

IN THE HIGH COURT

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 154 OF 2014

STATE

-v-

SULIASI NASARA

Counsel: Mr. J. Niudamu with Ms. R. Uce & Ms. S. Naibe for the State
Ms. S. Dunn for Accused

Date of Judgment: 06th June, 2107

Date of Sentence: 13th June, 2017

SENTENCE

1. Mr. Suliasi Nasara, you were charged with one count of Murder Contrary to Section 237 and one count of Aggravated Robbery contrary to Section 311 (b) respectively of the Crimes Act 44 of 2009.
2. You were tried on following Information:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

SULIASI NASARA on the 16th day of November 2014, at Lautoka in the Western Division, murdered NITIN NAVINESH KUMAR.

SECOND COUNT

Statement of Offence

AGGRAVATED ROBBERY: Contrary to Section 311 (b) of the Crimes Act 2009.

Particulars of Offence

SULIASI NASARA on the 16th day of November 2014, at Lautoka in the Western Division, robbed NITIN NAVINESH KUMAR of Nissan Vanette Van Registration Number CG 638 valued at \$3000 belonging to Vijay Lakshmi and at the time of the robbery used an offensive weapon namely, a wheel spanner.

3. At the conclusion of the trial, Assessors unanimously found you not guilty of Murder on 1st count and instead found you guilty of Manslaughter. On the second count, they unanimously found you guilty of Aggravated Robbery.
4. The deceased was providing night time public transport to people in Lautoka Town. You hired deceased's van pretending that you are going home. As the deceased lawfully reacted against the physical violence on him and the threat of robbery you overpowered him and incessantly attacked with a wheel spanner

several times on the deceased's head. Then you took the van out of deceased's possession together with the radio fitted into the van.

5. You used a wheel spanner, an offensive weapon. The deadly strokes had landed on deceased's head, the most vulnerable part of the body. Whilst the deceased was on the ground motionless you struck deceased's head again about three times with the wheel spanner. You took no effort to transport the deceased to the hospital and fled the scene in his van.
6. The deceased had received severe traumatic head injuries caused by blunt force trauma. According to the pathologist, a high energy force had been used to cause such an extensive damage. Pathologist noted multiple injuries over the back of the head and the top part of the head. He also noted extensive subarachnoid hemorrhage and also pockets of subdural hemorrhage.
7. In light of the above set of facts, having disagreed with Assessors opinion on count 1, I found you guilty of Murder. You were convicted accordingly on 6th June, 2017 for the offences of Murder and Aggravated Robbery.
8. You stand today before me to receive sentences against you. The maximum sentence for the offence of Murder is mandatory imprisonment for life while the court having discretion to fix a minimum term, after weighing the aggravating circumstances and mitigating factors. Minimum terms for Murder had been set between 11 and 30 years imprisonment, depending on the mitigating and aggravating factors: *State v Colanaudolu* [2017] FJHC 384; HAC121.2016S (26 May 2017), *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. The offence of Murder is the most heinous crime committed against humanity. Preservation of human life is the fundamental objective in maintaining the wellbeing of our society. There can be no more serious offence than one which needlessly takes away the life of an innocent person. Devastation caused to the deceased's family will be immense and immeasurable.
10. The offence of Aggravated Robbery contrary to S.311 (b) of the Crimes Act 2009 carries a maximum penalty of 20 years' imprisonment.
11. The tariff for Aggravated robbery ranges between 8-16 years imprisonment. The Court of Appeal in Maya AAU 0053.2011 (27 February, 2015) set the tariff for Aggravated Robbery in the range of 10 to 15 years. In the recent Supreme Court decision (24th April 2015) of Wallace Wise CAV 0004 of 2015, the court confirmed the tariff for spate of Aggravated Robberies to be between 10 and 16 years (para 3). Madigan J in Rarawa Crim App. HAA 5 of 2105, set a tariff for Aggravated Robbery in the range between 8 to 16 years.
12. In the sentencing process, I bear in mind the objectives in imposing a term of imprisonment under Section 4(1), the general principle of sentencing under Section 15(3) of the Sentencing and Penalties Act, and jurisprudential underpinnings so as to balance competing interests of the offender, the victim and the society at large.
13. To decide your sentence for both offences, I considered the nature and gravity of the offence. You have demonstrated a high level of culpability and degree of responsibility. The impact of the offence on the deceased's family, the degree of violence and injuries caused to the deceased and loss and damage resulting from the offences are enormous.

14. Although you have stated in your caution statement that you attacked the deceased in self-defence at an encounter triggered by a money transaction, your claim was not supported by evidence and thus disbelieved. It was in evidence that you committed these crimes on a victim who, by virtue of his employment, vulnerable. He was exposed to this pathetic situation because he provided services to the public during night time. An attack on the public transport service providers must not be condoned and must be punished to ensure that essential services to public are not hindered.
15. Given the circumstances of offending, there is a degree of pre-meditation in the commission of the robbery although there is no evidence of pre planning to kill the deceased.
16. Upon consideration of submissions in mitigation, I will now proceed to consider an appropriate sentence for you. Learned Defence counsel placed before court following personal background in mitigation of your sentences. They are:
 - (i) You are now 27 years of age;
 - (ii) You are not married but have a daughter aged 9 months.
 - (iii) You works as casual worker as a logger and support your mother.
17. You have served 15 months in remand.
18. As shown above, the offence of Aggravated Robbery attracts a range of 8-16 years of imprisonment. Having considered the objective seriousness of the offence, I pick 10 years as the starting point and add 3 years to reflect aggravating factors to arrive at 13 years. I reduce 1 year for mitigating factors and arrive at 12 years. I reduce further 15 months for the period in remand and

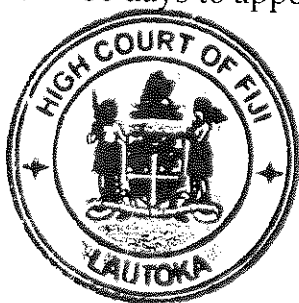
arrive at a sentence of 10 years' and 9 months imprisonment for the offence of Aggravated Robbery, with a minimum period of 9 years.

19. As regards the offence of Murder, I sentence you to life imprisonment as I am mandatorily required to. Upon a careful consideration of the provisions of Sections 4 and 15 of the Sentencing and Penalties Act, the facts and circumstances as set-out above, and the remand period, I order that you serve a minimum term of 18 years' imprisonment.
20. Having considered the totality and one transaction principles, I order that you serve your sentences concurrently.
21. Your final sentence is as follows:

1st Count- Murder - 18 years' imprisonment.

2nd Count- Aggravated Robbery- 10 years and 9 months' imprisonment with a non- parole period of 9 years, to be served concurrently.

22. 30 days to appeal the Fiji Court of Appeal.




Aruna Aluthge

Judge

At Lautoka

13th June 2017

**Solicitors: The Office of the Director of Public Prosecutions for State.
Legal Aid Commission for Accused.**