

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

Sentenced on : 19 July 2019

SENTENCE

1. Rozleen Razia Khan, you stand convicted of the following offence;

Statement of Offence

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

Particulars of Offence

ROZLEEN RAZIA KHAN on the 6th day of May, 2018 at Kasavu, Nausori, in the Central Division, murdered **RAHIKA RAHIDA ALLI**.

2. In terms of the provisions of section 237 of the Crimes Act the penalty for murder is mandatory life imprisonment with a judicial discretion to set a minimum term to be served before pardon may be considered.
3. In sentencing you, I am required to exercise discretion in two ways. That is, first I am to decide whether I should fix a minimum term that you should serve before pardon may be considered. Secondly, if I decide that I should, then the length of the said minimum term should be decided. [Per Calanchini P in *Balekivuya v State* [2016] FJCA 16; AAU0081.2011 (26 February 2016)]
4. In *Balekivuya* (supra) the court also held thus;

"In determining what the length of the minimum term should be a trial judge should consider the personal circumstances of the convicted murderer and his previous history."
5. It stands to reason then that the personal circumstances and the previous history of the offender are factors that should be taken into account in deciding whether to fix a minimum term in terms of section 237 of the Crimes Act in the first place.
6. The evidence revealed that, on 06th May 2018, you tied your 04 year old daughter onto your chest using a scarf and jumped into the Rewa River with the intention of killing her. Your daughter died as a result of drowning. According to you, you wanted to kill both yourself and your daughter. The reason you gave was that you were having family problems. You said that the fact that you were served with documents in relation to the custody case filed by your husband led you to take that decision. In your cautioned interview you had stated that, after you decided to kill yourself and your daughter, you tried to drive your car into the river but the car got stuck in the riverbank and thereafter you jumped into the river with your daughter

tied onto your body. However, when you gave evidence you said that you cannot remember how your car ended up at the riverbank and you decided to jump into the river because your husband did not turn up after informing him that there was an accident and because you got scared having heard the police siren. You said that you thought that the only way you can be together with your daughter is by jumping into the river with her because the husband had already applied for custody of your children.

7. However, when the evidence was taken as a whole, it was clear that this was a premeditated killing whether or not you wanted to commit suicide. According to your own evidence, you were aware of the likelihood of your husband filing a case for the custody of your children when you were in Labasa on your own from 30/04/18 to 05/05/18, without your children.
8. Therefore, the serving of the documents in relation to the custody case could not have come as a surprise to you. Nevertheless, it appears that you were disturbed by the fact that your husband got the said documents served on you that day because, according to you, he told you previously when you asked him while you were in Labasa that he will not file a custody case. The evidence suggests that there was a substantial time difference between the time you were served with the documents and the time you killed your daughter. The fact that you wanted to commit suicide would not mitigate the seriousness of your decision to kill your daughter and then killing her.
9. In this case, there is a serious breach of trust demonstrated by taking the life of your own 04 year old daughter who was vulnerable and dependent on you to protect her.

10. Now I would turn to your personal circumstances and your background. You are 35 years old. The deceased was your youngest daughter. You have two other children, a 17 year old son and a 14 year old daughter who are currently with your parents. Your husband is said to have abandoned the family and withdrawn the custody application in respect of the children. You were compelled to get married when you were 16 years old due to the financial hardships faced by your father. After marriage your husband did not spend much time with you and your children. This is what you said in your evidence and the prosecution did not challenge this evidence. It was also your evidence that you were having an extra marital affair for about 05 years where your husband and your family were aware of it. However, you were never assaulted by your husband throughout your married life. Your evidence did not suggest that there were many heated arguments between you and the husband.
11. I note that the second defence witness ("DW2") who said that she is the senior psychologist of the Fiji Corrections Services had mentioned in her report at paragraph 17 that;

The following are important contributing factors that led to the crime committed by the inmate.

- *Continuous accusations not only from her husband, but in-laws as well.*
- *Unhealthy couple and family relationship*
- *Abusive language used during husband's arguments*
- *Confined environment with a limited network support system*
- *Poor family support*
- *Overload with her family responsibilities*
- *Long periods of separation – rift in couple's relationship*
- *Loosing trust*

12. It is pertinent to note that according to DW2, this report was prepared based only on the interview she had with you. Moreover, your evidence given in court did not support the first and the third points above.


13. All in all, I have no difficulty of accepting that you were having family problems although there was no independent evidence to support it and it is not within my purview in this case to decide who is at fault. Though I am not convinced that the family problems you claimed you were having are capable of mitigating the seriousness of the offence you have committed, I can certainly take that into account in deciding whether to fix a minimum term pursuant to section 237 of the Crimes Act in this case.

14. Given your age, what you have gone through in life up to the point you killed your daughter having got married at the age of 16 years, the fact that you have to live with the guilt of taking the life of your own daughter and the circumstances of the offending, I am inclined to hold the view that this is an appropriate case not to fix a minimum term in terms of section 237 of the Crimes Act.

15. I hereby sentence you to mandatory life imprisonment pursuant to section 237 of the Crimes Act. I use my discretion not to fix a minimum term that you should serve before pardon may be considered.

16. Thirty (30) days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors;

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