IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CRIMINAL APPEAL NO.AAU 0070 of 2018
[In the High Court at Suva Case No. HAC 420 of 2016S]

BETWEEN : **MARIANNE PREMILA DEVI**

Appellant

AND : **STATE**

Respondent

Coram : **Prematilaka, JA**

Counsel : **Ms. S. Ratu for the Appellant**
: **Ms. J. Fatiaki for the Respondent**

Date of Hearing : **11 January 2021**

Date of Ruling : **12 January 2021**

RULING

[1] The appellant had been indicted in the High Court of Suva on one count of murder contrary to section 237 of the Crimes Decree, 2009 committed on 17 November 2016 at Sakoca, Nasinu, in the Central Division.

[2] The information read as follows.

'Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Act 2009.

Particulars of Offence

MARIANNE PREMILA DEVI on the 17th day of November, 2016 at Sakoca, Nasinu, in the Central Division, with intent to cause the death of BAL

KRISHNA NAIDU, set fire to the said BAL KRISHNA NAIDU, which caused his death on the 24th day of November 2016."

[3] After the summing-up on 19 June 2018 the assessors had unanimously found the appellant guilty as charged. The trial judge on 20 June 2018 had agreed with the assessors and convicted the appellant of murder. On 21 June 2018 the appellant had been sentenced to mandatory life imprisonment with a minimum serving period of 17 years.

[4] The appellant had filed a timely notice of appeal against conviction and sentence on 04 July 2018. The Legal Aid Commission on 21 September 2020 had filed amended grounds of appeal and written submissions on behalf of the appellant. The state had responded by its written submissions on 26 November 2020.

[5] In terms of section 21(1)(b) and (c) of the Court of Appeal Act, the appellant could appeal against conviction and sentence only with leave of court. The test for leave to appeal is **'reasonable prospect of success'** (see **Caucau v State** AAU0029 of 2016: 4 October 2018 [2018] FJCA 171, **Navuki v State** AAU0038 of 2016: 4 October 2018 [2018] FJCA 172 and **State v Vakarau** AAU0052 of 2017:4 October 2018 [2018] FJCA 173, **Sadrugu v The State** Criminal Appeal No. AAU 0057 of 2015: 06 June 2019 [2019] FJCA87 and **Waqasaqa v State** [2019] FJCA 144; AAU83.2015 (12 July 2019) in order to distinguish arguable grounds [see **Chand v State** [2008] FJCA 53; AAU0035 of 2007 (19 September 2008), **Chaudry v State** [2014] FJCA 106; AAU10 of 2014 and **Naisua v State** [2013] FJCA 14; CAV 10 of 2013 (20 November 2013)] from non-arguable grounds.

[6] Further guidelines to be followed for leave to appeal when a sentence is challenged in appeal are well settled (vide **Naisua v State** CAV0010 of 2013: 20 November 2013 [2013] FJSC 14; **House v The King** [1936] HCA 40; (1936) 55 CLR 499, **Kim Nam Bae v The State** Criminal Appeal No.AAU0015 and **Chirk King Yam v The State** Criminal Appeal No.AAU0095 of 2011). The test for leave to appeal is not whether the sentence is wrong in law but whether the grounds of appeal against sentence are arguable points under the four principles of ***Kim Nam Bae's*** case. **For a ground of appeal timely preferred against sentence to be considered arguable**

there must be a <u>reasonable prospect of its success</u> in appeal. The aforesaid guidelines are as follows.

> *(i) Acted upon a wrong principle;*
> *(ii) Allowed extraneous or irrelevant matters to guide or affect him;*
> *(iii) Mistook the facts;*
> *(iv) Failed to take into account some relevant consideration.*

[7] The grounds of appeal raised by the appellant are as follows.

> *'Ground 1- The learned trial judge erred in law and in fact in not adequately addressing the issue of provocation.*
>
> *'Ground 2- The learned trial judge erred on law and in fact in his assessment of the Res Grstae principle.*
>
> *Ground 3- The learned trial judge erred on law and in fact in imposing a sentence with a high minimum term of 17 years.*

[8] The case against the appellant had been based on utterances made by the deceased to three persons after the incident, an admissions made by the appellant to the receiving doctor that she had burnt the deceased and her cautioned interview. The appellant had also given evidence under oath. The facts as briefly narrated by the trial judge in the sentencing order are as follows.

