

IN THE COURT OF APPEAL
[On Appeal from the High Court]

CRIMINAL APPEAL NO. AAU0094 OF 2014
[High Court Criminal Case No. HAC012 of 2013]

BETWEEN : **SAMUELA VAKARURU** *Appellant*

AND : **THE STATE** *Respondent*

BEFORE : The Hon. Mr. Justice Daniel Goundar

Counsel : Mr. S. Waqainabete for the Appellant
Mr. S. Vodokisolomone for the Respondent

Date of Hearing : 4 August 2015

Date of Ruling : 12 August 2015

RULING

[1] The appellant was tried on a charge of murder, but convicted of manslaughter and sentenced to 12 years' imprisonment with a non-parole period of 10 years' by the High Court at Suva. This is a timely application for leave to appeal against conviction and sentence on the following grounds:

- 1. The Court erred in law and in fact when it found the actions of the Appellant against the deceased was the substantial contribution to the cause of death when the pathologist did not give his expert opinion as to who substantially caused the death of the deceased.*
- 2. That the Court erred when it did not consider the other possible of substantial causes of death apart from the assault from by Timoci Delai and the appellant.*
- 3. The Court erred in law and in fact when it imposed a sentence against the Appellant to the higher end of the scale of the tariff given the circumstances of the case.*

[2] The grounds against conviction relate to the issue of causation. At trial, it was not in dispute that the deceased was assaulted by others earlier in the night and in the morning

before the incident involving the appellant took place. The first incident of assault took place on 17 December 2012 at around 11 pm. The second incident took place on 18 December 2012 at around 2 am. At about 2.45 am, a police officer met the deceased and saw his forehead was swollen. The third incident took place at about 3.43 am. At around 8 am, the appellant confronted the deceased with an allegation that the deceased tried to steal from the appellant's house. During that confrontation, the appellant assaulted the deceased. The deceased died around 4 pm on 18 December 2012. Cause of death was brain injury.

- [3] The first complaint relates to the expert opinion. The appellant contends that the pathologist was unable to say who caused the brain injury. This contention is misconceived. The pathologist was not in a position to say who caused the brain injury. The pathologist could only say what caused the death. Ultimately it was for the assessors to determine whether it was the appellant's assault that caused the brain injury leading to death. In this regard, the trial judge's directions are correct.
- [4] The second complaint relates to the evidence on the issue of causation. On the agreed facts and evidence led at the trial, whether causation was proven beyond a reasonable doubt is arguable.
- [5] The sentence appeal is arguable. The trial judge used a high starting point of 10 years by subsuming the degree of violence and the lack of provocation in the legal sense. He then added 3 years for "the *vigilante* attack taking the law into his own hands". It could be argued that there was double counting of the aggravating factors.

[6] **Result**

Leave to appeal conviction and sentence granted.



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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

Office of the Legal Aid Commission for the Appellant

Office of the Director of Public Prosecutions for the Respondent