

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 157 OF 2015

STATE

-v-

MALONI MOCEYAWA

Counsel : **Mr. J. Niudamu for the State**
Mr. W. Nainima for Accused

Date of Conviction : **8th July, 2016**

Date of Sentencing Hearing : **15th July, 2016**

Date of Sentence : **22nd July, 2016**

SENTENCE

1. Mr. MALONI MOCEYAWA, on the 17th day of June, 2016, you pleaded guilty to the following counts in the presence of your counsel:

1ST COUNT

Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

Maloni Moceyawa on the 09th day of September 2015 at Naria, Rakiraki, Ra in the Western Division, murdered **Simran Sumital Singh**.

2ND COUNT

Statement of Offence

ATTEMPTED MURDER: Contrary to Section 44 and 237 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

Maloni Moceyawa on the 09th day of September 2015 at Naria, Rakiraki, Ra in the Western Division, attempted to murder **Jainendra Singh** by striking him with a cane knife.

2. You were explained the consequence of the guilty plea. You and your Counsel confirmed that you understood the consequence of the guilty plea and that you pleaded on your own free will. The Court accepted your plea after being satisfied that it was unequivocal, voluntary and free from any influence.
3. On the 8th day of July, 2016, summary of facts filed by the State was read over to you. Having understood the same, you agreed the facts filed by the State. This Court found that all the elements of offences of Murder and Attempted Murder were proved on the facts agreed by you. You were convicted of both charges accordingly. You now come before this Court for sentence on the conviction.
4. On the 8th July 2016, following summary of facts was read to you in Court:

*On Wednesday, 9th September 2015 at about 4.30 pm one **Simran Sumital Singh** (hereinafter referred to as the “**Deceased**”), 16 years, Form 4 student of Penang*

Sangam High School, Rakiraki was travelling in the school bus with other students returning to their respective homes after school. The bus picked the students from Penang Sangam High School and then travelled to Rakiraki Bus Stand before proceeding to Naria Settlement. The deceased was seating a few seats behind Ritesh Sen (hereinafter referred to as "PW3"), 39 years, Bus Driver of Korowaqa, Rakiraki. Once they reached the deceased driveway at Naria, the bus stopped and the deceased disembarked followed by Joape Uga (hereinafter referred to as "PW4"), 16 years, student Naboutolu Village, Ra and Selvin Chand (hereinafter referred to as "PW5"), 17 years, student of Naria, Rakiraki. As the deceased was disembarking one Maloni Moceyawa (hereinafter referred to as the "accused"), 36 years, unemployed of Naboutolu Village, Saivou, Ra had already standing on their driveway beside the road side. The deceased had walked for about 4 metres into their driveway when the accused picked his cane knife which was on the flower hedges and suddenly attacked the deceased from her right side.

The accused intentionally struck the deceased first on her left neck with his cane knife and due to the impact of the first strike the deceased made a turn facing the school bus which she had travelled in. As the deceased was standing facing the school bus the accused with his cane knife struck the deceased again on the right side of her neck which caused the deceased to fall. As the deceased was about to fall the accused then struck the deceased on her back with the cane knife which caused the deceased to fall backwards on the driveway.

Whilst the accused was striking the deceased with his cane knife the father of the deceased Mr Jainendra Singh, 45 years, farmer of Naria, Rakiraki (hereinafter referred to as "PW1") shouted at the accused and was moving towards the accused when the accused turned and went towards PW1. PW1 was searching for a stick to arm him when the accused confronted him and intentionally struck PW1 on his left face and neck using his cane knife. The accused after striking PW1 then pulled the knife backwards when PW1 held the cane knife tightly and

they pulled the cane knife against each other. As they were struggling for the cane knife, an i-Taukei man yelled out at the accused and the accused pushed PW1 towards the fence releasing the cane knife and PW1 fell on the ground.

The accused then ran towards PW1's compound then into the cane fields and he was chased by Special Constable Cama Kotobalavu (hereinafter referred to as "PW2), 45 years, Police Officer of Naria, Rakiraki. He was unable to arrest the accused as he was fast and PW2 then returned to the driveway and noticed the deceased lying in a pool of blood whilst PW1 was lifting the deceased head as blood was flowing out profusely from her injuries. PW2 ran towards the main road and then stopped a vehicle in which they loaded the deceased and PW1 to convey them to Rakiraki hospital.

At their arrival to Rakiraki Hospital, the deceased was pronounced dead on arrival by the Sub Divisional Medical Officer Rakiraki Hospital Dr. Mere Vakawaletabua. PW1 was medically examined by Dr. Sharma at Rakiraki Hospital and the findings were as follows: Huge laceration over the left side of the face and neck forming a flap hanging over the face, the left ear also half chopped off and also hanging over the side, damaged to the left parotid gland, massive amount of bleeding, skin and muscle torn – off however major vessels was intact. Dr. Sharma had also concluded that PW1 was also a victim of attempted homicide.

On the 11th of September 2015 a Post-Mortem examination was conducted on the deceased by Dr. James J. V. Kalougivaki where he stated that the cause of death was due to the deep incised neck wound and multiple slashed wounds (Attached hereto is a copy of the Post-Mortem Report and the Medical Cause of Death Certificate of the deceased).

