

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 109 OF 2013

STATE

V

RONALD DULARE SINGH

Counsel : Mr. S. Babitu for State
Mr. J. Singh for Defence

Date of Summing Up: 24th April, 2018

Date of Judgment: 26th April, 2018

JUDGMENT

1. The Accused was charged with one count of Manslaughter Contrary to Section 239 of the Crimes Act 44 of 2009.
2. The Information upon which the Accused was charged is as follows:

Charge Statement

Count

Statement of Offence

MANSLAUGHTER: Contrary to Section 239 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

RONALD DULARE SINGH on the 11th of May, 2013 at Korolevu, Sigatoka in the Western Division, unlawfully killed Manasa Nawakula.

3. Prosecution called 5 witnesses including a pathologist. At the close of the Prosecution case, Accused was put to his Defence. Accused elected to give evidence and called one witness for Defence. At the conclusion of the trial, Assessors in their majority opinion found the Accused guilty of Manslaughter.
4. I direct myself with my own Summing Up and review evidence led in trial. Having concurred with the majority opinion of Assessors, I proceed to give my reasons as follows.
5. Prosecution's case is that the Accused Ronald Dulare Singh punched the deceased Manasa Nawakula on his chin and the medical condition developed in deceased's brain as a result of Accused's conduct ultimately led or substantially contributed to Manasa's death and, at the time of his act, the Accused intended to cause serious harm to the deceased or he was reckless as to causing serious harm to the deceased.
6. To establish the charge, Prosecution must satisfy following four elements beyond all reasonable doubt:
 - i. the Accused Ronal Dulare Singh;
 - ii. engaged in a conduct;
 - iii. that conduct caused the death of the deceased Manasa;
 - iv. the Accused intended that his conduct will cause serious harm to the deceased;or
he was reckless as to a risk that the conduct will cause serious harm to the deceased.
7. There is no dispute as to the first two elements. Accused admits that he is the Accused in this case and that he punched the deceased and his punch landed on deceased's chin. He also admits that the external injuries noted in deceased's chin were caused by the punch he threw.

8. To establish the third element which is causation, the Prosecution relies on medical evidence of the pathologist, Dr. Mate, and the post mortem report prepared by her.
9. The pathologist is an independent expert witness in the field of pathology. In her opinion, the death of the deceased was caused by an extensive subarachnoid haemorrhage in the brain as a result of a blunt force trauma. She found a correlation between the external injuries seen in Accused's submental area (below the chin) and the internal haemorrhage in the bottom part of the brain or brain stem. She agreed that a punch by fist of a man is a blunt force and such a force on the submental area could damage the blood vessels of brain stem of the deceased.
10. The Defence challenges the credibility of the opinion of the pathologist as to the cause of death. The contention of the Defence is that the death was caused due to 'aspiration of gastric contents' into the lungs or aspiratory system of the deceased. They rely on the Medical Cause of Death Certificate prepared by the pathologist where she had stated 'aspiration of gastric contents' as another significant condition contributing to death.
11. The pathologist said that in all cases where a post-mortem is required, the Medical Cause of Death Certificate is issued only after conducting the post-mortem examination. The pathologist admits that, in this case too, she had filled the Medical Cause of Death Certificate after the post mortem examination and, in that certificate, she had noted 'aspiration of gastric contents' as another significant conditions contributing to the death of the deceased.
12. The pathologist admits that her finding on aspiration of gastric contents is missing in the Post-mortem Report. Explaining the reason, the pathologist said that her expert opinion changed after further examination of tissues. When she found partially digested food particles in the trachea and bronchi, which is an abnormal finding in the living, she went on to conduct a further examination to determine the degree of extension of gastric contents into the aspiratory system. The further examination she conducted revealed that partially digested food particles are not present in the lungs (which is the case in an ante-mortem aspiration) and had just been extended into the bronchi. Upon this finding she concluded that the aspiration was post-mortem and excluded the possibility that the death was caused due to aspiration.
13. By the time she reached this conclusion, Medical Cause of Death Certificate had already been issued. She admits that she did not take any step to correct the

Medical Cause of Death Certificate because the final and conclusive report (for Courts) on the cause of death is the Post-mortem Report. The Medical Cause of Death Certificate is issued to the office of Registrar General for Deaths.

