

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

Criminal Case No.: HAC 001 of 2019

BETWEEN : STATE

AND : MOSESE CAMA

Counsel : Ms D Rao for the State
Ms K Boseiwaqa for the Accused

Date of Hearing : 4 - 5 February 2020

Date of Sentence : 19 February 2020

SENTENCE

- [1] Sainimere Raikadroka was a 65-year old great grandmother living by herself in Naidi at the outskirts of Savusavu. The house was made of corrugated iron and timber with very basic facilities. On the night of 30 December 2018, the offender entered the victim's home, struck her multiple times on the head with an iron rod used for husking coconuts, raped her and stole her property. The following morning the victim's daughter discovered her mother's half naked body inside her house.
- [2] The offender was arrested, and on 1 January 2019, he was interviewed under caution. He was found in possession of the stolen property of the victim. He gave a detailed account of how he entered the victim's home, struck her with an iron rod, raped her and then stole her property. He was 20 years old at the time and a first time offender.
- [3] The offender had a known history of mental illness. He lived with his widowed mother and had little support for his mental disorder. Upon arrest, he was referred for a psychiatric assessment at a public mental health institution. There are two psychiatric

reports on the offender by qualified psychiatrists. The first report was compiled by Dr Blicher in May 2019 after an assessment. Dr Blicher clinically diagnosed the offender to be suffering from schizophrenia. Dr Blicher's opinion was that the offender was unfit to stand trial and that he was most likely to have acted under the influence of mental illness at the time of the alleged offences. After that assessment, the offender remained at the mental health institution and received treatment.

[4] After treatment, a second psychiatric assessment was done by the Superintendent of the hospital, Dr Gaikwad. Dr Gaikwad reached a different opinion from Dr Blicher. Dr Gaikwad accepts that the offender is suffering from chronic schizophrenia but says that after treatment the condition has gone in remission. Dr Gaikwad's opinion is that the offender was aware of his actions at the time of the alleged offences and that he is fit to stand trial.

[5] Following Dr Gaikwad's opinion, the offender pleaded guilty to the charges of murder, rape, burglary and theft. The guilty pleas are at the first opportunity. He admitted the facts tendered by the prosecution.

Burglary

It was sometimes between 30th and 31st of December 2018 that the Accused Mosese Cama inhaled some premix fuel and walked toward the house of the deceased at the village of Naidi in Savusavu.

Upon reaching her house, he placed his finger in the hole that was on the door of her house and managed to twist the nail used to keep the door closed and managed to open the door from outside. The door is facing the main road, at the kitchen area. He entered the deceased's house with the intention of stealing from within.

Murder

The accused after gaining forced entry into the deceased person's house, walked through the passage and saw light at the other end of the passage. He walked towards it and saw the deceased sleeping on the mattress on the floor. He saw the deceased facing the wall, her back to the door. She was asleep, with the blanket partially covering her head.

Upon seeing the deceased sleeping, the accused walked back to the kitchen, picked an iron rod that was sharp at one end as it was used to husk coconuts and walked back to the room where the deceased was sleeping.

With the intention of killing the deceased, the accused stood beside the deceased head, at her back and struck the deceased person's head several times with the sharp iron rod. The deceased was still sleeping when she was struck. There was blood splattered on the walls, apart from where the deceased lay.

As a result of the strikes on her head by the accused, the deceased's body suffered seizures for a few seconds and then became motionless.

The deceased died as a result of the act of the multiple strikes by the iron rod the accused struck with her.

Rape

As the deceased lay motionless, bleeding profusely, the accused removed her panty, pushed her legs and forcefully inserted his penis into her vagina and had sex with her.

He ejaculated inside her after which he stood up, took the iron rod that he used to strike the deceased with and washed it.

Accused removed the clothes he was wearing and wore another pair of clothes that was in the room, including a black jacket.

Theft

Accused then blew out a lit lantern and walked out of the room. Before leaving the deceased house, he stole items belonging to the deceased, which included a mobile phone, solar inverter and a bag containing the personal items of the deceased.

On the 31st of December 2018, the Savusavu Police Officers attended the crime scene to patrol the crime scene, while officers were patrolling the crime scene, they heard mumbling noises coming from the bushes near the deceased's house.

Upon investigation, police found the accused, wearing the black jacket, with a bag and a gallon with some premix with no lid on it. The items that were stolen from the deceased house was in his possession at that time.

- [6] The sentence for murder is life imprisonment with discretion to fix a minimum term before a pardon may be considered by the President upon advice of the Mercy Commission. The sentence for rape is also life imprisonment. The tariff for rape of an adult victim is between 7 to 15 years imprisonment (*Rokolaba v State* [2018] FJSC 12; CAV0011.2017 (26 April 2018)). The maximum penalty prescribed for burglary is 13 years imprisonment. The tariff for burglary is 1-3 years' imprisonment (*Waqavanua v State* [2011] FJHC 247; HAA013.2011 (6 May 2011)). The maximum penalty prescribed for theft is 10 years imprisonment. The tariff for simple theft is between 2 to 9 months imprisonment (*Ratusili v State* [2012] FJHC 1249; HAA011.2012 (1 August 2012)).
- [7] The offences are objectively serious. An elderly vulnerable woman was raped and killed in the security of her home in a gruesome manner. Weapon was used to inflict extreme violence. The victim's skull was fractured and she died of head and brain injuries. Offence of this nature attracts heavy penalty to denounce the conduct, to punish the offender and to deter others.
- [8] However, there is a special circumstance present in this case that reduces the offender's moral culpability. The special circumstance is the mental illness of the offender, which if not treated may exacerbate. When an offender is suffering from chronic mental illness, then matters such as general deterrence, retribution and denunciation have less weight. The High Court Australia in *Muldock v The Queen* (2011) 244 CLR 120 explained the principle at [54]:

The principle is well recognized. It applies in sentencing offenders suffering from mental illness, and those with an intellectual handicap. A question will often arise as to the causal relation, if any, between an offender's mental illness and the commission of the offence. Such a question is less likely to arise in sentencing a mentally retarded offender because the lack of capacity to reason, as an ordinary person might, as to the wrongfulness of the conduct will, in most cases, substantially lessen the offender's moral culpability for the offence. The retributive effect and denunciatory aspect of a sentence that is

appropriate to a person of ordinary capacity will often be inappropriate to the situation of a mentally retarded offender and to the needs of the community.

[9] I endorse the above principle and have decided not to fix a minimum term for the offender to serve before he may be considered for a pardon by the President.

[10] The offender is convicted and sentenced as follows:

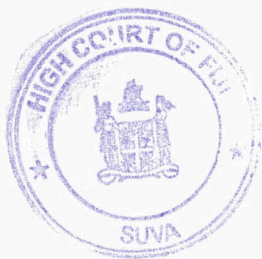
Count 1 – Murder – Life imprisonment

Count 2 – Rape – 14 years' imprisonment

Count 3 – Burglary – 18 months' imprisonment

Count 4 – Theft – 6 months' imprisonment

[11] Since all the offences arose from the same transaction, the sentences are made concurrent. The total effective sentence is life imprisonment with a recommendation that a pardon may only be considered if the offender is no longer a threat to the safety of the community. He may continue to receive treatment in a secured corrections facility and the Commissioner of Correction Services may collaborate with the mental health institution for proper planning and treatment of the offender.



A handwritten signature in blue ink, appearing to be "D. Goundar", with a long horizontal line extending to the right.

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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused