

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 139 OF 2012S**

**STATE**

**VS**

- 1. YANG XIU QI**
- 2. HU JIAN ZHAN**

**Counsels** : **Mr. M. Korovou for the State**  
**Mr. A. Vakaloloma for Accused No. 1**  
**Mr. J. Savou for Accused No. 2**

**Hearings** : **6<sup>th</sup> and 8<sup>th</sup> May, 2013**

**Sentence** : **10<sup>th</sup> May, 2013**

---

**SENTENCE**

---

1. On 6<sup>th</sup> May, 2013, in the presence of your counsels, the following information was read to you two:

**Statement of Offence**

**MURDER**: Contrary to Section 237 (a) – (c) of the Crimes  
Decree No. 44 of 2009.

**Particulars of Offence**

**YANG XIU and HU JIAN ZHAN alias KIM**, on the 8<sup>th</sup> day of  
April, 2012, in Suva, in the Central Division, murdered  
**ROBERT FONG alias JAN QIU KUANG**.

2. Both of you, through your counsels and with the aid of the official Chinese Court interpreter, said you understood the information. You then both pleaded guilty to the charge of murder. The prosecution then read the summary of facts in court.
3. Briefly, they were as follows. You both came to Fiji from China on or about March 2012. You came to work as security guards at the Chinese Amusement Centre. You were then approached to kill the late Robert Fong in exchange for the payment of some money. Both of you accepted the job. On a Saturday night on 7<sup>th</sup> April, 2012, both of you went to Suva city in a van driven by another Chinese. You both waited for the late Robert Fong to exit the Angel Night Club, at Victoria Parade, Suva. You both had knives in your possession at the time. Between 1.30 am and 2 am, on Sunday morning on 8<sup>th</sup> April, 2012, the late Robert Fong exited the Angle Night Club. You both rushed towards him, and jointly stabbed him repeatedly, thereby causing him multiple injuries.
4. You both fled from the scene in a van driven by the other Chinese. The late Robert Fong was conveyed to Suva Private Hospital, where he died shortly thereafter. His post mortem report revealed that he died from the serious injuries he suffered as a result of you two's stabbing of him on 8<sup>th</sup> April, 2012. The matter was reported to police. You were later arrested and caution interviewed by them. You both admitted to police that you stabbed the deceased, at the material time. You were then charged for the murder of the late Robert Fong.
5. The court then checked with your counsels, with the aid of the Official Chinese interpreter that, all the elements of the offence of murder, were admitted by the two of you. Both of you admitted, through your counsels that, at the material time, both of you jointly stabbed the deceased with the knives you had in your possession, and thereby caused serious injuries to the deceased, from which he later died on 8<sup>th</sup> April, 2012. Both of you, through your counsels, admitted that, at the time, you both had the intention to cause the late Robert Fong's death. As a result of you two's above admissions, conveyed through your counsel, with the aid of the official Chinese interpreter, I

found both of you two guilty of murdering the late Robert Fong on 8<sup>th</sup> April, 2012, and I convicted you two accordingly.

6. "Murder", is often considered the most serious in our criminal calendar, and thus carries the mandatory sentence of life imprisonment. Consequently, I sentence both of you to life imprisonment, effective forthwith.
7. However, the law gives me "a judicial discretion to set a minimum term to be served before pardon may be considered" (section 237 of the Crimes Decree 2009). In his sentence submission, the Learned prosecutor submitted that, in cases where a guilty verdict for murder was obtained **after** trial, the non-parole period was often fixed between 18 to 20 years imprisonment. When the guilty verdict was obtained through a guilty plea, the non-parole period was often between 15 to 18 years imprisonment. He referred to the following cases: **The State v Bimlesh Prakash Dayal**, HAC 364 of 2011, High Court, Suva; **State v Lepani Temo**, HAC 060 of 2011, High Court, Labasa; **State v Temo Lutumailagi**, HAC 022 of 2008, High Court, Lautoka; **The State v Rohit Khan**, HAC 023 of 2011, High Court, Labasa and **State v Bharat Lal & Others**, HAC 061 of 2009S, High Court, Suva. I agree with the Learned prosecutor.
8. The aggravating factors in this case, were as follows:
  - (i) There was pre-planning to this murder. Planning to kill someone is always an aggravating factor. It showed a total disregard for human life. Human life is the most precious of all things on earth. Those who plan and bring about people's death, must expect a severe sentence from the courts, to remind them of the above;
  - (ii) Use of two knives in inflicting injuries on the deceased. As a weapon, a knife is always considered seriously. People must be discouraged from using knives to carry out their evil intentions. Those who use knives in committing crimes, must expect a severe sentence;
  - (iii) The extent of the injuries inflicted on the deceased. As reflected in the post mortem report, the deceased suffered numerous stab injuries. He was stabbed repeatedly in the areas surrounding the neck, the neck and head. The injuries showed that the two accuseds did intend to cause the deceased's death;

(iv) The death of the victim. The accuseds' offending had deprived the accused's wife and his children the support of her husband and their father. The deceased was the sole bread winner for his family. His death had seriously affected the social and economic wellbeing of his family. Both accuseds must accept the punishment they will get for depriving this family of a husband and a father.

9. The mitigating factors are as follows:

- (i) At the age of 25 years each, these are your first offences in Fiji;
- (ii) You both pleaded guilty to the murder charge, although this after more than 1 year after first call in the High Court. You have nevertheless, saved the court's time;
- (iii) Both of you have been remanded in custody since 23<sup>rd</sup> April, 2012, that is, 1 year 16 days ago.

10. I start with a minimum term of 16 years imprisonment. I add 5 years for the aggravating factors, making a total of 21 years. I decrease the same by 4 years to 17 years imprisonment. I fix the non-parole period as 17 years imprisonment. Had this matter gone to trial, the non-parole period would be 20 years imprisonment.

11. In summary, for murdering the late Robert Fong, I sentence both of you to the mandatory term of life imprisonment, with a non-parole period of 17 years imprisonment each, effective forthwith.

**Salesi Temo**

**JUDGE**

**Solicitor for the State : Office of the Director of Public Prosecutions, Suva.**  
**Solicitor for Accused No. 1 : Vakaloloma & Associates, Suva.**  
**Solicitor for Accused No. 2 : Legal Aid Commission, Suva.**