> *'2. The facts were as follows: On 17 November 2016, you were 41 years old, and the deceased, your defacto husband was 34 years old. You had two children from a previous relationship, and a young daughter with the deceased. You worked at Lyndhurst Limited as a Machinist, while the deceased worded as a taxi driver. You two had been living in a defacto relationship wince 2009, and at times, the relationship between you two had been volatile. You had each taken out a Domestic Violence Restraining Order (DVRO) against each other previously. At times, you are on friendly terms with each other, and on other times, you fought each other.*
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> *3. On 17 November 2016, after 6 pm, at you two's home at Sakoca Settlement, you two argued and pushed each other in your bedroom. The argument became heated and you poured kerosene on the deceased. You later set him alight. He was later taken to Colonial War Memorial Hospital for medical treatment. On 24 November, 2016, your defacto husband died as a result of his burn injuries. He had suffered second and third degree burns to 80% of his body. The matter was reported to police. An investigation was carried out. You were later charged for his murder. You have been tried and convicted of his murder in the High Court."*

01st ground of appeal

[9] The Court of Appeal in **Naitini v State** [2020] FJCA 20; AAU135.2014, AAU145.2014 (27 February 2020) examined the past decisions and principles relating to provocation and stated as follows.

> *'[10] In **Regina v. Duffy** [1949] 1 All E.R. 932 the gist of the defence of provocation was encapsulated by Devlin J. in a single sentence in his summing-up, which was afterwards treated as a classic direction to the jury:*
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> > *"Provocation is some act, or series of acts, done by the dead man to the accused, which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary **loss of self-control**, rendering the accused so subject to passion as to make him or her for the moment not master of his mind."*
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> *[11] The counsel for the appellant heavily relies on the decision in **Tapoge v State** [2017] FJCA 140; AAU121.2013 (30 November 2017) in support of the sole ground of appeal. In **Codrokadroka v State** [2008] FJCA 122; AAU0034.2006 (25 March 2008) the Court of Appeal in relation to section sections 203 and 204 of the Penal Code dealing with provocation has engaged in an exhaustive analysis and come out with the approach that should be taken as follows.*
>
> > *'1. The judge should ask himself/herself whether provocation should be left to the assessors on the most favourable view of the defence case.*
> >
> > *2. There should be a **"credible narrative"** on the evidence of provocative words or deeds of the deceased to the accused or to someone with whom he/she has a fraternal (or customary) relationship.*
> >
> > *3. There should be a "credible narrative" of a resulting **loss of self-control** by the accused*
> >
> > *4. There should be a "credible narrative" of an attack on the deceased by the accused which is **proportionate** to the provocative words or deeds.*
> >
> > *5. The source of the provocation can be one incident or several. To what extent a past history of abuse and provocation is relevant to explain a **sudden loss of self-control** depends on the fact of each case. However cumulative provocation is in principle relevant and admissible.*
> >
> > *6. There must be an evidential link between the provocation offered and the assault inflicted.'*

[12] The Supreme Court in ***Codrokadroka v State*** *[2013] FJSC 15; CAV07.2013 (20 November 2013) adopted the above propositions as accurately reflecting the approach that should be taken by a trial judge to the issue of provocation.*

[13] In ***Tapoge*** *the Court of Appeal had applied both the CA and the SC decisions in* ***Codrokadroka*** *to section 242 of the Crimes Decree and further observed as follows*

'[15] Provocation is not a complete defence to an unlawful killing. It is a partial defence. Killing with provocation reduces culpability from murder to manslaughter. This lesser culpability is the effect of section 242 of the Crimes Act 2009

'[16] There is a general duty on the courts to consider a defence, even if it was not expressly relied upon by the accused at trial. The scope of that duty in relation to provocation was explained by Lord Devlin in ***Lee Chun Chuen v R*** *(1963) AC 220 as follows:*

Provocation in law consists mainly of three elements – the ***act of provocation***, *the* ***loss of self-control***, *both actual and reasonable, and* ***the retaliation proportionate to the provocation***. *The defence cannot require the issue to be left to the jury unless there has been produced a credible narrative of events suggesting the presence of these three elements.'*

[10] In **Robert Smalling v. The Queen** (Jamaica) [2001] UKPC 12 (20th March, 2001) on behalf of the Privy Council, Lord Bingham of Cornhill *inter alia* stated on law relating to provocation as follows.

