

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 5 OF 2016

BETWEEN : STATE

AND : MOHAMMED SAMIL SAHIB

Counsel : Ms. R. Uce for State
Ms. J. Singh for the Accused

Date of Hearing : 12th and 13th of June, 2019

Date of Closing Submissions : 13th of June, 2019

Date of Summing Up : 14th of June, 2019

Date of Judgment : 14th of June, 2019

J U D G M E N T

1. The accused is charged with one count of Murder, contrary to Section 237 of the Crimes Act. The particulars of the offence are that;

Count One

Statement of Offence

MURDER: Contrary to section 237 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MOHAMMED SAMIL SAHIB on the 14th day of December, 2015, at Nadi in the Western Division murdered MAUREEN YASHMIN NISHA.

2. The hearing commenced on the 12th of June 2019 and concluded on the 13th of June 2019. The prosecution presented the evidence of two witnesses and the accused gave evidence for the defence. The learned counsel for the prosecution and the defence then made their respective closing addresses. Subsequently, I made my summing up.
3. The three assessors in their opinions, unanimously found the accused not guilty of murder but guilty of manslaughter.
4. Having carefully considered the evidence presented in the hearing, the respective closing addresses of the counsel, the summing up and the opinion of the assessors, I now proceed to pronounce my judgment as follows.
5. According to the evidence presented by the prosecution and the defence and the admitted facts, the main issue that needs to be determined is whether the accused had an intention to kill the deceased when he stabbed her with a kitchen knife or he was acting as he lost his self - control due to the provocation of the deceased.
6. The accused knew that the deceased was coming to see him at his workplace on the 14th of December 2015. According to the admission made in the caution interview, the accused had arranged this meeting with the deceased as he wanted to have a face to face meeting. He had asked her to come and pick the kids as the kids wanted to see the mother. Actually the deceased had made arrangement to pick kids two days before the incident, but she failed to turn up. The accused had then made this

arrangement on the morning of 14th of December 2015 for the deceased to come and pick the kids in the afternoon. However, the accused had not taken his kids to the workplace and also did not inform the deceased about it. He wanted to have a face to face meeting with her. That was the reasons the accused had not informed the deceased that he did not bring his kids to the work place.

7. However, the accused in his evidence said that it was arranged by the deceased as she wanted his signature to certain documents pertaining to their divorce matter. The accused admitted the contents of the caution interview in the admitted facts which the prosecution and the defence filed pursuant to Section 135 of the Criminal Procedure Act. I find the admission made by the accused in the caution interview as evidence of the truth of the facts regarding the reason for the deceased to visit the workplace of the accused on the afternoon of 14th of December 2015.
8. The accused had already started to make a grave for the deceased at the Waqadra garden, the same place the accused made an arrangement to the deceased to meet on the 14th of December 2015. According to the caution interview of the accused, he had started to work as a security guard with Paradise Security Services on the 10th of December 2015, that was four days before this incident. (vide Q &A 17, 18 and 19). Before that he had been working at a Textile Factory. Accordingly, he had started to work at Waqadra garden just four days before this incident. Hence, it is clear that the accused had started to dig the grave for the deceased after he commenced his work at the Paradise Security Services on the 10th of December 2015.
9. The accused knew that the deceased was living with another man who was her new boyfriend. Therefore, the information of having a new boyfriend is not a surprise or a new information to the accused on the 14th of December 2015. If the court accept the evidence of the accused where he said that he actually wanted to kill the deceased

when she left him in August but six months later, he gave up the idea and decided to leave her to have her life, then why did the accused still ask the deceased to come back when he met her on the 14th of December 2015?

10. In view of the reasons discussed above, I do not accept the accused explanation that he had already given up the idea of killing the deceased when he met the deceased on the 14th of December 2015.
11. The accused said that he had been carrying the kitchen knife in his bag all the time. He then used the kitchen knife to make his lunch at 12 noon. Then he put the kitchen knife in his pocket and not into the bag. Accordingly, he had been carrying the kitchen knife in his pocket for about five hours by the time the deceased came.
12. The accused had stabbed the deceased 8 to 9 times on the chest, neck and legs. The evidence of the doctor explained the force that he had used to stab the deceased. It had taken 25 to 30 minutes to stab the deceased in that manner. Having stabbed the deceased, the accused had hidden the hand bag of the deceased while taking the wallet and mobile phone of her. It is impossible to stab the deceased in that manner and then hid her items afterwards if the accused acted under the heat of passion of any provocation.
13. In view of these reasons, I do not find that the accused stabbed the deceased under the heat of the passion caused by a sudden provocation. Hence, I do not accept the defence of provocation.
14. Therefore, I am satisfied that the prosecution has proven beyond reasonable doubt that the accused stabbed the deceased with the intention of killing her. Therefore, I

find there are cogent reasons for me to disagree with the unanimous opinion of not guilty given by the three assessors.

15. In conclusion, I find the accused guilty of murder, contrary to Section 237 of the Crimes Act and convict to the same accordingly.



R. D. R. Thushara Rajasinghe

Judge

At Lautoka

13th June, 2019

Solicitors : Office of Director of Public Prosecution
Office of the Legal Aid Commission