

IN THE HIGH COURT OF FIJI

AT LABASA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 42 of 2016

STATE

V

WILLIAM MCPHERSON

Counsel : Mr. Lisiate Fotofili for the State
Ms. Christina Choy for the Accused

Dates of Trial : 23-25 October 2017

Summing Up : 27 October 2017

Judgment : 27 October 2017

JUDGMENT

[1] The accused is charged with the following offence:

FIRST COUNT

Statement of offence

MANSLAUGHTER : Contrary to Section 239 (a), (b) & (c) (ii) of the Crimes Decree No. 44 of 2009.

Particulars of the Offence

WILLIAM MCPHERSON, on the 10th day of February 2015 at Savusavu, in the Northern Division, unlawfully assaulted **PARMA NAND**, which caused the death of the said **PARMA NAND** and at the time of the assault was reckless as to the risk that his conduct would cause serious harm to **PARMA NAND**.


- [2] The accused pleaded not guilty to the charge and the ensuing trial was held over 3 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a majority decision, two of the three Assessors found the accused not guilty of Manslaughter, while one Assessor found him guilty of Manslaughter. However, the said two Assessors found the accused guilty of the lesser or the alternative charge of Assault Causing Actual Bodily Harm.
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.
- [5] During my summing up I explained to the Assessors the provisions of Section 239 (a), (b) & (c) (ii) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [6] The Assessors were directed that in order to prove the charge of Manslaughter, the prosecution must establish beyond reasonable doubt that;
- (i) the accused;
 - (ii) on the specified day (in this case the 10th day of February 2015);
 - (iii) at Savusavu, in the Northern Division;
 - (iv) engaged in a conduct (which in this case was unlawfully assaulting Parma Nand); and
 - (v) the said conduct caused the death of Parma Nand (the deceased); and
 - (vi) (at the time of the assault) the accused was reckless as to the risk that his conduct will cause serious harm to the deceased.
- [7] Each of the above elements were further elaborated upon in my summing up.
- [8] The Assessors were also directed that in the event they find that the prosecution has failed to establish any of these elements in relation to the offence of Manslaughter beyond any reasonable doubt; as an alternative, they were then allowed to look at the lesser offence of 'Assault Causing Actual Bodily Harm' to Parma Nand, though the accused is not formally charged in the Information for that offence.
- [9] Thereafter, I went on to explain to the Assessors the provisions of Section 275 of the Crimes Act, which deals with Assault Causing Actual Bodily Harm.
- [10] The Assessors were directed that in order to prove the offence of Assault Causing Actual Bodily Harm, the prosecution must establish beyond any reasonable doubt that;
- (i) the accused;
 - (ii) on the specified day (in this case the 10th day of February 2015);
 - (iii) at Savusavu, in the Northern Division;

- (iv) assaulted Parma Nand; and
- (v) thereby caused actual bodily harm to the said Parma Nand.

- [11] Each of the above elements too were further elaborated upon in my summing up.
- [12] In support of their case, the prosecution called Dewa Nand, Dominiko Wainiu, Dr. Praneel Kumar (a Forensic Pathologist) and Detective Inspector Beiatau Enota.
- [13] The prosecution also tendered the following documents as prosecution exhibits:
- Prosecution Exhibit **P1**- Post Mortem Examination Report of the deceased.
- Prosecution Exhibit **P2(a)**- Caution interview statement of the accused (the hand written version).
- Prosecution Exhibit **P2(b)**- Caution interview statement of the accused (the typed version).
- Prosecution Exhibits **P3(a), P3(b) and P3(c)**- Photographs taken, on 11 February 2015, at the scene of crime (as shown by the accused).
- Prosecution Exhibit **P4**- Rough sketch plan of the scene of crime as shown by the accused.
- [14] In this case the prosecution is relying on the admissions made by the accused in his caution interview statement. I explained to the Assessors that any admission made by the accused in his caution statement is admissible and sufficient evidence to prove his guilt to a charge.
- [15] In the admitted facts it is stated that the accused gave his answers during his caution interview voluntarily. Since the accused is not challenging the admissibility of the said caution interview statement, the statement was tendered to Court by consent of both the prosecution and the defence. The accused also admits to making the statement. I directed the Assessors that the truthfulness of the statements and the question of what weight they can put on the admissions made in the said statement is a matter of fact for them to decide.
- [16] In this case it is admitted facts, and as such proved, that the accused, on the 10 February 2015, at Savusavu Town (in the Northern Division), punched the deceased Parma Nand several times.
- [17] What is most important is to determine whether the said conduct of the accused, caused the death of Parma Nand; and whether at the time of the assault the accused was reckless as to the risk that his conduct will cause serious harm to the deceased Parma Nand.
- [18] The incident took place on 10 February 2015. The deceased passed away 10 days later, on 20 February 2015.

- [19] The younger brother of the deceased, Dewa Nand, testified that the deceased was taken to the Savusavu Hospital immediately after the incident. He had accompanied the deceased to the hospital. The deceased was then transferred to the Labasa Hospital the same day by ambulance. He was at Labasa Hospital for 10 days until he passed away. The witness testified that during the time the deceased was at Savusavu Hospital and later at Labasa Hospital the deceased never spoke. The deceased was not moving and his eyes were also not moving. He was on oxygen.
- [20] However, there is no medical evidence available to establish what transpired while the deceased was at the Labasa Hospital or as to the status of his medical condition while he was there or as to what treatment was afforded to him.
- [21] Dr. Praneel Kumar, 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 P1. The Doctor testified that the condition directly leading to the death was acute inferior myocardial infarction. The antecedent causes or contributing factors were coronary artery disease and history of assault. In simple words, the Doctor said the patient died of heart attack because he had a heart problem and because of the assault.
- [22] This Court has to determine, from the totality of the evidence available, whether the several punches given by the accused substantially contributed to the deceased suffering an acute inferior myocardial infarction and thereby his death. Even the pathologist is not in a position to say with certainty that the assault substantially contributed to the deceased suffering an acute inferior myocardial infarction and thereby his death, as he has testified that the contributing factors were both coronary artery disease and assault.
- [23] In the circumstances, this Court is of the opinion that the prosecution has failed to establish beyond any reasonable doubt all the elements that constitute the offence of Manslaughter.
- [24] Therefore, in my view, the majority opinion of the Assessors finding the accused not guilty of Manslaughter is justified. It was open for them to reach such a conclusion on the available evidence. I concur with the majority opinion of the Assessors.
- [25] In the circumstances, I find the accused not guilty of Manslaughter.
- [26] The majority of the Assessors have found the accused guilty of the lesser or the alternative charge of Assault Causing Actual Bodily Harm.
- [27] In my view, the majority opinion of the Assessors finding the accused guilty of the lesser or the alternative charge of Assault Causing Actual Bodily Harm is justified. It was open for them to reach such a conclusion on the available evidence. I concur with the majority opinion of the Assessors.
- [28] In the circumstances, I find the accused guilty of Assault Causing Actual Bodily Harm, in terms of Section 275 of the Crimes Act.

[29] Accordingly, I convict the accused for the offence of Assault Causing Actual Bodily Harm.


Riyaz Hamza
JUDGE
HIGH COURT OF FIJI



AT LABASA
Dated this 27th Day of October 2017

Solicitor for the State : Office of the Director of Public Prosecutions, Labasa.
Solicitor for the Accused : Office of the Legal Aid Commission, Labasa.