

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 176 OF 2012

STATE

-v-

RAJENDRA

Counsels : **Mr. S. Babitu for the State**
Ms. C. Choy for the accused

Date of Trial : **1 October 2014 – 2 October 2014**

Date of Summing Up : **3 October 2014**

SUMMING UP

Madam Assessors and Gentleman Assessor:

1. We have now reached the final phase of this case. The law requires me – as the Judge who presided over this trial – to sum up the case to you on law and evidence. Each one of you will then be called upon to deliver your separate opinion, which will in turn be recorded. As you listened to the evidence in this case, you must also listen to my summing up of the case very carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused.
2. I will direct you on matters of law which you must accept and act upon.
3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, these are matters entirely for you to decide for yourselves. So if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.
4. In other words you are the Judges of fact. All matters of fact are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.

5. The counsel for Prosecution and the defence counsel made submissions to you about the facts of this case. That is their duty as the Prosecution Counsel and the Defence Counsel. But it is a matter for you to decide which version of the facts to accept, or reject.
6. You will not be asked to give reasons for your opinions, and your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions, but I will give them the greatest weight when I come to deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law, that the accused is innocent until he is proved guilty. The burden of proving his guilt rests on the prosecution and never shifts.
8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty.
9. Your decisions must be solely and exclusively upon the evidence, which you have heard in this court and upon nothing else. You must disregard anything you might have heard or read about this case, outside of this courtroom. Your duty is to apply the law as I explain to you to the evidence you have heard in the course of this trial.
10. You must judge the case solely on the evidence that you heard in this Court room. There will be no more evidence and you are not to speculate on what evidence there might have been or should have been. You Judge the case solely on what you have heard and seen here.
11. Your duty is to find the facts based on the evidence and apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
12. As assessors you were chosen from the community. You, individually and collectively, represent a pool of common sense and experience of human affairs in our community which qualifies you to be judges of the facts in the trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.
13. In accessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole. In deciding on the credibility of any witness, you should take into account not only what you heard but what you saw. You must take into account the manner in which the witness gave evidence. Was he/she evasive? How did he/she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable.
14. In this case the prosecution and the defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth. They are

of course an important part of the case. The agreement of these facts has avoided the calling of number of witnesses and thereby saved a lot of court time.

15. The agreed facts of this case are:

Rajendra (the Accused) was born on the 21st of December 1964.

Nancy Shobna Pillay is the deceased in this case and also the defacto partner of the accused.

Nancy Shobna Pillay died on the 09th of December 2012.

The accused rented a room in the house of one **Paras Ram Reddy** at Vitogo, Lautoka.

Paras Ram Reddy also transported them to the deceased mother's house in Rifle Range, Lautoka to visit her children on the 09th of December 2012 at around 1.45 pm.

After returning back to their house, they continued drinking but after an argument, they were told by the landlord to go away.

The accused and the deceased came to the Lautoka Fisheries Wharf with **Maika Kaufusi** and **Ganeshwar Chand** to go fishing in **Ganeshwar's** boat named Spirit of Drunken Master with boat number as WL 082.

The accused, deceased and **Ganeshwar** continued drinking beer at the wharf until 5.00 pm when all of them (including **Maika Kaufusi**) left for the sea.

The boat was anchored near Bekana Island where they had dinner before lying down to rest for a while, **Ganeshwar Chand** and **Maika Kaufusi** were in the open space of the boat whilst the accused and the deceased went inside the deck.

The accused was arrested from the Lautoka Wharf by police on the 09th of December 2012 at around 10.00 pm.

16. The charge against the two accused is as follows:

COUNT 1
Statement of Offence

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

Particulars of Offence

RAJENDRA alias BAKA on the 9th day of December 2012 at Lautoka in the WESTERN DIVISION recklessly murdered **NANCY SHOBINA PILLAY**.

