

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 042/2012

BETWEEN : THE STATE

AND : DEVENDRA NAIKER

COUNSEL : Mr R Prakash and Ms Uce for the State
Mr T Ravuniwa for the Accused

Dates of Trial : 02-08/04/2014

Date of Summing Up : 09/04/2014

Date of Judgment : 09/04/2014

Date of Sentence : 11/04/2014

SENTENCE

- [01] The accused Devendra Naiker after a trial before three assessors has been convicted of the murder of Bishal Anand Mishra on 20/12/2011.
- [02] In this case it is not in dispute that the accused went in the rear seat of the deceased's taxi after 6.00pm on 20/12/2011. Accused admitted in his evidence that he went home in the deceased's taxi on 20/12/2011. This was corroborated by witnesses Melvin Nandan and Dinesh Karan. According to them the accused was the person last seen going in the deceased's taxi after 6.00pm on 20/12/2011. After few hours the deceased's dead body was found at Waituri Road.
- [03] Tevita Naqaruqaru and Ratu Meli Draunimasi had caught the accused few minutes after he left with the deceased to go to Korociriciri. They found blood

on the accused's both hands around 6.30pm at the Irrigation road. Accused had driven the deceased's taxi along Irrigation Road very fast when Tevita and Meli apprehended him. He used the deceased's taxi to get away from the crime scene.

[04] The accused admitted to the doctor and in his caution interview statement that he stabbed the deceased on 20/12/2011. The Pathologist Dr. R. Goundar had noted 15 fatal cut injuries on the deceased's body. One injury had penetrated the deceased's heart.

[05] The sentence fixed by law is imprisonment for life. This court has no discretion to order a lesser term for murder. However, this court has discretion to set a minimum term of imprisonment. The setting of a minimum term is governed by Section 18 of the Sentencing and Penalty Decree of 2009.

[06] The accused is 33 years old, unmarried and live with his parents and his younger brother. He is a welder by profession and specialised in marine welding. He is truly remorseful for what he has done and begs forgiveness and leniency from this court.

[07] The deceased was an innocent taxi driver who gave a lift to the accused on 20/12/2011 and in the course of this conveyance; the accused, with a pre-plan, brutally attacked the defenceless victim with a knife and killed him instantly.

[08] This was a dreadful crime. In **State v Chand** [2013] FJHC 385;HAC45.2013(9 August 2013) at paragraph 12, His Lordship Justice Madigan said:

“[12] A minimum term is set obviously so that the community can be assured that persons taking the lives of others may serve a meaningful period in custody. The more serious the murder, the longer the minimum term; a murder with intention to kill will also attract a longer term than a murder committed by recklessness.”

[09] The deceased is a married person. He had his wife and two small children. Due to his tragic death his family was left in lurch. The deceased's wife had lost her beloved husband and his children had lost their lovable father.

[10] As required by the law, I pass a sentence of life imprisonment for committing murder of Bishal Anand Mishra. Using my discretion and considering Section 18 of Sentencing and Penalties Decree 2009, I impose 20 years imprisonment as non-parole period.

[11] You have 30 days to appeal to Fiji Court of Appeal.



P Kumararatnam
JUDGE

At Suva
11/04/2014