

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 219 OF 2019

STATE

-v-

MOHAMMED AIYAZ AHMED

Counsel : Ms M. Lomaloma for State
: Ms A. Chand for Defence

Date of Judgment : 11 February 2025
Date of Sentence Hearing : 17 February 2025
Date of Sentence : 24 February 2025

SENTENCE

1. Mr Mohammed Aiyaz Ahmed (the Offender) was convicted after trial on the following information filed by the Director of Public Prosecutions:

FIRST COUNT

Statement of Offence

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

Particulars of the Offence

MOHAMMED AIYAZ AHMED on the 20th day of November, 2019 at Lautoka in the Western Division murdered **SABINA AZMIN NISHA**.

SECOND COUNT

Statement of Offence

BREACH OF DOMESTIC VIOLENCE RESTRAINING ORDER: Contrary to Section 77 (1) (a) of the Domestic Violence Act 2009.

Particulars of Offence

MOHAMMED AIYAZ AHMED on the 20th day of November 2019 at Lautoka in the Western Division, having notice of the Domestic Violence Restraining order number 450/19 by which he was bound, without reasonable excuse, contravened the said order by stabbing **SABINA AZMIN NISHA**, a protected person, to death.

2. The Offender now stands before this Court to receive his sentence. The Counsel filed helpful sentencing and mitigation submissions for which this Court is grateful.
3. The facts of this case can be summarised as follows: The Offender and the deceased were married with two young children. They resided in Drasa with the children. They developed marital problems over time, which led them to obtain Domestic Violence Restraining Orders (DVROs) against each other. Despite the DVROs, they lived under one roof but slept separately in the divided matrimonial home.
4. A few days before the incident, the deceased left the marital home with two children to live with her sister. Having stayed with her sister for a week, she returned home on 19 November 2019, leaving the children at her sister's place. While she was sleeping around 2 a.m., the Offender went to her bedroom with the knife he had hidden underneath his mattress. He punched her to wake her up. He then slit her throat and stabbed her in her abdomen. After stabbing her wife he went to the bathroom and washed himself and the knife. He took the knife and the gloves he used to kill his wife and threw them to a nearby well. He then proceeded to his workplace.
5. At the post-mortem, the pathologist observed multiple cut injuries all over the deceased's body. The Offender confessed to the Murder at the caution interview and the charge.
6. Murder is the most serious offence in the Crimes Act. Any person convicted of murder should be sentenced in compliance with section 237 of the Crimes Act. The penalty for murder is mandatory life imprisonment, with judicial discretion to set a minimum term that must be served before the President may consider a pardon. A pardon can be either

free or conditional and forms part of the prerogative of mercy exercised by the President upon the recommendation of the Mercy Commission under section 119 of the Constitution¹.

Minimum Term for Murderer

7. In selecting the minimum term, the Court exercises discretion in two ways. The first is whether a minimum term should be set at all. The second is the length of the minimum term that the offender should serve before a pardon may be considered². There may certainly be an overlap in reasons for the two aspects of the discretion for a minimum term³.
8. In the Sentencing and Penalties Act (SPA), there is no guidance as to what matters should be considered in deciding whether to set a minimum term and determining the length of the minimum term. It has been held that 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.⁴
9. In *Balekivuya v The State*⁵ the Court of Appeal took the view that in determining the length of the minimum term, the Court should consider the personal circumstances of the murderer and his/her previous history.
10. In *Vuniwai v State*⁶, the Court of Appeal was specifically invited to pronounce a guideline judgment on what matters should be considered in deciding whether to set a minimum term and determining the length of the minimum term. Having considered the jurisprudence of other jurisdictions, previous decisions, the SPA and the Constitution, the Court introduced a sentencing guideline on how to exercise the judicial discretion for the minimum term.
11. In the latest approach, the Court of Appeal has rejected the notion that in murder sentencing the SPA has no application. It has also rejected the pure instinctive synthesis methodology

¹ *Aziz v The State* [2015] FJCA 91; AAU112.2011 (13 July 2015)

² *Balekivuya v The State* [2016] FJCA 16; AAU0081.2011 (26 February 2016)

³ *Vuniwai v State* [2024] FJCA 100; AAU176.2019 (30 May 2024)