'[11].....

(1) Where the evidence produced at trial is such that a jury, properly directed, could reasonably find that the defendant had been provoked to lose his self-control and kill the deceased, the jury should be invited to consider and evaluate that evidence whether a defence of provocation has been advanced by the defence at trial or not. This principle was very clearly and succinctly stated by Lord Tucker, giving the advice of the Board, in Bullard v The Queen [1957] AC 635, 642:

> *"It has long been settled law that if on the evidence, whether of the prosecution or of the defence, there is any evidence of provocation fit to be left to a jury, and whether or not this issue has been specifically raised at the trial by counsel for the defence and whether or not the accused has said in terms that he was provoked, it is the duty of the judge, after a proper direction, to leave it open to the*

jury to return a verdict of manslaughter if they are not satisfied beyond reasonable doubt that the killing was unprovoked."

This authority recognises the acute practical dilemma facing a defendant who may have an arguable defence of provocation, giving possible ground to support a conviction of manslaughter instead of murder, but who chooses to deny participation in the killing altogether. Justice requires that consideration be given to a possible defence disclosed by the evidence even if, for reasons good or bad, the defendant chooses not to advance it.

(2) Before the judge can properly invite the jury to consider a defence of provocation, there must be evidence fit for the jury's consideration that the defendant was provoked to lose his self- control and act as he did. This principle was laid down by Lord Devlin, giving the advice of the Board in Lee Chun-Chuen v The Queen [1963] AC 220, 231-234, recently applied by the House of Lords in R v Acott [1997] 1 WLR 306, 310-311 where Lord Steyn said:

> *"In the absence of any evidence, emerging from whatever source, suggestive of the reasonable possibility that the defendant might have lost his self-control due to the provoking conduct of the deceased, the question of provocation does not arise.....If in the opinion of the judge, even on a view most favourable to the accused, there is insufficient material for a jury to find that it is a reasonable possibility that there was specific provoking conduct resulting in a loss of self - control, there is simply no issue of provocation to be considered by the jury...."*

Thus the defence must be one which a reasonable jury properly directed could accept, and it must be disclosed by the evidence. The jury should not be distracted by directions to consider hypotheses which lack any factual substantiation in the evidence, since that is an invitation to speculate.

(3) If there is evidence fit for the jury's consideration that the defendant was provoked to lose his self-control and kill the deceased, the judge must leave the defence of provocation to the jury and not withdraw it on the ground that a reasonable jury could not properly find that the provocation was enough to make a reasonable man act as the defendant did. This submission is fully supported by the language of the relevant statutory provision applicable in Jamaica, quoted below, and by authoritative expositions of the same provision in other jurisdictions: R v Davies (Peter) [1975] QB 691 700; R v Camplin [1978] AC 705, 716; Logan v The Queen [1996] AC 871; R v Acott, above.

[11] The Supreme Court in **Khan v State** [2014] FJSC 6; CAV009.2013 (17 April 2014) referred to paragraph 11(2) of ***Smalling*** and to **Tej Deo v. The State** Crim. App. No. CAV0017 of 2008S, 18th October 2010 on the partial defence of provocation.

[12] In **Tej Deo v. The State** (supra) where the defence of intoxication was thought not open in view of the sworn testimony of the petitioner, the Court said:

> *"The law requires the trial judge to direct the jury fully and correctly if on the evidence a defence is raised. That is subject to an exception. If there is a conflict between the defence that the defendant through his counsel is putting to the jurors or assessors, and some other defence theoretically available on the evidence, the trial judge should only put the defence not being put, if he has ascertained that there is no objection from defence counsel." (emphasis added)*

[13] It appears that the appellant's substantive defense had been that of accident. She had admitted under oath of having thrown kerosene on the deceased and lit a newspaper but had said that he having caught alight was an accident. However, the defense counsel in his closing submissions had raised the issue of provocation and accordingly the trial judge had addressed the assessors on provocation in paragraphs 14, 41, 42 and 43 of the summing-up and also the events leading to the appellant pouring kerosene on the deceased at paragraphs 16, 17, 20 and 42.

