

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

LAUTOKA CRIMINAL CASE HAC NO. 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  
Hearing : 15 November, 2016  
Ruling : 15 November, 2016  
Written Reasons : 23 December, 2016

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**WRITTEN REASONS FOR ALLOWING A SUBSTITUTE PATHOLOGIST  
FOR THE PROSECUTION**

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1. In Lautoka High Court Criminal Case No. HAC 146 of 2011L, the accused faced the following information:

*Statement of Offence*

**MURDER:** Contrary to section 237 of the Crimes Decree No. 44 of 2009.

*Particulars of Offence*

**TARUN KUMAR RAWAT** on the 21<sup>st</sup> day of July 2011, at Nadi in the Western Division murdered **TEVITA TABUA**.

2. Prior to the trial proper proceeding on 15 November 2016, the prosecution made a verbal application for permission to call a substitute pathologist to give evidence on the deceased's post mortem report dated 25 July 2011. The post mortem of the deceased was done by Doctor R. P. S Gounder on 25 July 2011, and he prepared the post-mortem report.
3. According to the prosecution, Doctor Gounder is no longer in the country and appeared to have migrated to Australia. The prosecution said that they were intending to call Doctor Gounder to give evidence on the deceased's post-mortem report. However, it appeared they had encountered unforeseen difficulties. According to the prosecution, Doctor Gounder is no longer willing to assist them and no longer willing to give evidence for the State. Hence, the present application for a substitute pathologist to give evidence on the post-mortem report prepared by Doctor Gounder.
4. In making their application, the prosecution had called in aid the authority of **Pauliasi Nacagilevu v The State**, Criminal Petition No. CAV 0023 of 2015, a decision of the Supreme Court of the Republic of Fiji, delivered on 22 June 2016. From paragraphs 21 to 33 of its judgment, the Supreme Court had clarified the legal position on whether or not the prosecution can call a substitute pathologist to give evidence on a post-mortem report that was prepared by another pathologist, who had left the country. The Supreme Court held, it was legally permissible for the prosecution to call another pathologist to give evidence on a post-mortem report, prepared by another pathologist, who had left the country.
5. The defence opposed the prosecution's application. They said, this was an 11<sup>th</sup> hour application. They said, according to section 15 (1) of the 2013 Constitution, they were entitled to a fair trial in a court of law. They said, they did not oppose Doctor Gounder coming to give evidence personally, or giving evidence via skype. They appeared to have said, that they had been denied a fair trial.
6. I ruled in favour of the prosecution. My reasons are as follows. **Pauliasi Nacagilevu v The State** (supra) is binding authority on this court. What the Supreme Court decided as discussed in paragraph 4 above, must be followed. Permission was therefore granted to the prosecution to call a substitute pathologist, to give evidence on the post-mortem report prepared by Doctor Gounder.
7. The above was the reason for my ruling on 15 November 2016.



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Salesi Temo  
JUDGE

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