

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 90 OF 2011

STATE

-v-

AVNIT SINGH

Counsels : Ms. Luisa Latu for the state
Ms. L. Raisua for the accused

Date of Sentence : 26 September 2014

SENTENCE

1. You are charged as follows:

FIRST COUNT
Statement of Offence

MURDER: Contrary to Section 237 (a) (b) (c) of the Crimes Decree No. 44 of 2009.

Particulars of the offence

AVNIT SINGH on the 3rd day of May, 2011 at Tuvavatu in the Western Division, murdered **BAL KRISHNA**.

2. You pleaded Not Guilty to the charge. After trial lasting one week, the three assessors unanimously found you Not Guilty. This Court over turned that verdict and found you Guilty as charged and convicted you.
3. Following facts were proved at the trial.

You and your de facto wife were given work by the deceased in his farm. You have lived and worked there for about a week. On the date of the incident, you have assaulted the deceased with the back of an axe while the deceased was having his breakfast. This axe was used in a fast manner to cause skull fractures. Then you left the deceased injured and fled to your parent's house at Nadi with your de facto wife.

You were arrested few days later after your de facto wife informed her father about the incident. You have admitted the offence in your caution interview statement.

4. 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.
5. 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.
6. Both parties have filed detail submissions on the sentence. I have carefully considered those submissions and the case authorities submitted by both parties on setting a minimum period.
7. 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 Nieme & 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 Lebobu**, 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.*

8. Aggravating factors;

- (i) Use of a weapon
- (ii) Nature of injuries on the deceased
- (iii) The age of the deceased
- (iv) You have shown no remorse for your conduct.

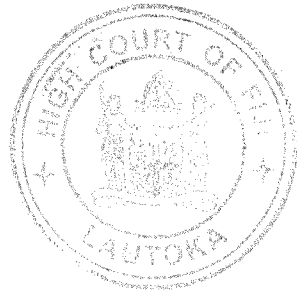
9. Mitigating circumstances;


- (i) You are first offender
- (ii) You are 22 years old and therefore young offender
- (iii) You are the sole breadwinner of your family
- (iv) You were in remand from 8.5.2011 to 7.6.2011 for a period of 29 days and from 18.10.2012 to 14.11.2012 for a period of 26 days.

10. After weighing the aggravating factors against the mitigating circumstances of this case, I fix a non-parole period of 20 years acting under Section 18 (1) of the Sentencing and Penalties Decree.

11. Therefore, you are sentenced for life imprisonment and not eligible for parole till completing 20 years imprisonment.

12. 30 days to appeal to Court of Appeal.




Sudharshana De Silva
JUDGE

At Lautoka
26th September 2014

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