

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. 185 OF 2018**

**STATE**

**V**

**SUBRAMANI NAIDU**

Counsel:                    Mr A. Singh for State  
   Mr M. Fesaitu for Defence

Date of Sentence:        5 December 2023

**SENTENCE**

1. Mr Subramani Naidu (the Offender) was charged with one count of Murder contrary to Section 237 of the Crimes Act 2009. He was convicted by the High Court after trial and was sentenced to life imprisonment with minimum term of 20 years to be served before a pardon may be considered.
2. Mr Naidu appealed to the Court of Appeal. His conviction was quashed, and a retrial was ordered. By the time his conviction was quashed on 4 October 2018, he had already served a term of 5 years and 7 months in the correction facility. Pending his retrial Mr

Naidu did not wish to apply for bail and hence was in remand for a period of approximately 5 years.

3. Before the retrial, Mr Naidu decided to take a progressive approach and plead guilty to the charge on his own free will. He was represented by a legal practitioner. His decision to plead guilty was free from any form of influence or pressure.
4. However, since Mr Naidu has had a medical history of mental illness (he was diagnosed with schizophrenia in 1995 and he had three admissions to St Giles Hospital from 1995-2012), it was imperative for the Court to satisfy itself before a guilty plea could be accepted that the accused was fit to plead and that the defence of mental impairment was not available to him as at the date of the commission of the offence. Therefore, a psychiatric evaluation was ordered to be conducted at St Giles Hospital before his plea was taken.
5. The Psychiatric Evaluation Report dated 22 October 2020 attached to the summary of facts specifically states that.. *at present, the accused should be mentally capable of making a plea in court and forming a legal strategy to defend him in the charges.*
6. Having been satisfied that Mr Naidu was fit to plead and that he understood the consequence of the guilty plea, the Court proceeded to take his plea. Mr Naidu pleaded guilty to the charge on his own free will.
7. The offence is dated 17 February 2012. After Mr Naidu was arrested for the charged offence, he was psychiatrically evaluated on 3 September 2012. That would have been the first psychiatric evaluation conducted on the accused after the alleged offence. In that Psychiatric Evaluation Report, the Consultant Psychiatrist states ... *In my opinion, Subramai Naidu was aware of his actions and understood the consequences of his actions on the day of the alleged offences. Though mentally unwell, he maintained clarity that it was his nephew ... he was attacking with a cane knife ... Though his actions appear out of proportion of the reason, it was most likely due to poor impulse control and aggressiveness.*
8. As regards the Defence of Mental Impairment, Section 28 (1) of the Crimes Act provides as follows;

A person is not criminally responsible for an offence if, at the time of carrying out the conduct constituting the offence, the person was suffering from a mental impairment that had the effect that —

(a) the person did not know the nature and quality of the conduct; or

(b) the person did not know that the conduct was wrong (that is, the person could not reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, was wrong); or

(c) the person was unable to control the conduct.

9. The Psychiatric Evaluation Reports attached to the summary of facts does not reveal that Mr Naidu was suffering from mental impairment which includes senility, intellectual disability, mental illness, brain damage and severe personality disorder at the time of the offence. Therefore, Mr Naidu is presumed not to have been suffering from a mental impairment at the time of the offence.

10. Mr Naidu agreed the following summary of facts read by the Statc:

On the 17th day of February, 2012 at about 1pm at Solovi Heights in Nadi, one Subramani Naidu (hereafter referred to as the accused), 40 years, Farmer the Salovi, Heights in Nadi, murdered one Vivan Munchsh Naidu (hereafter referred to as the deceased), aged 2 years and 6 months old (at the time of the offence). The matter was reported by one, Rajamma Naidu (hereafter referred to as the complainant) a 74 year old woman also of Salovi, Nadi. The accused is the younger son of the complainant.