On 10th September 2015, the accused was arrested by Ratu Semi Ravulo, traditional chief of Nawaqavesi at Naboutolu Village and then he informed the

*Police to come over and take custody of the accused. The accused was taken to the Rakiraki Police Station and he was cautioned interviewed and charged for one count of **Murder** contrary to Section 237 and one count of **Attempted Murder** contrary to Section 44 and 237 of the Crimes Decree, 2009. The accused made admissions in his caution interview that he had admitted striking the deceased and PW1. Accused admitted that his actions can lead to death and he had planned to strike the deceased first before striking.*

Murder

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. Sentencing Court is given a judicial discretion to set a minimum term to be served before pardon may be considered. The discretion should be exercised judiciously having taken into consideration the nature of the offending, aggravating and mitigating circumstances.
6. 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”.
7. 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 Lebobu, 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.

8. Madam Justice Shameem in *State v Nute* - [2008] FJHC 327; HAC139S.2007S (26 November 2008) observed the following:

"I am however required to consider setting a minimum term to be served under section 33 of the Penal Code. It is generally more than 12 years' imprisonment which is the term usually served before there is an entitlement to an application for parole".

9. An offender convicted of Murder will have demonstrated a high level of culpability. Even so, I will decide the precise level of culpability in your case in the light of the circumstances of the offending and whether the offence was planned or spontaneous.

Attempted Murder

10. A person who attempts to commit an offence is guilty of the offence attempting to commit that offence and is punishable as if the offence attempted, had been committed. Accordingly, a person who is convicted of Attempt to Commit Murder is liable to be punished as if he or she had committed Murder.

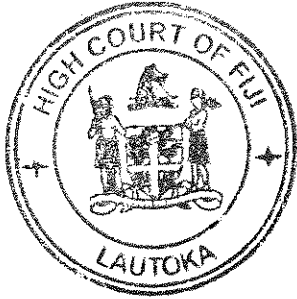
11. In *State v Laduva* [2004] HAC 003/04 14 June 2004, the accused was sentenced to ten years' imprisonment for attempting to murder his daughter with a bayonet. His Appeal against sentence to the Fiji Court of Appeal was dismissed.
12. In *State v Swamy* [2007] FJHC78; HAC 029S.06 929 November 2007), the accused pleaded guilty to three counts of Attempted Murder. Accused had struck his mother on the face, head and neck with a chopper and two others, in a premeditated attack. Madam Justice Shameem imposed a sentence of 9 years imprisonment:
13. In *Waganivalu v State* [2008] FJSC 44; CAV0005.2007 (27 February 2008), the Supreme Court refused special leave to appeal against the sentences of ten years' imprisonment imposed by the High Court and affirmed by the Fiji Court of Appeal. The Appellant had been convicted for five counts of Murder and one count of Attempted Murder. For the Attempted Murder charge, he was sentenced to ten years' imprisonment.
14. You took away a life of a young girl and attempted to kill her father when he tried to save his daughter's life. The law says that a person who is guilty of attempted murder must be punished as if he had committed murder. Accordingly, you are liable to be punished on the second count as if you had committed Murder of deceased's father, Mr. Jainendra Singh although he was fortunate to survive.
15. Although your Counsel says otherwise, there is evidence of pre planning in the commission of offences. There is no evidence of you loosing self-control to commit these crimes. You have stated to police that you were angry with deceased's father after he growled at you a week prior to the incident and also at his decision to sack you from the job. You killed an innocent girl who was returning from school to take revenge from her father. She did not give any provocation to you. You had brought a cane knife from home, hidden it on the flower hedges and watched her return from school to take her life.
16. It is highly aggravating that you attempted to kill the deceased's father (your former employer) when he tried to save his daughter' life.

17. You demonstrated a high level of violent behavior when you attacked the deceased and his father in a public place when even school children were in the vicinity. As per the Post -Mortem Report, injuries noted on deceased's body demonstrate a high degree of violence used to commit these crimes.
18. You have one previous conviction of similar nature within the period of ten years. You do not deserve any discount for previous good character.
19. You are remorseful in court and repentant for what you have done. You beg for mercy of this court. You now understand that no amount of apology will ever be enough to justify the eternal loss you have caused to the deceased's family.
20. You cooperated with police and confessed to crimes at the caution interview. You pleaded guilty to the charge at the first available opportunity. You saved precious time of this court and saved the father of the deceased from giving evidence and recalling the gruesome killing of his daughter.
21. You are a 36 years old farmer, a bachelor. It is unfortunate that you resorted to this type of an action in the peak of your youth.
22. You have been in remand for nearly ten months. Your remand period will be taken into consideration in deciding your minimum prison term.

Sentence

23. Having considered every aspect, for the first count of Murder, I sentence you to life imprisonment with a fixed minimum term of 20 years' imprisonment before being eligible for parole. For the Second Count of Attempt to Commit Murder, I impose a minimum term of ten years' imprisonment before being eligible for parole. The total term would be excessive if I ordered consecutive terms. I therefore sentence you to 20 years' imprisonment to be served concurrently.

24. 30 days to appeal to the Fiji Court of Appeal



Aruna Aluthge

Judge

At Lautoka

22nd July, 2016

**Solicitors: Office of the Director of Public Prosecution for State
Office of Legal Aid for Accused**