

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. 012 of 2013

STATE

v

SAMUELA VAKARURU

Counsel: Mr. L. Fotofili for the State
Mr. S. Waqanaibete with
Mr. M. Fesaitu (L.A.C.) for the Accused.

Date of trial: 5, 6 & 7 August 2014

Date of Sentence: 12 August 2014

SENTENCE

1. When cyclone Evan was threatening the Fiji Islands on the 17th December 2012 a group of young men were protecting a house in the Nanuku settlement. Sometime early in the morning of 18

December the deceased broke into the house and attempted to steal a sound system. On waking the next morning the accused was told about this, and he decided to take the law into his own hands. He took a cane knife, put on a pair of steel capped boots and went to the home of the deceased at about 8.30am.

2. The deceased was still sleeping but was woken by the accused yelling and swearing at him. The accused went into his room and started punching him and kicking him with the boots on. On his own admission in an interview with the Police the attack was violent and relentless. He confessed to having punched the deceased with both hands and kicked him on his face and head. He stepped on his face and chest. The expert opinion of the pathologist was that the cause of death was cerebral haematoma caused by assault. There were multiple wounds around the face and head.
3. The maximum penalty for manslaughter is twenty five years' imprisonment and was set by the Court of Appeal in **Kim Nam Bae** AAU0015/98 where it was said that sentences should range from suspended sentence when there has been a great deal of provocation to twelve years imprisonment where the provocation was said to be minimal. The Court added that sentence in every case will be determined on its own facts and on the aggravating and mitigating circumstances.
4. The accused is 32 years old, married with a baby son. He worked as a fisherman and has a clear record. His counsel stresses that he had always co-operated with the authorities, short of entering a plea of guilty.
5. The State submits victim impact reports from the deceased's 2 older children, his wife and his younger sister. All speak quite

understandably of their great loss of a father, a husband and a potential provider for the family. Of course when a life is taken unlawfully there will always be others who suffer from the loss of a loved one and this must add to the aggravation of the offence

6. When the tariff was set by **Kim Nam Bae**, the maximum penalty for the offence was life imprisonment and it may well be now that the Court of Appeal would review the higher end of the tariff downwards, but unless and until that is done this Court must operate within the tariff already set for the offence.
7. The Crimes Decree 2009 now provides for a very nice distinction between murder and manslaughter in respect of recklessness. The recklessness in doing very violent acts as were done in this case could easily be seen to be acts of murderous intent. To that extent then the upper range of sentences where there has been little or no provocation and where there has been very violent conduct may well be extended in years to match the accepted minimum incarceration period for a person serving life imprisonment. That will of course be an added consideration for a Court of Appeal.
8. In the present case there was a suggestion of provocation raised by the reported theft of electronic equipment by the deceased from the accused's home. While the accused exercised his right to remain silent, there was no evidence before the Court of provocation. He did say in his caution interview that he was angry when he visited the deceased the next morning but he did not say when he got angry or provide any further evidence that would lead to a finding of provocation in the legal sense.

9. To take the law in one's own hands and to assault another violently because he has been thought to have committed a crime cannot afford an accused any mitigation. It must in fact be an aggravating feature in that the accused did not report the crime and let the law take its own course.
10. The accused says in his caution interview that the deceased hit him first but an eyewitness says she saw nothing of the sort. There is no other evidence to establish that and an attempt by the accused to run a defence of self defence could not possibly be viable given the frenzied nature of the accused's attack in response.

Sentence

11. I take a starting point for this crime of ten years. That relatively high starting point subsumes the degree of violence used and the lack of any provocation in the legal sense. To that starting point I add a term of three years for the *vigilante* attack taking the law into his own hands. The fact that he took the life of his cousin is also aggravating and I add one further year for that bringing the interim total to one of fourteen years.

From that I deduct a term of one year to reflect his clear record, and a further one year for his time spent in remand and his co-operation at an early stage of the investigation.

12. I have considered a discount for his family circumstances, but thoughts of family should be the consideration of an accused who embarks on any criminal enterprise. In addition the family circumstances of the deceased's family are to balance out his own family's loss.

He will receive no further discount. He will serve a total term of twelve years' imprisonment and will serve ten years before being eligible for parole



A handwritten signature in black ink, appearing to read "P. Madigan". The signature is written in a cursive style with a large, looping initial "P".

P.K. Madigan
Judge

At Suva
12 August 2014.