

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 107 of 2022

STATE

V

BRADLEY ROBERT DAWSON

Counsel: Mr. Alvin Singh with Ms. Sheenal Swastika for the State
Mr. Anil Prasad for the Accused

Dates of Trial: 30 September and 1-4, 7-8 and 11 October 2024

Judgment: 11 December 2024

Sentence Hearing: 27 January 2025

Sentence: 11 February 2025

SENTENCE

[1] Bradley Robert Dawson, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offence:

Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Act 2009.

Particulars of Offence

BRADLEY ROBERT DAWSON, on the 9th day of July 2022, at Turtle Island Resort, in the Western Division, murdered **CHRISTE JIAO CHEN**.

[2] You pleaded not guilty to the above mentioned charge and the ensuing trial was held over 8 days.

[3] The prosecution in support of their case, called 14 witnesses- 5 staff members of the Turtle Island Resort; 2 other civilian witnesses; the Forensic Pathologist; the Medical

Officer who first examined the deceased and pronounced her death and 5 Police Officers, who were part of the investigating team. The prosecution also tendered to Court several production items as prosecution exhibits.

- [4] You exercised your right to remain silent.
- [5] At the conclusion of the evidence and having reviewed the totality of the evidence, this Court found you guilty and convicted you of the charge of Murder.
- [6] It was proved during the trial that on 9 July 2022, at Turtle Island Resort, you engaged in a conduct, and the said conduct caused the death of Christe Jiao Chen (the deceased), and you intended to cause the death of the deceased or you were reckless as to causing the death of the deceased by your conduct.
- [7] The deceased was your newly wedded wife, who was 36 years of age, at the time you brutally caused her death. You and the deceased had got legally married on 19 February 2022, in the United States of America and the two of you had come to Fiji to celebrate your honeymoon at the Turtle Island Resort. What should have been a truly joyous and memorable vacation was turned into a nightmare for the deceased and her family, causing much pain and sorrow to them.
- [8] In terms of the Victim Impact Statement filed in Court by the parents of the deceased, who was their only child, it is recorded that they have been emotionally and psychologically traumatized by this incident. It is clear that the impact of your actions are continuing, as the parents remain emotionally and psychologically traumatized by the incident.
- [9] The deceased's father Tao Chen has stated as follows:

"There are no words that can fully capture the devastation I feel from the loss of Christe, my only child. Her life was cruelly taken by someone she trusted, her husband, who should have been her protector. Not knowing what led to her death and the story of her final moments still haunts me to this day. Having an account of her last moments and the reason her life was taken may provide some sort of closure, but along with her life, this has been taken from us as well.

Psychologically and emotionally, this crime has shattered my life. She was my only child, my little girl, and my reason for living. Each day since her death has been a struggle to find meaning in a life that now feels empty. I am haunted by thoughts of her final moments, the betrayal she endured, and the dreams she will never realize. The emotional pain is indescribable – it feels like a permanent wound that will never heal.

Socially, my world has grown smaller. My daughter was the center of my family and our lives. Without her, I have withdrawn from many of the activities and relationships we once shared. Her absence is felt not just by me, but by everyone whose life she touched. I find it difficult to interact with people that knew us as a family. Friends and family are at a loss for what to say. This tragedy is at the forefront of every interaction we have with people we know and opens the wound each time.

We no longer celebrate holidays or birthdays, as it is now too painful with her absence. Each year Christie would plan a holiday vacation for our family. Those have now stopped, as there is no one to plan these adventures, and no one to celebrate with. There is no longer a reason to celebrate. I have withdrawn from events that used to bring me pleasure because the pain of her loss is too great."

[10] The deceased's mother Xiao Wei Liu has stated as follows:

"There are no words to describe the pain and suffering you have inflicted on myself and my family. The physical and emotional toll this has taken on me is unimaginable. I now suffer from insomnia, chronic gastrointestinal issues, panic and anxiety disorders, severe major depressive issues and thoughts of self-harm. I spend hours in doctors' offices just to be told these are symptoms that result from the enormous stress. This continues day after day since you made the decision to murder my daughter.

