

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 137 OF 2014

STATE

VS

AMINIO TURAGAVA

Counsel : **Ms. S. Kiran for the State**
: **Mr. Aman Singh with Mr M. Antoney for**
Accused
Dates of Trial : **3rd, 4th and 05th of February, 2016**
Date of Summing Up : **8th February, 2016**

SUMMING UP

Ladies and Gentleman Assessor,

1. We have now come to the final phase of this trial. It is now my duty to sum up this case to you. I will direct you on matters of law which you must accept and act upon. On matters of fact however, which witnesses to accept as reliable, which version of the evidence to accept, these are matters for you to decide for yourselves. So if I express any opinion to you about the facts of the case, or if I appear to do so it is a matter for

you whether you accept what I say, or form your own opinions. In other words, you are the judges of fact.

2. 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?'
3. When you have decided the truthfulness and reliability of evidence, then you can use that credible evidence to determine the questions of facts, which you have to decide in order to reach your final conclusion, whether the Accused is guilty or not to the charge. You decide what facts are proved and what inferences you properly draw from those facts. You then apply the Law as I explain it to you and form your own opinion as to whether the Accused person is guilty or not guilty.
4. A question of fact is generally understood as what actually had taken place among conflicting versions. It should be decided upon the primary facts or circumstances as revealed from evidence before you and of any legitimate inference which could be drawn from those given sets of circumstances. You as Assessors, in determining a question of fact, should utilize your commonsense and wide experience which you have acquired living in this society.
5. In determining questions of fact, the evidence could be used in the following way. There are two concepts involved here. Firstly, the concept of primary facts and secondly the concept of inferences drawn from those primary facts. Let me further explain this to you. Some evidence may directly prove a thing. A person who saw, or heard, or did something, may have told you about that from the witness box. Those facts are called primary facts.

6. In addition to facts directly proved by the evidence or primary facts, you may also draw inferences – that is, deductions or conclusions – from the set of primary facts which you find to be established by the evidence. If you are satisfied that a certain thing happened, it may be right to infer that something else also occurred. That will be the process of drawing an inference from facts. However, you may only draw reasonable inferences; and your inferences must be based on facts you find proved by evidence. There must be a logical and rational connection between the facts you find and your deductions or conclusions. You are not to indulge in intuition or in guessing.
7. You will not be asked to give reasons for your opinions but merely your opinions themselves, and your opinions need not be unanimous but it would be desirable if you could agree on them. Your opinions are not binding on me but I can tell you that they will carry a great weight when I deliver my judgment.
8. As a matter of law, I must direct you that the onus or burden of proof lies on the Prosecution throughout the trial and it never shifts. There is no obligation on the Accused person to prove his innocence. Under our criminal justice system an Accused person is presumed to be innocent until he is proved guilty.
9. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of Accused person'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.
10. Your decisions must solely and exclusively be based 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 disregard them and your opinions should only be based on the evidence given in this Courtroom.

11. Your duty is to find the facts based on the evidence, apply the Law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
12. The evidence is what the witnesses said from the witness box, the documents, the things received as Prosecution or defence exhibits and any admissions made by the parties. Statements, arguments, questions and comments by the Counsel are not evidence. A thing suggested by a Counsel during a witness's cross- examination is also not evidence of the fact suggested, unless the witness accepted the particular suggestion as true. The opening and closing submissions made by both Counsels are not evidence. They were their arguments, which you may properly take into account when evaluating the evidence; but the extent to which you do so is entirely a matter for you.
13. Documentary evidence is important in this case. Prosecution tendered number of documents in evidence; for example, the cautioned interview, of the Accused and the medical report of the doctor. You can take into account the contents of those documents.
14. Expert evidence is also important to be borne in mind. Usually, witnesses are not allowed to express opinions. They are allowed to give evidence on what they have seen, heard or felt by physical senses only. 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 expressed on a particular fact to aid us to decide the issue or issues before Court on the basis of their learning, skill and experience.

