

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

High Court Criminal Case No. HAC 63 B of 2015

BETWEEN : STATE

AND : SHALENDRA KRISHNA SAMI

Counsel : Mr A. Singh and Ms Lata for the State
Ms J. Singh and Ms Ali [LAC] for the Accused

Dates of Hearing : 05, 07, 08, 09 March 2019

Closing Speeches : 13 March 2019

Date of Summing up : 18 March 2019

Date of Judgment : 20 March 2019

Date of Sentence : 26 March 2019

SENTENCE

1. You, Shalendra Krishna Sami were found guilty and stand convicted for the offence of murder contrary to Section 237 of the Crimes Act No 44 of 2009. As per the Information filed by the State the particulars of the offence are as follows;

Shalendra Krishna Sami on the 16th day of April 2015 at Lautoka in the Western Division murdered Chandra Baskaran.

2. You pleaded not guilty to the charge of murder and after a full hearing, the assessors unanimously found you guilty. Subsequently you were convicted for murder in my judgement delivered on 20 March 2019.
3. The deceased was your own brother. You lived in the same house with the deceased, his wife, his two children and your parents. The evidence revealed that there had been continuous disputes between you and your deceased brother. Eruption of fights had been a frequent occurrence and you had a strained relationship with the deceased according to the evidence of the deceased's wife. On 16 April 2015 you had a fight with your deceased brother. Only you and the deceased were at home. You received injuries in one of your fingers as a result of the fight. Later the deceased brought a kitchen knife and you started struggling with him. During the struggle you pushed the deceased's hand so hard and the knife struck the deceased's neck. Having seen the knife struck the deceased's neck, you pushed the knife further into his neck. After the deceased fell on the floor, once again you stabbed the deceased on his back. As per the medical evidence you caused two independently fatal wounds on the deceased resulting instant death. Later you called your mother who was at a neighbour's house and you confessed to her that you killed your brother. The incident was reported to the police as a case of suicide. Later upon investigations you were arrested and charged for murder. You admitted to the offence in your caution interview.
4. This is an unfortunate example of how inaction and tolerance for domestic violence could ultimately escalate into homicide. Domestic violence of any nature or any degree must be nipped in the bud and it is the duty of the family members as well as the members of the society to report incidents of domestic violence to authorities. Early prevention of domestic violence can stop repetition of violence and unfortunate events like this. The failure to resort to proper remedies to prevent violence at home has cost the life of a father of two young children.
5. The offence of murder carries a mandatory sentence of life imprisonment.
6. However, the court has a discretion pursuant to Section 237 of the Crimes Act, to set a minimum term to be served before pardon may be considered. According to the judgement in *Balekivuya v State* [2016] FJCA 16; AAU0081.2011 (26 February 2016) when a person is sentenced for murder the trial judge is required to exercise the

discretion to set a minimum term in two steps. firstly, the court should consider whether a minimum term should be set. Secondly, it must consider the length of the term.

7. In *Balekivuya* (supra) the Court of Appeal, while observing that there are no guidelines as to what matters should be considered in deciding whether to set a minimum term or the length of the term, further noted;

“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.”

8. As a practice, the courts in Fiji have considered aggravating and mitigating factors to exercise the discretion to set a minimum term to be served before pardon is considered and the length of the term. In *State v Radike* [2018] FJHC 1212;HAC11.2013 (18 December 2018) Justice Sharma set the minimum term stating the following;

“In arriving at the minimum term this court has taken into account the aggravating factors, mitigation of all the accused persons and their remand period which is just in the circumstances of this case.”

9. In *State v Motonivalu* [2017] FJHC 950; HAC013.2017 (19 December 2017) Justice Rajasinghe observed that;

“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.”

10. In light of the above observations I will now consider the aggravating factors, mitigating factors, your personal circumstances and your previous history to decide whether a minimum term to be served before pardon may be considered and if so, the length of the minimum term that you should serve before pardon may be considered.
11. You committed this offence in a domestic environment. You used a weapon namely, a kitchen knife and caused multiple stab injuries. The incident was initially reported as a case of suicide, possibly to mislead the investigations. Your actions resulted in two children losing their father and a wife losing her husband. Those factors have aggravated your actions.
12. You are 46 years old and single. You were homeless after the incident and it was informed that you sleep at a bus stand. You are unemployed. You have an undiagnosed medical condition which makes you collapse at times.
13. It appears that you have been in continuous stress due to fights between you and the deceased. Justice Madigan in *State v Bati* [2018] FJHC 1086; HAC179.2017 (16 November 2018) considered prolonged period of stress in determining the minimum term, among other things.
14. You have no previous convictions.
15. In the sentencing submissions your counsel has requested that the time you spent in remand custody may be regarded as a period of imprisonment already served by you. It should be noted that Section 24 of the Sentencing and Penalties Act has no applicability to the offence of murder, where there is a mandatory sentence as per the decision in *Balekivuya* (supra). Although you have spent about 6 months in remand custody I cannot take that into consideration.
16. Having considered the circumstances in this case I am of the view that a minimum term should be set to reflect the gravity of your conduct and I determine the length of the minimum term to be 12 years having regard to all the aggravating factors, mitigating factors, your personal circumstances and your previous history.
17. Accordingly, you are sentenced to mandatory life imprisonment for the offence of murder with a minimum term of 12 years to be served before pardon may be considered.

18. 30 days to appeal to the Court of Appeal.



Rangajeeva Wimalasena
Acting Judge

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors of the Accused: Legal Aid Commission