

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 064 OF 2011S

STATE

VS

RONEEL CHAND

Counsels : **Mr. L. Fotofili and Mr. R. Kumar for State**
Mr. T. Ravuniwa for Accused
Hearings : **5th to 8th and 11th to 15th November, 2013**
Summing Up : **18th November, 2013**

SUMMING UP

A. ROLE OF JUDGE AND ASSESSORS

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of fact.

2. State and Defence Counsels have made submissions to you, about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsels, in this case. Their submissions were designed to assist you, as the judges of fact. However, you are not bound by what they said. It is you who are the representatives of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.

3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

B. THE BURDEN AND STANDARD OF PROOF

4. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation on the accused to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he is proved guilty.
5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt, then you must express an opinion, that he is not guilty.
6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accused or the victim. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

C. THE INFORMATION

7. You have a copy of the information with you, and I will now read the same to you:

"... [read from the information]...."

D. THE MAIN ISSUE

8. In this case, as assessors and judges of fact, each of you will have to answer the following question:

- (i) Did the accused, on 19th February 2011, at Nasinu, in the Central Division, murder Krishma Nath?

E. THE OFFENCE AND ITS ELEMENT

- 9. "Murder", as a criminal offence, has three essential elements. For the accused to be found guilty of "murder", the prosecution must prove beyond reasonable doubt, the following elements:
 - (i) that the accused did a wilful act; and
 - (ii) that wilful act caused the death of the deceased; and
 - (iii) at the time of the wilful act, the accused either:
 - (a) intended to cause the death of the deceased; or
 - (b) is reckless as to causing the death of the deceased.

- 10. On the first element of murder, a "wilful act" is a voluntary act by the accused. It is feeling of strong determination to do something that he wanted to do. It is what he wanted to happen in a particular situation. This is the physical element of the offence of murder. For example, A wants to shoot B with a gun. A picks up a gun, and shoots B in the heart, A did a "wilful act". Likewise, if A wants to burn B using kerosene and fire. When A pours kerosene on B and then lights her on fire, A did a "wilful act".

- 11. On the second element of murder, "the wilful act must cause the death of the deceased". This simply meant that the accused's wilful act, substantially contributed to the death of the deceased. The accused's wilful act must be a substantial contributor to the death of the deceased. In other words, the accused's wilful act was a substantial cause of the deceased's death. Continuing from the above examples when A shot B in the heart, with a gun, B later died as a result of the injuries to his heart. A's shooting B in the heart (wilful act) was a substantial cause of B's death. Likewise, when A set B alight with kerosene and fire, B later died as a result of her burnt injuries. A's burning B with fire (wilful act) was a substantial cause of B's death.

- 12. The third element of murder concerned its fault element. There are two fault elements for murder, as described in paragraph 9(iii) (a) and 9(iii) (b). The prosecution was not clear on which of these

fault elements it was running its case on. It need only prove one of the fault element to succeed on the murder charge. So, we will consider both fault elements.

13. We will first consider the element in paragraph 9(iii)(a), that is, the accused “intended to cause the person’s death”. As a matter of common sense, it is not possible to look into a person’s brain, to find out his intention, at the time, he did the physical element of murder. In other words, in the context of this case, it is not possible to look into the accused’s brain, to find out his intention, at the time he burnt the deceased. However, throughout the centuries, the courts have often resolved this problem, by closely examining the accused’s physical actions at the time, what he said, and the surrounding circumstances, to draw inferences of fact, as to his intentions. In other words, you must put yourselves in the shoes of the accused, and from his physical actions, spoken words and the surrounding circumstances, you should be able to find out his intentions, at the time he burnt the deceased.
14. Now we consider the fault element in paragraph 9(iii)(b), that is, the accused was “reckless as to causing the deceased’s death”. If you found that, the prosecution had satisfied you beyond reasonable doubt that, the accused intended to cause the deceased’s death, at the time he burnt her, you do not need to consider the second fault element of murder. Only if you find that the prosecution had not done the above, then you move on to consider the second fault element of murder.
15. The question becomes: Was the accused reckless in causing the deceased’s death, by burning her, at the time? A person is reckless with respect to a result if: (a) he is aware of a substantial risk that the result will occur, and (b) having regard to the circumstances known to him, it is unjustifiable to take the risk. The question whether taking a risk is unjustifiable is one of fact. So, if the accused was aware that there was a substantial risk that if he burns the deceased, the deceased will die, it was obvious that it would be unjustifiable to take the risk. If you find that the accused was reckless, when he burnt the deceased, then the second fault element of the murder charge is satisfied.

