

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 04 of 2015

STATE

V

BESUN DEO

1st Accused

SHAREEN WATI RAJ

2ND Accused

Counsels: Mr. L. Fotofili for the State

Mr. R. Vananalagi for the 1st accused

Mr. A. Paka (L.A.C.) for the 2nd accused

Date of Conviction : 2 September 2016

Date of Sentence : 6 September 2016

SENTENCE

[1] The two accused have been convicted after trial in this court of one count of the murder of Parma Nand on the 13 January 2015 at

Labasa.

- [2] The deceased was the estranged husband of the second accused who after leaving her husband entered into a relationship with the first accused. Divorce proceedings between the deceased and the second accused were being contested over matrimonial property and custody of the one child and the protracted nature of these proceedings appeared to severely irk the first accused, the wife's new de facto partner and between them they resolved to "settle" the matter once and for all. The deceased was seen to have been arguing with the couple in a bus on the 13th January 2015 and the deceased feared for his safety by telling a neighbour that "they will kill me and throw me".
- [3] In the early evening of the 15th the two accused took a bus to Tabicola Tiri on the outskirts of Labasa where the deceased lived. The ex-wife called the deceased and asked him to come and meet her because she had brought their son to see him. The deceased did go to meet her but took a friend with him. When they encountered the ex-wife she was with the first accused but no son. They met on the road in a desolate farm area. A dispute quickly arose about the matrimonial property and the first accused started attacking the deceased. He was punched by the first accused and hit with a stone by the second accused. The deceased fell to the ground and on the instructions of the wife the first accused attempted to strangle him. This was all observed by the deceased's friend. When the victim was semi-conscious or unconscious they both picked his body up and took it a few metres off the road and threw him face down into a swamp filled with water.
- [4] The pathologist has opined that he died of asphyxiation by drowning.

[5] Section 237 of the Crimes Decree in setting a penalty for murder makes it mandatory for the Court to impose a sentence of imprisonment for life, but the court is left with the discretion to set a minimum term to be served before pardon may be considered.

[6] In considering the gravity of this case and its seriousness, I determine that it is an appropriate case in which to set a minimum term on both accused before they can apply for pardon.

[7] As this Court said in **CHAND** HAC 45 of 2013 (Lbs) at par12;

*“[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.”*

[8] The Court of Appeal has said in **Balekivuya and Tukana** AAU 81 of 2011 (28 Feb 2016) that a Court should give reasons for a minimum term if deciding to impose one and that there is no need to consider the time spent in custody prior to trial. Such discounts may come at the time that the Mercy Commission is assessing the eligibility for pardon.

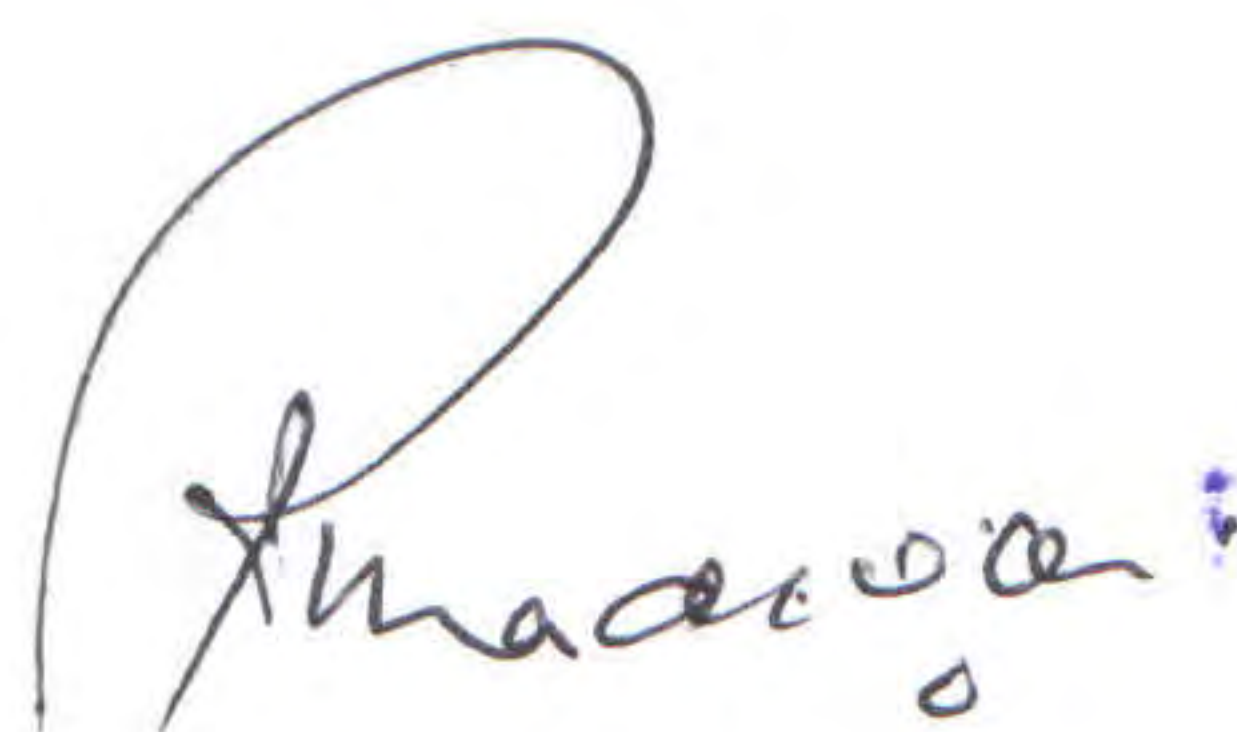
[9] The facts brought forth in this trial show a ruthless, cynical and

determined agreement to do away with the second accused's former husband who was perceived to be an impediment to their happiness. They set out on this day in pursuance of a premeditated plan using deceit to lure him to a totally deserted place and set upon him. He was defenceless and unprovocative. By throwing him in a swamp when he had been incapacitated was not only reckless in the extreme but showed a clear intention to kill. It is a very serious murder indeed.

[10] I pass on each of these accused the mandatory sentence of life imprisonment.

[11] In consideration of the matters advanced in mitigation by their respective Counsel and in consideration of the appalling nature of this pre-meditated killing, I make an order that each should spend a minimum of 20 years in custody before parole be considered.

[12] I have turned my mind to the evidence that suggests that the second accused wife was the instigator of this enterprise and that she egged on the first accused as he undertook the assault; but they acted jointly and were charged and tried jointly so they will suffer jointly. I make no difference in the exercise of my discretion. They will each suffer the loss of seeing their only child (one boy each) grow to maturity.



P. K. Madigan

Judge



At Labasa

6 September 2016