

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 137 OF 2014

STATE

-v-

AMINIO TURAGAVA

Counsel : Mr. S. Kiran for the State
Mr. Aman Singh with Mr. M. Anthony for
the Accused

Date of Judgment : 15th February, 2016

Date of Sentencing Hearing : 18th February, 2016

Date of Sentence : 15th March, 2016

SENTENCE

1. Mr. Aminio Turagava (herein after referred to as the Accused), now stands convicted after trial.
2. Accused was charged with Murder, contrary Section 237 of the Crimes Decree 44 of 2009. Assessors unanimously found the Accused guilty of Murder as charged. Court concurred with the opinion of the Assessors and found the accused guilty.

3. Counsel for the accused withdrew after filing mitigation submission. Accused indicated to Court that he intends to file mitigation afresh. He was given two mention days to file mitigation. But he failed and informed Court that he is not filing any further submission.

4. The facts of the case were that:

Accused is a thirty-four-year-old father of two children. He was in a de-facto relationship with the deceased and was living separately after a dispute in relation to which a Domestic Violence Restraining Order was in operation. He visited his de facto wife to force her to withdraw the Court case that was to be called on the day of the unfortunate incident. A series of violent activities, followed by an argument, lasted for a considerable period of time. Last punch he dealt on her head caused her to fall down on the ground. He stomped on her head twice when she was lying down on the cement floor. Warnings of neighbours who came to rescue her fell on his deaf ears. She was bleeding from her ears, nose and mouth and was later abandoned by the Accused in the bush. She was pronounced dead upon admission to hospital. Pathologist who conducted the postmortem attributed her death to subarachnoid hemorrhage caused by blunt force. In the cautioned interview, Accused admitted punching and kicking on her head three to four times.

5. The sentence for the offence of murder is fixed by law. For a person who is convicted of Murder, the penalty is a mandatory sentence of life imprisonment, with a judicial discretion to set a minimum term to be served before pardon may be considered.

6. The sentencing judge has a discretion to fix the minimum term. Discretion should be exercised judiciously having taken into consideration the nature of the offending, aggravating and mitigating circumstances.
7. In **State v Singh** [2009] FJHC 27; HAC072.2008 (4 February 2009) Justice Gounder said:

“In my view, there are no hard and fast rules for minimum term in murder cases. Each case is to be assessed on its own facts. If the court finds aggravating features present in a case of murder, the court has discretion to fix minimum term, after weighing the aggravating circumstances against any mitigating factors”.

8. In **State v Masicola** [2015] FJHC 411 (5 June 2015) Justice Temo said:

*The offence of "murder" (count no. 1) is often said to be at the top of the criminal calendar. To preserve human life is a fundamental objective in preserving and maintaining the wellbeing of our society. Our lawmakers had prescribed a mandatory penalty of life imprisonment for those found guilty of murder. The court is empowered "to set a minimum term to be served before a pardon may be considered" (Section 237 of the Crimes Decree 2009). A pardon may only be granted by His Excellency the President of the Republic of Fiji (Section 119 of the 2013 Fiji Constitution). Minimum terms for murder had been set between 26 to 11 years imprisonment, depending on the mitigating and aggravating factors: **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. An offender convicted of Murder will have demonstrated a high level of culpability. Even so, the precise level of culpability has to be decided in light of the circumstances of the offending and whether the offence was planned or spontaneous. Accused did not use a weapon. There is no evidence of pre planning. Accused said he was angry and under the influence of liquor.

Aggravating Factors

Prolonged Violence

10. Accused demonstrated a high level of violent behavior when he attacked his *de facto* wife in the presence of neighbors who were trying to rescue her. Violence lasted for a considerable period of time.

Domestic Violence

11. This is a classic case of domestic violence that must attract higher sentence. Since domestic violence takes place within the context of a current or past relationship, the history of the relationship will often be relevant in assessing the gravity of the offence. Therefore, a Court is entitled to take into account anything occurring within the relationship as a whole, which may reveal relevant aggravating or mitigating factors.
12. Violent conduct of the Accused had forced his *de facto* wife to desert him. There was a pending Family Court case where a Domestic Violence

Restraining Order was in operation. He wanted her to withdraw the case by hook or by crook. If he failed to do so, he was even prepared to go to jail, taking responsibility for harming her.

13. Accused breached the trust in the *de-facto* relationship. Trust implies a mutual expectation of conduct that shows consideration, honesty, care and responsibility. An abuse of trust, whether through direct violence or emotional abuse, represents a violation of this understanding; an abuse of power in a relationship involves restricting another individual's autonomy which is sometimes a specific characteristic of domestic violence.
14. The Accused exploited the victim's vulnerability. He committed this crime in an attempt to use the power he exercised over his *de facto* wife to prevent her from seeking and obtaining help from Courts. Any steps taken to prevent the victim obtaining assistance aggravated the offence.

Mitigating Factors

15. Offending was spontaneous. There is no evidence of pre planning.
16. Accused has one previous conviction. He does not get any discount for his previous character. He is sorry for what he had done to his *de facto* wife and now repents and blames himself for losing his self-control in his anger and drunkenness. He begs for mercy of the Court.
17. There is no evidence of sudden provocation for him to lose self control. Accused was drunk at the time of the incident. However, there is no evidence that his drunkenness affected his judgment.


18. Accused has not shown any remorse in Court. However, he had admitted punching and kicking his wife when he was caution interviewed. He cooperated with police in investigations.
19. Accused is caught up in this unfortunate incident in the peak of his youth. Court is sorry that he has committed this offence in his youth ruining his entire life.
20. Accused had been in remand for nearly fifteen months.

Sentence

Having considered every aspect, I sentence the Accused to life imprisonment with a fixed minimum term of 15 years' imprisonment before being eligible for parole.

21. 30 days to appeal to the Fiji Court of Appeal.




Aruna Aluthge
Judge

At Lautoka
15th March, 2016

Solicitors: Office of the Director of Public Prosecution for State
Aman Singh Lawyers for Accused