⁴ *R v Jones* [2005] EWCA Crim. 3115, [2006] 2 Cr. App. R (S) 19

⁵ [2016] FJCA 16; AAU0081.2011 (26 February 2016)

⁶ [2024] FJCA 100; AAU176.2019 (30 May 2024)

to select the length of the minimum term. Rather, the Court has advocated a mixed methodology as was suggested by the Supreme Court in *Senilokula v State*⁷ where the court identifies its starting point, states the aggravating and mitigating factors and then announces the ultimate sentence without saying how much was added for the aggravating factors and how much was then taken off for the mitigating factors.

12. While some considerations may overlap in determining whether to fix a minimum term and deciding the length of that minimum term, there are also distinct factors for each stage of the decision-making process. By carefully weighing these considerations, the Court must strive to make informed and just decisions regarding the imposition and length of minimum terms⁸.
13. Accordingly, in determining whether to fix a minimum term, the Court should consider the following factors⁹
 - **Severity of the Crime:** This involves evaluating the nature and extent of the offence. Factors such as whether the crime was premeditated, involved extreme violence, or resulted in multiple victims can influence the decision. The judge assesses the overall impact of the crime on the victim, their family, and society.
 - **Culpability of the Offender:** The judge considers the level of the offender's responsibility for the crime. This includes examining the degree of intent, motive, and any aggravating factors such as previous violent behavior or lack of remorse.
 - **Victim Impact:** Judges take into account the emotional, psychological, and financial harm inflicted on the victim and their loved ones. Victim impact statements may provide insight into the lasting effects of the crime, helping the judge understand the full scope of the harm caused.
 - **Public Safety:** Ensuring the safety of the public is paramount. Judges assess the risk posed by the offender to society, considering factors such as the likelihood of reoffending and the potential danger posed by releasing the offender back into the community.
 - **Previous Criminal History:** The offender's criminal record, particularly any history of violent or serious offenses, is considered. Repeat offenders or those with a pattern of criminal behavior may receive harsher sentences to protect the public and deter future crimes.

⁷ [2018] FJSC 5; CAV0017.2017 (26 April 2018)

⁸ Para 76 *Vuniwai v State* [2024] FJCA 100; AAU176.2019 (30 May 2024)

⁹ Para 77

- **Sentencing Guidelines and Precedents:** Judges refer to established legal principles, sentencing guidelines, and precedents in similar cases to ensure consistency and fairness in sentencing. This helps prevent arbitrary or disproportionate sentences and promotes confidence in the justice system.

14. This murder was clearly intentional, motivational and premeditated; it involved extreme violence and affected the deceased's young children. The victim impact statement shows that the impact on the deceased's children is likely to be devastating. However, in terms of community protection, an early release during the Offenders' lifetime will have comparatively less concern for society given the isolated matrimonial dispute that had led to the offending and lack of evidence of previous violent behaviour on the part of the Offender. The Offender has maintained a clear record with nil previous convictions over 40 years of his life. A lifetime incarceration for the Offender would be obnoxious to the sentencing and proportionality principles. Therefore, I am of the opinion that a minimum term should be fixed.

15. In *Vuniwai*¹⁰ the Court recognised the following considerations for deciding the length of the minimum period:

- **Rehabilitation Potential:** Assessing the offender's potential for rehabilitation is crucial. Judges consider factors such as participation in rehabilitation programs, expressions of remorse, and willingness to change as indicators of rehabilitation potential.
- **Specific Deterrence:** The length of the minimum term may serve as a deterrent to the offender, dissuading them from committing future crimes. A longer minimum term may be imposed to deter the offender from reoffending or engaging in similar criminal behavior.
- **General Deterrence:** The minimum term also serves as a deterrent to others in society. Judges consider the message sent to the community about the consequences of similar crimes. A longer minimum term may be necessary to send a strong deterrent message and protect the public interest.
- **Proportionality:** The length of the minimum term should be proportionate to the severity of the offense and the offender's level of culpability. Judges strive to ensure that the punishment fits the crime and is not unduly harsh or lenient.