15. The doctor in this case, came before Court as an expert witness. He, unlike any other witness, gave his opinion based on examination of the victim. If you believe that the medical report he perused to refresh his memory contained contemporaneous recordings made by the doctor at the relevant time upon examination of the victim, then you can act on such evidence. All other evidence including his observations and the diagnosis may be considered when coming to your decision.
16. However, doctor's evidence is not accepted blindly. You will have to decide the issue before you by yourself and you can make use of doctor's opinion if his reasons are convincing and acceptable to you; and, if such opinion is reached by considering all necessary matters that you think fit. In accepting doctor's opinion, you are bound to take into account the rest of the evidence led in the trial.
17. The parties consented to have the bundle of documents provided to you to be treated as "*agreed fact*" of the case. The agreed facts are part of evidence. You should accept that 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 time of this Court.
18. Now I draw your attention to the information with which the Accused is charged. You have a copy of the amended information with you. The Accused is charged with one count of Murder. The particulars of the offence say that the Accused murdered his *de-facto* partner, Veniana Alivina between the 20th day of October, 2014 and 21st day of October, 2014.
19. For the Accused to be found guilty of "Murder", the Prosecution must prove the following elements beyond reasonable doubt:
 - (i) that the Accused;

- (ii) did an unlawful act;
 - (iii) that act caused the death of the deceased;
 - (iv) at the time of the act the Accused:
 - (a) intended to kill the deceased; or
 - (b) knew what he was doing would cause death or very serious harm but went on to do it regardless.
20. An unlawful act is simply an act not justified in law, for example punching, stabbing, strangling, suffocating are all unlawful acts. This is the physical element of the offence of murder.
21. The second element the Prosecution must prove is that the unlawful act caused the death. This simply means that the unlawful act, substantially contributed to the death of the deceased.
22. The third element of murder concerned its fault/ mental element. As I described earlier, there are two fault elements for murder. In this case, the Prosecution is running its case on the basis that the Accused intended to kill his *de facto* partner and also that he was reckless as to causing his death. You will therefore have to concentrate on these fault elements. In law, 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.
23. So, in this case you must find proved that the Accused engaged in conduct that caused the death of Veniana and that he intended to kill her or he knew that there was a risk that what he was doing might kill her and also that he was not justified in taking that risk.
24. In law, a person may be found guilty of a lesser offence, although he was not formally charged with the same. In this case, I am talking about

the offence of Manslaughter. Manslaughter has the same first two ingredients of murder; that is to say that the Accused engages in conduct which caused the death of another, but instead of the recklessness as to causing the death by his conduct, he just has to be reckless as to whether his conduct will cause serious harm to the victim.

25. In murder, the Accused must intend to cause the deceased's death, or was reckless in causing the same. In Manslaughter, the Accused must intend to cause serious harm, not death, or was reckless as to causing serious harm, not death to the deceased. If you find that the evidence satisfy the elements of Manslaughter, and you are sure of the same, then you are entitled to find the Accused guilty of the alternative lesser offence of Manslaughter .

Case for the Prosecution

Evidence of Josateki Seuseu

26. Prosecution called Josateki Seuseu, the Police Photographer, as its first witness. He tendered 19 photographs and a sketch he prepared after visiting the scene short while after the alleged incident. You will see that his statement, the photographs and the sketch are all included in the bundle of agreed facts. You can rely on them without further proof in coming to your conclusions.

Evidence of Avinash Aman Kumar

27. Prosecution then called Avinash Aman Kumar. He was having grog with a friend in his house at Koroipita Settlement on the 20th October, 2014, when Vereti (Accused) came around 7.p.m asking for a cigarette. His mother and neighbour, Fariza were also in the house at that time.

Vereti said to him that he had a pending case in Court with his wife Veniana and he wanted to talk to her about that. Then Vereti left.

28. Around 10.00 - 10.30 p.m. he heard one lady screaming from the left side of his house and ran towards where scream was coming from to check who that was. When he reached there, he saw Vereti and Veniana. Vereti was standing and Veniana lying down as if she had fallen. Residents including Sanjay and Ravinesh had also come there and were talking to Vereti to inquire what happened. Vereti replied and said "it's my wife's problem do not interfere". Sanjay and Ravinesh asked him to talk to Vereti to settle the dispute and left.
29. He asked Vereti what happened and asked him why he was hitting his wife. He said that he had a pending court case and wanted to settle it; but his wife does not want to settle it. 'It is better for me to kill her and go to jail' he said. Vereti was talking in Hindi. He told Vereti not to kill her as his understanding of the words Vereti spoke was that he was going to kill her.
30. Then he left them behind and went home to resume the grog session. After a short while, he heard Veniana's scream again and went to see them. He saw Vereti standing while Veniana sitting down on the ground. She was scared and crying. He asked her to come to his place and assured her protection. He held his hand and managed to take her down to his compound. She could not stand; but there were no visible injuries on her body at that time. His mother asked Vereti 'why you are hitting her like that'. Vereti was sitting quietly for a while and wanted to hit Veniana again. He stood up and intervened to stop. Then Vereti went to the kitchen and took a small knife. He managed to snatch the knife from Vereti and kept it back in the kitchen. Then he locked the kitchen door preventing him from taking it. He was just trying to save Veniana. He heard Vereti saying "I want to settle. She is not settling. I will kill her and go to jail."