17. I will now deal with the elements of the offence. The offence of murder is defined under Section 237 of the Crimes Decree. "Murder", has three essential elements. For accused to be found guilty of murder, the prosecution must prove beyond reasonable doubt, the following elements:
- (i) That accused did an unlawful act;
 - (ii) That the unlawful act caused the death of the deceased;
 - (iii) That accused person intended to cause, or reckless as to causing, the death of other person by the conduct.
18. An "unlawful act", is simply an act not justified in law. For example, in attempting to rob someone I rushed towards him and delivered punches to his body and head. The act of punching, without any legal justification, is an assault and is an unlawful act. It is an unlawful application of force to the person of another, and is therefore an unlawful act.
19. The "unlawful act" must "cause the death of the deceased". This is the second element of murder. The law requires a link between the unlawful act and the death. Continuing from the above example, the right hand punch I landed on the person's head was so hard he fell to the ground. As a result, he suffered internal bleeding in his brain, and subsequently died. My punch therefore "caused the deceased's death", because it was a substantial cause of the injuries to his brains. Without my punch, he wouldn't have had a brain injury, and therefore would not die. My punch was a substantial and major cause of his death.
20. The third element of murder is the accused intended to cause, or reckless as to causing, the death of other person by the conduct.
21. The first element is called the physical element of the offence, while the second element indicates the casual link. The third is called the mental element. You have to always bear in mind that all three elements should be established by the prosecution at all times together for it to succeed in the charge of murder. It must be absolutely clear in your mind that the act or the conduct of the accused was accompanied by intended to cause, or reckless as to causing, the death of other person by the conduct, which is the necessary mental state or the faulty intention to complete the offence of murder.
22. You must also bear in mind that a person's intentions are locked up in mind. They are not often spoken out. The intent, therefore, cannot be physically observed. However, this intent can be proved by what one tells others, or can be inferred from one's conduct prior to, during and subsequent to the act or conduct in question. The question you have to decide in this element is, if the accused caused the injury to the deceased was he reckless as to causing the death of the deceased.
23. If, on the other hand, the prosecution failed to prove beyond reasonable doubt, the mental element required, but have only proved beyond reasonable doubt that-
- (i) an illegal act was done

- (ii) it resulted in the death
- (iii) that he intended to cause serious harm or is reckless as to a risk that the conduct will cause serious harm

then you are entitled to find the accused guilty of manslaughter. The elements of manslaughter are the first two elements for murder, that is, the accused did an unlawful act, which caused the deceased's death with intention to cause serious harm or recklessness as to risk the conduct will cause serious harm.

24. I will now explain what manslaughter is. Manslaughter is a lesser offence that stands very close to the offence of murder. It is the killing of someone by an unlawful act or omission without necessary intention or recklessness. If you consider that the accused did not have the necessary intention of committing the death of the deceased or reckless in his action, but he had only the knowledge that the death would be caused by his act or conduct, then you must find the accused guilty not of murder but of manslaughter only. Whether the accused had knowledge only or whether he had the intention to cause the death of the deceased or cause serious harm to him is a matter entirely for you to decide on the basis of facts and circumstances of the case.
25. Apart from the elements of the offence, the identity of the person who alleged to have committed the offence is very important. There must be positive evidence beyond reasonable doubt on identification of the accused-person and connect him to the offence that he alleged to have committed.
26. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw it or by a victim who saw, heard and felt the offence being committed.
27. As a matter of law I must direct you on circumstantial evidence. In this case, the prosecution relies on certain circumstantial evidence. In circumstantial evidence, you are asked to piece the story together from witnesses who did not actually see the crime being committed, but give evidence of other circumstances and the events that may bring you to a sufficiently certain conclusion regarding the commission of the alleged crime.
28. I cite the following situation as an example for circumstantial evidence. In a silent night, you hear cries of a man from a neighboring house. You come out to see that a man named 'A' is running away from that house with an object in his hand. Out of curiosity you go inside the house to see what really had happened. You see your neighbor 'B' lying fallen on pool of blood with injuries. Here you don't see 'A' committing any act on 'B'. The two independent things you saw were the circumstances of a given situation. You can connect the two things that you saw, and draw certain inferences. An inference you may draw would be that 'A' caused the injury on 'B'. In drawing that inference you must make sure that it is the only inference that could be drawn, and no other inferences could have been possibly drawn from said circumstances. That should be the inescapable inference that could be drawn against 'A' in the circumstances. Further in evidence one witness may

