

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 013 of 2017

BETWEEN: STATE

PROSECUTION

AND: WAISEA MOTONIVALU

ACCUSED PERSON

Counsel: Ms. S. Serukai for State
Mr A. Chand for Accused

Sentence: 19th December 2017

S E N T E N C E

1. Mr. Waisea Motonivalu, you are being charged with one count of Murder, contrary to Section 237 of the Crimes Act which carried a mandatory sentence of imprisonment of life. The particulars of the offence is that:

“Waisea Motonivalu and others on the 1st day of January 2017, at Lokia, Rewa, in the Central Division, murdered Jai Prasad”.
2. You pleaded guilty for this offence on the 01st of November 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 the offence of murder as charged in the information.
3. It was revealed in the summary of fact, which you admitted in open court that you have committed this offence in the early morning of the New Year day of 2017. You and your other accomplices were drinking home brew at the house of one Penelope Vodo.

At about midnight, home brew finished and you and your accomplices then planned to go to the house of the deceased. You went and knocked the door of the deceased's house while others were hiding. You then asked the deceased for a cigarette. When the deceased said that he had no cigarette, you forcefully entered into the house and started to punch him. The deceased managed to escape and ran out of the house. You then followed him and managed to catch him. You then pulled him to the nearby bushes and continued to punch and kicked him on his face and ribs. The deceased died due to the injuries that he sustained during the assault. Your conduct of punching and kicking the deceased on his face and ribs has substantially contributed to the death of the deceased.

4. This is a case of breaking of a dwelling house in night and violently attacking the occupant, causing his death. Hon Chief Justice Gates in **Wise v State (2015) FJSC7; CAV0004.2015 (24 April 2015)** has outlined the important of safe and secure environment for the people from violent intruders as of this nature, where his Lordship 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 civilized 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 this offence obviously outweighs the principle of rehabilitation.
6. The punishment for the offence of murder is a mandatory sentence of life imprisonment. 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. 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 by punching and kicking him on his face and ribs. You have followed the deceased when he tried to escape from you. You then pulled him to the bushes and continued to punch and kick him.
9. The deceased was a forty-six (46) years old person. He lived alone in his house. You and your accomplices invaded his house in the night. Accordingly, it appears that the deceased was in a vulnerable and defenseless situation. I consider these grounds as aggravating factors of this offending.

10. You are 35 years old married farmer. You are a first offender. Therefore, I find that you are entitled for a discount for your previous good character.
11. You pleaded guilty for this offence before it proceeds to the hearing, though it was not a first available opportunity. In doing that you have expressed your remorse and also you have 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.
12. You killed the deceased in the course of robbing his house. You and your accomplices decided to go and rob the house of the deceased, when your drinks finished. It appears that it was a planned 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.
13. In conclusion, I sentence you for imprisonment of life for the offence of Murder, contrary to Section 237 of the Crimes Act with minimum term of twenty (20) years before being considered for any pardon.
14. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
19th December 2017

Solicitors
Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused