

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CRI-2008-004-005894**

**REGINA**

v

**NAI YIN XUE**

Hearing: 31 July 2009

Counsel: Aaron Perkins and Sam Wimsett for Crown  
Christopher Comeskey and Jesse Soondram for Prisoner

Sentenced: 31 July 2009

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**SENTENCING REMARKS OF HUGH WILLIAMS J**

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Convicted: 20 June 2009

Offence: Murder

Sentenced: Life imprisonment with a minimum period of 12 years.

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Solicitors:

Crown Solicitor, PO Box 2213 Auckland 1140  
Chris Comeskey, P O Box 4304 Shortland Street Auckland 1140

**MR XUE: It is usual for people being sentenced to stand during the sentencing remarks but this will take some time.. You and the escort can remain seated until I ask you to stand.**

[1] On 19 September 2007 the body of your wife, An An Liu, was found by Police in the boot of your “*Chinese Times*” car parked outside your Auckland residence. The circumstances ruled out suicide: she had been murdered by strangulation with your tie and the pendant she was wearing.

[2] Despite your efforts to create a doubt as to who was responsible for your wife’s murder, the jury, probably unsurprisingly, on 20 July 2009 decided the Prosecution had proved to the required standard that it was you who murdered your wife, and found you guilty. Your formal conviction was deferred until today to comply with s 103(2) of the Sentencing Act 2002. Therefore you appear here today, as you know, for sentencing for that murder even though your actions when the verdict was announced suggest you continue to deny responsibility for her death.

[3] Those who are convicted of murder must, under s 102 of the Sentencing Act 2002, be sentenced to imprisonment for life unless that sentence is “manifestly unjust”.

[4] You were given the opportunity to argue that a sentence of life imprisonment would be manifestly unjust. You have not taken up that opportunity and Mr Comeskey, your lawyer, accepts in his submissions that there are no circumstances which would make a life sentence manifestly unjust. It follows that you will be convicted and sentenced to life imprisonment for your wife’s murder at the conclusion of these remarks.

[5] Under s 103 of the Sentencing Act 2002 a person who is convicted of murder and sentenced to imprisonment for life must serve a minimum period of imprisonment of not less than 10 years before becoming eligible for parole. However, the Court has power to increase that minimum period if such is considered

“necessary to satisfy” the sentencing purposes of accountability, denunciation, deterrence, and the protection of the community.

[6] The Crown has sought the imposition of a minimum period greater than 10 years. Mr Comeskey argues that the 10 year minimum period would be appropriate and that is therefore the major issue for decision today.

[7] The circumstances of the offence are that you, a martial arts expert, now 56 years old, came to New Zealand in 1990, married An An Liu on 28 July 2003 and the pair of you are the parents of Quin Xun Xue known as “Clare” born on 22 December 2003.

[8] Your wife, An An Liu, was born on 20 February 1979 and came to New Zealand in 2002 on a student permit. She applied for residency in September 2003 about two months after your marriage, and was granted residency on 19 December 2005.

[9] Even well before your wife’s death, your marriage was not uninterrupted or, it seems, happy. She returned twice to China for her mother to meet her granddaughter, but much more importantly for sentencing purposes, as a result of your violence towards her she left your home on 20 September 2006. Though the violence to which you subjected her that day was not extreme by comparison with the violence which commonly comes before the Courts, the evidence showed she was plainly terrified by your actions. She complained to the Police, as a result of which you were prosecuted and, on 20 June 2007, pleaded guilty to charges of assaulting your wife and child and using threatening words to your wife. More serious charges were withdrawn.

[10] Between September 2006 and June 2007 there was not a long period when your wife and child lived with you. From a Women’s Refuge she obtained Interim Parenting and Protection Orders against you in September 2006. There were assertions of breaches by you of the Protection Order by driving near her house or contacting her – assertions which, again, frightened her – and she left New Zealand

in November 2006, about three weeks earlier than expected because she was scared you would stop her. She remained away until 26 February 2007.

[11] On her return it seems the three of you lived in the same house for about five months. During that period, even though the evidence was sketchy, the relationship probably did not recover because at about the end of June she and your daughter abruptly left Auckland and flew to Wellington where they remained until 18 August.

[12] During that period you drove to Wellington and on one occasion burgled the house in which she was living – almost certainly armed with an axe – and, as you told Madam Jia later, you may have killed your wife had you succeeded in locating her.

[13] Despite all of that, she agreed to resume living with you and the three of you returned to Auckland on 18 August 2007. Tragically, she reasoned that because you seemed able to find her wherever she was living you were less likely to carry out the threats you had earlier made to kill her or be violent to her if you were all living under the same roof.

[14] She was murdered about three weeks later.

[15] Madam Jia's evidence of your attitude to your wife at about this time was revealing. You told her the axe would have been used to kill your wife had she refused to return.. And then, when you had lunch with her on 10 September, probably the day before the murder, her evidence was that you told her that:

“... in his lifetime nobody would cheat him like that. He was suspicious. ... His wife probably didn't want to continue to live with him. ... He was in pain because of it.”

[16] Even now there is some doubt as to precisely when and where you killed your wife. She was alive on the afternoon of 11 September 2007 because she made a purchase at a supermarket at 1845 hours. Tenants in the other half of your property saw her about 4:00 or 5:00 o'clock that afternoon but never saw her again. But, perhaps significantly, as you must have known, they went out each night for a walk from about 7:30-8:00 o'clock in the evening to about 10:30 or 11:00pm.

[17] As a result of the Police investigations, your movements on 13 September were well documented.

[18] You left the house with Clare just before 9:00am in An An Liu's car.. Up to about 10 o'clock in the morning you were at the Henderson Police Station with Clare, uplifting your passport. About 11:00am you bought a return ticket to Melbourne, just for yourself. Between about 11:19pm and just after mid-day you were at the bank uplifting \$6,445 in US currency which had been credited to your account about three years before. Just before mid-day you cleared the contents of the drawer at your bank vault. You had lunch at the restaurant with a witness and Clare between 1:00 and 2:00pm. You returned to the travel agent about 3:00pm to pick up your ticket, at which point you also paid cash for a return ticket for Clare. Then, from about 3:45pm you were seen on surveillance cameras at the airport carpark, check-in, Customs, and boarding the flight for Melbourne where you arrived at about 7:40 that evening, Melbourne time.

[19] During that and the preceding day, you made dissembling excuses to the employees of your newspaper about non-publication on the Thursday, 12 September (at a time when the newspaper had significant debts outstanding and you were under pressure to meet them). You told An An Liu's mother when she telephoned that your wife had gone to Wellington with Clare but would return on Sunday - a lie you repeated in the note you left the tenants (though you said you had gone to Wellington too) and to your commission agent.

[20] On 14 September you went to a Melbourne travel agent about 10:30am, trying to fly to Los Angeles that evening and when that proved impossible, "anywhere else in the world" that day. Having booked to Los Angeles for the following day, 15 September, you left Clare at the railway station shown in the surveillance footage, flew to Los Angeles, managed to gain entry to the United States, and disappeared - until a group of Chinese living in Atlanta, Georgia, recognised you and, bravely and publicly-spiritedly, hatched and executed a plan to capture you and hand you over to the Police in late February 2008.

[21] In the meantime, Clare had been looked after first by an Asian couple at the railway station, then by railway security officers, and then by the Victorian Police. She spoke essentially no English, and you took her passport with you thus leaving her with no means of being identified.

[22] Fortunately, the Victorian Police broadcast the surveillance footage and, by chance, a fellow passenger on the Auckland-Melbourne flight recognised her and rang the Police. By checking the airline's manifest and Customs records, they were able to establish who she was and where she came from. That occurred on Sunday, 16 September.

[23] What began as a telephone call to New Zealand Police on Monday 17 September about 10:40am as an inquiry concerning the whereabouts of Clare's mother, began to focus on your house by about 7:30pm on Monday. The white "*Chinese Times*" car was noticed parked outside. It was locked and debris around the wheels suggested it had not been moved since the last rain, although there was no evidence as to when that had been. It was uplifted that day and when the boot was opened on 19 September, your wife's body was found in the situation shown in the photographs. She had been strangled with a tie you had been photographed wearing a couple of months beforehand and it was not disputed the tie around her neck and eyes was yours. A contributing factor to the strangling was a pendant she was wearing. The Pathologist's evidence was that strangling a person by those means would take up to 45 seconds of continuous pressure before the victim became unconscious and another two to three minutes of continuing pressure before death.

