

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

LAUTOKA CRIMINAL CASE NO. HAC 146 OF 2011L

STATE

vs

TARUN KUMAR RAWAT

Counsels	:	Mr. Y. Prasad, Mr. S. Nath and Mr. A. Dutt for State Mr. A. Singh for Accused
Hearings	:	14 to 18 November, 2016
Summing Up	:	21 November, 2016
Judgment	:	22 November, 2016

JUDGMENT

1. Yesterday, I delivered my summing up to the three assessors and after deliberating on the matter, the assessors returned with a mixed opinion. Assessor No. 1 and 2 returned with an opinion that the accused was guilty as charged, while Assessor No. 3 found the accused not guilty of murder, but guilty of the lesser offence of manslaughter.
2. Obviously, Assessor No. 1 and 2 accepted the prosecution's version of events, and were of the opinion that the accused was guilty as charged. Assessor No. 3 did not accept the prosecution's version of events, and was of the opinion that the accused was not guilty of murder, but guilty of the lesser offence of manslaughter. The assessors' opinions were not perverse. It was open to them to reach such conclusions on the evidence.

3. Assessors are there to assist the trial judge come to a decision on the guilt or otherwise of the accused. I had reviewed the evidence called in the trial and I have directed myself in accordance with the summing up I gave the assessors yesterday.
4. On my assessment of the evidence and the credibility of the witnesses, I agree with the majority opinion of Assessor No. 1 and 2, and I will accept them. I disagree with the opinion of Assessor No. 3, and I will not accept it. My reasons are as follows.
5. In his police caution interview statements (Prosecution Exhibit No. 2), the accused admitted that he was with the deceased, at the crime scene, at the material time on 21 July 2011. He admitted that he had a fight with the deceased, at the material time, as a result of the deceased questioning the "love bites" on his neck (see Questions and Answers 169 and 240). He admitted that he and the deceased were in a homosexual relationship since September 2010 (Questions and Answers 22 to 32). He also admitted, he was going out with a girlfriend at the same time (see Questions and Answers 33 to 35). He admitted that prior to the fight, he had oral sex with the deceased (see Question and Answer 60 to 70).
6. The accused admitted that, during the fight, he threw several punches at the deceased and also attacked him with a stone (see Questions and Answers 74 to 78, 94 to 101, 115, 116, 119, 120, 178 to 184, 186, 196, 198, 202, 205, 207, 213 and 214). He admitted that, as a result of the punches he threw at the deceased and the stone he struck him with, at the material time, the deceased fell to the ground unconscious and his pulse were not beating (see Question and Answer 77). As the sole judge of fact as to guilt, I accept that the accused made the above statements in his caution interview statements, and that they were true.
7. The deceased's post-mortem report was tendered as Prosecution Exhibit No. 3. This document was admissible evidence by virtue of section 133 (1) of the Criminal Procedure Decree 2009, and Doctor James Kalounivaki (PW6), a substitute pathologist, was entitled to comment on it, by virtue of section 133 (5) of the above Decree. It was the injuries the deceased allegedly suffered, as itemized in the report, that spoke volumes about the accuseds' intention, at the material time. The report found 4 external injuries on the deceased. There were large bruises on left side of the chest to the neck. There were scratches on the back down to the buttocks. There was a deep laceration on the left top side of the head. The scalp showed large bruises on the top front region and at the back of the head. Doctor Kalounivaki

had outlined the type of blunt force trauma that was required to cause the above injuries in paragraph 32 of the Summing Up and I accept what the doctor said.

8. In my view, when you put all the evidence together, especially what the accused had admitted in his caution interview and charge statements, and the effect of the deceased's post mortem report and the doctor's comments on the same, including the other evidences mentioned in paragraphs 45 and 46 of the Summing Up, as the sole judge of fact as to guilt, I find as a matter of fact that, the accused, on 21 July 2011, repeatedly punched and attacked the deceased with a stone to death, with an intention to kill him.
9. For the above reasons, I accepted Assessors No. 1 and 2's opinion, and I find the accused guilty as charged. I convict him accordingly.




Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Lautoka
Solicitor for Accused : A. J. Singh Lawyers, Nadi