

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

APPELLATE JURISDICTION

Criminal Appeal No. AAU 103 of 2008

BETWEEN : **SIMON JOHN MACARTNEY**
APPELLANT

AND : **THE STATE**
RESPONDENT

Coram : **Byrne, AP**
Madigan, JA
Fernando, JA

Counsel : **G. Reynolds, QC with him Ms A. Neelta**
: **Ms P. Madanavosa for the Respondent**

Dates of Hearing : **5th and 6th of May 2010**

Date of Brief Judgment
(Detailed Judgment to
follow later) : **6th of May 2010**

JUDGMENT OF THE COURT

[1.0] After a trial in the High Court at Suva, on the 4th of November 2008 the appellant was found guilty of the murder of his wife ASHIKA LATA on the unanimous opinion of the five assessors with which the learned trial judge concurred and convicted the appellant.

- [2.0] On the 5th of November 2008 the trial judge sentenced the appellant to life imprisonment and, pursuant to Section 33 of the former Penal Code, sentenced the appellant to a minimum term of 18 years imprisonment.
- [3.0] The appellant appealed to this Court against his conviction on seven grounds and reserved the right to add further grounds of appeal after perusal by his legal advisers of the High Court record.
- [4.0] The Prosecution Case was based on circumstantial evidence only and on very unreliable identification evidence.
- [5.0] In this Court's judgment it would be unsafe to uphold the conviction which we therefore quash, acquit the appellant of the charge of murder and discharge him.
- [6.0] Detailed reasons for the court's decision will be published in due course but in the meantime we order that the appellant's passports be returned to him today.
- [7.0] After announcing the Court's decision, Senior Counsel for the appellant asked for an order for costs to be made against the respondent. The court will consider this submission in its detailed reasons and for the moment reserves that question.

Dated at Suva this 6th day of May 2010.



John E. Byrne

Hon. Justice John E. Byrne, AP

P. Madigan

Hon. Justice P. Madigan, J.A

P. Fernando

Hon. Justice P. Fernando, J.A