[24] She was naked apart from being dressed in what was said by several witnesses to have been your green dressing gown, with gloves on each hand.

[25] Analysis of samples taken from swabs from your wife's body and the clothing she was wearing showed your DNA, unsurprisingly. The same was true on the dressing gown and gloves, the pyjama pants and a top.

[26] A more refined analysis by Dr Harbison of ESR concerning male DNA showed a DNA profile from the ends of tie with DNA present from more than one

male; the waistband of female underpants found in the boot gave a DNA profile, with DNA present “from more than one male contributor, in this sample ... at least three”. No explanation was able to be offered as to how the other male DNA came to be on the tie and the underpants, though transfer by various agencies was suggested. And prints on the Honda in the airport carpark included an unidentified print on the rear view mirror, and another on the right rear passenger wheel arch.

[27] It remains to add that at no time have you made any statement to the US or the New Zealand Police, or given evidence in Court, as to the circumstances of your wife’s death - still less acknowledging any involvement in it at all, although the media suggests you are currently writing a book on that topic.

[28] You appeared not to accept the jury’s verdict when it was given and it is assumed your stance has not changed.

[29] As developed during your trial, your defence was that you were entirely uninvolved in your wife’s death, and the death must therefore have occurred either as suicide or, more probably, at the hands of another man, possibly during a sexual episode of auto-erotic asphyxiation.

[30] However, essentially, almost the whole of that defence rested on the unidentified fragments of DNA on your tie and the waistband of the underpants. And in that regard, it is noteworthy pretty well the entirety of that defence must have come from disclosure by the Prosecution to your lawyers. There was no evidence you could possibly have known of the presence of the other male DNA profiles before Dr Harbison’s sophisticated analysis was disclosed to you.

[31] Further, it is pertinent to record that, although you would have opened yourself to criticism for never having mentioned it before, the circumstances in which your wife’s body was found might - had you chosen to raise it - conceivably have given rise to the partial defence of provocation. Your wife, 25 years younger than you, may have married you to help gain New Zealand residency. For significant periods of your marriage you lived apart, particularly during the year prior to her death. She was, justifiably, scared of your violence and your threats to

kill her involved the actual or threatened use of weapons. There was evidence of her telling others she did not love you and did not like having intercourse with you. She clearly did not wish to have another child with you: she had an IUCD inserted, probably during one of her trips to China. And there was an ambiguous QQ message to a friend found on her computer.

[32] In those circumstances, it is not difficult to conceive of a scenario where provocation may have been a partial defence you could have raised had you had given evidence as to the circumstances which led to you strangling your wife. But none of that – or at least your involvement in it – was suggested to the jury. No doubt on legal advice the partial defence of provocation was simply never raised.

[33] So the pretty well the entirety of your defence that some other man strangled your wife was only based on evidential aspects of which you must have been unaware until well after your extradition back to New Zealand. And it was belied by the major DNA contributor to the strangling being your tie, with your DNA on it, and with your wife being found clad in your dressing-gown in the boot of your car, locked and parked outside your home.

[34] And it was further belied by your violence and other actions concerning your wife, particularly in the year leading up to her death, and by your actions on 12 and 13 September and thereafter.

[35] The jury must have regarded as literally incredible the suggestion that it was a mere coincidence that your wife died at about the time you made very considerable efforts to leave, first New Zealand and then Australia, with as much money as possible, as quickly as possible.

[36] The pointers to your having murdered your wife, though circumstantial, were very significant indeed. The pointers towards another man or men having murdered her were slight.

[37] The Prosecution has filed considered and thoughtful submissions – Mr Perkins elaborated on those this morning – to the effect that increasing the



minimum period before your parole eligibility beyond the statutory 10 years would be consonant with the applicable principles of sentencing. The Prosecution submits there are two factors which justify the imposition of a minimum term of imprisonment somewhat greater than the statutory 10 years.

[38] The first is the history of violence by you towards your wife and in respect of which the Crown refers me to a decisions in *R v Rajamani* (HC AKL CRI-2005-004-001002, 28 March 2006, Venning J) and *R v Tiimalu* (HC Wellington CRI-2005-091-5819, November 2006, Clifford J).