¹⁰ Paragraph [78]

- Proportionality: The length of the minimum term should be proportionate to the severity of the offense and the offender's level of culpability. Judges strive to ensure that the punishment fits the crime and is not unduly harsh or lenient.
- Age and Maturity: In cases involving young or juvenile offenders, judges consider the offender's age, maturity, and capacity for change. Rehabilitation and education may play a more significant role in determining the length of the minimum term for these offenders.
- Human Rights Considerations: Judges must ensure that the offender's rights are respected throughout the sentencing process, including the right to a fair trial and proportionate punishment. This involves balancing the need for justice with the principles of fairness and respect for human dignity.
- Judicial Discretion: Judges have discretion to consider the unique circumstances of each case. This may include mitigating factors such as the offender's cooperation with authorities, remorse, or evidence of rehabilitation. Conversely, aggravating factors may warrant a longer minimum term.

16. As the first step, the courts should use the following table to set the minimum term. For the purposes of setting the starting point for the minimum term, the table sets out three categories: Extremely High, High and Low¹¹.

Categories of Seriousness

Extremely High	
Starting point	25 years' imprisonment
Minimum term range	20 – 30 years' imprisonment
High	
Starting point	20 years' imprisonment
Minimum term range	15 – 25 years' imprisonment
Low	
Starting point	8 years' imprisonment
Minimum term range	05 – 15 years' imprisonment

Extremely High

- I. The murder of two or more persons, where each murder involves a substantial degree of premeditation or planning or the abduction or kidnapping of the victim, or sexual or sadistic conduct.
- II. The murder of a child if involving the abduction of the child or sexual or sadistic motivation.

¹¹ Paragraph (91)

- IV. A murder done for the purpose of advancing a political, religious, racial or ideological cause or terrorist act or in furtherance of a coup (military or otherwise) involving overthrowing a democratically elected government or involving ethnic cleansing or in the course of ethnic riots or killing of a political figure for political ends.
- V. A murder by an offender previously convicted of murder or the offender is convicted of two or more counts of murder whether or not arising from the same transaction.
- VI. A murder committed with extreme brutality, cruelty, depravity or callousness or cold-blooded execution.
- VII. A murder committed in any other exceptional circumstance including instances amounting to crimes under international criminal law.

High

- I. A murder involving unlawful entry into, or unlawful presence in a dwelling house or commercial or public establishment or place or the use of a firearm, other weapon, explosive or poison.
- II. A murder done for or in furtherance of payment, ransom or gain (such as a murder done in the course of contract killing or in furtherance of extortion, robbery or burglary or done in the expectation of property- moveable or immovable or intangible gain as a result of the death).
- III. A murder intended to conceal another offence or avoid the detection, prosecution or conviction of any person or in any other way to obstruct or interfere with the course of justice.
- IV. A murder involving sexual or sadistic conduct.
- V. The murder of two or more persons.
- VI. A murder that is aggravated by racial or religious hostility or by hostility related to sexual orientation.
- VII. A murder that is aggravated by hostility related to disability or transgender identity.
- VIII. If the offender took a knife, other weapon or poison to the scene intending to commit any offence or have it available to use as a weapon and used that knife, other weapon or poison in committing the murder .
- IX. A murder committed in the course of arson, treason, espionage, sabotage, piracy, escaping or rescuing from prison, lawful custody or detention or in the course of any other serious offence.
- X. A murder committed in sight of deceased's children.
- XI. A murder committed in domestic-violence context.

Low

Those cases in which, in the judge's opinion, the seriousness does not fall within Extremely High or High.

- 17. I would identify this murder in the 'high' category, attracting a starting point for a minimum term of 20 years imprisonment and a sentence within the range of 15-25 years imprisonment in view that it was committed in a domestic setting using a knife. The photographs tendered

and the pathologist's evidence proved that the deceased had sharp cut injuries all over her body including those of defensive and fatal. There is also evidence in the DNA report and the caution statement suggestive of sexual violence.

