Court:

Leave to appeal against sentence is granted.




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Hon. Justice S. Chandra
Resident Justice of Appeal