prove one thing, and another witness may prove another thing. None of those things separately alone may be sufficient to establish guilt, but taken together may lead to the conclusion that the accused committed the crime.

29. You must consider all direct evidence—that what witnesses saw, heard or perceived by their senses, as well as circumstantial evidence.
30. Circumstances are not made by mere speculation or guesswork. They must be established beyond reasonable doubt and the proved circumstances must only be consistent with the accused having committed the crime. To find him guilty, you must be satisfied so as to feel sure that an inference of guilt is the only rational conclusion to be drawn from the combined effect of all the circumstances proved. It must be inference that satisfies you beyond reasonable doubt that the accused committed the crime and that inference should be irresistible and inescapable on the evidence. Before you can draw any reasonable inference, you must first be satisfied beyond reasonable doubt, that the evidence given by each witness relating to the circumstances giving rise to the issues of fact to be proved is credible and truthful.
31. Documentary evidence is also important in a case. Documentary evidence is the evidence presented in the form of a document. In this case, coronial autopsy report of the deceased is an example.
32. Expert evidence is also important to borne in mind. Usually, witnesses are not allowed to give opinions. They are allowed to give evidence on what they have seen, heard or felt by their physical senses only, as described earlier. The only exception to this rule is the opinions of experts. Experts are those who are learned in a particular science, subject or a field with experience in the field. They can come as witnesses and make their opinions expresses on a particular fact to aid Court and you to decide the issues/s before Court on the basis of their learning, skill and experience.
33. In assessing evidence of witnesses you need to consider a series of tests. They are for examples:

Test of means of opportunity: That is whether the witness had opportunity to see, hear or feel what he/she is talking of in his/her evidence. Or whether the witness is talking of something out of pace mechanically created just out of a case against the other party.

Probability and Improbability: That is whether what the witness was talking about in his or her evidence is probable in the circumstances of the case. Or, whether what the witness talked about in his/her evidence is improbable given the circumstances of the case.

Belatedness: That is whether there is delay in making a prompt complaint to someone or to an authority or to police on the first available opportunity about the incident that was alleged to have occurred. If there is a delay that may give room to make-up a story, which in turn could affect reliability of the story. If the complaint is prompt, that usually leaves no

room for fabrication. If there is a delay, you should look whether there is a reasonable explanation to such delay.

Spontaneity: This is another important factor that you should consider. That is whether a witness has behaved in a natural or rational way in the circumstances that he/she is talking of, whether he/she has shown spontaneous response as a sensible human being and acted accordingly as demanded by the occasion.

Consistency: That is whether a witness telling a story on the same lines without variations and contradictions. You must see whether a witness is shown to have given a different version elsewhere. If so, what the witness has told court contradicts with his/her earlier version.

You must consider whether such contradiction is material and significant so as to affect the credibility or whether it is only in relation to some insignificant or peripheral matter. If it is shown to you that a witness has made a different statement or given a different version on some point, you must then consider whether such variation was due to loss of memory, faulty observation or due to some incapacitation of noticing such points given the mental status of the witness at a particular point of time or whether such variation has been created by the involvement of some another for example by a police officer in recording the statement where the witness is alleged to have given that version.

You must remember that merely because there is a difference, a variation or a Contradiction or an omission in the evidence on a particular point or points that would not make witness liar. You must consider overall evidence of the witness, the demeanor, the way he/she faced the questions etc. in deciding on a witness's credibility.

