

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 106 OF 2016

BETWEEN : STATE

AND : JOVILISI GODROVAI

Counsel : Mr. S. Babitu for State
Mr. M. Fesaitu for the Accused

Date of Sentence : 14th of October 2016

SENTENCE

1. Mr. Jovilisi Godrovai, you are being charged with one count of Murder, contrary to Section 237 (1) of the Crimes Decree which carried a mandatory sentence of imprisonment of life and one count of Aggravated Robbery, contrary to Section 311 (1) (b) of the Crimes Decree. which carries a maximum sentence of twenty years of imprisonment period. The particulars of the offences are that;

First Count,

Jovilisi Godrovai between the 19th of May 2016 and 20th of May 2016 at Lautoka in the Western Division murdered Sushila Devi,

Aggravated Robbery

Jovilisi Godrovai between the 19th of May 2016 and 20th of May 2016 at Lautoka in the Western Division robbed Sushi Devi of \$ 120 cash, 1 Sony portable radio valued at \$90, 1 Nokia mobile phone valued at \$ 80, 1 carry bag valued at \$80, 4 tin Fish valued at \$ 14, 1 torch light valued at \$ 7.50, all to the total value of \$ 391.50, the property of Sushi Devi and at the time of the robbery used personal violence on the said Sushi Devi.

2. You pleaded guilty for these two counts on the 16th of September 2016 on your own free will and accord. Having satisfied that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I now convict you for these two counts as charged in the information.

3. It was revealed in the summary of fact, which you admitted in open court that you have committed these two offences between the periods of 19th of May 2016 to 20th of May 2016. On that particular day, you entered into the house of deceased Sushila Devi through the side window of the sitting room. You removed the wooden shutters and louver blades and then entered into the house ,while she was sleeping in her bed room in the night. You then walked into her bed room, where she was sleeping. You pressed the mouth of the deceased and punched on her both thighs. She woke up and started to shout. You then gagged her mouth with a piece of cloth ripped out from the bed sheet. You then tied up her legs and hands using a rope. You used a knife to cut the ropes. You have used the rope and the knife to incapacitate the deceased before you proceed to rob the house. You then ransacked the house searching valuables. You stole FJD 120, four Angel tin Fish valued at FJD 14 , one Nokia Mobile Phone valued at \$

80, and Sony Black Radio valued at \$90. Before leaving the house you went and check the deceased and found that she was dead. You then left the house.

4. This is a case of breaking of a dwelling house in night and violently attacking the occupant causing her death. Hon Chief Justice Gates in **Wise v State (2015) FJSC7; CAV0004.2015 (24 April 2015)** held that;

“It is our duty to make clear these type of offences will be severely disapproved by the courts and be met with appropriately heavy terms of imprisonment. It is a fundamental requirement of a harmonious civilised and secure society that its inhabitants can sleep safely in their beds without fear of armed and violent intruders”.

5. In view of the above observation made by Hon Chief Justice Gates in **Wise (supra)**, the purpose of this sentence is founded on the principle of deterrence and the protection of community. I am mindful of the principle of rehabilitation, however, the seriousness of the offence out weights the principle of rehabilitation.
6. The punishment for the offence of murder is a mandatory sentence of imprisonment of life. However, the sentencing court has been given a judicial discretion to set a minimum term to be served before pardon may be considered. In order to set a minimum term to be served for the offence of murder, the court is required to consider the aggravating and mitigating circumstances of the crime. Murders which are brutally carried out without any form of remorse or respect to human life must be given longer minimum period.

