

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

**CRIMINAL APPEAL NO. AAU 0064 OF 2014**  
**[High Court Case No. HAC03 of 2014]**

**BETWEEN** : **PRIYA DARSHANI**  
*Appellant*

**AND** : **THE STATE**  
*Respondent*

**Coram** : Goundar JA

**Counsel** : Mr. S. Sharma for the Appellant  
Ms S. Puamau for the Respondent

**Date of Hearing** : 16 October 2014

**Date of Ruling** : 10 June 2015

**RULING**

[1] The Appellant was convicted on her own guilty pleas in the High Court at Lautoka and sentenced as follows:

Count 1 – Murder - Life imprisonment.

Count 2 – Murder – Life imprisonment.

Count 3 – Attempted Murder - Life imprisonment.

Count 4 - Attempted Murder – Life imprisonment.

Count 5 – Attempted Murder – Life imprisonment.

[2] The punishment for murder is fixed by law. The courts have no discretion but to impose life imprisonment for murder. Section 237 of the Crimes Decree 2009 states:

*“A person commits an indictable offence if –*

- (a) the person engages in conduct; and*
- (b) the conduct causes the death of another person; and*
- (c) the first – mentioned person intends to cause, or is reckless as to causing, the death of the other person by the conduct.*

*Penalty – Mandatory sentence of imprisonment for life, with a judicial discretion to set a minimum term to be served before pardon may be considered.”*

- [3] The punishment for attempt is provided by section 44(1) of the Crimes Decree 2009. Section 44(1) states:

*“A person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.”*

- [4] After imposing life imprisonment on all five counts, the learned High Court judge fixed a non-parole period of 20 years pursuant to section 18(1) of the Sentencing and Penalties Decree 2009.

- [5] The sole ground of appeal reads:

*“The Learned Trial Judge erred in principle and also erred in failing to take into account some relevant considerations resulting in a non-parole period of 20 years which was excessive.”*

- [6] This application for leave to appeal is governed by section 21(1)(c) of the Court of Appeal Act Cap. 12. Section 21 (1)(c) states:

*21.-(1) A person convicted on a trial held 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.*

- [7] The sentence of life imprisonment for murder is fixed by section 237 of the Crimes Decree 2009. There is no right of appeal against the sentence of life imprisonment.
- [8] However, section 237 provides for a judicial discretion to set a minimum term to be served before pardon may be considered. The discretion to set a minimum term is arguably in conflict with the discretion to fix a non-parole period provided by section 18(1) of the Sentencing and Penalties Decree 2009. The question is whether the parole regime applies to the mandatory sentence of life imprisonment for murder. This is a pure question of law.
- [9] The Appellant's contention is somewhat different. Her complaint relates to the exercise of discretion by the learned High Court judge to arrive at a non-parole period which she says is excessive. In my judgment this contention is arguable.

### **Result**

Leave to appeal against sentence is granted.



A handwritten signature in blue ink, appearing to read "Daniel Goundar", is written above a dotted line.

Hon. Justice Daniel Goundar  
**JUSTICE OF APPEAL**

### **Solicitors:**

Office of the Legal Aid Commission for the Appellant  
Office of the Director of the Public Prosecutions for the Respondent