

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. 52 of 2014

THE STATE.

vs

- 1. MATAIASI ULUI**
- 2. MAIKELI LOKO**
- 3. RAKESH KUMAR**
- 4. VINOD SEGRAN**

Counsel: Ms. S. Kiran with Mr. S Seruvatu for the State.
Mr I. Khan for the first and second accused.

Dates of Hearing : 15 January to 1st February 2018
Date of Summing up : 2nd February 2018
Date of Sentence : 8 February 2018

SENTENCE

- 1.] The first and second accused have been convicted by this Court of murder and manslaughter respectively.

- 2.] They were both manual workers at a small manufacturing company in Nadi town and the deceased, known as "Arun" was a subcontractor to that company and known to both the accused for some time. It was rumoured that Arun was using black magic in an attempt to affect some of the company workers and therefore on the 14th April 2014, a

meeting was called to put these accusations to Arun and get his response.

- 3.] The meeting took place in an attached carport to the home of the proprietor of the company in Nawaicoba. The confrontation started with harsh words but quickly turned violent. The second accused hit the legs of the deceased with a broom and the first accused picked him up swung him around and dashed him head first on to the concrete floor of the carport. The impact of that assault caused the skull of Arun to be fractured and caused bleeding within and around the brain. He died in Lautoka Hospital later the following day.
- 4.] Both accused admitted their roles in this fatal attack to the Police when interviewed the following day.

First Accused.

- 5.] On a conviction for murder, the Court has no option but to pass a term of imprisonment for life, pursuant to section 237 of the Crimes Act 2009 and that is the sentence I do indeed pass on Mataiasi Ului.
- 6.] He is 34 years old. Married with 2 children. His counsel pleads his clear record and good character, and relies on a plea he offered to the prosecution in 2014 - a plea to the lesser offence of manslaughter. There can be no credit for that early plea which was rightly rejected by the DPP, but he does deserve credit for his clear record, his remorse and co-operation with the authorities.

- 7.] Counsel also asks that the 9 or 10 months spent in custody awaiting trial be allowed for. However that is a matter for the Mercy Commission to consider when he applies for pardon.
- 8.] I have discretion to set a minimum term to be served before he can be considered for pardon and I now turn to consider that minimum term.
- 9.] Murder by recklessness will attract a lesser minimum term than murder by intent, the rationale being that the perpetrator did not set out with a premeditated plan to take someone's life. That allowance must not of course detract from the seriousness of any murder be it by intent or recklessness. One would find it hard to imagine an act more reckless than throwing a person head first on to a concrete floor, with a force said by the pathologist to have been severe. This act was done without provocation, but in reaction to some swearing by the deceased who was denying rumours of witchcraft founded on the unproven claim of an observer seeing him muttering and sprinkling grog on the ground.
- 10.] The convict has shown some remorse for his conduct.
I order that he serve a minimum term of 15 years before he can be considered for pardon.

Second Accused

- 11.] Although an actor in this assault by way of joint enterprise, this court has found that the second accused's culpability is less in that it was not foreseeable that the first accused would act with such murderous recklessness. He has therefore been convicted of manslaughter.

- 12.] The maximum penalty for manslaughter is a term of 25 years' imprisonment and sentences have covered a very wide range from suspended sentences to term of 16 years imprisonment.
- 13.] In this case, consideration must be given to the fact that the second accused was hitting the deceased's legs with a broom, comparatively benign conduct in comparison with the recklessness of his co-accused.
- 14.] He is 35 years old, and married with one child. He too has a clear record and has spent 10 months in custody awaiting trial.
- 15.] He co-operated with the authorities and expressed remorse asking for forgiveness. He too offered a plea to manslaughter in 2014 which was not accepted.
- 16.] I take a starting point for the offence as 7 years imprisonment. For his remorse, co-operation and time spent in custody awaiting trial I deduct 3 years leaving an interim total of four years.
- 17.] For his early offer of a plea to this very offence, I deduct one year and the sentence that he shall serve shall be one of three years. He will serve a minimum term of 2 years before he is eligible for parole.
- 18.] Counsel has submitted that this may be a suitable case for the sentence to be suspended. Where a life is lost through violent and reckless conduct with no provocation, a suspended sentence is totally inappropriate. Suspended sentences are more appropriate in situations such as inadvertent conduct or in the face of extreme provocation.

Orders:

- 19.] First accused sentenced to life imprisonment, with a minimum term of 15 years.
- 20.] Second accused sentenced to 3 years imprisonment with a minimum term of 2 years.



P.K. Madigan
Judge

At Lautoka

8th February 2018