31. Vereti then pulled Veniana again and took her to her neighbor, Mereadani's compound. He sat down again with his friend to have grog. He could still hear Veniana shouting and one Fijian lady pleading with him not to hit or punch her.
32. He then went to Mereadani's house to check if the door of her house is closed. When he arrived there, he saw a lot of blood on the passage of Mereadani's house. On his return, he saw Vereti and Veniana in Mereadani's compound. Vereti was pulling Veniana backwards from her chest area towards the road. Her face and dress were covered with blood. He asked Vereti 'what you did' and asked him to look for a transport to take her to hospital. He kept on pulling her quietly. She was making a sound as if she was in pain. Then he put her on his shoulder then both of them fell on the edge of the road.
33. Under cross examination, Avinash conceded that according to the English translation of what Vereti said, it does not say 'I will kill her'; but the words spoken of in Hindi meant 'I will hit her'. In latter part of his cross examination, he admitted that what Vereti said in Hindi was not that 'he will kill her' (*Janse hum maar dega*) but 'he will hit her' (*hum maar dega*). Finally he said '*generally, it can be kill her and hit her both*'.
34. He admitted that liquor smelled from Vereti's mouth and he was drunk at that time.

Evidence of Sanjay Kumar

35. 'Around 9.40 p.m. he heard a woman crying. He and his neighbor, Ravinesh, went to see who was crying. He saw Vereti and Veniana near a banana bush. Vereti was shouting at Veniana while she was sitting on the ground. Vereti was telling her 'I will kill you if you don't resolve

this issue'. Then, Aman also came and tried to settle the dispute. He rang up the Police and left the place.

Evidence of Fariza Begam

36. Fariza was making sweets for Deewali at Aman's house in the night of 10th of October, 2014 when she heard a scream of a woman. She sent Aman to check whose cry was that. Aman came with Vereti and Veniana. Veniana had injuries. She had blood on her face and arms and was unable to move. Aman advised Vereti not to fight. Vereti went to Aman's kitchen and took a knife. Aman snatched the knife from Vereti and warned him not to do anything in his compound. But he did not listen. She did not understand what Vereti was talking in Fijian.

Evidence of Oliva Nabula

37. Next witness called for the Prosecution was Oliva Nabula. She went to Mereadani's house around 11 p.m. on 20th October, 2014 to ask for some mosquito coils. She could hear someone shouting 'oh father', 'oh father'. In a short while Aman and Veniana arrived in front of Aman's house. Then Vereti came and went towards Aman's compound. Aman's mother and Aman chased him away. Then he came back and got hold of Veniana and dragged her towards Mereadani's house.
38. Vereti punched Veniana on her head. She fell down and her head hit the concrete floor. Veniana's right side of the head landed on the cement floor and Vereti jumped on the left side of her head. When Veniana fell down, she shouted and ran towards them. Vereti jumped on her head twice. When he was about to jump again he got hold of him and begged him not to touch Veniana again. There was blood everywhere and it was hard for her to breath as blood was coming out from her mouth, nose

and ears. Vereti apologized to her and said *'sorry, I know why I am touching her, because I have been informing her to withdraw the case, if I will go to jail I will put you into the hospital'*.

39. After Vereti spoke to her, she asked him if he can take Veniana to hospital if not to call the ambulance. He informed her *'don't worry I will not call the ambulance I will carry her by myself to the van'*. She did not see him taking Veniana to the van. Van was in a far away place. She pointed out the place where the van could have been found when she was shown the sketch of Koroipita Settlement.
40. Under cross examination, she admitted that Vereti was drunk and angry at the time of the incident. Although there was no light in the passage of Mereadani's house, lights were on in Aman's house and Mereadani's house, lighting the passage of Mereadani's house.