16. If you find that all the elements of murder are proved beyond reasonable doubt by the prosecution, then you must find the accused guilty as charged. If one of the elements is not proven by the prosecution beyond reasonable doubt, then you must find the accused not guilty as charged.

F. THE PROSECUTION'S CASE

17. The prosecution's case were as follows. On 19th February 2011, the accused was 28 years old, and his deceased wife 25 years old. They had been married for 3 years since 2008. According to the wife's father (PW1), the two had known each other for 15 years, prior to getting married in 2008. According to the accused, he knew his wife for 3 years before he married her in 2008. The couple had no children. They resided at Lot 21, Reba Circle, Nadera, with the accused's mother (DW3) and the accused's sister.
18. 19th February 2011 was a Saturday. At about 8.30am, the accused's sister left for work. The accused was sitting on a settee in their porch at 9am, when his mother (DW1) left for a prayer meeting at her temple in Samabula. Only the accused and his wife were at home, at the time. According to the prosecution, the accused and his wife had a heated argument that morning. A neighbor (PW9) heard them fighting. PW9 heard a man speaking harshly to a female, who was replying to him in a crying manner. According to PW9, the two were arguing for about 5 to 7 minutes. Suddenly PW9 heard a woman yelled in a state of shock, and she also heard kitchen appliances falling in the accused's kitchen.
19. According to the prosecution, the accused set fire to his wife by pouring kerosene on her, and setting her alight. The wife, although injured as a result of the burns, managed to take herself to CWM Hospital in a taxi. She rang her father (PW1) prior to that, and told him that the accused burnt her. She also told the taxi driver (PW2) that her husband burnt her. While the taxi was parked near the Nadera Police Post, she also told PW3 that her husband burnt her. She was later taken to hospital. At the hospital, she was put in the intensive care unit. She died 5 days later as a result of "1st degree burn to 40% of her body".

20. The matter was reported to police. An investigation was carried out. The accused was caution interviewed by police on 20th and 28th February and 1st March 2011. He was formally charged for murder on 1st March 2011. He appeared in the Nasinu Magistrate Court on 2nd March 2011. According to the prosecution, the accused burnt his wife to death, and at the time, intended to cause her death, or was reckless as to causing her death. Because of the above, the prosecution is asking you, as assessors and judge of facts, to find the accused guilty as charged. That was the cause for the prosecution.

G. THE ACCUSED'S CASE

21. On 5th November 2013, the first day of the trial proper, the information was put to the accused, in the presence of his counsel. He pleaded not guilty to murder. In other words, he denied the allegation against him. At the end of the prosecution's case, wherein a prima facie case was found against him, through his lawyer, he choose to give sworn evidence and called 2 witnesses, in his defence. That was his right.

22. The defence's case was very simple. The accused denied setting his wife on fire on 19th February 2011. He didn't tell us how the fire on his wife started on 19th February 2011. He appeared to be saying that his wife set herself on fire on 19th February 2011. He admitted he and his wife, were the only ones at home, at the material time. Suddenly, he heard his wife yelling in the kitchen, went there and saw her burning. He managed to extinguish the fire by pouring two buckets and a pot of water on her. He told her to go to the hospital, while he put out the fire in the kitchen. He said, his wife suffered from epileptic fits and had attempted to commit suicide in the past. He strongly denied setting his wife on fire, at the material time. Given the above, he asks you, as assessors and judges of fact, to find him not guilty as charged. That was the case for the defence.

H. ANALYSIS OF THE EVIDENCE

(i) Agreed Facts:

23. The parties have submitted an "Agreed Facts", and a copy of the same is with you. There are 6 paragraphs in the "Agreed Facts". Because the parties are not disputing these facts, you may take it that the prosecution had proven those facts beyond reasonable doubt. You may treat the same as established facts.

