

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 26 of 2016

STATE

V

JONE TAHA SENICEVA

MOSESE VUVANUA

AND

VILIAME SIGANIQAVOKA

Counsel : Ms. Susan Serukai, Mr. Yogesh Prasad and Mr. Taitusi Tuenuku for the State
Mr. Kevueli Tunidau for the Accused

Dates of Trial : 12-13, 15-16 & 19-21 June 2017

Summing Up : 23 June 2017

Judgment : 26 June 2017

JUDGMENT

[1] The three accused are charged with the following offence:

FIRST COUNT

Statement of offence

MANSLAUGHTER –Contrary to Section 239 of the Crimes Act No. 44 of 2009.

Particulars of the Offence

JONE TAHA SENICEVA, MOSESE VUVANUA AND VILIAME SIGANIQAVOKA on the 11th of December 2015 at Vusuya, Raralevu, Nausori in the Central Division, unlawfully killed **ALBERT TURUSI ALIPATE VAKADEWAVOSA**.

- [2] The three accused pleaded not guilty to the charge and the ensuing trial was held over 7 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, the three Assessors unanimously found the three accused guilty of Manslaughter.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors.
- [5] There are no eye witnesses in this case. The prosecution case is based primarily on the caution interview statements made by the three accused. In support of their case the prosecution led the evidence of the Investigating Officer, Woman Detective Corporal Anjaleen Kumar, and Dr. James Kalougivaki, the pathologist who conducted the post mortem examination on the deceased person. The three accused gave evidence in support of their case.
- [6] The case for the prosecution was that the three accused assaulted the deceased and thereby caused his death.
- [7] The Assessors were directed that in order to prove the count of Manslaughter, the prosecution must establish beyond reasonable doubt that;
- (i) the three accused;
 - (ii) on the specified day (in this case the 11th day of December 2015);
 - (iii) at Vusuya, Raralevu, Nausori in the Central Division;
 - (iv) engaged in a conduct;
 - (v) the said conduct caused the death of Albert Turusi Alipate Vakadewavosa (the deceased); and
 - (vi) the three accused persons intended the conduct will cause serious harm to the deceased; or
- the three accused persons were reckless as to the risk that the conduct will cause serious harm to the deceased.
- [8] Each of the above elements were further elaborated upon in my summing up.
- [9] The prosecution case was that the offence of manslaughter was committed by joint offenders in prosecution of a common purpose. As such, the Assessors were directed on the principles of joint enterprise.

[10] In terms of Section 46 of the Crimes Act it is stated: *“When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.”*

[11] The Assessors were directed that in order to prove the case against the accused persons, the prosecution should prove beyond reasonable doubt that;

- a. the three accused persons formed a common intention to prosecute or engage in an unlawful purpose, and
- b. in the process of performing that unlawful purpose the three accused committed the offence of manslaughter, and
- c. the commission of the offence of manslaughter was an offence of such a nature that its commission was a probable consequence of carrying out that unlawful purpose.

[12] Each of the above elements too were further elaborated upon in my summing up.

[13] Since the accused are not challenging the admissibility of the said caution interview statements, the statements have been tendered to Court by consent of both the prosecution and the defence. These caution interview statements have been tendered to Court as Prosecution Exhibits **P1A** (first accused); **P1B** (second accused) and **P1C** (third accused).

[14] The Assessors were directed that any admission made by these accused in their caution interview statements are admissible and sufficient evidence to prove their guilt to the charge. However, they were advised that the caution interview statement of one accused cannot be used against the other accused. The accused also admit to making the statements. However, the truthfulness of the statements and the question of what weight to attach to the admissions made in the said statements was a matter of fact for the Assessors to decide.

[15] In this case, the three accused have stated that the deceased was a thief. At about 3.00 in the morning on 11 December 2015, they had found the deceased was stealing items from an Army Officer/Military Officer’s house, situated close to their residence. They had confronted him. The three accused state that they acted in self-defence so as to subdue the deceased. Thus the Assessors were directed on the provisions of Section 42 of the Crimes Act.

[16] Section 42(1) of the Crimes Act sets out: *“A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.”*

[17] In terms of Section 42(2) of the Crimes Act:

“A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:

- (a) *to defend himself or herself or another person; or*
 - (b) *to prevent or terminate the unlawful imprisonment of himself or herself or another person; or*
 - (c) *to protect property from unlawful appropriation, destruction, damage or interference; or*
 - (d) *to prevent criminal trespass to any land or premises; or*
 - (e) *to remove from any land or premises a person who is committing criminal trespass —*
- and the conduct is a reasonable response in the circumstances as he or she perceives them.”*

[18] Considering the facts and circumstances of this case, I did not deem it necessary to direct the Assessors on Section 42(3) of the Crimes Act which reads as follows:

“This section does not apply if the person uses force that involves the intentional infliction of death or grievous harm —

- (a) *to protect property; or*
- (b) *to prevent criminal trespass; or*
- (c) *to remove a person who is committing criminal trespass.”*

[19] The prosecution counters this position by submitting that excessive force was used by the three accused on the deceased. The prosecution also submits that none of the three accused sustained any injuries during the incident. As such the injuries caused on the deceased were excessive and not proportionate in the circumstances of this case.

[20] Dr. James Kalougivaki, conducted the post mortem examination on the deceased and issued the post mortem report. The post mortem report was tendered to Court as Prosecution Exhibit **P5**. The Doctor explained in detail the external and internal injuries suffered by the deceased.

[21] The Doctor has given the cause of death as:

- (a) Severe Traumatic Brain Injury and Subarachnoid Haemorrhage ;
- (b) Severe Extensive Head Injury;
- (c) Multiple Traumatic Injuries;
- (d) Blunt Force Trauma.

[22] The Assessors have found the evidence of prosecution as truthful and reliable, as they unanimously found the three accused guilty of Manslaughter. Therefore, the Assessors have obviously rejected the evidence of the three accused.

[23] In my view, the Assessor's opinion is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the unanimous opinion of the Assessors.

[24] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond a reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the offence of Manslaughter with which the three accused are charged.

[25] In the circumstances, I find the three accused guilty of Manslaughter.

[26] Accordingly, I convict the three accused for Manslaughter.



Riyaz Hamza

JUDGE

HIGH COURT OF FIJI



AT SUVA

Dated this 26th Day of June 2017

Solicitor for the State : **Office of the Director of Public Prosecutions, Suva.**
Solicitor for the Accused : **Messrs. Kevueli Tunidau Lawyers, Lautoka.**