

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 11 of 2013

STATE

V

- 1. ULAIASI GLEN RADIKE**
- 2. ANARE MARA**
- 3. KELEMEDI SEVURA**

Counsel	:	Ms. S. Kiran for the State.
	:	Ms. J. Singh for the First Accused.
		Second Accused Trial in Absentia.
		Ms. V. Narara for the Third Accused.
Dates of Hearing	:	30 November, 3, 4, 5 December, 2018
Closing Speeches	:	11 December, 2018
Date of Summing Up	:	11 December, 2018
Date of Judgment	:	12 December, 2018
Date of Sentence	:	18 December, 2018

SENTENCE

1. In a judgment delivered on 12 December, 2018 this court found all the accused persons guilty and convicted them for one count of murder as per the following amended information:

COUNT 1

Statement of Offence

MURDER: contrary to section 237 of the Crimes Act No. 44 of 2009.

Particulars of Offence

ULAIASI GLEN RADIKE, ANARE MARA and **KELEMEDI SEVURA**, on the 29th of November, 2012 at Nadi in the Western Division murdered **JOSEVATA NAISALI**.

2. The brief facts were as follows:

On 29 November, 2012 in the evening the deceased was assaulted by all the accused persons near the fence opposite Deep Sea Night Club in Nadi Town. The deceased had gone to the Deep Sea Night Club with his cousins, after a few drinks the deceased went to the nearby service station to buy cigarette. A fight broke out between the deceased and the three accused persons. The accused persons punched the deceased then kicked and stepped on his head and face wearing boots after he had fallen on the ground. The victim died within hours of the assault.

3. Mereani Raikadroka saw the deceased being assaulted she tried to stop the fight and in the process got punched. The deceased was punched and stepped upon. Mereani knew two out of the three who were assaulting the deceased and was able to recognize the first accused Dike and the third accused Kele. The punching and stepping was on the head of the deceased who was lying down bleeding from his head.
4. In respect of the second accused Anare Mara, Emma Batiluva saw the fight at the back of Deep Sea Night Club she saw the second accused punching the deceased twice on his face.

5. Furthermore, the first and the second accused in their caution interviews and the charge statements admitted assaulting the deceased.
6. On 29 November, 2012 Cpl. Omendra Gupta had arrested the third accused near the crime scene the witness could smell liquor on the accused. Upon questioning the third accused, the witness was told by the third accused that he was accused of stealing a packet of cigarette, the deceased had punched him first and then he had retaliated with punches.
7. Dr. Mate recalled on 3rd December, 2012 she conducted the post mortem on the deceased. According to the doctor, the cause of death was extensive subarachnoid hemorrhage due to blunt force trauma.
8. The injuries to the head of the deceased were extensive suggesting that he was punched, kicked, stomped or stepped on the head or face.
9. All the counsel filed their written sentence submissions for which this court is grateful.
10. The following personal details and mitigation has been presented by both the defence counsel. As for the second accused who was tried in absentia his details have been obtained from the court file.

FIRST ACCUSED

- (a) He is a first offender;
- (b) Was 19 years of age at the time of the offending;
- (c) Was a student of Nadi Vocational Centre at the time;
- (d) He is married with 2 children and has young family;
- (e) His wife does not work and looks after the children.

SECOND ACCUSED

- (a) He is a first offender;
- (b) Was 21 years of age at the time of the offending;
- (c) Unemployed, educated up to Form 4;
- (d) Resided with his parents and siblings.

THIRD ACCUSED

- (a) He is a first offender;
- (b) Was 21 years of age at the time of the offending;
- (c) Educated up to Form 6;
- (d) Is in a defacto relationship and they have one daughter;

AGGRAVATING FEATURES

Use of Force

11. All the accused persons had not only punched but kicked and stomped the head and face of the deceased wearing boots. The force used on the deceased was deadly and violent more so when the deceased had fallen on the ground. It was a case of three against one.

Vulnerable Victim

12. The deceased was under the influence of alcohol, vulnerable and alone. The accused persons knew the deceased was vulnerable yet they continued to assault him.

Leaving the injured deceased

13. After the deceased had fallen and was bleeding profusely all the accused persons quickly left the dying deceased at the scene and ran away.

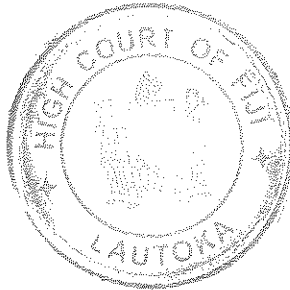
Remand Period

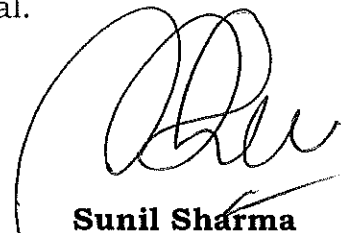
14. The first accused has been in remand from 4 December, 2012 to 13 August, 2013 and also from 28 June, 2018 till now. The first accused has been in remand for 1 year 2 months and 1 day.
15. The second accused has been in remand from 4 December, 2012 to 13 August, 2013 then from 1 June, 2017 to 9 November, 2017 for 1 year 1 month and 19 days.
16. The third accused has been in remand from 4 December, 2012 to 13 August, 2013 and from 8 June, 2018 to date. The third accused has been remanded for 1 year, 2 months and 21 days.

DETERMINATION

17. The sentence for the offence of murder is fixed by law which is mandatory life imprisonment. This court, however, has discretion to determine a minimum term which an offender must serve before he is eligible for parole.
18. The purpose of a minimum term is to assure the community and the public at large that offenders for such an offence serve a definite and meaningful period of imprisonment. A murder committed with an intention to kill will attract a longer minimum term of imprisonment than murder by recklessness. This was a case of murder by recklessness.
19. A family has lost an enterprising young member who was 21 years of age and a boat captain. The life of a young person has been cut short by the accused persons who had no regard for the life of the deceased. The deceased was alone and defenceless the assault continued after he had fallen on the ground.

20. All the accused persons have committed a very serious offence. The assault on the deceased was forceful and deadly. There can be no justification for the taking of another life the deceased never recovered from the injuries sustained.
21. In arriving at the minimum term this court has taken into account the aggravating factors, mitigation of all the accused persons and their remand period which is just in the circumstances of this case.
22. All accused persons are sentenced to mandatory life imprisonment for one count of murder with a minimum term of 14 years to be served by each one of them.
23. Since the second accused Anare Mara is at large this sentence is to commence from the day this accused is apprehended.
24. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka

18 December, 2018

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the First and Third Accused.