[14] Having examined the summing-up particularly the above paragraphs where the trial judge had addressed the assessors on provocation and in the light of the decisions cited above, I do not think that there is any reasonable prospect of success of the first ground of appeal. In addition the trial judge had rejected provocation in the judgment as well.

02nd ground of appeal

[15] In **Chand v State** [2017] FJCA 139; AAU112.2013 (30 November 2017) the Court of Appeal examined the principles of law relating to *res gestea* evidence.

> *'[91] Lord Wilberforce in **Ratten v. R** [1972] A.C. 378 at 389 said*
>
> *'The expression 'res gestae', like many other Latin phrases, is often used to cover situations insufficiently analysed in clear English terms. In the context of the law of evidence it may be used in at least three different ways:*

1. When a situation of fact (e.g. a killing) is being considered, the question may arise when does the situation begin and when does it end. It may be arbitrary and artificial to confine the evidence to the firing of the gun or the insertion of the knife, without knowing, in a broader sense, what was happening. Thus in O'Leary v Regem [1946] HCA 44; (1946) 73 CLR 566 evidence was admitted of assaults, prior to a killing, committed by the accused during what was said to be a continuous orgy. As Dixon J said (at 577): 'Without evidence of what, during that time, was done by those men who took any significant part in the matter and specifically evidence of the behaviour of the prisoner, the transaction of which the alleged murder formed an integral part could not be truly understood and, isolated from it, could only be presented as an unreal and not very intelligible event.'

2. The evidence may be concerned with spoken words as such (part from the truth of what they convey). The words are then themselves the res gestae or part of the res gestae, i.e. are the relevant facts or part of them.

3. A hearsay statement is made either by the victim of an attack or by a bystander -- indicating directly or indirectly the identity of the attacker. The admissibility of the statement is then said to depend on whether it was made as part of the res gestae.'

[92] Lord Wilberforce then reviewed a number of cases in England, in Scotland, in Australia and America and concluded that they

"show that there is ample support for the principle that hearsay evidence may be admitted if the statement providing it is made in such circumstances (always being those of approximate but not exact contemporaneity) of involvement or pressure as to exclude the possibility of concoction or distortion to the advantage of the maker or the disadvantage of the accused."

*[93] **Ratten** was applied in **R v Andrews** [1987] 1 All ER 513 where Lord Ackner inter alia said*

'My Lords, may I therefore summarise the position which confronts the trial judge when faced in a criminal case with an application under the res gestae doctrine to admit evidence of statements, with a view to establishing the truth of some fact thus narrated, such evidence being truly categorised as "hearsay evidence":

1. The primary question which the judge must ask himself is can the possibility of concoction or distortion be disregarded?

2. To answer that question the judge must first consider the circumstances in which the particular statement was made, in order to satisfy himself that the event was so unusual or startling or dramatic

as to dominate the thoughts of the victim, so that his utterance was an instinctive reaction to that event, thus giving no real opportunity for reasoned reflection. In such a situation the judge would be entitled to conclude that the involvement or the pressure of the event would exclude the possibility of concoction or distortion, providing that the statement was made in conditions of approximate but not exact contemporaneity.

3. In order for the statement to be sufficiently "spontaneous" it must be so closely associated with the event which has excited the statement, that it can be fairly stated that the mind of the declarant was still dominated by the event. Thus the judge must be satisfied that the event, which provided the trigger mechanism for the statement, was still operative. The fact that the statement was made in answer to a question is but one factor to consider under this heading.

4. Quite apart from the time factor, there may be special features in the case, which relate to the possibility of concoction or distortion ... The judge must be satisfied that the circumstances were such that having regard to the special feature of malice, there was no possibility of any concoction or distortion to the advantage of the maker or the disadvantage of the accused.

5. As to the possibility of error in the facts narrated in the statement, if only the ordinary fallibility of human recollection is relied upon, this goes to the weight to be attached to and not to the admissibility of the statement .... However, here again there may be special features that may give rise to the possibility of error. In such circumstances the trial judge must consider whether he can exclude the possibility of error.' (emphasis added)

[16] The trial judge had dealt with the evidence the prosecution sought to admit under *res gestea* rule as follows in the written reasons for the *voir dire* ruling of 28 December 2018.

4. The prosecution called the three witnesses, whose hearsay statement, they would like declared as admissible evidence under the "res gestae" rule. The witnesses were Mr. Samuela Viviaturaga (PW1), PC 3712 Mr. Navnit Chandra (PW2) and Mr. Aseri Saurara (PW3).