The day you killed my daughter was the day you killed me as well. You took away my only child, my best friend, my travel companion, my only chance for grandchildren and my reason for living. I struggle every single day to find a purpose to go on. I would not wish this all-consuming grief on anyone – except for you and your family. The brutality in which you took my child's life – no living thing should ever have to endure this torture.

No mother should have to know this is how her daughter's life ended, and by the hands of the very person who took a vow to love, honour and cherish her. I can only hope that

the rest of your life is filled with misery, loneliness and despair. I hope you suffer every single day. I hope the memories of what you did to her in her last moments haunt you— because you are a monster. You deserve exactly what you gave to my daughter – horror, pain and suffering in her final moments. Not even then will you have the slightest degree of punishment you deserve. There is no forgiveness and there never will be. You have inflicted the greatest pain a person can to a mother by murdering my child.”

[11] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

4. — (1) The only purposes for which sentencing may be imposed by a court are —

(a) to punish offenders to an extent and in a manner which is just in all the circumstances;

(b) to protect the community from offenders;

(c) to deter offenders or other persons from committing offences of the same or similar nature;

(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;

(e) to signify that the court and the community denounce the commission of such offences; or

(f) any combination of these purposes.

[12] Bradley Robert Dawson, I have duly considered the above factors in determining the sentence to be imposed on you, which is primarily to punish and to deter offenders or other persons from committing such offences and also to signify that the Court and the community denounce the commission of such offences.

[13] Section 4(2) of the Sentencing and Penalties Act provides that a Court must also consider the following factors when sentencing an offender:

(2) In sentencing offenders a court must have regard to —

(a) the maximum penalty prescribed for the offence;

(b) current sentencing practice and the terms of any applicable guideline judgment;

- (c) the nature and gravity of the particular offence;*
- (d) the offender's culpability and degree of responsibility for the offence;*
- (e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;*
- (f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;*
- (g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;*
- (h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;*
- (i) the offender's previous character;*
- (j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and*
- (k) any matter stated in this Decree as being grounds for applying a particular sentencing option.*

[14] Furthermore, Section 4 (3) of the Sentencing and Penalties Act stipulates the factors that a Court must have regard to in sentencing offenders for a domestic violence offence.

"(3) In sentencing offenders for an offence involving domestic violence, a court must also have regard to —

(a) any special considerations relating to the physical, psychological or other characteristics of a victim of the offence, including —

(i) the age of the victim;

(ii) whether the victim was pregnant; and

(iii) whether the victim suffered any disability;

(b) whether a child or children were present when the offence was committed, or were otherwise affected by it;

(c) the effect of the violence on the emotional, psychological and physical well-being of a victim;

(d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim;

(e) the conduct of the offender towards the victim since the offence, and any matter which indicates whether the offender —

(i) accepts responsibility for the offence and its consequences;

(ii) has taken steps to make amends to a victim, including action to minimise or address the negative impacts of the offence on a victim;

(iii) may pose any further threat to a victim;

(f) evidence revealing the offender's —

(i) attitude to the offence;

(ii) intention to address the offending behaviour; and

(iii) likelihood of continuing to pose a threat to a victim; and

(g) whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance."

[15] Bradley Robert Dawson, I have duly considered the above factors as well in determining the sentence to be imposed on you.

[16] In terms of the provisions of Section 237 of the Crimes Act No. 44 of 2009 ("Crimes Act") the penalty for the offence of Murder is a mandatory sentence of imprisonment for life, with a judicial discretion to set a minimum term to be served before pardon may be considered.

[17] In *State v Masicola* [2015] FJHC 411; HAC081.2014S (5 June 2015); His Lordship Justice Temo held:

"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 Waganivalu v The State, Criminal Appeal No. CAV 005 of 2007, Supreme Court, Fiji; The State v Navau Lebovo, Criminal Case No. HAC 016 of 2002, High Court, Suva: State v Anesh

Rom, Criminal Case No. HAC 124 of 2008, High Court, Suva and State v Tukana, Criminal Case No. HAC 021 of 2009, High Court, Lautoka.”

