

**IN THE COURT OF APPEAL, FIJI ISLANDS**  
**ON APPEAL FROM THE HIGH COURT OF FIJI**

**Criminal Appeal No. AAU 79/05**  
(High Court Criminal Cases Nos HAC 13 & 15/04L)

**BETWEEN:**

**WAISALE WAQANIVALU**

***Appellant***

**AND:**

**THE STATE**

***Respondent***

**Coram:** Scott, JA  
Wood, JA  
McPherson, JA

**Hearing:** 22 November 2006

**Counsel:** Appellant in person  
D.D. Goundar for the Respondent

**Judgment:** 24 November 2006

---

**JUDGMENT OF THE COURT**

---

**INTRODUCTION**

[1] In March 2003 and December 2003 five particularly gruesome murders and one attempted murder took place. In each case the method was the same. The victims were young lovers who

had gone to a remote spot to be alone together. The assailant, looking for something to steal, crept up upon them, surprised them and then beat them about the head either with a heavy stone or an iron bar until he had killed them.

[2] On 12 December 2003, acting on information received, the police went to the Appellant's house. The Appellant accompanied them to the police station at Ba. There, according to the police, he made a full confession to having murdered two young men and two young women during the night 8/9 December.

[3] On 15 December 2003 the Appellant was interviewed in relation to the murder and attempted murder which had been committed in March. According to the police he again made a full confession.

#### THE HIGH COURT PROCEEDINGS

[4] The Appellant first appeared in the High Court at Lautoka on 30 January 2004. He was represented by counsel. He was remanded in custody. He appeared on two further occasions each time being represented by counsel before, on 4 May he pleaded not guilty. There then followed fourteen further appearances at which on most occasions he was represented before, on 22 February 2005, his counsel asked that he be re-arraigned.

[5] The record of the High Court reveals the following:

Criminal Case HAC 3/04

Ms. Nair: Wish to have plea put again.

Information put.

Accused: Count 1 – understand – plead guilty.  
Count 2 - understand – plead guilty.  
Count 3 – understand – plead guilty.  
Count 4 – understand – plead guilty.

Accused: Understand gravity and nature of charge. Pleaded  
guilty of my own accord.

---

Mr. Tunidau: Tender facts MF1.

Facts read to accused.

Accused: Understand the facts as read out to me and agree  
(shortly after)

Court: In view of the plea entered by the accused and  
having perused the translation of the confession  
statement I find the accused guilty of murder and  
convict him accordingly on each of the four counts.

[6] Criminal Case HAC 15/04

The record of the High Court reveals the following:

Ms. Nair: My instructions to put information to accused.  
Information put.

Accused: Count 1 – understand – plead not guilty  
Count 2 – plead not guilty.

Ms. Nair: Recess 10 minutes

Ms. Nair: Have discussed with the Accused and asked for  
information to be put again

Accused: I agree

---

Information put

Count 1 – understand – plead guilty

Count 2 – understand – plead guilty

Court: Accused. No pressure put on me.  
Realised the seriousness of the charges.

---

Summary of facts.

Accused: Understand facts. Agree  
(shortly after)

Court: On his own plea and admission of facts I find the Appellant guilty on both counts as charged and convict him accordingly.

[7] On 24 February, after hearing from the State and from Ms. Nair sentence was passed. Concurrent sentences of life imprisonment for the five murders and ten years for the attempted murder were imposed. At the invitation of the State the Court exercised its power under section 33 of the Penal Code; it recommended that the Appellant not be released until he had spent 19 years in prison.

#### THE APPEAL

[8] The Appellant appealed against his convictions and sentence. He appeared before the President of the Court on 16 January 2006. He was given leave to appeal against his sentence but leave to appeal against his conviction was refused. The Appellant now renews his application for leave to appeal against conviction to the full court under the provisions of Section 35 (3) of the Act.

---

[9] The Appellant advances four general grounds of appeal:

- (i) that he did not have adequate legal representation in the High Court;
- (ii) that his lawyer insisted on him pleading guilty "without taking proper instructions";
- (iii) that the validity of the confessions was not challenged by his counsel, contrary to his instructions; and
- (iv) that he was denied access to a lawyer at the police station when his statements were taken.

[10] As can be seen from the extracts from the record already set out, after guilty pleas had been entered by the Appellant personally, the facts were read out and accepted by the Appellant. These facts included the fact that the Appellant had fully confessed to all the charges laid against him. At no stage during his numerous appearances before the High Court, at which he was represented by several different counsel, did the Appellant complain that he had been assaulted and that therefore any confession made by him should be rejected.

[11] On 22 February the Appellant first entered a not guilty plea but later, after discussing the matter with counsel, pleaded guilty. At no point in the hearing or at any other time did the Appellant complain that his counsel was not following his instructions or was not sufficiently able to represent him.

[12] At the hearing of the appeal the Appellant told us that he wished to abandon his appeal against conviction. Later he presented further argument against his conviction. For the avoidance of

doubt we have dealt with the grounds of appeal against conviction as originally advanced. We can find no merit in any of the grounds which in any event raise no matters of law for our consideration. Leave to appeal against conviction is refused.

[13] As to sentence, life terms for the murders are mandatory while ten years imprisonment for attempted murder in circumstances such as those disclosed cannot possibly be considered excessive. There is no objection to these sentences being ordered to be served consecutively to the sentence the Appellant was already serving (Jones v. DPP (1962) Cr. App. R 129, 149). The only remaining question is the recommended minimum term of 19 years.

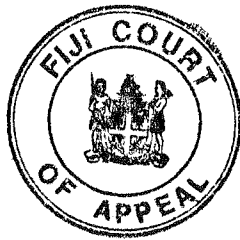
[14] The Appellant suggests that the normal period of incarceration of persons serving life sentences is 14 years. Therefore, he argues, 19 years is excessive. The Appellant's submission is based on a misunderstanding of the law. As pointed out in R v. Foy [1962] 2 All ER 246, a sentence of life imprisonment means imprisonment for life. Although the general practice is to release persons serving life sentences on licence well before they die, such release is not automatic. It must depend on all the circumstances, including the nature of the killings and the propensity of the Accused.

[15] As is clear from his criminal history and from the dreadful manner in which these murders were committed, the Appellant is a highly dangerous man. In our view the 19 year period recommended by the judge is entirely appropriate. The only amendment we make is to the recommendation in respect of the

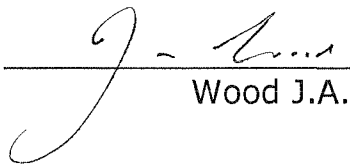
December murders. Following a change in the law (Penal Code (Penalties) (Amendment) Act 2003) the recommendation is replaced by a fixed minimum term of equal length.

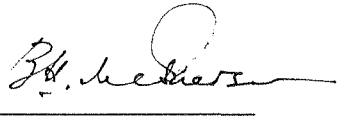
RESULT

1. Appeals against convictions dismissed.
2. Appeals against sentences dismissed.
3. Appellant to serve a fixed minimum term of 19 years imprisonment consecutive to any term being served at the time of his sentencing before he is released.



  
Scott J.A.

  
Wood J.A.

  
McPherson J.A.

Solicitors

Office of the Director of Public Prosecutions for the Respondent