[39] The second aggravating factor the Crown puts forward are your attempts to evade detection, which it submits can properly be taken into account. The Crown referred me to *R v Hoko* (CA420/02, 30 June 2003) and *R v Latu* (HC AKL CRI-2003-004-039422 and CRI-2003-092-026934, 2 July 2004, Nicholson J).

[40] Those factors and those cases, the Crown submit, indicate the appropriate length of the minimum period of imprisonment before parole eligibility in your case could justifiably be in the range of 12-14 years.

[41] The Crown has also filed a statement from Madam Liu which, with deletions, can properly be regarded as a victim impact statement on her behalf and on behalf of your daughter.

[42] Madam Liu speaks feelingly of the devastation and enormous sense of loss felt by her and her family as a result of her daughter's murder.

[43] She also speaks poignantly of the sense of bewilderment and incomprehension on Clare's part at her mother's sudden and continuing absence.

[44] Mr Comeskey submits the statutory 10 year minimum non-parole period would be appropriate in this case. He makes the point you should not be sentenced for matters of which you have not been convicted and submits it would be incorrect to increase the sentence because of your prior offending. He also submits the cases

the Crown relies on concerning violence nearly all involve additional or more violence than was the case in your situation.

[45] In relation to flight, he suggests you committed no further offences to avoid detection, or at least have not been charged with any. However, abandoning your 4-year-old child in a foreign country and the means by which you managed to obtain entry to the USA may have amounted to offences. But that possible offending is completely irrelevant as far as your present situation is concerned.

[46] Mr Xue, “murder” necessarily involves violence and cruelty, so you are not to be sentenced to more than the statutory minimum period for those factors unless the circumstances of your offending include cruelty and violence beyond what is implicit in the conviction for murder.

[47] The sentence to be imposed on you must include an allowance for the harm you did to your wife, try to promote a sense of responsibility in you, denounce your conduct, deter others and protect the community.

[48] The cruelty arising out of the manner of your killing your wife is an aggravating effect – that is to say, one making the offending worse – and she was clearly vulnerable. There was also a degree of premeditation. You said to Madam Jia you were prepared to kill your wife if she did not do what you wanted. That was clearly an attitude you had had for some time. There is also a modest degree of premeditation in your getting your tie and placing it around her neck to strangle her. Your previous convictions are a very minor aggravating factor.

[49] There are no mitigating factors – those making it less serious – and none are put forward on your behalf.

[50] Particular factors bearing on whether the 10 year minimum might be justifiably increased include your violence to your wife. You had been violent to her on, probably, a number of occasions during your marriage, or at least threatened violence. You told Madam Jia you would kill her if she didn’t do what you wanted. And there was the premeditation involved, which I have mentioned.

[51] She was killed by strangulation. Everyone has choked on occasions and knows how frightening it is to be unable to breathe, even for only a few seconds. Here, you subjected your wife to about 45 seconds of what must have been excruciating terror whilst you were garrotting her until she lost consciousness. And your determination to kill her was such, you continued to apply pressure to the tie and pendant for about another two to three minutes to ensure she died. That is a factor which must be taken into account in the principal matter for decision

[52] As to the circumstances after the killing, though of great significance in human terms - but of almost no significance for the purposes of sentencing - there is also the cruelty you displayed in abandoning your daughter in another country.

[53] Though comparisons cannot be precise, the authorities to which the Crown refers indicate that in the circumstances of your offending an increase above the 10 year minimum before you become eligible for parole is appropriate. For you to serve only 10 years before becoming eligible for parole would not be a sufficiently serious response by this Court to the circumstances of your murdering your wife and would not appropriately reflect the sentencing principles in s 103.

[54] Imposing a minimum term of imprisonment greater than the statutory minimum is not re-sentencing you on offences for which you have already been sentenced. It is merely setting the base period you must serve before becoming eligible for parole and recognises most prisoners do not get parole on first review.

**Mr Xue, would you and the escort please stand:**

[55] In all those circumstances you are convicted and sentenced to imprisonment for life for your wife's murder, and you will serve a minimum term of imprisonment before becoming eligible for parole of 12 years. Stand down.