

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 052 OF 2013S

STATE

VS

SAILASA MOCIU

Counsels : Mr. Y. Prasad and Ms. V. Prasad for the State
Mr. T. Tawake and Ms. P. Chand for Accused

Hearings : 27 to 30 October and 3 November, 2014

Summing Up : 4 November, 2014

Judgment : 4 November, 2014

Sentence : 5 November, 2014

SENTENCE

1. In a judgment delivered yesterday, the court found the accused guilty of the following charge, and convicted him accordingly:

Statement of Offence

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

Particulars of Offence

SAILASA MOCIU on the 9th day of January 2013, at Naisaumua, Tailevu in the Central Division, murdered **KASAYA VEISEIKONABOU**.

2. The brief facts were as follows. At the time of the murder, the accused was 42 years old, and his deceased wife was 33 years old. They had been married for 17 years with four young children. The first three were boys aged 14, 11 and 9 years old. The youngest was a girl aged 6 years old. The accused was a sugar cane farmer at Nadi. The family lived a happy life until September 2012, when the accused came out of prison.
3. The wife began to distance herself from her husband by going out night-clubbing, and was neglecting the children. The accused suspected she was having extra-marital affairs. The accused tried to hold the family together by attempting to talk to his wife. She refused and swore at him thereafter. The accused was taken aback and angry. On 9 January 2013, he released his tension by stabbing his wife to death, with the necessary intention to kill.
4. As I have said in State v Seremaia Naidole Momo, HAC 086 of 2011S and State v Roneel Chand, HAC 064 of 2011S, both are High Court, Suva cases, "...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; State v Bharat Lal & Others, Criminal Case No. HAC 061 of 2009S, High Court, Suva, and The State v Salesi 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..."
5. The aggravating factors in this case were as follows:
 - (i) There was pre-planning in the murder of his deceased wife. He had been sharpening the kitchen knife he used to stab his wife, one week before her murder.

- (ii) You have unnecessarily terminated the young lady's life, aged 33 years at the time, and this showed your utter disregard to her right to life.
- (iii) By your criminal action, you have deprived your four young children the right to be brought up by their parents, in that their mother had died, and you will be jailed for a very long time.
- (iv) Throughout the proceeding, you showed no remorse.

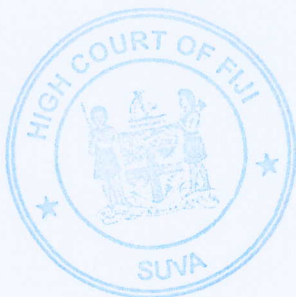
6. The mitigating factors were as follows:

- (i) Because the prosecution provided no previous conviction, I will treat you as a first offender at the age of 44 years;
- (ii) You had been remanded in custody since 25 January 2013, that is, 1 year 9 months 10 days ago.

7. For murdering your wife on 9 February 2013, I sentence you to the mandatory life imprisonment.

8. For the non-parole period, I start with 19 years imprisonment. I add 5 years for the aggravating factors, making a total of 24 years. I deduct 4 years for the mitigating factors, leaving a balance of 20 years imprisonment.

9. In summary, I sentence you to life imprisonment, with a non-parole period of 20 years imprisonment, effective forthwith.




Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Legal Aid Commission, Suva.**