

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 200 of 2018

[CRIMINAL JURISDICTION]

STATE

V

ROZLEEN RAZIA KHAN

Counsel : Ms. S. Serukai and Ms. S. Tivao for the State  
Mr. G. O'Driscoll for Accused

Hearing on : 08 - 11 July 2019

Summing up on : 12 July 2019

Judgment on : 16 July 2019

JUDGMENT

1. The accused is charged with the following offence;

*Statement of Offence*

**Murder:** contrary to section 237 of Crimes Act of 2009.

*Particulars of Offence*

**ROZLEEN RAZIA KHAN** on the 6<sup>th</sup> day of May, 2018 at Kasavu, Nausori, in the Central Division, murdered **RAHIKA RAHIDA ALI**.

2. The assessors have returned with the unanimous opinion that the accused is guilty of the above offence.
3. I direct myself in accordance with the summing up delivered to the assessors on 12<sup>th</sup> July 2019 and the evidence adduced during the trial.
4. The prosecution led the evidence of four witnesses. The accused gave evidence in her defence and called one witness.
5. In this case, the accused did not dispute the fact that she killed the deceased, her four year old child. The position taken by the defence was that this is a case of manslaughter based on diminished responsibility and not murder. Therefore, the dispute was only in relation to the fault element.
6. The prosecution was required to prove beyond reasonable doubt that the accused either;
  - a) intended to cause the death of the deceased,
  - or
  - b) was reckless as to causing the death of the deceased by the conduct.
7. It is admitted that the accused drove to Kasavu with the accused and that the accused got off the vehicle and tied the deceased using a scarf to the accused's chest.
8. The following evidence was not challenged;
  - a) the accused's car was found at the riverbank;
  - b) the accused was found around midnight by PW2 in the river with the deceased tied to the accused's body towards the accused's waist;

- c) the deceased was motionless when the deceased was pulled into PW2's boat and then was pronounced dead at the hospital.
9. The above admitted facts and the evidence leads to the irresistible inference that the accused either intended to cause the death of the deceased or that the accused was reckless as to causing the death of the deceased.
10. The cautioned interview tendered as PE1 which is a mixed statement is therefore not required to establish the prosecution case.
11. The accused was required to establish on the evidence that it was more likely than not, that the accused's responsibility was diminished as the accused was suffering from an abnormality of mind that substantially impaired the accused's;
- a) capacity to understand what the accused is doing; or
  - b) capacity to control the accused's actions; or
  - c) capacity to know that the accused ought not to do the act.
12. In the case of *R v Byrne* 1960 2 QB 396, Lord Parker CJ said thus;

*“Abnormality of mind,” which has to be contrasted with the time-honoured expression in the M’Naughten Rules “defect of reason,” means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind’s activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the ability to exercise will power to control physical acts in accordance with that rational judgment. The expression “mental responsibility for his acts” points to a consideration of the extent to which the accused’s mind is answerable for his physical acts which must include a consideration of the extent of his ability to exercise will power to control his physical acts.*

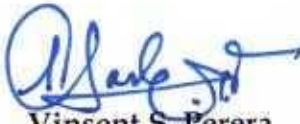
*Whether the accused was at the time of the killing suffering from any "abnormality of mind" in the broad sense which we have indicated above is a question for the jury. On this question medical evidence is no doubt of importance, but the jury are entitled to take into consideration all the evidence, including the acts or statements of the accused and his demeanour. They are not bound to accept the medical evidence if there is other material before them which, in their good judgment, conflicts with it and outweighs it.*

*The aetiology of the abnormality of mind (namely, whether it arose from a condition of arrested or retarded development of mind or any inherent causes, or was induced by disease or injury) does, however, seem to be a matter to be determined on expert evidence."*

13. The defence case was that the accused was suffering from marital problems over a period of years and her conduct of killing the deceased was triggered by the serving of custody papers to her by the police that day. According to the defence, the accused was faced with the fear of losing her children as a result of being served with the said papers.
14. I have carefully considered the evidence presented by the defence and also the explanations the accused had provided in her cautioned interview statement. All in all, I am not convinced that the accused suffered from an abnormality of mind that substantially impaired her capacity to understand what she was doing, or the capacity to control her actions, or the capacity to know that she ought not to do the act, when she killed the deceased.
15. In the circumstances, I agree with the unanimous opinion of the assessors and I find the accused guilty of the offence of murder.

16. I hereby convict the accused for the offence of murder as charged.



  
Vincent S. Perera  
JUDGE

**Solicitors:**

Office of the Director of Public Prosecutions for the State  
O'Driscoll & Associates, Suva for the Accused