- [18] The penalty stipulated in Section 237 of the Crimes Act is a stand-alone penalty provision which is specific to sentencing upon a conviction for Murder. As such, His Lordship Justice Calanchini (Then President, Court of Appeal) has held that the general provisions that apply to sentencing under the Sentencing and Penalties Act have no application.
- [19] In the case of Aziz v The State [2015] FJCA 91; AAU112.2011 (13 July 2015); His Lordship Justice Calanchini held as follows:

“...Under section 237 of the Crimes Decree (Crimes Act) the penalty for murder is expressly stated to be a mandatory sentence of imprisonment for life with a judicial discretion to set a minimum term to be served before a pardon may be considered. This is a particular sentencing enactment that applies specifically to an offender convicted of murder. Pardon is part of the prerogative of mercy exercised by the President on the recommendation of the Mercy Commission under section 119 of the Constitution. The pardon may be free or conditional (section 119 (3) (a)). The effect of a free pardon is to clear the person from all consequences of the offence for which it is granted and from all statutory or other disqualifications following upon conviction, but not to remove the conviction (8 (2) Halsburys 827).

Although section 18 of the Sentencing Decree (Sentencing and Penalties Act) is a general enactment which ordinarily would apply to a life sentence imposed for murder, the particular enactment in section 237 of the Crimes Decree must be operative and in such case the maxim of interpretation "generalia specialibus non derogant" (general things do not derogate from special things) should be applied. The provisions of section 18 of the Sentencing Decree will have general application to all sentences, including where life imprisonment is prescribed as a maximum sentence unless a specific sentencing provision excludes its application. In my judgment a sentencing court is not expected to select either a non-parole term or a minimum term when sentencing for murder under section 237 of the Crimes Decrees. As a result any person convicted of murder should be sentenced in compliance with section 237 of the Crimes Decree. For the same reason the discretion given to the High Court under section 19(2) of the Sentencing Decree, being an enactment of general application, does not apply to the specific sentencing provision for murder under section 237 of the Crimes Decree.”

[20] Furthermore, some very useful guidance on sentencing in cases of Murder have been provided by His Lordship Justice Calanchini in *Balekivuya v The State* [2016] FJCA 16; AAU0081.2011 (26 February 2016).

"[36] Section 237 (of the Crimes Act) provides for a mandatory sentence of life imprisonment for a person convicted of murder. It must be recalled that life imprisonment means imprisonment for life (Lord Parker CJ in R v Foy [1962] 2 All ER 246). The trial Judge when sentencing a person convicted of murder is required to exercise a discretion in two ways. The first is whether a minimum term should be set. The second is the length of the minimum term that should be served before a pardon may be considered. The use of the word "pardon" in the penalty provision is not the same as what is sometimes referred to as an "early release" provision. The word "pardon" is not defined in the Crimes Decree nor is it defined in the Sentencing Decree. The only reference to the word "pardon" that is relevant to sentencing is to be found in section 119 of the Constitution. Under section 119(3) the Prerogative of Mercy Commission (the Mercy Commission), on the petition of a convicted person, may recommend that the President exercise a power of mercy by, amongst others, granting a free or conditional pardon to a person convicted of an offence.

[37] In my judgment the effect of section 237 when read with section 119(3) of the Constitution is that a convicted murderer may not petition the Mercy Commission to recommend a pardon until that person has served the minimum term set by the trial Judge. The reference to minimum term in section 237 has nothing to do with early release. The Mercy Commission may or may not make the necessary recommendation to the President. Furthermore, the matters that the Mercy Commission takes into account in deciding whether to recommend a pardon may or may not be the same as the matters that are taken into account by the trial judge when he sets the minimum term.

[38] It should be noted that under section 119(3) of the Constitution any convicted person may petition at any time the Mercy Commission to recommend (a) a pardon, (b) postponement of punishment or (c) remission of punishment. However it would be reasonable to conclude that the Mercy Commission would take into account the sentencing judgment and the actual sentence imposed during the course of its deliberations.

[39] Finally and importantly, it is abundantly clear from the observations made above that the discretion to set a minimum term under section 237 of the Decree is not the same as the mandatory requirement to set a non-parole term under section 18 of the Sentencing Decree.

