

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO : HAC 79 OF 2020

STATE

v

MOHAMMED MASUM

Counsel : Ms. S. Naibe with Mr. A. Singh for Prosecution
Accused in Person

Date of Judgment: 4 May 2023

Date of Sentence 18 May 2023

SENTENCE

1. Mr. Mohammed Masum, you stand convicted of two counts of Murder on the following information:

COUNT 1

Statement of Offence

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

Particulars of Offence

MOHAMMED MASUM on the 15th of April, 2020, at Rarawai, Ba,
in the Western Division murdered MOHAMMED ISLAM
NAZRUL KHANDAKAR

COUNT 2

Statement of Offence

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

Particulars of Offence

MOHAMMED MASUM on the 18th of April, 2020, at Rarawai, Ba,
in the Western Division murdered ROHAN BAPARI

2. The two deceased were your flat mates. It was revealed in evidence that Mohammed Nazrul Khandakar (deceased-1) facilitated the travel that brought you and Rohan Bapari (deceased-2) to Fiji from Bangladesh on a false promise that you will be sent to Australia. You all were renting a flat in Rarawai, Ba, for the time being. Nazrul became a nuisance when he kept demanding money from you and Rohan. Nazrul also tortured you by burning your palms. Rohan expressed his intention to kill Nazrul. You supported to execute Rohan's plan to kill Nazrul and bury him in the cane field. You and Rohan together dug the grave in the cane field in advance of the killing. While Nazrul was sleeping in the flat, Rohan went to the landlord's kitchen to take a cane knife. You kept watching the doorway to ensure that nobody was coming to the flat. Rohan struck the sharp knife on Nazrul's head when he was still sleeping. You were standing right behind Rohan when he struck the knife. You and Rohan together buried Nazrul's dead body in the grave you had dug in the cane field. Upon being pointed out by you, Nazrul's dead body was later discovered.
3. The Pathologist who conducted the post mortem on exhumed body observed a severe and massive deep incised wound or cut that went across the face. It was a clean cut right across. The blood vessels, muscle structures and also the spinal cord had been cut and severed. The complete transection of the spinal cord and the vessels of the head caused the death of Nazrul.
4. After burying the dead body of Nazrul, an argument broke out between you and Rohan in which you say you received death threats. You said you suspected that Rohan will kill you.

You took a hammer from landlord's kitchen and struck it on Rohan's head to kill him. The internal fracture of the temporal bone and excessive intracranial haemorrhage caused the death of Rohan.

5. After the killings, you had taken every effort to conceal the crime, the dead bodies and other evidence. The information as to your failed attempt to dump Rohan's body in the sea led to the police investigation. In the caution interview, you confessed to the killing of both the deceased. The blood stains found in your clothes tested positive for DNA of both the deceased.
6. The offence of Murder is serious. The sentence prescribed is mandatory life imprisonment. Although the life imprisonment is mandatory, the sentencer has a judicial discretion to set a minimum period to be served before a pardon may be considered. The discretion to set a minimum period has to be exercised judiciously, having regard to the gravity and culpability of the offending, loss /harm caused, and the aggravating and the mitigating circumstances.
7. 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 a discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence for both offences.
8. Having taken into consideration the culpability, the loss of life, the aggravating and mitigating factors, I proceed to exercise my discretion to set the minimum term that you must serve before a pardon may be considered.
9. The manner in which the killings had been done was extremely cruel and inhuman. It was a disgrace to humanity. There is evidence of pre planning. You did everything to counsel the evidence and the dead bodies. All of these aggravated your offending.
10. You were given ample opportunity and time to file mitigation. You asked the Court to disregard the mitigation submission filed by the duty counsel assigned by the Legal Aid

Commission. Instead of filing mitigation, you blamed the judges, the interpreters and the lawyers. You have not shown any remorse or repentance.

11. Having considered the gruesome manner the two deceased had been killed, the lack of remorse, the conduct you demonstrated in Court, the fact that you are a foreigner having to serve a long sentence away from home and the relatives, the remand period of approximately three years, I order that you serve a minimum aggregate term of twenty (20) years in the correction facility before a pardon may be considered. Accordingly, you are eligible to apply to the Mercy Commission for a pardon only when you have served 20 years in the correction facility.

Summary

12. Mr. Mohammed Masum you are sentenced to life imprisonment. You are to serve a minimum term of twenty (20) years before a pardon may be considered. You are eligible to apply to the Mercy Commission for a pardon when you have completed twenty (20) years in the Correction Centre.
13. This sentence will now be interpreted to you in Hindi. You have 30 days to appeal to the Court of Appeal if you so desire.



A handwritten signature in black ink, appearing to read "Aruna Aluthge", written over a horizontal line.

Aruna Aluthge

Judge

18 May 2023

Solicitors:

Office of the Director of Public Prosecutions for State