7. Justice Madigan in State v Rokete [2014] FJHC 114; HAC084.2009 (4 March 2014) has discussed the setting of minimum term in comparison with the sentencing guidelines of UK, where his lordship held that;

“In the U.K, the Criminal Justice Act, 2003 Schedule 21, makes provision for minimum terms. The schedule provides for elements of aggravation and mitigation that a Court could consider in assessing a minimum term for murder. This U.K Act does not apply in Fiji of course, nor does Fiji have similar legislation but those provisions can be of real assistance in assessing a minimum term before pardon in terms of section 237 of the Fiji Crimes Decree. Aggravating features listed in the UK schedule and which are of particular relevance to the present case include:

- i) Murder for gain (for example in the course of robbery or burglary),*
- ii) The murder of a vulnerable victim in terms of age and or vulnerability,*
- iii) A murder with a view to obstruct justice,*

8. The maximum punishment for the offence of Aggravated Robbery is 20 years of imprisonment period. The tariff for the aggravated robbery is 8 to 16 years of imprisonment period. (Wise v State (2015) FJSC7; CAV0004.2015 (24 April 2015), Bonaseva v State (2015) FJSC12;CAV0022.2014 (20 August 2015),State v Nadavulevu - Sentence [2015] FJHC 651; HAC046.2015S (10 September 2015).

9. I now draw my attention to determine the level of culpability and the harm caused by this offending. You have used high level of force on the deceased in order to incapacitate her. You have pressed her mouth and punched on her thighs. You then gagged her mouth with a piece of cloth, ripped out from the bed

sheet and also tied up her hands and legs using a rope. Having considered the seriousness of this offending and, the level of harm and culpability, I select Thirteen (13) years as the starting point for the offence of robbery.

10. The deceased was a Sixty Nine (69) years old elderly woman. She lived alone in her house. You attacked on her while she was sleeping alone in her bed room in the night. Accordingly it appears that the deceased was in a vulnerable and defenceless situation. You have broken into the house by removing the wooden shutters and louver blades of the window. I consider these grounds as aggravating factors of this offending.
11. In view of the above discussed aggravating factors, I increase four years, reaching an interim imprisonment period of seventeen (17) years.
12. You are twenty-nine (29) years old farmer. You are an unmarried person and looking after your parents.
13. You have been adversely recorded with twenty one previous convictions. Therefore, I find that you are not entitled for any discount for your previous good character. I must assure you that your previous convictions have not been considered as an aggravating factor in this sentencing.
14. Having considered, your relatively young age and your family circumstances, I reduce one (01) year, reaching sixteen (16) years of interim imprisonment period.
15. You pleaded guilty for these two counts before they were proceeded for the hearing, though it was not a first available opportunity. In doing that you not only expressed your remorse, but also you saved the time and resources of the

court and State. Hence, you are entitled for a substantive discount for the early plea of guilty in the sentencing. Accordingly, I reduce further three (03) years. Your final sentence for the offence of Aggravated Robbery is now thirteen (13) years of imprisonment.

16. You have been in remand custody for this case since 26th of May 2016 as you were not granted bail by the court. Accordingly, I reduce further five months for the time that you have spent in remand custody. Your actual sentencing period for the offence of Aggravated Robbery is now Twelve (12) years and Seven (7) months of imprisonment period.
17. Having considered the purpose of the sentencing, your ages, and opportunities for rehabilitation, it is my opinion that eleven (11) years of non-parole period would adequately serve the purpose of this sentencing.
18. You killed the deceased in the course of robbing her house. It appears that it was not a pre-planned or premeditated act. Having considered these factors together with above discussed aggravating and mitigating grounds, it is my opinion that you must be served minimum sentence of twenty (20) years for the offence of murder before you are being considered for any pardon.
19. In conclusion, I sentence you for imprisonment of life for the offence of Murder, contrary to Section 237 (1) of the Crimes Decree with minimum term of twenty (20) years before being considered for any pardon.
20. Furthermore, I sentence you for twelve (12) years and Seven (07) months of imprisonment period for the offence of Aggravated Robbery, contrary to Section

311 (1) (b) of the Crimes Decree with non-parole period of eleven (11) years. Both sentences to be served concurrently.

21. Thirty (30) days to appeal to the Fiji Court of Appeal.



R. D. R. Thushara Rajasinghe

JUDGE

At Lautoka
14th October 2016



Solicitors : Office of the Director of Public Prosecutions
Office of Legal Aid Commission