14. I am satisfied with the credibility of pathologist's evidence and her explanation as to her finding in the Post-mortem Report which is logical and hence acceptable. I am satisfied that the death of the deceased was caused by haemorrhage in the brain as a result of a blunt force trauma in the chin area which is intrinsically linked to the punch of the Accused. Prosecution proved the causation that the conduct of the Accused substantially contributed to the death of the deceased.
15. As to the fourth element, the Court has to be satisfied that the Accused intended to cause serious harm or he was reckless as to causing serious harm to the deceased.
16. The Accused said that he did not intend to cause serious harm to the deceased. However, I am not inclined to accept his evidence which is not consistent with his conduct and other evidence led in trial.
17. Sefanaia says that he saw the Accused punching the deceased and the punch landed on deceased's chin. The Accused admits that he threw a punch in the dark and he felt his punch being landed on deceased's chin.
18. Accused also admits that if he punched someone in the face specifically in the chin area, the recipient of the punch can have serious injuries. In other words, Accused admits that he was aware that a punch on the chin could cause serious harm to the deceased.
19. An 'intention' is the state of mind of one who does an act because he desires it to produce a particular result. This encompasses knowledge namely the state of mind of one who, when he does the act, is aware that it is likely to produce that result but is prepared to take the risk that it may do so.
20. To ascertain whether the Accused knowingly punched or aimed at deceased's chin area, or he just threw a punch in the dark, it is important for this Court to be satisfied as to the lighting condition of the crime scene.
21. Much of the time was spent by the Defence in this trial to show that the incident happened in the dark or poor lighting condition. The lighting condition at the crime scene was so important to the Defence case because if they could prove that the punching happened in the dark, they could have created a reasonable doubt not only as to the credibility of eye witness Sefanaia's evidence but also to

the knowledge of the Accused as to the risk he was taking when he threw the punch.

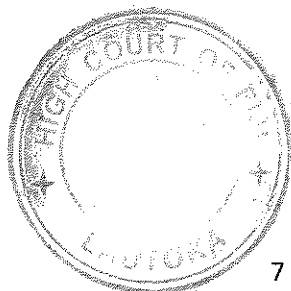
22. Defence argues that Sefanaia is not a reliable witness mainly because the lighting condition at the scene was not bright enough to see what was going on. Sefanaia said that he was watching the incident from a distance of about 10 metres and nothing was there between him and Ronald obstructing the view when he saw Ronald punching. He said that he could see everything clearly under bright flood light. He went back to get his torch only for his own protection. Mossese also confirmed Sefanaia's evidence. He said that the light was bright but, as security officers doing night shifts; they had to carry a torch. Batinisavu said he took a torch because it was dark outside and brought the deceased to the entrance to see him properly because the place where this man was lying was not that bright, and it was only the light from the signboard.
23. All the security guards are workmates of the Accused for a considerable period of time. There is no apparent reason for the security guards to make up a case against the Accused and put the Accused in trouble. The so called contradictions or omissions highlighted by the defence Counsel during cross examination are not material enough to discredit the version of the Prosecution.
24. Accused in his evidence admits that there were two lights shooting at the sign board although those lights were not that bright enough to lighten the area. Although his evidence is not consistent in its entirety, Accused admits that he saw the man he punched falling down in a sitting position. He admits that at the bus stop where he was standing, there was plenty light. He admits that that he saw his 'nene' from the bus stop when she was standing beside the sign board. He admits that when he reached there he saw his 'nene' was being pulled by her hand. He also saw the man he punched carrying a bag.
25. Having considered all the evidence led in this trial as to the lighting condition of the crime scene, I accept the evidence of Sefanaia and come to the conclusion that there was enough light for Sefanaia to see what he said he saw on that night. I am also satisfied that the Accused knew where he was punching in the lighting condition he was in that night.
26. To further satisfy myself as to the *mens rea* of the Accused, I also considered if the Accused was reckless as to causing serious harm when he punched the deceased.
27. 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. [See: Section 21(2) (b) of the Crimes Act]