[40] The non-parole period is determined after the trial judge has arrived at what is referred to as the head sentence. The head sentence is premised on the existence of a prescribed maximum (not mandatory) penalty from which a tariff is identified, a starting point determined, aggravating and mitigating factors considered, any early plea of guilty credited and finally, under section 24 of the Sentencing Decree, a deduction made for time spent in remand as time already served. **However the position is different when the head sentence is a mandatory sentence of life imprisonment. There is no basis for undertaking the approach described above when the head sentence is fixed by law.** Furthermore there is no basis for proceeding to determine a non-parole period for a person sentenced to the mandatory life sentence for murder since the specific sentence provision of section 237 of the Decree displaces the general sentencing arrangements set out in section 18 of the Sentencing Decree. In my judgment the reference to the court sentencing a person to Imprisonment for life in section 18 of the Sentencing Decree is a reference to a life sentence that has been imposed as a maximum penalty, as distinct from a mandatory penalty. Examples of prescribed maximum penalties can be found for the offences of rape and aggravated robbery under the Decree.

[41] **For all of the reasons stated above I have concluded that there is no requirement for a trial judge to consider the time spent in remand when he has imposed the mandatory head sentence of life imprisonment upon a conviction for murder under section 237 of the Decree.** Further given that the minimum term, if one is set, does no more than entitle the convicted person to petition the Mercy Commission to recommend a pardon in my judgment there is no requirement for the trial judge to consider the time spent in remand when setting the minimum term under section 237 of the Decree. In my view section 24 of the Sentencing Decree has no application to the specific sentencing provisions in section 237 of the Decree.

[42] As I observed earlier, there is no guidance as to what matters should be considered by the judge in deciding whether to set a minimum term. There are also no guidelines as to what matters should be considered when determining the length of the minimum term.

[43] He should however give reasons when exercising the discretion not to impose a minimum term. He should also give reasons when setting the length of the minimum term. Some guidance may be found in the decision of *R v Jones* [2005] EWCA Crim. 3115, [2006] 2 Cr. App. R (S) 19 for the purpose of deciding whether a minimum term ought to be set. The Court of Appeal observed at paragraph 10:

"A whole life order should be imposed where the seriousness of the offending is so exceptionally high that just punishment requires the offender to be kept in prison for the rest of his or her life."

In determining what the length of the minimum term should be a trial judge should consider the personal circumstances of the convicted murderer and his previous history."

.....

*"[48] It is clear that the sentencing practices that were being applied prior to the coming into effect of the Crimes Decree, the Sentencing Decree and the Constitution no longer apply. Whatever matters a trial judge should consider when determining whether to set a minimum term and the length of that term under section 237, the process is not the same as arriving at a head sentence and a non-parole period. **In my judgment the decision whether to set a minimum term and its length are at the discretion of the trial judge on the facts of the case....."** [All emphasis is mine].*

[21] Bradley Robert Dawson, considering all the facts and circumstances of this case, I deem that it is appropriate to fix a minimum term to be served by you before pardon may be considered. In determining the length of the minimum term I take the following factors into consideration:

- (1) You inflicted extensive injuries to the deceased which is clearly depicted in her Post-Mortem Report, the Photographic Booklet of the Crime Scene and the Photographic Booklet of the Post Mortem Examination, which have been tendered in Court by the State.
- (2) You have shown utter disregard to the deceased's right to life and her personal liberty.
- (3) Your conduct after the incident was appalling. Having inflicted serious and life threatening injuries to the deceased you fled the scene of the crime, leaving the deceased alone and helpless in your Bure. Her body was discovered several hours later.
- (4) The deceased was your newly wedded wife, who had accompanied you to Fiji to celebrate your honeymoon. As such, she trusted you and relied upon you. Being so, you should have protected and safeguarded her.

Instead you have breached the trust expected from you and the breach was gross.

- (5) The deceased's parents have been emotionally and psychologically traumatized by the loss of their only child and the circumstances which led to her death. The emotional and psychological harm is said to be continuing.
- (6) You are a first offender with no previous history of offending. This has been confirmed by the State and also by way of a communication from the Tennessee Bureau of Investigation, Nashville, Tennessee.
- (7) As personal circumstances, you have submitted the following factors to Court:
 - (i) That you are 41 years old. Your date of birth is 11 October 1983. At the time of the offending you were 38 years.
 - (ii) You are said to be the youngest son of Suzanne Dawson, a Retired Educator of Tennessee, who is now 77 years of age. Your older brother, Christopher Scott, is a law enforcement professional with over 20 years of experience. You also have a younger sister, who is a Baker at a Grocery Store.
 - (iii) After your graduation from University, it is stated that you worked at Youth Villages from 2007 to 2015. Youth Villages is a non-profit organization that provides mental health care and services to children and adolescents. It serves children and families all over the United States of America.
 - (iv) From 2015 to 2020 you had worked at Support Solutions. Support Solutions provide services for adults with mental and psychological issues and serves clients in Tennessee and North Carolina.