(ii) The Undisputed Fact – The Second Element of Murder – see paragraph 9(ii) hereof :

24. Doctor Goundar (PW6) did the post-mortem examination on Krishna Nath on 27th February 2011, and submitted his post-mortem report as Prosecution Exhibit No. 3. In his opinion, the cause of Krishma's death was "1st Degree burn to 40% of her body surface".
25. In his evidence, the doctor said, **"...superficial burns could result in death. After the burns to the body, as shown in "Marks of violence" section, the patient goes into shock – most of the blood vessels get constricted (narrowing of the blood vessels). This leads to marked reduction of blood supply to the body tissues in the brain, heart and every part of the body ie. all organs, muscles etc. These organs are starved of nutrition, oxygen and accumulation of toxic materials within the cells, tissues and organs. The patient would be in coma ie. unconscious (ie. instantly, days, couple of weeks) and that could lead to death. The above is a chain reaction of what a "burn injury" does to the body. What I have described above is the conclusion I reached on the cause of death of the deceased in this case. At the time of the examination, I concluded roughly a 35% burns to the body. After reflection when writing the report and reviewing all the facts, I concluded there was 40% burns to the body..."**
26. When cross-examined, the doctor said, **"...Confirmed injuries in the "mark of violence" section. I could not confirm what was used to cause the patient's burns. I can't tell who caused the burns. I don't decide who caused the death, but I do decide how death was caused..."** It would appear that the parties do not dispute the doctor's conclusion and evidence. Consequently, it would appear that they do not dispute, that Karishma died as a result of the complication arising out of the "first degree burns to 40% of her body". Someone burn her resulting in her death – the second element of murder – please, refer to paragraph 9(ii) hereof. The only issues left to be resolved are:
- (i) Who burn her? (1st element of murder)
 - (ii) Did that person intend to kill her, or was reckless in causing her death, when he burnt her (3rd element of murder).

(iii) The Case Against the Accused:

27. The State's case against the accused, on the above two issues, were based primarily on a combination of two types of evidence:
- (i) Karishma's alleged "dying declarations" to her father Jitendra Nath (PW1); the taxi driver Suresh Pratap (PW2) and Josephine Joytika (PW3) on 19th February 2011, prior to her going to CWM Hospital, after the alleged burning incident; and
 - (ii) Circumstantial evidences on what occurred on 19th February 2011, the relationship between the accused and his wife (deceased), what transpired prior to, during and after the alleged burning and the surrounding circumstances in the case.
28. The State provided no direct evidence to prove who burn Karishma, at the material time. It was accepted by both parties that, at the material time, only Karishma and her husband, the accused, were at the crime scene, that is, in their kitchen. It was accepted by the parties that, the accused, was the only person who saw Karishma burning (ie. on fire), at the material time. It was accepted by the parties that, Karishma went alone to CWM Hospital, in PW2's taxi. It was accepted by the parties that, the accused, Karishma's husband, did not accompany her seriously burnt wife, to CWM Hospital. It was accepted by the parties that, Karishma died on 24th February 2011 (5 days later) at about 7.05pm, as a result of "1st degree burns to 40% of her body". It was accepted by the parties that, the accused, her husband was not beside her bedside, when she departed this world.
29. According to Jitendra Nath (PW1), the accused and his daughter, the deceased, knew each other for 15 years before they married in 2008. According to the accused, he knew his wife for 3 years before they married in 2008. After marriage, they lived in the accused's home at Lot 21 Reba Circle Nadera. The couple lived with the accused's mother and sister, at the house. The couple had no children. In 2011, the accused was aged 28 years, while his wife, the deceased was aged 25 years. On 19th February 2011, a Saturday, the accused's sister left for work at about 8.30am. The accused was awake, and sitting on a settee, at their porch. At about 9am, the accused's mother left for a prayer session at her temple in Samabula. Only the accused, and his wife, were at home at the time. According to the accused, he heard his wife yelling in the kitchen, and he rushed to the same.