5. Mr. Samuela Viviaturaga (PW1) said, he had known Mr. Bal Krishna Naidu (the deceased) for about 3 months prior to the alleged incident on 17 November 2016. He said, he lived in Sakoca Settlement near to the deceased's residence. He said, he had lived there for nearly 50 years. He said, he recalled the 17th November 2016, between 5 pm and 6 pm. He said, he was standing near the deceased's residence. He said, he heard and saw a man yelling. He said, he saw the man standing outside his house, on his porch and saw his

body on fire. He said, the man had a black short on. He said, he ran to him to assist him. He said, he told the deceased's wife to bring a bed sheet for them to wrap the man's body with. He said, he later assisted the man to a taxi to take him to CWM Hospital. He said, the man's skin had peeled off from his leg, thigh, stomach and both arms. He said, he asked the man how he got burnt. He said, the man told him his wife poured kerosene on him and set him on fire. He said, the man spoke slowly and softly. He said, he later drove the man in a taxi to CWM Hospital. The man died 7 days later from his burn injuries.

6. PC 3712 Navnit Chandra (PW2), a police officer, was at the time based at Valelevu Police Station. PW2 said, while at Valelevu Police Station, he received a call from CWM Hospital that one Bal Krishna Naidu was admitted at the hospital as a result of burn injuries. He was instructed by his superiors to attend to Mr. Naidu. He said, he went to CWM Hospital after 7.50 pm on 17 November 2016. He said, he was directed to the burns unit where he met Mr. Naidu. He said, he saw Mr. Naidu heavily bandaged from his neck, stomach, chest, thighs, legs and hands. He said, he spoke to Mr. Naidu in hindi. He said, he asked him "how he received his injuries?" He said, Mr. Naidu told him, "he was at home a bit drunk, then he had a fight with his wife, whereby his wife accused him of having an affair. His wife was very angry and later threw kerosene on him and later set him on fire." PW2 said, Mr. Naidu was not moving when he spoke to him, as he was in pain. PW2 said, Mr. Naidu was crying when he related the above to him. PW2 said, he later briefed his superiors about the above.

7. Mr. Aseri Saurara (PW3) next gave evidence. PW3 had worked for CWM Hospital 5 years prior to the 17 November 2016 incident as a staff nurse. On 19 November 2016, he was on duty at the burns unit where Mr. Naidu was a patient. At about 8.30 am, he attended to Mr. Naidu as he was in extreme pain. PW3 said, he gave him a morphine injection to relieve his pain. After a while, PW3 said Mr. Naidu's pain was relieved. PW3 said, he then asked Mr. Naidu, "how he got burnt?" PW3 said, he spoke to him in English. PW3 said, Mr. Naidu told him "his wife threw kerosene on him and lit the fire." PW3 said, Mr. Naidu was weak and sad at the time. PW 3 said, when Mr. Naidu told him the above, he saw tears coming out of his eyes and he spoke in a slow and weak tone. He was severely burnt from the neck down to the legs.

[17] The trial judge had applied ***R v Andrews*** (supra) to the facts before him and ruled the impugned evidence as admissible in the following words.

9. Applying the above principles to the facts of this case, I will deal first with Mr. Samuela Viviaturaga's (PW1) evidence. The deceased's statement to him that his wife threw kerosene at him and later set him on fire was certainly hearsay evidence. The deceased uttered the statement on 17 November 2016 and he died 7 days later as a result of his injuries. Can the statement be admitted as part of the res gestae? Was the statement made in conditions

which were sufficiently spontaneous and sufficiently contemporaneous with his burning to preclude the possibility of concoction or distortion? Was the statement so closely associated with his burning which excited his statement that the victim's mind was still dominated by the burning? I would answer the above questions by saying yes. The deceased's statement to PW1 was made by a seriously injured man in circumstances which were spontaneous and contemporaneous with the attack and there was thus no possibility of any concoction or fabrication of identification, the statement should rightly be admitted in evidence. Mr. Naidu's mind was still dominated by his burning.