Pathologist's Evidence

41. Last witness for the Prosecution was Pathologist, James Kalounivaki. He is the acting head of the Forensic Science Service under the Fiji Police Force. He has a double degree in Medicine and Surgery and a Post Graduate Diploma in Pathology. He had conducted more than 800 autopsies over a period of six years.
42. Referring to the Post Mortem report he prepared after examining the dead body of Veniana at the Lautoka Hospital Mortuary on the 22nd October, 2014, Pathologist explained to us his medical findings and his opinion on the possible cause of death.
43. Upon the external examination, he noticed an obvious laceration or a deep cut over the right side of the face. The right orbit showed a black eye. On the left orbit also, there was a black eye. There was a prominent disfigured swelling over the left jaw angle.

44. Upon internal examination, and when the skin of the scalp was opened, there was extensive hematoma or hemorrhage under the layers of the skin extending from the front of the scalp to the back of the scalp. Unfolding of the skin of the face revealed extensive bruising of soft tissue and muscles of the right cheek. Unfolding of the left side of the face revealed an extensive muscular hemorrhage and soft tissue hemorrhage of the left cheek including the left angle of the jaw.
45. Moving on to the covering of the brain, there was obvious sub-arachnoid hemorrhage on both sides of the brain underneath the fine covering, extending down into the small brain.
46. Expressing his medical opinion on the cause of death, the doctor said that the deceased died of extensive sub-arachnoid hemorrhage due to blunt force trauma.
47. He described sub-arachnoid hemorrhage as bleeding within the fine covering of the brain, mostly associated with stream of blunt lateral blows to the face or to the neck, eventually causing rotation and avulsion of the mid brain. He said that blunt force trauma can be caused by anything that has a blunt or rounded surface like a fist or foot. He conceded that stomping on the left side of the face when the right side of the face is on the floor can cause a sudden avulsion of the brain.
48. Pathologist said that if a person dies from a fall, he would expect bruising externally over the skin and also under the skin of the scalp and possible fracturing. He further said, in a fall, he would expect different type of hemorrhage called subdural hemorrhage because of the sudden deceleration that occurs. He opined that the kind of medical condition he observed in Veniana rarely conforms to injuries caused by a fall.

49. That Ladies and Gentleman was the end of the Prosecution case. You then heard me explain several options to the Accused. I explained to him that he could remain silent or give sworn evidence and call witnesses on his behalf. He could also address Court. He was given these options as those were his legal rights. He need not prove anything. The burden of proving his guilt rests on Prosecution at all times.

Case for the Defence

50. Accused opted to remain silent. That is his right. You must not draw any negative inference and think that he offered no evidence and opted to remain silent because he is guilty.

51. Defence Counsel in the course of his cross examination and in his closing address took up the position that Vereti did not intend to kill Veniana and he was drunk at the time of the incident. Defence Counsel also took up the position that Veniana's death was caused by her falling down on a hard surface twice.

52. I have summarized 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 from 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.

ANALYSIS

53. The Prosecution relied on the evidence of Josateki Seuseu, the photographs and the sketch he tendered, evidence of Avinash Aman Kumar, Sanjay Kumar, Fariza Begum, Olivia Nabula, Doctor James and

his report, cautioned interview and the charge statement of the Accused to prove its case.

54. Prosecution says that the Accused intended to kill his *de facto* partner when he punched and stomped on her head several times. Prosecution also says that he knew what he was doing would cause death but went on to do it regardless. Defence on the other hand says that Accused did not intend to kill Veniana. Defence Counsel in the course of his cross examination and in his closing address took up the position that the Accused was drunk at the time of the incident and it was drunkard man's act. Defence Counsel also took up the position that Veniana's death was caused by her falling down on a hard surface twice and not by Accused's actions.
55. First of all, you must consider the evidence of the Prosecution to satisfy yourselves whether its evidence is truthful and, reliable. In testing the credibility of witnesses, you can consider if the Prosecution evidence is consistent and appeals to your common sense. If you are satisfied that the evidence of the Prosecution is credible and believable, then you must be satisfied that each element of the offence has been proved by the Prosecution beyond reasonable doubt.
56. There is no dispute in this case about the identity of the Accused. Accused was known to the main eye witnesses of this case. Avinash Kumar positively identified the Accused whose name, in his evidence, was referred to as Vereti.
57. In the cautioned interview, which was tendered as an agreed fact, Accused admitted certain actions. He admitted punching Veniana several times on her head and his last punch caused her to fall down, face downward, on the cement passage. When she was lying on the cement floor he stepped on her head three to four times. Eye witness Olivia Nabula said that Vereti punched Veniana on her head causing her

