

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 12 OF 2014

STATE

-v-

TALAT MAHAMOOD

Counsels : Mr. Josaia B. Niudamu for the state  
Ms. S. Lagilagi Jiuta for the accused

Date of Sentence : 24 September 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**

**TALAT MAHAMOOD** on the 27<sup>th</sup> day of January, 2014 at Nadi in the Western Division, murdered **HAMIDA**

2. On 28<sup>th</sup> March 2014 you pleaded Not Guilty to the charge. On 10<sup>th</sup> September you informed Court that you want to change your plea. On 12<sup>th</sup> September 2014 you pleaded Guilty to the charge and admitted the Summary of Facts on 16<sup>th</sup> September 2014.

3. The Summary of Facts submitted by the State Counsel states as follows:

On 27<sup>th</sup> January 2014 in the afternoon at about 1pm, Talat Mahamood (hereinafter referred to as the "accused"); 35 years visited, Hamida, (hereinafter referred to as the "deceased"), 53 years, domestic duties, at the deceased house at Nakavu settlement in Nadi. The accused is the nephew and neighbor of the deceased. The accused visited the deceased to inform the deceased of his relationship with the deceased daughter. The deceased was in her sitting room cutting vegetables when the accused approached her.

The accused informed the deceased that her daughter is out of control and a heated argument arose between the accused and the deceased. During the argument, the accused slapped the deceased twice on the face and he got hold of the deceased mouth which led to the falling of the false teeth of the deceased on the floor. The deceased then stabbed the accused on his right palm from the knife she was using in cutting the vegetables. The accused got wild and then he forcefully got hold of the kitchen knife from the deceased and started stabbing the deceased on the neck, stomach and hands for several times. While the accused was stabbing the deceased, the knife broke and the knife blade was stuck in the deceased's neck.

The accused got hold of another kitchen knife which was on the floor and stabbed the deceased again on the stomach for several times. The deceased was bleeding heavily in the sitting room and after he noticed that the deceased was motionless he then dragged the deceased in to the kitchen and hides the deceased's body under the table and placed some tyres on top of the body. The accused then started cleaning the sitting room by mopping the blood stains and re-arrange everything in the sitting room in order.

At about 5.30 pm, the deceased son, Riaz Ali, 20 years, was about to enter their house when he noticed the accused was sitting on the sofa in the sitting room. As Mr Riaz Ali was about to enter the sitting room, the accused stopped him from entering and he gave Mr Riaz Ali \$15 to go and buy some beer. Mr Riaz Ali refused to go and he forced himself inside their house and then he went to the kitchen and saw his mother, the deceased, lying under the table with three tyres were placed on top of her. Mr Riaz Ali returned to the sitting room and saw the accused ran away from the house towards the main road.

The accused went to Imam Taxis and tours and then he hired a taxi to take him to Wailoaloa. The accused got off at Wailoaloa beach where he was hiding until he was arrested by Police on 29<sup>th</sup> January 2014. The matter was then reported to the Police and the deceased body was later conveyed to Nadi Hospital. A post-mortem was conducted on the deceased on 29<sup>th</sup> January 2014 by Dr Ponnu Swamy Goundar. The post mortem report revealed that there was excessive loss of blood from several minor blood vessels of the neck due to stab injuries.

The accused was then taken to Nadi Police Station on 29<sup>th</sup> January 2014 and was interviewed under caution whereby he admitted that he stabbed the deceased on the neck and stomach several times. At the time of the offence the accused was reckless as to causing the death of the deceased by stabbing the deceased several times on the deceased neck and stomach.

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.
5. Accused **Talat Mahamood** you stand convicted for one count of Murder.
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
- (ii) Nature of injuries on the deceased
- (iii) The age and the vulnerable nature of the deceased

10. Mitigating circumstances:

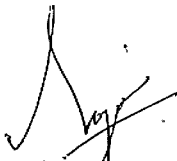
- (i) You are first offender
- (ii) You pleaded guilty to the offence
- (iii) You are remorseful
- (iv) You were in remand from 29<sup>th</sup> January 2014

11. After weighing the aggravating factors against the mitigating circumstances of this case, I fix a non-parole period of 15 years acting under Section 18 (1) of the Sentencing and Penalties Decree.

12. Therefore you are sentenced for life imprisonment and not eligible for parole till completing 15 years imprisonment.

13. 30 days to appeal to Court of Appeal with leave from that Court.



  
Sudharshana De Silva  
**JUDGE**

At Lautoka  
24<sup>th</sup> September 2014

Solicitors : Office of the Director of Public Prosecution for State  
Office of the Legal Aid Commission for Accused