You must also consider the issue of omission to mention something that was adverted to in evidence on a previous occasion on the same lines. You must consider whether such omission is material to affect credibility and weight of the evidence. If the omission is so grave, you may even consider that to be a contradiction so as to affect the credibility or weight of the evidence or both.

In dealing with consistency you must see whether there is consistency *per se* and *inter se* that is whether the story is consistent within a witness himself or herself and whether the story is consistent between or among witnesses. In deciding that, you must bear in mind that the evidence comes from human beings. They cannot have photographic or videographic memory. All inherent weaknesses that you and I suffer, insofar as our memory is concerned, the memory of a witness also can be subject to same inherent weaknesses.

Please remember that there is no rule in law that credibility is indivisible. Therefore, you are free to accept one part of a witness's evidence, if you are convinced beyond doubt and reject the rest as being unacceptable.

34. You need to consider all those matters in evaluating the evidence of witnesses. You shall, of course, not limit to those alone and you are free to consider any other factors that you may think fit and proper to assess the evidence of a witness. I have given only a few illustrations to help what to look for to evaluate evidence.
35. I will now deal with the summary of evidence in this case.
36. The first witness for the prosecution was Doctor Ponnu Swamy Goundar. He is experienced doctor. He had done more than 5000 post mortems and 600 - 700 cases involving murders.
37. He had conducted the post mortem on 10.12.2012 at the Lautoka hospital mortuary. The deceased was 29 years old and well-nourished person. There were five external injuries. A triangular cut was present in the chest measuring 4cm × 3cm × 3.2cm. There were superficial cuts on the left wrist and back side of hand. An abrasion on left fore-arm and a cut on upper lip with surrounding contusion.
38. The two superficial cuts and the abrasion are more of defence injuries. The defence injuries are when a person is attacked, that person will try to defend one self, try to hold the other person or ward off that person. During this process injuries are produced in defence. Injury on the lip was assault injury. The first injury was a stab injury. That stab had penetrated the pleural cavity. There was 100 ml blood in pleural cavity. The first intercostal muscle was cut. It has also cut base of upper lobe of right lung. The upper part of the middle lobe and upper part of the lower lobe were also cut. There were existing holes in the back of the lung. This injury was caused by sharp weapon with fair amount of force. The knife shown could have been used to produce this injury. This injury could not be self-inflicted. This injury had gone in oblique direction. Usually self-inflicted injuries go straight. The cause of death was shock and excessive loss of blood due to stab wound. He tendered the post mortem report marked P1.
39. Under cross examination he stated that there was no smell of alcohol. The depth of an injury depends on the resistance of the body at the location of the injury. This injury could not have happened when someone trying to prevent the deceased stabbing herself. In such case the direction of the injury should be straight. If there was a struggle there should be other injuries. The two persons should be facing each other. If the deceased was drunk that will not affect the angle of the injury. He could not comment if the deceased had an epileptic attack as that is a very hypothetical question.
40. Doctor is an independent witness. He ruled out that this injury could be self-inflicted. He gave reasons for his opinions. It is up to you to decide whether you could accept this evidence beyond reasonable doubt with all other evidence in this case. If you accept this evidence beyond reasonable doubt it confirms the prosecution version and also the accused version cannot be believed.
41. The second witness for the prosecution was Ganeswar Chand. He is a fisherman for 30 years. The accused had worked with him as a fisherman for more than 10 years. On

9.12.2012 the accused came with his wife for the first time. He was sleeping in the boat. Maika woke him up and told him that accused had stabbed his wife. He had seen her in pool of blood. He had told Maika to pull the anchor and brought the boat to the wharf. The security guard was told to inform the police. He had seen the accused in water and Maika pulled him out. Maika had punched the accused 2-3 times. He identified the accused and the knife in Court.