to fall down and her head hit the concrete floor. Right side of Veniana's head landed on the cement floor and Vereti jumped on the left side of her head twice when she was lying down.

58. There is evidence that Veniana fell on the ground twice. Contention of the Defence is that Veniana's death was caused by head injuries she received when she fell on the ground and not by the acts of punching and stomping of the Accused. You have to be satisfied beyond reasonable doubt that Vereti's unlawful actions substantially contributed to Veniana's death.
59. In coming to your conclusion you will find Pathologist's evidence useful. If you find Pathologist's opinion logical and reasonable, you carefully consider his evidence in light of other evidence led in the trial and decided what caused Veniana to die.
60. If you find that Vereti's actions substantially contributed to the death of Veniana, then you consider whether his actions were triggered by a murderous intention.
61. In the cautioned interview and the charge statement which were tendered as agreed facts, the Accused had admitted punching, knocking her to the ground and jumping or stamping on her head. In the cautioned interview, he says that he was drunk at that time and it was not his intention to kill her. You decide whether the Accused, at the time of his actions, intended to kill Veniana.
62. People usually don't write down what they are intending to do. So you must discern Vereti's intention from the circumstances established by evidence. You decide intent by considering what the Accused did or did not. You should look at his behavior before, at the time of and after the act. The nature and duration of the attack. The number and gravity of injuries inflicted, the place of the body where the injuries were inflicted.

You may also consider if he had any motive to kill her. All these things may shed light on the intention of the Accused at the crucial time when the injuries were caused to the victim.

63. To facilitate your task, I will refresh your memory on relevant evidence which I thought would be helpful to you in determining the state of mind of the Accused at the time of his actions. Remember however, you are the judges of fact and you are free to consider all the evidence led in the trial in coming to your own conclusions.

Cautioned Interview

64. You may consider the cautioned interview and the charge statement to determine his intention and perhaps the motive of the Accused. Remember, you have to determine his intention not the motive. If there is evidence of motive, you may be able to draw certain inferences with regard to his intention.

- In the charge statement which was tendered as an agreed fact, Accused says:

“I was in de facto relationship with Veniana for the last 18 months and it was in September this year she reported against me for assaulting and we have a case pending in court also DVRO case. On this day I had gone to see Veniana to tell her to reconcile with me but but she didn’t want to. I was trying my best to convince her to reconcile with me as the case was on Tuesday 21/10/14 but she did not. I got annoyed on her and started to punch her. I punch her all over the head. I was drunk that time when I dragged Veniana into the passage between the house and kitchen of my sister Meredani. I punched her again and Veniana fell down and I kicked her over her head several times and that is the time she stopped breathing. I knew that she was dead so I

dragged her away from there and took her to an open grass and left her there and went to sleep at the house of one Samisoni”.

- In the cautioned interview, Accused says:

Q.61. When this argument took place what else happen?

A: She was making unnecessary comments and I slapped her.

Q.62. Then what happened?

A: She also got angry and ran towards me and she grabbed me and started bashing me and I punched her again.

Q.63. When you were having argument and punching your wife, did anyone else come there?

A: Yes, I can recall people standing around, but I can't remember who all were there?

Q.64. Can you recall people stopping you from punching your wife?

A: I can recall only my sister stopping me.

Q.65. When your sister was stopping you from punching your de facto wife did you listen to her?

A: Yes, when my sister stopped me I can recall punching my wife the last time and she fell down.

Q.66. When you punched your wife where did she fell?

A: She fell face downwards on the cement foot path near the kitchen.

Q.67. What else did you do when your de facto wife fell on the foot path?

A: I stepped on her three or four times.

Q.68. Which part of the body did you stepped on after she fell down.

A: I stepped on her head when she was lying on the cement.