28. The Accused in his evidence admits that he was aware of the substantial risk that the result (serious harm) will occur if he punched the deceased on his chin. The pathologist said that submental area is a vulnerable part compared to other areas of the body and is easily prone to lacerations with any force that comes into contact with and it doesn't need much force to cause damage to this area because of the chin bone that sits there without much underlying structures and muscles.
29. The Accused knew the deceased was drunk. He saw the deceased carrying a bag in one hand. Accused is a well- built strong man any punch by his fist would carry a heavy force. Having regard to the circumstances known to him, Accused is not justified in taking the risk he took when he punched the deceased on his highly vulnerable part of the body. I find that the Accused was reckless as to causing serious harm to the deceased and the fourth element of Manslaughter has been satisfied.
30. Now I turn to the defence Accused took up. The defence of self-defence, if believed, is sufficient to create a reasonable doubt in the Prosecution case. Therefore, the prosecution must disprove all evidence of self-defence beyond reasonable doubt.
31. Defence says that the Accused acted reasonably when he threw a punch on the Accused in self-defence. Defence relies on the evidence of the Accused and Dr. Zebran to show that Accused was lawfully exercising his right to self-defence. The Accused said that he threw only one punch in the dark in self-defence. Defence called Dr. Zebran to show that the Accused had also received injuries.
32. The version of the Defence is not credible and believable. I have already found that there was sufficient light at the crime scene. Accused's evidence that he punched only once in self defence was disproved by unshaken evidence of Sefanaia. Sefanaia heard a lady's voice saying, 'enough, enough, enough' when he was changing cloths in the changing room, which is not an enclosed area. He then came outside, and took 3 seconds from the shout to come to the Queen's Road. He saw a man lying down in an upwards position at the edge of the flower bed when Ronald punched him. This man was not trying to assault the Accused at that time. He was motionless.
33. It can be inferred from the lady's voice, that Accused had punched the deceased more than once. When Sefanaia approached the crime scene, the Accused was still punching the deceased who was lying down upwards on the edge of the

flower bed. The deceased at that time was motionless. Accused asked "You would like me to kill him". Dr. Zebran had observed an injury in Accused's right knuckle. The injury on Accused's knuckle indicates that the Accused had used considerable force when he punched the deceased.

34. There is credible evidence that the Accused was drunk and was in an aggressive mood before and after the alleged incident. He had challenged the security guards for a fight. He had asked the security guards to leave the man he punched when this man was lying on the flower bed motionless. His conduct indicates that he was not acting in self-defence. Accused had only told the security guards that he punched the deceased once to save her 'nene' and he had not told that he had punched in self-defence. Sefanaia had not seen the Accused was also being punched by the deceased.
35. The evidence of the Accused that he too had received injuries in the fight was not supported by evidence of Prosecution witnesses. It was never put to the Prosecution's witnesses that Accused also had injuries on his body. Dr. Zebran could not specifically tell how old the injuries he had observed on Accused's body were. Dr. Zebran had examined the Accused three days after the incident when police took him to the hospital on his lawyer's request. Accused failed to explain satisfactorily as to how a drunken man carrying a grocery bag in his hand had managed to get hold of a man like him and throw four punches without any resistance.
36. When I apply the directions in respect of self defence in my Summing Up, I take the view that even if the evidence of the Accused were to be believed, he was not justified or reasonable in his reaction. I am satisfied that the Accused was not lawfully exercising the right of self-defence.
37. Prosecution proved their case beyond reasonable doubt. I agree with the majority opinion of the Assessors which is available on evidence led in the trial. I find the Accused guilty of Manslaughter.
38. Accused is convicted accordingly.
39. That is the judgment of this Court.




Aruna Aluthge
Judge

26th April, 2018

At Lautoka

**Solicitors: Office of the Director of Public Prosecution for State
Samusamuvodre Sharma Law for Accused**