

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No: HAC 45 of 2013

BETWEEN : **THE STATE**

AND : **NILESH CHAND**

BEFORE : **HON. MR. JUSTICE PAUL MADIGAN**

Counsel : Mr. S. Vodokisolomone for State
Mr. A. Sen for the accused

Dates of hearing : 6 and 8 August 2013
Date of Sentence : 9 August 2013

SENTENCE

[1] The accused has been charged along with one other with the following offences:

First Count

Statement of Offence

MURDER: Contrary to section 237(a), (b) and (c) of the Crimes Decree 2009.

Particulars of Offence

Nilesh Chand between the 5th of July and the 7th of July 2013 at Korosomo, Seaqaqa in the Northern Division murdered Abhishek Kumar.

Second Count

Statement of Offence

MURDER: Contrary to section 237 (a), (b) and (c) of the Crimes Decree 2009.

Particulars of Offence

Nilesh Chand and Tevita Dutaboto between the 5th of July and the 7th of July 2013, at Korosomo, Seaqqa in the Northern Division, murdered Samuel Vikash Nand.

- [2] The accused entered a plea of guilty to these two counts at the very first opportunity on the 6th August. On the 8th August 2013 he agreed a set of relevant facts and he was thereupon found guilty and convicted.

Facts

- [3] The two victims of these murders were Abhishek (aged 20, a F.N.U. student) and his friend Samuel (aged 17, a student at Dreketi High School). For some time Abhishek had been having a romantic but platonic relationship with a young lady called Subashni (18 years) who happened to be the accused's niece and was living with the accused.
- [4] On the 5th July 2013 at about 7.45pm the accused, a 31 year old farmer of Matasawalevu, Dreketi drove to Abhishek's home in Wailevu and picked up the two young men. The accused was together with another. The four of them drove to Labasa, bought a carton of beer and then proceeded to Korosomo, Seaqqa to drink the beer.
- [5] The accused knew that Abhishek had been texting and phoning his niece and he was most unhappy about it. The accused had taken Subashni's sim card from her phone and using it in his own phone placed a miss-call to Abhishek on their way to Korosomo. As soon as the call was received on Abhishek's phone he showed it to the accused

telling him that there was a "missed call" from Subashni. The accused then got angry saying that this now confirmed that they were having a relationship. He was angry with Samuel as well because he attended the same school as Subashni and the accused thought he was acting as a messenger for Abhishek.

- [6] They drove up to Korosomo and at Long Bay they stopped and parked. The four got out and started to drink the beer. The accused then asked Abhishek why Subashni had called and picking up a full bottle of beer, he, with full strength, struck the face of Abhishek with it. Abhishek fell to the ground. The accused went to the car and pulled out a cane knife. He sat on Abhishek's chest and slashed his neck with the knife several times until Abhishek was motionless.
- [7] After cutting Abhishek's neck the accused then jumped on to Samuel and slashed both his arms with the knife. He then cut the boy's neck from the back, severing the spinal cord from his neck. The accused and his companion then got back into the vehicle and left the scene.
- [8] The families of the boys reported the two missing and a search was conducted and they were found at Long Bay.
- [9] The accused was interviewed under caution and made full and frank admissions to the two crimes.
- [10] The only sentence that I can pass by law is life imprisonment and that is the sentence I now pass for each of these two murders. Those terms will be served concurrently.
- [11] I do have the discretion to set a minimum term before pardon can be considered and Counsel for the accused has addressed me in detail on that point and has in addition filed written submissions.

- [12] A minimum term is set obviously so that the community can be assured that persons taking the lives of others may serve a meaningful period in custody. The more serious the murder, the longer the minimum term; a murder with intention to kill will also attract a longer term than a murder committed by recklessness. Minimums of at least 20 years have been set in recent years and somewhat more for crimes of particular violence. This Court set a minimum term of 20 years in ***Bimal Prakash Dayal*** (HAC 364 of 2011) for a violent attack on three defenceless females where there had been no provocation and after mitigation had been taken into account. State Counsel refers me to the case of ***Seremaia Momo*** (HAC 86 of 2011) in which Temo J. passed a minimum term of 24 years for a very violent double murder when the accused had pleaded guilty.
- [13] The circumstances of this case are very similar to the ***Momo*** case in that the accused had pleaded guilty, and co-operated with the Police from the very beginning.
- [14] This accused has taken the lives of two very young men who had never even reached their prime, all in a fit of anger over a relationship that he perceived one of the deceased was having with his niece. The young men did not expect that sharing an evening beer would result in their violent deaths. The accused had in his interview with the Police told them that he set out that evening with an intention to end Abhishek's life because of the relationship with Subashni. I find it as highly aggravating feature of this case that the accused resorted to subterfuge to trick the elder deceased into thinking that Subashni was trying to call him and on the excuse of that launched his murderous attack on the boys. Whilst the two sentences are to be served concurrently, it is also a valid aggravating feature in considering a minimum term that the accused took two lives that evening.

[15] I take into account the accused's early plea; I take into account his co-operation with the authorities; I take into account his clear record and I take into account his reported remorse: however the sheer horror of these frenzied, unprovoked and unjustified intentional murders of two very young men must attract a minimum term of 25 years and that is the minimum term I impose.

[16] The sentence is Life Imprisonment with a minimum term before he is eligible to apply for pardon of 25 years.

Paul K. Madigan
JUDGE

At Labasa
9 August 2013