- (v) From 2020 up until the time you came to Fiji and was arrested and remanded for this case, you had again been working at Youth Villages.
 - (vi) You were said to be involved with charities, both local (Memphis, Tennessee) and others in the United States and worldwide. This includes the St. Jude Children's Research Hospital, SoFar Sounds, Youth Villages, PAWS and the World Wildlife Fund. You have also participated in several charity races so as to raise funds for charitable work. For two years you had donated to and participated in the Community Foundation of Memphis, which helped raise funds and give grants to inner-city non-profit organization that served the needs of vulnerable populations in Memphis.
 - (vii) It is stated that for the two and a half years you have been in remand at the Natabua Remand Centre, you had worked on the fatigue team (outside work) and the in property store in the administration building. You were voted by your fellow remand prisoners into the position of Qase ni Bure (Dorm Leader) of Makaluva Dua. As a Dorm Leader you had helped to organize the structure of the dorm inhabitants and set the standards and rules for others to follow. You are said to be considered a trusted prisoner by the Correction Officers and has helped to maintain order and defuse difficult situations at the Remand Centre.
- (8) In mitigation it is further submitted that you have been a person of previous good character. In support of this claim, character reference letters have been submitted from the following:
- (i) Suzanne Dawson - Your mother.
 - (ii) Christopher Scott - Your older brother.
 - (iii) Paul Allen England - Attorney at Law, England Law Office,

Decaturville, Tennessee.

- (iv) James A England - Decatur County Bank, Decaturville, Tennessee.
- (v) Rev. G. Lee Ramsey - Ordained Elder, The United Methodist Church, Tennessee.
- (vi) Gall Crawley Story - Retired Teacher, Decaturville, Tennessee.
- (vii) Angie Boggan - a Teacher of yours, at Decaturville, Tennessee.
- (viii) Coy Schnadelbach - a Friend.
- (ix) Harry Durbin Jr. - a Friend.
- (x) Brittany Nicole Feltman - Programme Director/Social Worker, Greenville, Tennessee.

All the above character references suggests that you are a person of previous good character and that you are a pleasant, responsible, trustworthy and honest person.

- (9) You have been in remand custody for this case for a long period of time. You were arrested for this case on 10 July 2022 and remanded into custody. You have remained in custody since that day. Therefore, you have been in remand custody for this case for a period of 2 years and 7 months. It has been held previously that the Sentencing Court is not required to consider the time spent in remand in determining the minimum term to be served before pardon may be considered. However, I am of the opinion, that the time spent in remand, especially when the time in remand is a long period of time, is an important factor that this Court must consider when determining the minimum term to be served before pardon may be considered.

[22] Bradley Robert Dawson, the penalty for the offence of Murder is a mandatory sentence of imprisonment for life. Accordingly, I sentence you to a mandatory sentence of imprisonment for life. Taking into consideration all the facts and circumstances I have referred to above, including your personal circumstances and your previous history, and

also taking into consideration the period you have spent in remand for this case, I set a minimum term of 18 years to be served by you before pardon may be considered.

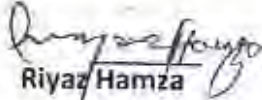
[23] In the result, I sentence you to a mandatory sentence of imprisonment for life. I set a minimum term of 18 years to be served by you before pardon may be considered.

[24] You have 30 days to appeal to the Court of Appeal if you so wish.



AT LAUTOKA

Dated this 11th Day of February 2025


Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

Solicitors for the State
Solicitors for the Accused

: Office of the Director of Public Prosecutions, Lautoka.
: Anil Prasad Lawyers, Barristers & Solicitors, Lautoka.