Q.69. Then what happened?

A: *My sister then again stopped me and when she was lying she was bleeding then I carried her to the nearby banana tree and made her lie down.*

Q.70. *When you carried her to the banana tree was she still alive?*

A: *Yes.....*

Q.71. *When you were having an argument with your de facto wife you wanted to solve a case of assault that was before court on 21/10/2014 Is this true.*

A: *Yes I wanted to ask my de facto wife to withdraw the case but this argument that had happened never gave a chance to discuss about the case.....*

Q.72. *When your de facto wife fell down near your sister's house after being punched by you, did you take her to the second place which you pointed to me this morning?*

A: *I carried her to that place.*

Q.73. *When you carried your de facto wife to where you showed us did you cross a road that goes to Koroipita settlement?.*

A: *Yes.*

Q.74. *Is it true that you crossed the road carrying your de facto wife and left her in the nearby bush near the banana tree.*

A: *Yes.*

Q.75. *Why did you take her there in the bush when your sister's house was just nearby?*

A: *When I saw her bleeding I was shocked and I did not know what I was doing.*

Q.76. *When you saw your de facto wife bleeding didn't you make any effort to take her to the hospital?*

A: *I went and called my sister to come and see her.*

Q.77. *Why did you take her to the nearby bush when your sister's house was just nearby? Is it because you saw that she died?*

A: *I could still hear her breathing.*

Q.78. *You meaningly punched her and you had planned to cause her death by punching and kicking her. What do you have to say?*

A: *I did punch her but it was not intention to cause her death.*

65. The Accused had given the partial confession to Police in his interview at 16.20 hrs. on 21.10. 2014, and in the charge statement at 15.05 hrs. on 22.10.2014. The Prosecution does not have to prove that the Accused set out with the intention to kill Veniana. The fact that afterwards the Accused may have regretted what he had done does not amount to a defence. You need to reach a conclusion as to what was his intention during the moments he was using unlawful violence against Veniana.

Words Spoken by the Accused

66. You may draw certain inferences as to the Accused's intention by examining words he had spoken.

Avinash Kumar's evidence

67. Avinash asked Vereti what happened and asked him why he was hitting his wife. He said that he had a pending court case and wanted to settle it; but his wife does not want to settle it. 'It is better for me to kill her and go to jail' he said. Vereti was talking in Hindi. He told Vereti not to kill her as his understanding of the words Vereti spoke was that he was going to kill her.
68. When Vereti took a small knife from Avinash's kitchen, Avinash heard Vereti saying "I want to settle. She is not settling. I will kill her and go to jail." Fariza Begam who witnessed the incident said she did not understand what they were talking in Fijian.
69. Defence Counsel disputed the English translation of the actual words spoken by the Accused in Hindi and suggested that the actual

translation should have been “It is better for me to hit her and go to jail”. Avinash later conceded that the words he overheard give double meaning and can mean either ‘hit’ or ‘kill’. It is up to you to form your own opinion on that.

Oliva Nabula’s evidence

70. Vereti apologized to her and said ‘*sorry, I know why I am touching her, because I have been informing her to withdraw the case if I will go to jail, I will put her into the hospital*’.

Sanjay Kumar’s Evidence

71. Vereti was shouting at Veniana while she was sitting on the floor. Vereti was telling her ‘*I will kill you if you don’t resolve this issue*’.

Accused’s Behaviour Before, At the Time and Soon After the Incident

Before..

72. Accused went to the Avinash’s kitchen and took a small knife. When the knife was in his possession, Avinash heard Vereti saying, “*I want to settle. She is not settling. I will kill her and go to jail*”. Avinash snatched the knife and locked it in the kitchen preventing him from taking it again.

At the time of the incident...

Oliva Nabula said:

73. Vereti punched Veniana on her head. She fell down and her head hit the concrete floor. Veniana’s right side of the head landed on the floor and Vereti jumped on the left side of her head. When Veniana fell down, she

shouted and ran towards them. Vereti jumped on her head twice. When he was about to jump again he got hold of him and begged him not to touch Veniana again.

After the incident..

74. Oliva asked Vereti if he can take Veniana to hospital if not call the ambulance. He informed her *'don't worry I will not call the ambulance I will carry her by myself to the van'*. You also consider the explanation given by Vereti to Police at the interview for not taking injured Veniana to his nearby sister's place, sketch and photographs tendered to describe the place where Veniana's body was found and the place where the van could have been hired to decide whether he took reasonable effort to save her life.

