

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 16 of 2022

STATE

V

SAMISONI VURUMATANA

Counsel : Ms. S. Naibe for the State.
: Ms. L. Volau for the Accused.

Date of Submissions : 18 December, 2023
Date of Sentence : 20 December, 2023

SENTENCE

1. The accused is charged with the following offence as per the amended information filed by the Director of Public Prosecutions dated 18th January, 2023:

Statement of Offence

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

Particulars of offence

SAMISONI VURUMATANA on the 31st of January, 2022 at Nalawa in the Western Division, murdered SAMUKARI NALAWAKULA JUNIOR.

2. This file was first called in the High Court on 23rd February, 2022. The amended information was filed in this court on 3rd February, 2023 and on 17th February, 2023 the accused pleaded not guilty. Before the matter could proceed to pre-trial conference hearing the accused in the presence of his counsel on 29th September, 2023 pleaded guilty.
3. After numerous adjournments because the state counsel was not ready with the summary of facts on 12th December, 2023 the accused admitted the amended summary of facts read by the state counsel.
4. The brief summary of facts is as follows:
 - a) On the morning of 31st January, 2022, the accused and the deceased who were biological brothers were heard arguing. The accused was questioned by his older brother for not tying the bullocks but the accused blamed the deceased stating that he was the one hiding the “juata” for their bullocks.
 - b) The accused was also angry that the deceased had brought people to their home to watch movies. The accused had also sworn at the deceased. The argument between the deceased and the accused continued till about 12.30 pm.
 - c) When the deceased left the house to uproot some cassava, the accused also left after 2pm, the deceased returned home with the cassava and began cooking inside their kitchen. Whilst the deceased was cooking, the accused entered the kitchen, took a

kitchen knife from the shelf and stabbed the deceased on his back multiple times and ran away.

- d) At around 4pm, the deceased was found lying on the ground near his house with blood all over his face and a knife stuck on his back. The deceased was found not breathing and had no pulse. The matter was reported to the police.
 - e) Upon investigations, a post-mortem examination of the deceased was conducted. The pathologist concluded that the direct cause of death was exsanguination. The antecedent causes were penetrating sharp force injury to the aorta and sharp force thoracic trauma. Other significant causes contributing to death but not related to the disease or condition/external causes – sharp force injury to the back-stabbing.
 - f) The accused was arrested and interviewed under caution. During the caution interview, the accused admitted committing the offence of murder as charged.
5. After considering the amended summary of facts read by the state counsel which was admitted by the accused in the presence of his counsel, and upon reading the annexures filed including the caution interview this court was satisfied that the accused had entered an unequivocal plea of guilty on his freewill.
6. This court was also satisfied that the accused had fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted by the accused satisfied all the elements of the offence of murder the accused is charged with.

7. In view of the above, on 12th December, 2023 this court found the accused guilty as charged for one of murder and he was convicted accordingly.
8. The state and the defence counsel filed their sentence and mitigation submissions for which this court is grateful.
9. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - a) The accused is 34 years of age;
 - b) Farmer;
 - c) Educated up to class 7;
 - d) Seeks forgiveness of the court;
 - e) Pleaded guilty;
 - f) Had cooperated with the police during investigation;
 - g) Realizes his wrong doing and is remorseful.

AGGRAVATING FACTORS

10. The following aggravating factors are obvious:

- a) Unprovoked attack on the victim

The accused attacked an unarmed deceased (his younger brother) with a kitchen knife whilst the deceased was cooking in the kitchen. The deceased was unsuspecting and vulnerable when the accused struck the deceased several times.

b) The victim were alone

The victim had his back to the accused whilst cooking. The accused knew the victim was alone and he took advantage of the situation.

c) Failure to assist the victim

After stabbing the victim the accused walked away without providing any assistance to the victim.

GUILTY PLEA

11. The accused pleaded guilty after about 1 year and 10 months of the matter being first called in this court. In *Gordon Aitcheson vs. The State, criminal petition no. CAV 0012 of 2018 (2 November, 2018)* the Supreme Court offered the following guidance at paragraphs 14 and 15 in regards to the weight of a guilty plea as follows:

*[14]. In **Rainima -v- The State** [2015] FJCA 17; AAU 22 of 2012 (27 February 2015) Madigan JA observed:*

“Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the “high water mark” of discount is one third for a plea willingly made at the earliest opportunity. This court now adopts that principle to be valid and to be applied in all future proceeding at first instance.”

*In **Mataunitoga -v- The State** [2015] FJCA 70; AAU125 of 2013 (28th May 2015) Goundar JA adopted a similar but more flexible approach to this issue:*

“In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effect of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment.”

*[15]. The principle in **Rainima** must be considered with more flexibility as **Mataunitoga** indicates. The overall gravity of the offence, and the need for the hardening of hearts for prevalence, may shorten the discount to be given. A careful appraisal of all factors as Goundar J has cautioned is the correct approach. The one third discount approach may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.*

12. This court accepts that genuine remorse leading to a guilty plea is a substantive mitigating factor in favour of an accused, however, the guilty plea must be entered in the true spirit of remorse since genuine remorse can reduce the harshness in the final sentence (*see Manoj Khera v The State, CAV 0003 of 2016 (1 April, 2016)*).
13. In this case, this court does not accept that the accused has shown genuine remorse when he pleaded guilty on the day of the trial proper. The date of allegation is 31st January, 2022 and the accused did not plead guilty until 29th September, 2023.
14. Genuine remorse is about genuinely feeling sorry for what a person has done, accepting guilt because of strong evidence and proof of the offender’s deeds and then pleading guilty is not genuine remorse *per se*. In this regard, the sentencing court has a responsibility to assess

the guilty plea along with other pertinent factors such as the timing of the plea, the strength of the prosecution case etc. Here there is no doubt the prosecution had a strong case against the accused.

15. Nevertheless, by pleading guilty the accused saved the court's time and expenses. Bearing this in mind, the accused ought to receive some reduction for his guilty plea.

TARIFF

MURDER

16. The sentencing regime for the offence of murder is mandatory life imprisonment fixed by law which this court cannot interfere with.
17. 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...”

18. However, this court has discretion to determine the length of the minimum term the accused must serve before he may be considered for a pardon. The state counsel is seeking a minimum term to be imposed for the offence of murder on the basis of the horrific nature of the offending committed on a defenceless victim. I agree a minimum term is required to send a strong message of deterrence to others.
19. 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. A murder committed with an intention to kill will attract a longer minimum term of imprisonment than murder by recklessness.
20. As per the court file the accused has spent 1 year, 10 months and 17 days in remand. I have taken into account all the aggravating and mitigating factors including the guilty plea and the remand period in arriving at the minimum term in this case.
21. I accept this was a callous, unprovoked attack on an unsuspecting, vulnerable person who was cooking in the kitchen.
22. Mr. Vurumatana you have committed a serious offence against your own younger brother. The extent of the injuries you caused to this victim was extensive and deadly that the knife was stuck on his back. You did not even look back but ran away like a coward.
23. You cannot be forgiven for what you have done to the victim. You have no respect for human life. Your complicity and culpability in the offending is obvious.

24. An innocent life has been lost because of your conduct which was intentional and directed to the deceased back.
25. There can be no lawful justification for the taking away of another human life in such circumstances this was a selfish, cold-hearted and an unprovoked attack on the victim.
26. In view of the above the accused is sentenced to mandatory life imprisonment with a minimum term of 16 years to be served before he may be considered for a pardon for one count of murder.
27. 30 days to appeal to the Court of Appeal.



Sunil Sharma
Sunil Sharma
Judge

At Lautoka

20th December, 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.