

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 144 OF 2014**

**STATE**

**-v-**

**LLOYD RICHARD SENIKAUCAVA**

**Counsel : Ms. J Fatiaki for State**

**Accused in person**

**Date of Conviction: 10<sup>th</sup> August, 2016**

**Date of Sentence : 16<sup>th</sup> August, 2016**

**SENTENCE**

1. Mr. LLOYD RICHARD SENIKAUCAVA (herein after referred to as the Accused), now stands convicted after trial.
2. Accused was charged with Murder, contrary Section 237 of the Crimes Decree 44 of 2009. Assessors unanimously found the accused guilty of Murder. Court concurred with the opinion of the Assessors and convicted the accused on the 10<sup>th</sup> day of August, 2016.
3. After the conviction was recorded, accused did not wish to be represented by his Counsel from the Legal Aid Commission. Learned Counsel's application to withdraw from the case was allowed. Accused was given time to file mitigation. He indicated to Court that he was not filing any mitigation.

4. The facts of the case were that:

Deceased is an European lady from Australia. She was in a relationship with Accused's uncle and was planning to invest in Fiji in collaboration with an Australian businessman. Accused also took an interest in the business and was involved in it. Accused was not happy with the returns and benefits he was getting from the deceased. On the 6<sup>th</sup> day of November 2014, the deceased was drinking alcohol with the accused till late night in two night Clubs in Sigatoka. Around 1.30 a.m. on the 7<sup>th</sup> day of November 2014, they took a taxi from Sigatoka to go to Vunavutu where she had been residing with his partner. On the way, an argument broke out. Taxi driver was asked to stop the taxi at a short cut to Vunavutu. Accused pulled the deceased out of the taxi and both of them got off. Deceased had gone missing since then. Her decomposed body was found in a bush near the Vunavutu short cut on the 10<sup>th</sup> day of November, 2014.

Accused fled the village after the discovery of the dead body. He was arrested from his hideout in a far remote area on the 14<sup>th</sup> day of November, 2014. In the caution interview, accused confessed to the killing and stated:

*"I thought of what Joe had told me for me to kill her then I can get back into a business again and shareholder with him. That motivates me to press her throat very hard using my both thumb until there was no other movements. But she was still breathing. Then I used my outer side of my right feet on her neck to suffocate her. After a while I removed my feet at that time, she was not moving and not breathing. I tried to carry her again but I could smell her shit. I then took her skirt and wiped her shit off and carried her to another place where I dumped her about 15 meters away."*

On accused's directions, deceased's hand bag and the skirt were discovered from the bush.

5. The sentence for the offence of murder is fixed by law. The penalty for Murder is a mandatory sentence of life imprisonment, with a judicial discretion to set a minimum term to be served before pardon may be considered.
6. Discretion should be exercised judiciously having taken into consideration the nature of the offending, aggravating and mitigating circumstances.
7. In *State v Singh* [2009] FJHC 27; HAC072.2008 (4 February 2009) Justice Gounder said:

*"In my view, there are no hard and fast rules for minimum term in murder cases. Each case is to be assessed on its own facts. If the court finds aggravating*

*features present in a case of murder, the court has discretion to fix minimum term, after weighing the aggravating circumstances against any mitigating factors”.*

8. In *State v Masicola* [2015] FJHC 411 (5 June 2015) Justice Temo said:

*The offence of "murder" (count no. 1) is often said to be at the top of the criminal calendar. To preserve human life is a fundamental objective in preserving and maintaining the wellbeing of our society. Our lawmakers had prescribed a mandatory penalty of life imprisonment for those found guilty of murder. The court is empowered "to set a minimum term to be served before a pardon may be considered" (Section 237 of the Crimes Decree 2009). A pardon may only be granted by His Excellency the President of the Republic of Fiji (Section 119 of the 2013 Fiji Constitution). Minimum terms for murder had been set between 26 to 11 years imprisonment, depending on the mitigating and aggravating factors: *Waisale Waqanivalu v The State, Criminal Appeal No. CAV 005 of 2007, Supreme Court, Fiji; The State v Navau Lebobo, Criminal Case No. HAC 016 of 2002, High Court, Suva; State v Anesh Ram, Criminal Case No. HAC 124 of 2008, High Court, Suva and State v Tukana, Criminal Case No. HAC 021 of 2009, High Court, Lautoka.**

9. An offender convicted of Murder will have demonstrated a high level of culpability. Even so, the precise level of culpability has to be decided in light of the circumstances of the offending and whether the offence was planned or spontaneous. Accused did not use a weapon. There is no evidence of pre planning.

### **Aggravating Factors**

#### Prolonged Violence on a Defenseless Woman

10. Accused demonstrated a high level of violent behavior when he attacked the deceased. When the deceased was punched on her face, she fell on the ground and became unconscious. Then accused attempted to suffocate her by using his both hands. Failure of which, he used his right foot on his neck to suffocate her to death.

#### Breach of Trust

11. Because of the trust deceased had towards the accused, she joined the accused in drinking alcohol and shared a taxi to go home in night. Accused betrayed that trust.
12. In a long Victim Impact Statement filed on behalf of her relatives by the deceased's daughter, it is stated:

*“18 months ago our lives changed receiving a call no family member should ever have to hear or be the family member who passes on that terrible news, something nobody would ever think of ever happening to them or anybody they knew.*

*The pain our grandparents had in their hearts hearing the news of their daughter but also having to be the ones to tell her children what had happen is just horrible, it makes me sick and my stomach tighten in writing those words, thinking of their faces and hearing their voices that day.*

*The pain/hurt and ongoing heartache our family has suffered when we lost a Mother, Daughter, Sister and Grandmother no one will never understand no amount of words will ever be able to describe our feelings inside.*

*Not only did we lose someone so very special so many other people lost her to, a kind hearted woman wherever she went and whoever she spoke to touched their hearts. Not only was our family mourning but the lives of some many others from our home town, across Australia and to your home country Fiji.....*

*.....To have someone taken from you so suddenly in such a terrible unthinkable in humane way is just too hard to understand there are no words you can say to or nothing anyone can do to take the hurt, the thoughts or the images away. No one should ever have to go through this not even your worst enemy would you wish this upon.*

*We have lost the heart to our family, to this day and forever we will never be able to understand why something like this happened to a woman who had a heart of gold, would not hurt a fly who wanted to help others before herself she had so much love to give and wanted nothing in return.....*

*.....Not being able to say goodbye and that you loved her makes my chest feel all tight. Not to be able to have her body brought home so we can grieve properly and lay her to rest where she was born is just another thing that makes this all a horrible tragedy and another thing we have to deal with. Her brother having to watch as his sister is bun over fire and then brought home in a bag to the family when she should have physically been sitting in the seat beside him is torture.....*

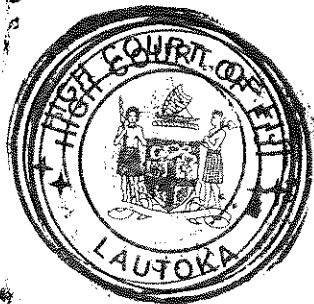
*..... No amount of time or words will ever make things feel any better, they say time heals it doesn't just covers the pain and grief for you to carry one living life it will never go away. Unanswered questions leave you wondering and trying to piece things together, we will never have that closure we will never fully understand why he did this to her” ....*

### **Mitigating Factors**

13. Accused did not file any mitigation although he was given an ample opportunity to do so.
14. Accused is caught up in this unfortunate incident in the peak of his youth. Court is sorry that he has committed this offence in his youth ruining his entire life.
15. Accused failed to cooperate with police. After the incident, he fled the village and went into hiding to evade arrest.
16. The accused has five active previous convictions.
17. According to the report filed by the Prosecution, accused had been in remand for 451 days.

### **Sentence**

18. Having taken all the relevant factors into account, I sentence the Accused to life imprisonment with a fixed minimum term of 16 years' imprisonment before being eligible for parole.
19. 30 days to appeal to the Fiji Court of Appeal.



  
**Aruna Aluthge**  
**Judge**

**At Lautoka**  
**16<sup>th</sup> August, 2016**

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