Injuries

75. You can also take into consideration the number and nature of injuries and the place of the body where the injuries were inflicted to determine the intention of the Accused. According to Oliva Nabula's eye witness account, photographs tendered and the Pathologist's evidence, Veniana had critical facial and head injuries.
76. Expressing his medical opinion on the cause of death, the doctor said that the deceased died of extensive subarachnoid hemorrhage in the brain due to a blunt force trauma. He specifically said that any blunt object, including fist of foot, can cause a blunt force trauma. He further said that chances of causing sub arachnoid hemorrhage as a result of a mere fall are very rare.
77. If you find that the Prosecution has not proved to the requisite standard that the Accused had murderous intention at the crucial time, then you must find proved, for Accused to be found guilty of murder, that Vereti

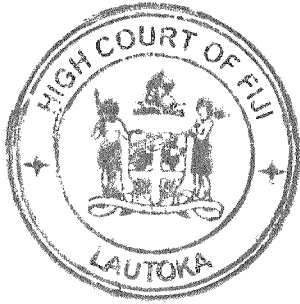
knew that there was a risk that what he was doing might cause death to Veniana and also that he was not justified in taking that risk. You consider whether Vereti had been reckless as to causing death to Veniana when he punched her on her head several times, knocking her down to the ground, and when he stomped on her head when she was lying on the cement floor. In coming to your conclusion, you can consider the physique or the build of the Accused and that of the deceased as shown in photographs.


78. Another matter you need to consider is the law relating to intoxication. There is evidence that Vereti was drunk at the time of the incident. According to the cautioned interview, Vereti was drinking two cartons of beer with three friends around 8 p.m. While his friends were still drinking, Vereti had left them to meet Veniana and he had met her around 9.30. p.m.. Eye witnesses confirmed he was smelling alcohol.
79. Defence Counsel argued that Vereti was so drunk that he was not aware what he was talking and doing. However, he recollected and narrated the sequence of event that took place that night to Police when he was interviewed at 4.20 p.m. on 21st October, 2014.
80. You will need to decide whether you accept that the Accused was or may have been as drunk as his Counsel says he was, sufficiently drunk to be unaware that night of what he had done and with what intent. If you accept that the Accused was or may have been drunk, you need to know to what extent that may be relevant to the issue you have to decide.
81. You must judge whether the Accused had the murderous intention at the time when he attacked Veniana or whether he was reckless in his actions as to causing her death despite his state of intoxication. The fact he may not have formed that intent had he been sober does not provide him with a defence. A drunken intention is still an intention but you must ask, did the Accused really do the unlawful act knowing that there

was a risk death might ensue, but carried on the attack in any event, knowing that he had no justification in taking the risk. The Accused's state of drunkenness at the time of the violence is just one of the factors which you must consider. Consider all the circumstances as I have described them, including the fact that the Accused was drunk, when judging whether the Defendant intended to cause the death of Veniana or whether he was reckless in his act.

82. If you find that Vereti was reckless as to causing serious harm and not death to the deceased and that the evidence satisfies the elements of Manslaughter, and you are sure of the same, then you are entitled to find the Accused guilty of the offence of Manslaughter.
83. Your possible opinion on the charge is either guilty or not guilty. Only if you find that the the Prosecution has failed to prove the element of the intention to kill or recklessness as to causing the death beyond reasonable doubt, then you may consider whether the elements of the lesser offence of Manslaughter have been proved beyond reasonable doubt.
84. Ladies and Gentleman Assessor, this concludes my summing up. Now you may retire and deliberate together and may form your individual opinions on the charge against the Accused. You may peruse any of the exhibits you like to consider. When you have reached your separate opinions you will come back to Court and you will be asked to state your separate opinion.
85. Your possible opinions would be.
 - a. Charge of Murder Accused guilty or not guilty? or
 - b. Charge of Manslaughter Accused guilty or not guilty
86. Any redirections?

87. You may now retire to consider your opinions.




Aruna Aluthge
Judge

At Lautoka
8th February, 2016

Solicitors: Office of the Director of Public Prosecution for State
Aman Ravindra Singh Lawyer for Accused