18. Once the starting point for the minimum term has been picked, the Court should proceed to the 2nd step where the Court is required to identify the aggravating and mitigating factors which were not used to select the starting point for the minimum term (to avoid double counting).
19. In Vuniwai, the Court suggested the following non-exhaustive list of aggravating and mitigating factors¹²: (For this sentence, I would take only the highlighted factors into account to avoid double counting).
 - (a) Significant degree of planning or premeditation.
 - (b) The fact that the victim was particularly vulnerable because of age, health, or any other disability.
 - (c) The fact that the offender had repeatedly or continuously engaged in behaviour towards the victim that was controlling or coercive and at the time of the behaviour, the offender and the victim were personally connected.
 - (d) Mental or physical suffering such as torture inflicted on the victim before death.
 - (e) The abuse of a position of trust.**
 - (f) The use of duress or threats against another person to facilitate the commission of the offence.
 - (g) The fact that victim was providing a public service (such as taxi driver) or performing a public duty.
 - (h) The use of sustained and excessive violence towards the victim.
 - (i) Concealment, destruction of the murder weapon or other means used in murder or concealment, destruction or dismemberment of the body.**
 - (j) Murder committed whilst on bail.
 - (h) Substantial harm, damage or loss caused to the deceased's family.

¹² Paragraph [94]

20. The Court suggested the following mitigating factors that may be relevant to the offence of murder (not exhaustive)¹³: (I would take only the highlighted mitigating factor into account).
- (a) An intention to cause serious bodily harm rather than to kill,
 - (b) Lack of premeditation,
 - (c) The fact that the offender suffered from any mental disorder or mental disability which (although not falling within mental impairment under section 28(1) or diminished responsibility under section 243 of the Crimes Act) lowered the offender's degree of culpability.
 - (d) The fact that the offender was provoked (for example, by prolonged stress) but, in a way not amounting to provocation under section 242 of the Crimes Act.**
 - (e) The fact that the offender acted to any extent in self-defense (although not falling within self-defense under section 42(1) of the Crimes Act) or, in the case of a murder committed in fear of violence,
 - (f) A belief by the offender that the murder was an act of mercy, and
 - (g) The age of the offender.
21. The Defence Counsel has submitted the following personal circumstances: That Offender was 40 years old at the time of the offence and is now 46 years old. He is a cook/chef by profession, earning \$200 a week. He has two young children. He has no previous convictions. He fully cooperated with the police at the interview and the scene reconstruction.
22. The sentence prescribed for Breach of DVRO is a fine of FJD 1,000.00 and imprisonment for 12 months. For repeated offenders, a fine of \$2,000.00 and 12 months imprisonment. For breaching a DVRO, there is no tariff established yet. The Offender murdered a protected person in utter disregard of the DVRO issued by the Court.
23. According to Section 17 of the Sentencing and Penalties Act 2009, if an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court has the discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence for the Offender.

¹³ Paragraph [95]

24. In *Balekivuya*, the Court of Appeal held¹⁴ that there is no requirement for a trial judge to consider the time spent on remand when imposing a minimum term under section 237 of the Crimes Act. However, the Court took a different view in *Vuniwai* and held that the provisions of SPA are effectual even in murder cases¹⁵. Section 24 of the SPA provides that if an offender is sentenced to a term of imprisonment any period of time during which the offender was held in custody prior to the trial of the matter shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender. Accordingly, in determining the minimum term to be served by the Offender, it is important that this Court consider the remand period.
25. The Offender had been in remand custody for approximately 2 years and 3 weeks. He was arrested for this case on 20 November 2019 and remanded until he was granted bail by this Court on 15 December 2021. On 11 February 2025, the day on which the Judgment was pronounced, he was remanded into custody once again. Therefore, the Offender has been in remand custody for approximately 2 years and 5 months.

Summary

26. Mr Mohammed Aiyaz Ahmed (the Offender) is sentenced to a mandatory sentence of imprisonment for life. Taking into consideration all the facts and circumstances I have referred to above, including the Offender's personal circumstances, previous history and the remand period, I set a minimum term of 18 years to be served before a pardon may be considered.
27. The Offender has 30 days to appeal to the Court of Appeal if he so wishes.




Aruna Aluthge

Judge

¹⁴ Paragraph [41]

¹⁵ Paragraph [117]

24 February 2025

At Lautoka

Solicitors

Director of Public Prosecution for State

Messrs Anishini Chand Lawyers for Defence