30. According to the accused, he saw his wife burning from the face to the front part of her body. He said, her clothes were on fire too. According to the accused, he filled a pot with water and poured it on her. Then he got two buckets of water, filled the same, and poured it on her. He managed to put out the fire on her. He said, he told her to ring an ambulance and go to the hospital. He then attended to his burning kitchen. He managed to put the kitchen fire out. He said, he saw his wife run to a waiting taxi and went. He said, he didn't accompany his wife to hospital.
31. The State provided a witness, Losena Vunidovu (PW9), to say that the accused and his wife were having a heated argument, in the morning, at about 10am. PW9's house was behind the couple's house. PW9 said, she was making breakfast for her family, and could hear a man talking loudly and harshly to a female. The female was crying and wanted the man to comfort her. According to PW9, the argument went on for 5 to 7 minutes. Suddenly, according to PW9, she heard the woman yell in shock and kitchen appliances falling on the floor. Later, she went up their driveway, which was beside the couple's house. She saw an Indian lady crying and moving about. If you accept PW9's evidence, it would show that the burning of Karishma was preceded by a heated argument between her and her husband, the accused.
32. Now, we come to "Karishma's dying declaration evidence". As a matter of law, I must direct you, that a statement of a deceased is admissible as evidence of the cause of death at a trial for her murder, if she was under a settled hopeless expectation of death, when she made the statement. But I must warn you to be careful when evaluating that evidence, because her statements were not tested by cross-examination because of her death, and you must guard against any possible fabrication, given the surrounding circumstances. You have heard the accused's version of events in the courtroom. Karishma's alleged version of events was through her injuries as itemized in her post-mortem report (Prosecution Exhibit No. 3) and through her alleged "dying declaration" to her father (PW1), the taxi driver (PW2) and Josephine Joytika (PW3). The weight to be attached to her dying declaration is a matter entirely for you.
33. Jitendra Nath (PW1) in his evidence said, her daughter Karishma called her about 10 am. He knew her voice. PW1 said, her voice was that of a scared person. PW1 said, she told him that,

“her husband Roneel was burning her”. PW1 said, he told her to run to the Nadera Police Post, which was nearby. They spoke for 20 seconds, and after that the phone went dead. Suresh Pratap (PW2), the taxi driver, next gave evidence. PW2 said, he was called to the couple’s house on 19th February 2011. Karishma came out of the house, wearing a long dress, and was wet. PW2 said, Karishma told him “My husband burnt me”. PW2 then drove Karishma to Nadera Police Post to report the matter. He spent a while there. The police told him to take Karishma to CWM Hospital, and he did so. PW2 said, Karishma was in his car for 20 minutes. PW2 said, Karishma wanted to hold him and she fell on the back seat. She was yelling “save me! Save me! Please, go fast!” PW2 said, she was massaging her hands, and he could see her skin coming out. PW2 asked her, “Where her husband was?” PW2 said, she told him “Her husband burnt her and he is at home”. PW2 said he took her to the Emergency Section at CWM Hospital. According to PW2, she continued to shout, “Help me! help me!” PW2 said, Karishma was very weak, at the time. PW2 said, he later had to wash Karishma’s skin away from the backseat of his car.

34. At the Nadera Police Post, before been taken to CWM Hospital, Josephine Joytika (PW3) also saw Karishma on 19th February 2011. It was between 10 am to 10.30 am. PW3 said, she talked to Karishma. Karishma was in the taxi near the Nadera Police Post. Karishma was her friend and relative. PW3 said, Karishma told her “her husband burnt her”. PW3 said, she saw mud and grass on her face. After a while, the taxi drove away. PC 4141 Cassidy (Police Officer) (PW4) next gave evidence. He said, PW2 drove Karishma in his taxi to Nadera Police Post, on 19th February 2011, at about 10.40am. He said, PW2 told him “There’s a lady at the back of the taxi and her husband burnt her”. PW4 said, he opened the right back door of the taxi. PW4 said, he saw a lady lying on the backseat with her face and hair completely burnt off. PW4 said, she was in great pain at the time, and she said, nothing to him.
35. Doctor Amelia Jane Andrews (PW7) gave evidence. She said, she saw Karishma from February 2008 to February 2011, for epilepsy. She said, she was an outpatient. She said, epilepsy is caused by abnormal brain activity. However, it is now not classified as a mental disease, but a physical condition, like diabetic. She said, Karishma was given the anti-epileptic tablet, and she remained well, as an outpatient. She said, Karishma had not told her of any suicidal tendencies, in the past. What you make of this evidence, is entirely a matter for you.

