

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case. No. HAC 84 of 2021**

**BETWEEN** : **THE STATE**

**A N D** : **ISEI TAMANIKALOU**

**Counsel** : Mr. S. Seruvatu and Ms. S. Naibe for the State.  
Ms. A. Bilivalu and Ms. K. Vulimainadave for the  
Accused.

**Dates of Hearing** : 14, 15, 16, 19, 20, 21 September, 2022

**Closing Speeches** : 26 September, 2022

**Date of Judgment** : 27 September, 2022

**Date of Sentence** : 26 October, 2022

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**SENTENCE**

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1. In a judgment delivered on 27<sup>th</sup> September, 2022 this court found the accused guilty and convicted him for one count of murder as per the following information:

***Statement of Offence***

**MURDER**: Contrary to section 237 of the Crimes Act 2009.

### ***Particulars of offence***

ISEI TAMANIKALOU on the 30<sup>th</sup> day of June, 2021 at Nadi in the Western Division, murdered RATU MARA BATINA.

2. The brief facts were as follows:

- a. In the night of 30<sup>th</sup> June, 2021 there were two separate groups of people drinking alcohol at Prince Charles Park. They had gained entry into the park after climbing the fence. As the drinking continued the accused was leaving the park to go outside.
- b. Whilst walking he went to the first pavilion through the passage, when the accused was beside the canteen he heard the deceased who was drinking with the other group swear at him.
- c. The deceased was saying in the Itaukei language “*sonalevu*” meaning big arsehole and “*caiti tamanu*” meaning fuck your father and your mother’s vagina.
- d. The accused got angry since he did not know why the deceased was swearing at him. The deceased whilst swearing was walking towards the accused and when within reach the deceased tried to head butt the accused.
- e. At this time the accused saw a dry broken tree branch beside the rubbish bin, the accused picked the branch and struck the deceased three times on his head.
- f. The accused first strike to the head of the deceased was with all his strength and it was during the time of the second strike the tree branch broke. In addition to hitting the deceased with the tree branch the accused kicked the deceased when he was lying on the ground.



After the unarmed deceased fell the accused did not bother to assist the victim but instead he left the scene and went home. The situation created by the accused was such that Tarusila (the eye witness) was afraid when she saw the accused kicking the deceased on his head.

b) Threatening the eye witness

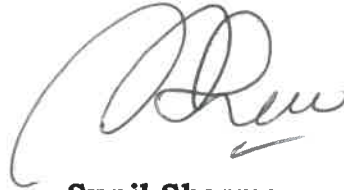
The accused after kicking the deceased on his head threatened the only eye witness Tarusila not to tell anyone about what she had seen that night.

7. The sentencing regime for the offence of murder is mandatory life imprisonment fixed by law which this court cannot interfere with.
8. The Court of Appeal in *Salesi Balekivuya and another vs The State, Criminal Appeal no. AAU 81 of 2011* at paragraph 40 confirmed the above as follows:

*“... There is no basis for undertaking the approach described above when the head sentence is fixed by law. Furthermore there is no basis for proceeding to determine a non-parole period for a person sentenced to the mandatory life sentence for murder since the specific sentence provision of section 237 of the [Act] displaces the general sentencing arrangements set out in section 18 of the Sentencing and Penalties [Act]. In my judgment the reference to the court sentencing a person to imprisonment for life in Section 18 of the Sentencing [Act] is a reference to a life sentence that has been imposed as a maximum penalty, is distinct from a mandatory penalty...”*

9. However, this court has a discretion to determine the length of the minimum term the accused must serve before he may be considered for a pardon.
10. The state counsel is seeking a minimum term to be imposed on the basis of the horrific manner in which the accused had assaulted a defenceless person. A minimum term is required to send a strong message of deterrence to others.
11. I agree, this was a dreadful attack on an unarmed, vulnerable, defenceless person who died instantly at the scene. The post mortem is self-explanatory in respect of the extent of the injuries suffered by the deceased.
12. Mr. Tamanikalou, you are a person who has no value for human life. The manner in which you assaulted the deceased was callous and inhumane. You showed no sympathy to the deceased.
13. A family has lost a member, a life has been lost due to your recklessness. There can be no justification for the taking away of another human life in such circumstances, you were selfish and cold-hearted on a defenceless victim.
14. The purpose of a minimum term is to assure the community and the public at large that offenders for such an offending serve a definite and meaningful period of imprisonment. I have taken into account that you had no intention to kill the deceased and I have also taken into account that the deceased had sworn at you.
15. As per the court file the accused has spent 1 year 3 months and 6 days in remand which is also accounted for in imposing a minimum term.

16. In view of the above, the accused is sentenced to mandatory life imprisonment for one count of murder with a minimum term of 12 years to be served before the accused may be considered for a pardon.
17. 30 days to appeal to the Court of Appeal.



**Sunil Sharma**  
**Judge**



**At Lautoka**

26<sup>th</sup> October, 2022

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**