42. Under cross examination he said that knife was used by him and police had taken it from the boat. That day he had gone to accused's house for drinking. The accused had a fight with his landlord. Then they have gone to town. They decided to sleep in boat as the accused did not want to go to his in-law's place. He was sleeping at the entrance of the cabin. Maika was sitting close to the engine. He had not seen what exactly happened between the accused and his wife. When he was asked whether accused was sitting next to wife when they came back to the wharf he said accused was sitting near him.
43. This is an independent witness. He had not seen the actual incident. But he speaks about previous and subsequent conduct of the accused. The defence had not suggested he is lying. You have to decide whether this witness's evidence confirms the prosecution version or create a reasonable doubt in the prosecution version and supports the accused's version.
44. The next witness for the prosecution was Doctor Jone Tabuya. He had examined the accused on 10.12.2012 at 12.45 p.m. The accused had given a history of being punched several times on chest and face. His medical findings were that the accused had a tender left chest and swollen left eye brow area. These injuries were result of blunt force. He tendered the medical report marked P2. He had examined the accused again on 11.12.2012 at 6.40 p.m. He had given a history that his wife had bitten him. There were two lacerations on 5th finger on both sides. There were teeth marks on left 4th finger. His opinion was the bite marks on the 4th finger was result of more than one bite. The laceration on the outside of the 5th finger is also a result of a bite. But the laceration on the pulp of the 5th finger is from something sharp. He tendered this second report marked P3.
45. Under cross examination he admitted that first page of the report is filed by the police officers. He also admitted that the accused was produced before him on the 10th to ascertain whether he is fit for interview.
46. This Doctor is an independent witness. He had given evidence on the injuries observed on 10th and 11th on the accused. It is important to note that he had not noticed the injuries on the hand of the accused on the 10th. You have to decide whether this witness's evidence is confirming the prosecution version or it creates a reasonable doubt in the prosecution case and supports the accused's version.
47. Prosecution called D/Cpl. Salen Kumar as the next witness. He is an officer with 25 years' experience. He had received instructions to interview the accused. D/Inspector Keshwan Naidu was the witnessing officer. The interview was conducted at the Crime office in Hindustani language. During the interview accused gave answers voluntarily. The accused

had not made any complaint to him. The accused was given breaks. The interview lasted for two days. The accused had voluntarily signed the interview. He identified and tendered the original interview notes marked P4A and a translation prepared by him marked P4B. He also identified the knife shown to the accused and the accused in Court.

48. Under cross examination he denied that Officer Dau was also present during the interview. He denied pressuring the accused to plead guilty during the interview. He denied that Officer Naidu telling the accused that if he doesn't plead guilty, Army officers will be called and they will break your hand and leg. He denied swearing at the accused during the interview. He denied that accused's rights were not given. He denied that he and Officer Naidu pressured the accused to sign the interview notes. He denied that admissions in the interview were written by the witness and those were never told to the accused. He also denied that content was not read over and explained to the accused. He had noticed accused's left eye brow area was swollen. He had not noticed the injuries on his fingers.
49. The above witness gave evidence on the caution interview of the accused. It is up to you to decide whether the accused made a statement under caution voluntarily to D/Cpl. Salen Kumar. If you are sure that the caution interview statement was made freely and not as a result of threats, assault or inducements or pressure made to the accused by person in authority then you could consider the facts in the statement as evidence. Then you will have to further decide whether facts in this caution interview statement are truthful. If you are sure that the facts in the caution interview are truthful then you can use those to consider whether the elements of the charge are proved by this statement.
50. The next witness for the prosecution was Sgt. Rusila. She is an officer with 24 years' experience. She is attached to Scene of Crime branch. On 9.12.2012 she had received instructions to attend a scene of crime at wharf. She had secured the scene, photographed the scene and made a sketch. Exhibits were uplifted from the scene. She identified and tendered the Rough sketch plan marked P5A and fair sketch plan marked P5B. She also identified and tendered booklet of 10 photographs marked P6.
51. Under cross examination she stated the deceased was lying facing upwards towards the door of the cabin. She had not noticed a sharp object next to her until later. She had not uplifted finger prints from the scene or the knives.
52. The booklet of photographs is before you. You have to consider whether these photographs are consistent with the prosecution version or raise any reasonable doubt in the prosecution case and consistent with the defence version.
53. DC Vedh Prakash was called as the next witness for the prosecution. He is an officer with 9 years' experience. He had charged the accused on 11.12.2012. Sgt. Kishore was the witnessing officer. The accused did not make any complaint to him. The accused was not threatened to give answers. The witnessing officer Sgt. Kishore had not done so. During the charge the accused made a statement. He and witnessing officer had not threatened the accused to make a statement. The accused, witnessing officer and him had signed the