*10. When the above principles are applied to Mr. Naidu's statement to PW2 and PW3, I would answer the same questions with a yes, although in PW2's case, it was made approximately 1 ½ to 2 hours after the event, and in PW3's case, 2 days after the event. When Mr. Naidu gave his statement to PW1, the man was seriously injured because of his burn injuries. He was bandaged from neck to toe, and he was continually in pain, presumably until his death on 24 November 2016. He was speaking slowly and in tears and was getting continuous morphine injection to relieve the pain. In my view his mind was still dominated by the burning incident. On the principles expounded in **R** v **Andrews** (supra), Mr. Naidu's statements to PW1, PW2 and PW3 as to the identity of his attacker ought to be admitted on the "res gestae" principle. I ruled so accordingly.*

[18] Thus, I do not see any substantial merits in the appellant's contention. In my view, it appears that the evidence of PW1, PW2 and PW3 may have been admitted as dying declarations, if not under *"res gestae"* principle. The Court of Appeal in **Chand v State** (supra) analyzed the law relating to dying declarations from paragraph 69 and stated

> *'[69] It is well settled that dying declarations are admitted in evidence at a trial for murder or manslaughter as an exception to the rule against hearsay. The rationale is that the reliability of the decision is assured by the imminence of death, and the consequent lack of motivation to tell anything other than the truth.'*

[19] Therefore, I do not find the second ground of appeal having a reasonable prospect of success.

03rd ground of appeal (sentence)

[20] It is pertinent to mention that in terms of section 237 of the Crimes Act, 2009 the sentencing judge has the judicial discretion only to fix a minimum term to be served before pardon may be considered (while the imprisonment for life is mandatory).

[21] In **Darshani v State** [2018] FJCA 79; AAU0064.2014 (1 June 2018) where a 20 year minimum serving period (wrongly termed as a non-parole period) had been imposed on the main sentence of life imprisonment, the Court of Appeal stated

> *"[10] Pursuant to section 237(2) of the Crimes Act the penalty for murder is a mandatory sentence of imprisonment for life, with a judicial discretion to set a minimum term to be served before a pardon may be considered. This provision should be contrasted with other penalty provisions which do not include the word "mandatory." Those penalty provisions are caught by section 3(4) of the Sentencing and Penalties Act 2009 which provides that:*
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> > *"Any penalty for any offence prescribed by law shall be deemed to be the maximum penalty that a court may impose for that offence after taking account of the provisions of this Act."*
>
> *[11] It follows that where a mandatory sentence is prescribed for an offence under the Crimes Act the provisions of the Sentencing and Penalties Act do not apply since pursuant to section 3(4) the Act only applies to sentences that can be regarded as maximum sentences.*
>
> *"[15] If ground one is considered as an appeal against the decision to impose a minimum term of 20 years as being excessive then it is necessary to consider in detail the sentencing court's decision. This was a brutal and nasty series of crimes committed against a mother and her baby on the one hand and against the mother's three other older children on the other hand. It was in every sense of the word an unprovoked attack on one adult and four children who happened to be the partner and children of a man with whom the appellant was also in a de facto relationship. However in his sentencing decision the learned Judge has made no reference to the issues of deterrence or rehabilitation. A proper consideration of these factors and a balanced assessment would have resulted in a lower minimum term before a pardon might be considered. The appeal is allowed on ground 1 and the minimum term before a pardon may be considered is reduced to 17 years.*

[22] When the sentencing order is examined it does not appear that the trial judge had made any reference to rehabilitation though the gist of what had been stated at paragraphs 4-8 suggests that had the aspect of rehabilitation of the appellant entered the trial judge's mind as a relevant consideration in the matter of sentence the minimum serving period might have been less than 17 years.

[23] On the other hand, there seems to be some gray area arising from the propositions at paragraph [11] and [15] in ***Darshani*** in that if Sentencing and Penalties Act does not apply where a mandatory sentence is prescribed for an offence under the Crimes Act, 2009 such as murder how and why the deterrence and rehabilitation of the accused should be necessarily considered in imposing the minimum serving period need to be further explained (for example as a matter of a common law sentencing principle etc.) by this court for clarity.

[24] In those circumstances and in view of ***Dharshani***, I think the appellant should be allowed leave to appeal to argue the appeal ground against sentence before the full court.

Order

1. Leave to appeal against conviction is refused.
2. Leave to appeal against sentence is allowed.

COURT OF APPEAL FIJI

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Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL