

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 18 OF 2011

STATE

-v-

NIUMAIA RAVULO SEMANAIQOLIQOLI

Counsels : Ms. S. Kiran for the State
The accused in Person

Date of Sentence : 30 June 2014

SENTENCE

1. You are charged as follows:

FIRST COUNT
Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Decree No. 44 of 2009.

Particulars of the offence

NIUMAIA RAVULO SEMANAIQOLIQOLI on the 15th day of January, 2011 at Lautoka in the Western Division was reckless as to cause the death of PUSPA KANTA.

SECOND COUNT
Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311(1) (b) of the Crimes Decree No.44 of 2009

Particulars of the offence

NIUMAIA RAVULO SEMANAIQOLIQOLI on the 15th day of January 2011 at Lautoka in the Western division being armed with a kitchen knife stole an Alcatel mobile phone valued at \$20.00, gold chain valued at \$100.00 and cash \$25.00 all to the total value of \$145.00 from **PUSPA KANTA**

2. On 16th May 2014 you pleaded guilty to both charges against you and admitted the Summary of facts on 30th May 2014.
3. The Summary of Facts submitted by the State Counsel states as follows:

The deceased in this case is Puspa Kanta, 44 years old of Navo, Nadi whilst the accused in this matter is Niumaia Ravulo Semanaiqoliqoli, 24 years old of Maqalevu Village, Nadi.

At about 3.15 pm, the deceased got off a bus coming from Nadi and going towards Lautoka at the Vuda back road junction as she was going to her sister's place further up the road. As she went past the garage, the accused started following her. Bal Ram who saw the accused going with the deceased became suspicious, told his son Sailesh Yash Ram to keep an eye on the accused. They saw that the accused and deceased started talking and the deceased gave him her plastics to hold. After a while, they turned into a bend and Sailesh Yash Ram lost sight of them so he continued with his work.

At about 3.30 pm, Chandra Kanta, deceased sister was at her home with her husband, Madhwan when she heard her dogs barking and also heard a female voice shouting for help. She walked up her driveway which starts from Vuda back road to see. Her driveway is about 40 meters from her house to the main road. Whilst watching, she saw a female wearing red top and black trousers run across her driveway and then falling down on her chest. She then shouted for her husband to come and check. Her husband came and discovered that it was her sister, the deceased lying in a pool of blood with stab wounds on her neck. Madhwan then went to look for a transport to take her to the hospital; he came back later with Bal Ram from the garage who identified her as going with a Fijian boy but by this time, the deceased had passed away.

Upon further investigation, the accused was arrested from Nadi where the deceased mobile phone, bank card, FNPF card and 2 gold chains were recovered from his

possession. These properties were positively identified by the deceased husband, Govind Sami Naidu as that of the deceased.

According to the post mortem report, conducted by Dr Ponnu Sami Goundar, the deceased cause of death was shock, excessive loss of blood due to the cuts on the neck.

Furthermore, the accused was identified in an identification parade by the taxi driver Shan Ali and Sailesh Yash Ram.

He confirmed at question 93 to 100 that he saw one Indian lady getting off a bus from Nadi to Lautoka and crossed the road and went along the Vuda back road. He further confirmed that he was sniffing glue. In addition, he stated that the Indian lady caught up to him and he offered to carry some of her bags which consisted of one big brown bag, one small bag and one plastic containing clothes. But just before they reached the feeder road that led to the deceased sister's house, they sat down to talk. Accused said at question 111 to 113 that he then pulled out a joint of marijuana and smoked it using his white gas lighter. The deceased also smoked the left over roll and after a while the accused suddenly stood up and punched the deceased on her chin causing her to fall down (question 122). At question 123 to 126, he stated that he then stood up, pulled out the knife with his back towards her and then turned around and stabbed her on her neck with his left hand then with his right hand, stabbed her neck again. At Question 127 the accused stated that he then took the brown bag and the hand bag and ran across the Vuda back road into the mangroves opposite the road and followed one small stream. At question 169 he stated that he also used the money he stole from the deceased. He stated at Question 135 and 136 that he knew that the deceased had died because he had squeezed the knife when he stabbed and she was bleeding a lot.

The accused was subsequently charged with one count of murder and one count of aggravated robbery. In his charge statement he voluntarily admitted that what he did was wrong and it was not his intention to kill her but just wanted to steal her money. It was during their struggle that he stabbed her with his knife.

4. After carefully considering the Plea of you to be unequivocal this Court found you guilty for one count of Murder contrary to Section 237 (1) of the Crimes Decree and

one count of Aggravated Robbery contrary to Section 311 (1) (b) of the Crimes Decree No. 44 of 2009.

5. Accused **Niumaia Ravulo Semanaiqoliqoli** you stand convicted for one count of Murder and one count of Aggravated Robbery.
6. The mandatory sentence fixed by law for Murder is that the convicted person shall be sentenced to imprisonment for life. There is no discretion allowed to the court in a murder case to sentence to a lesser term.
7. It is well known that convicted persons sentenced to life imprisonment usually do not serve the full term, that is serve imprisonment for the rest of their lives
8. In **State v Momo** [2012] FJHC 1093; HAC 086.2011 (18 May 2012) Hon. Mr. Justice Temo had discussed this issue in detail.

*“Murder” is a serious offence, and it is often said, to be at the top of the criminal calendar. It carries a mandatory penalty of life imprisonment. (Section 237, Crime Decree 2009). The court has the power to fix a non-parole period to be served, before a prisoner is eligible for parole. Case precedents show that the non-parole period for murder varies widely, depending on the peculiar facts of the case. In **Waisale Waqanivalu v The State**, Criminal Appeal No. CAV 0005 of 2007, Supreme Court, Fiji, on 5 counts of murder and 1 of attempted murder, the accused was given 19 years non-parole period on each murder count, and 10 years consecutive on a pending prison sentence, total non-parole period was 26 years. In **State v Niume & Others**, Criminal Case No. HAC 010 of 2010, High Court, Suva, on 2 counts of murder, Accused No. 1 was given 25 years non-parole period for the murder counts. In **State v Ashwin Chand**, Criminal Case No. HAC 032 of 2005, High Court, Lautoka, on a count of murder, the accused was given a non-parole period of 22 years. In **State v Navau Lebobo**, Criminal Case No. HAC 016 of 2002, High Court, Suva, the non-parole period was 20 years. Twenty years non-parole period were also imposed in the following three cases: **State v Anesh Ram**, Criminal Case No. HAC 124 of 2008S, High Court, Suva; **The State v Bharat Lal & Others**, Criminal Case No.*

HAC 061 of 2009S, High Court, Suva; *The State v Balekivuya*, Criminal Case No. 095 of 2010S, High Court, Suva. In *State v Tukana*, Criminal Case No. HAC 021 of 2009, High Court, Lautoka, the non-parole period was 11 years. The non-parole period imposed will depend on the mitigating and aggravating factors.

9. Aggravating factors;

- (i) Use of a weapon-knife
- (ii) Nature of injuries on the deceased
- (iii) As the accused had waited for the victim to come this is planned crime.

10. Mitigating circumstances:

- (i) You are first offender
- (ii) You are from a broken family and had a troubled childhood
- (iii) You pleaded guilty to the offences
- (iv) You are remorseful
- (v) You were in remand from 18.1.2011 to 19.7 2013 for a period of 2 years and 6 months. Then you were in remand from 2.12.2013 up to now for a period of 7 months.

11. After weighing the aggravating factors against the mitigating circumstances of this case, I fix a non-parole period of 17 years acting under Section 18 (1) of the Sentencing and Penalties Decree.

12. The maximum sentence for Aggravated Robbery is 20 years.

13. The tariff for Aggravated Robbery is well settled now.

14. In *State v Rokonabete* [2008] FJHC 226; HAC 118.2007 (15 September 2008) it was held by Hon. Mr. Justice D. Goundar that:

"The dominant factor in assessing seriousness for any types of robbery is the degree of force used or threatened. The degree of injury to the victim or the nature of and duration of threats are also relevant in assessing the seriousness of an offence of robbery with violence. If a weapon is involved in the use or treat of force that will always be an important aggravating feature. Group offending will aggravate an offence because the level of intimidation and fear caused to the victim will be greater. It

may also indicate planning and gang activity. Being the ring leader in a group is an aggravating factor. If the victims are vulnerable, such as elderly people and person providing public transport, that will be an aggravating factor. Other aggravating factors may include the volume of items taken and the fact that an offence was committed whilst the offender was on bail.

The seriousness of an offence of robbery is mitigated by factors such as a timely guilty plea, clear evidence of remorse, ready co-operation with the police, response to previous sentence, personal circumstances of offender, first offence of violence, voluntary of property taken, a minor part, and lack of planning involved."

15. In **State v Manoa** [2010] FJHC 409; HAC 061.2010 (6th August 2010) it was held by Hon. Mr. Justice Paul Madigan that:

"The maximum penalty for robbery with violence under Penal Code is life imprisonment, while the maximum penalty for aggravated robbery under the Crimes Decree is 20 years imprisonment. Although the maximum sentence under the Decree has been reduced to 20 years imprisonment, in my judgment, the tariff of 8-14 years imprisonment established under the old law can continue to apply under the new law. I hold this for two reasons. Firstly, the established tariff of 8-14 years under the old law falls below the maximum sentence of 20 years under new law. Secondly, under the new law, aggravated robbery is made an indictable offence, triable only in the High Court, which means the Executive's intention is to continue to treat the offence seriously."

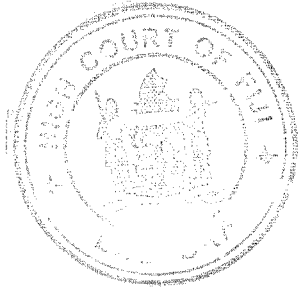
16. Considering all above, I order 10 years as sentence for the Aggravated Robbery charge.


17. Your sentences are as follows:

- | | | |
|------|---|-------------------------|
| (i) | 1 st count of Murder | - Life imprisonment |
| (ii) | 2 nd count of Aggravated Robbery | - 10 years imprisonment |

18. Considering the totality principle, I order both sentences to run concurrently.

19. Therefore, you are sentenced for life imprisonment and not eligible for parole till completing 17 years imprisonment.
20. 30 days to appeal to Court of Appeal with leave form that Court.




Sudharshana De Silva
JUDGE

At Lautoka
30th June 2014

Solicitors: Office of the Director of Public Prosecution for State
 Accused in Person