charge statement. The accused was not threatened or induced to sign the charge statement. He identified and tendered the charge statement marked P7A and the translation marked P7B. He read the charge statement in Court. He identified the accused in Court.

54. Under cross examination he stated that he had not seen any injuries on the accused. He had not noticed bite marks on the fingers. He denied Salen being present. He denied that accused's rights were not given. He denied that questions and answers were already written and accused was only asked to sign. He denied that the accused was threatened and pressured to sign the charge statement. He denied that the content of the charge statement was never read back to the accused.
55. The above witness gave evidence on the charge statement of the accused. It is up to you to decide whether the accused made a statement in the charge voluntarily to DC Vedh Prakash. If you are sure that the charge statement was made freely and not as a result of threats, assault or inducements or pressure made to the accused by persons in authority then you could consider the facts in the statement as evidence. Then you will have to further decide whether facts in this charge statement are truthful. If you are sure that the facts in the charge statement are truthful then you can use those to consider whether the elements of the charge are proved by this statement.
56. The last witness for the prosecution was Sgt. Dau. He was appointed as the investigating officer of this case on 9.12.2012. Rajendra was the suspect. The accused did not make any complaint to him during the investigation. The accused was not threatened in any way while in police custody. A kitchen knife with wooden handle was uplifted as the weapon used from the scene. He identified and tendered the knife marked as P8. He identified the accused in Court.
57. Under cross examination he stated that when he first met the accused on 9.12.2012 he observed a swelling on forehead. He had not noticed any injury on fingers. The accused was smelling of liquor. The accused was escorted to the hospital on 10th before the interview. He was not present at the time of the interview. He had not uplifted any finger prints either from the scene or the knife.
58. After the prosecution case was closed you heard me explaining the accused his rights in defence. The Accused elected to give evidence.
59. He stated that he had a de-facto relationship with the deceased for nearly 9 - 10 months and they were to marry in December. On 9.12.2012 in the morning he was at wharf selling fish. Then he had gone home with deceased. They bought 6 beer bottles and drank those. Then they called Paras Ram to bring 1 carton of beer. He, the deceased, Ganeshwar and Paras Ram had 6 -7 bottles. Thereafter he had gone with deceased to her parent's house. After coming back they continued drinking beer. There was argument with Paras Ram's brother and Ganeshwar. He had punched Paras Ram's brother and Paras Ram. He was chased out of the house by Paras Ram and was asked to move out.

60. They have gone to the boat. They had some more beers on the way and at the wharf. Then he, deceased, Ganeshwar and Maika had gone fishing to Bekana reef. The boat was anchored there. He and the deceased were in the cabin. Ganeshwar was sleeping in front of the cabin. Maika was lying down at the back near the engine. He was drinking beer with the deceased. The deceased had told him, 'you don't trust me and you don't have faith in me' and picked up a knife. He had held her hand. Deceased had bitten his small finger. Then he left her. She stabbed herself. She had grabbed a knife from a shelf beside her using right hand. He said the knife was P8. When the deceased stabbed her, he came out. He had woke up Maika and told him the deceased stabbed herself. Maika punched him saying how this happened.
61. Then he woke up Ganeshwar and told him go back to the wharf to save the deceased. Ganeshwar captained the boat back to wharf. Maika pulled up the anchor. When they reached the wharf, Maika was sent to security to call police for them to come and take the deceased to the hospital. He was sitting with the deceased. When police came he was taken to the station with Maika and Ganeshwar. He was put in the cell and other two were released. On 10.12.2012 he was taken to hospital. When he came back his statement was taken. Salen, Dau and the officer who got retired were present. He was not given his rights. He was pressured by the police officers. The one who got retired threatened him. He was told 'you plead guilty. You have done this. If not we will call Army officers and they will come and break your arms and legs.' He could not read and write in English or Hindi. The statement was not explained to him by Salen. He was threatened and forced to sign the statement. He was taken to hospital again on 11.12.2012. He was interviewed again same day. Salen, retired officer, Dau and Vedh were present. He was not questioned by Vedh. He was not threatened by Vedh to sign. Vedh did not take any statement from him. When he tried to pull the anchor, he was not stable, the boat was shaking and he fell into water. He swam to the backside and Ganeshwar and Maika pulled him back.
62. Under cross examination he admitted that he had a fight with the deceased in the boat on 9.12.2012. He further admitted that he accused her for having an affair with Paras Ram. He did not see where the deceased tried to stab. The deceased stabbed herself only once. She was holding the knife from the right hand. The injuries on arms must have happened while she was taken out. Maika punched him as Maika thought he stabbed the deceased. Maika was younger to him and this is the first time he came fishing with them. He is the person who told Ganeshwar to go back to the wharf to save the deceased. He denied trying to escape. He admitted that he gave the answers voluntarily in the interview but he was frightened.
63. In re-examination he said that he told police that he didn't kill the deceased. He told the police how she got stabbed.
64. You watched the accused giving evidence in court. What was his demeanor like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? The position taken up by the accused in giving evidence in the court is different from his caution interview statement and the position taken up by him at the time

of cross examination of some prosecution witnesses. In other words his version is inconsistent.

65. I must remind you that when an accused person has given evidence he assumes no onus of proof. That remains on the prosecution throughout. His evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.
66. You will generally find that an accused gives an innocent explanation and one of the three situations then arises:
- (i) You may believe him and, if you believe him, then your opinion must be Not Guilty. He did not commit the offence.
 - (ii) Alternatively without necessarily believing him you may say 'well that might be true'. If that is so, it means there is reasonable doubt in your minds and so again your opinion must be Not Guilty.
 - (iii) The third possibility is that you reject his evidence as being untrue. That does not mean that he is automatically guilty of the offence. The situation then would be the same as if he had not given any evidence at all. He would not have discredited the evidence of the prosecution witnesses in any way. If prosecution evidence proves beyond reasonable doubt that he committed the offence then the proper opinion would be Guilty.
67. I have summarized all the evidence before you. But, still I might have missed some. That is not because they are unimportant. You heard every item of evidence and you should be reminded yourselves of all that evidence and form your opinions on facts. What I did was only to draw your attention to the salient items of evidence and help you in reminding yourselves of the evidence.
68. Remember, the burden to prove accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial, and 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.
69. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of accused's guilt you must find him guilty for the charge. 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 accused's guilt, you must find him not guilty as charged.
70. Your possible opinions are as follows:

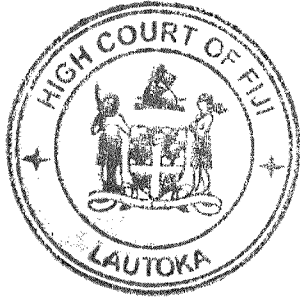
The charge of Murder Accused – Guilty or Not Guilty


 If Not Guilty for Murder

Manslaughter Accused - Guilty or Not Guilty

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

72. Any re-directions?




Sudharshana De Silva
JUDGE

At Lautoka
03rd October 2014

Solicitors : Office of the Director of Public Prosecutions for State
 Office of the Legal Aid Commission for Accused