36. The accused (DW1) gave sworn evidence, and he denied the allegation against him. He said, he did not burn his wife, at the material time. He said, he was in the porch when he heard his wife yelling. He said, he ran into the house and saw his wife on fire. He said, he filled a pot with water and poured it on her. Then he filled 2 buckets of water and poured it on her. He said, the fire went out. He said, he then put out the fire in the kitchen. He said, he told his wife to call an ambulance and go to the CWM Hospital. He said, he saw his wife go onto the road. He said, he didn't follow his wife as she was too fast of the house and he was confused. He said, he rang his mother (DW3) and told her that Karishma burnt herself. He told his mother he saved Karishma and their kitchen. Later, he said, he and his mother went to CWM Hospital to visit Karishma, at about 10.45 am. He said, he saw his wife in the hospital. She was in a serious condition. She had an oxygen mask on her.
37. The defence called Eseta Yavuvatu (DW2). She said, she is a close friend of the accused's family, and treats the accused as a brother. She said, she heard about this case last week. She said, she wanted to assist the accused in his defence. She recalled in 2010, when she saw Karishma pouring kerosene on herself, and attempting to set herself alight. She said, she stopped her. However, according to her, Karishma later blamed her for attempting to burn her. Later, Karishma apologized to DW2 about the above. What you make of DW2's evidence is entirely a matter for you.
38. The defence last witness is Shanti Chand (DW3), the accused mother. She confirmed the accused called her after 10 am on 19th February 2011. The accused told her Karishma was burnt and she was in CWM Hospital. When she reached home, both mother and son went to hospital to see Karishma. They arrived before 11 am. According to DW3, they were not allowed to see Karishma. They left after 2.30pm. They went home. At home, the police arrived to conduct their investigation. After 7 pm, DW3 and her son went to the hospital to visit Karishma. They were not allowed to see her. They returned home. What you make of this evidence is entirely a matter for you.

39. The State's case against the accused rested primarily on Karishma's dying declaration, and what is often termed as circumstantial evidence. That simply means that the prosecution is relying upon evidence of various circumstances relating to the crime and the defendant which they say when taken together will lead to the sure conclusion that it was the defendant who committed the crime. It is not necessary for the evidence to provide an answer to all the questions raised in a case. You may think it would be an unusual case indeed in which a jury can say "We now know everything there is to know about this case". But the evidence must lead you to the sure conclusion that the charge which the defendant faces is proved against her. Circumstantial evidence can be powerful evidence, but it is important that you examine it with care, and consider whether the evidence upon which the prosecution relies in proof of its case is reliable and whether it does prove guilt. Furthermore, before convicting on circumstantial evidence you should consider whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the prosecution case. Finally, you should be careful to distinguish between arriving at conclusions based on reliable circumstantial evidence, and mere speculation. Speculating in a case amounts to no more than guessing, or making up theories without good evidence to support them, and neither the prosecution, the defence nor you should do that.
40. The State's case were as follows. The accused and his wife had a heated argument on 19th February 2011, after 9 am, when the others had left the family house. The neighbor, PW9, testified to this heated argument, in her evidence. PW9 heard the accused talking harshly and angrily at Karishma. Karishma was replying in a crying manner and wanted her husband to comfort her. Karishma yelled in shock when the accused set her on fire, possibly using kerosene and a lighter. Karishma was crying as she called his father, PW1, and told him "her husband burnt her". Karishma called a taxi to take her to the hospital. She told the taxi driver, PW2, that "her husband burnt her". At the Nadera Police Post, where PW2 took her, she told PW3 that, "her husband burns her". According to the accused himself, the taxi driver and PW4, the police officer, Karishma was seriously injured at the time, as a result of "1st degree burn to 40% of her body". Obviously, she was under a settled hopeless expectation of death, when she made the above statements to her father, the taxi driver and Joytika (PW3). The State asks you to disregard the accused's denials. According to the State, he was more interested in saving his kitchen than his wife. As of today, his kitchen is intact, while his wife is dead. According to the State, this fact spoke volumes

about the accused's act on 19th February 2011 and his intention. It was the State's case that the accused burnt Karishma, at the material time, with intent to cause her death, or was reckless as to causing her death. The State asks you to disregard DW2's evidence, as a pack of lies. She should have reported her evidence to the police in 2011, rather than one week after hearing the case in the newspapers. If you accept the above, you must find the accused guilty as charged. If you reject the same, you must find the accused not guilty as charged.

I. SUMMARY

41. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's guilt, you must find him guilty as charged. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty as charged.

42. Your possible opinions are as follows:

(i) Murder: Accused : Guilty or Not Guilty

43. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive your decisions.

Salesi Temo
JUDGE

Solicitor for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : T. Ravuniwa, Barrister & Solicitor, Suva.