In the year 2012, the accused was residing with the complainant and his older brother namely Mun Sami Naidu at Salovi, Nadi. The accused also has another elder brother by the name of Bal Sundaram Naidu who is now deceased. On the above date and time, the complainant and the deceased were in the kitchen having lunch whilst the accused was lying down in the sitting room resting. After a while, the accused got up, picked up a Cane Knife which was tucked underneath his mattress and walked into the kitchen. The accused then ran towards the deceased and struck him once with the Cane Knife. Since the deceased was a toddler, the complainant grabbed the deceased and ran out of the kitchen. The accused ran after complainant and the deceased and stuck the deceased several times with the Cane Knife on his hands and head. The complainant tried to protect the deceased but was unable to do so.

The complainant then left the deceased on the ground and ran towards the house of Vishal Naidu, the father of the deceased, shouting for help. The deceased lay on the ground motionless with several injuries as a result of the strike from the Cane Knife. One Mun Sami Naidu who was sleeping in the house woke up and ran towards the accused. He held on to the accused and the cane knife and tried to stop him. Later the accused threw away the cane knife. The matter was reported at the Namulomulo Police post and later a team of Police officers attended to the crime scene. The accused was interviewed under caution whereby he admitted to striking the deceased several times with the cane knife.

During the reconstruction of the scene, the accused also showed the police the exact places where he had struck the deceased with the cane knife.

11. On the facts admitted by Mr Naidu, I am satisfied that all the elements of offence of Murder are established. I find him guilty as charged and a conviction for Murder is recorded.
12. Murder is the most serious offence in the Crimes Act. The sentence prescribed is mandatory life imprisonment. Although life imprisonment is mandatory, the Court has judicial discretion to set a minimum period to be served before a pardon may be considered. The discretion to set a minimum period has to be exercised judiciously, having regard to the gravity and culpability of the offending, loss /harm caused, and the aggravating and mitigating circumstances.
13. The culpability level is high in the offending. The offender had used a cane knife to kill a toddler who was only 2 years and 6 months old. The cane knife was struck several times despite the intervention of the offender's mother to save the life of an innocent toddler. Apparently, no provocation had been offered. As a result of the action of the offender, a life of an innocent toddler was lost causing irreparable harm to the parents.
14. I accept that the killing was not premeditated, but the violence that the offender inflicted on a toddler was gruesome. He breached the trust and caused significant emotional pain to the parents of the deceased.
15. The offender is currently 51 years old and single. Prior to the offence, he made his living through farming, selling vegetables. He does not have previous convictions. He has maintained a clear record until he committed this offence. He pleaded guilty to the charge when the retrial was ordered. However, I doubt his belated guilty plea is genuine expression of remorse although it carried some utilitarian purpose as it saved time and resources of this Court.
16. The deceased is the nephew of the offender and was in a domestic relationship. In sentencing a domestic violence offender, deterrence is important factor together with the requirement of strong denunciation by the community of such conduct and the need for protection of the community. The harm done to the victim and the community as a result

of crimes of domestic violence must be acknowledged and dealt with severely to reflect the abhorrence of the society. In the sentence, the courts must make it clear that the acts of violence perpetrated on children will not be tolerated in our society, and will be punished severely.

17. For these reasons, I have decided to fix a minimum term. A minimum term means that the offender is not eligible for a pardon until he has served that term.
18. He has already served an imprisonment term of 5 years and 7 months in the correction facility and approximately 5 years in remand pending his retrial. Technically, the offender's liberty has been curtailed for a period of more than a decade. Therefore, in setting the minimum term, I would take the imprisonment and the remand period in to account.

#### Summary

19. Mr Subramani Naidu is sentenced to life imprisonment with a minimum term of 8 years to be served before a pardon may be considered.
20. 30 days to appeal to the Court of Appeal if the offender so desires.



Aruna Aluthge  
Judge

5 December 2023  
At Lautoka

Solicitors:



Office of the Director of Public Prosecutions for the State  
Legal Aid Commission for the offender