

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CRIMINAL JURISDICTION

Criminal Case No. 52 of 2014

THE STATE

vs

1. MATAIASI ULUI
2. MAIKELI LOKO
3. RAKESH KUMAR
4. VINOD SEGRAN

**Counsel** : Ms. S. Kiran with Mr. S Seruvatu for the State.  
Mr I. Khan for the first and second accused.  
Mr. M. Raza for the third accused  
Mr. A. Sen with Mr. W Pillay for the fourth accused.

**Dates of Hearing** : 15 January to 1st February 2018

**Date of Summing up:** 2<sup>nd</sup> February 2018

**Date of Judgment:** 5 February 2018

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**JUDGMENT**

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1] The accused were tried in this Court on the following count:

**MURDER:** *Contrary to section 237 of the Crimes Act 2009.*

*MATAIASI ULUI, MAIKELE LOKO, RAKESH KUMAR and VINOD SEGRAN on the 14<sup>th</sup> April 2014 at Nawaicoba Nadi in the Western Division, murdered VASU DEWAN NAIDU.*

- 2] After trial, and after being directed on the law and reminded of the evidence, four assessors have returned with unanimous opinions that:
- **That the first and second accused are guilty of the lesser offence of manslaughter**
  - **That the third and fourth accused are not guilty.**
- 3] All four accused were colleagues at a small manufacturing company in Nadi Town, (the third accused being the proprietor). The deceased was a subcontractor to that small company and was well known to all of the accused.
- 4] It was suspected that the deceased was using witchcraft to have an effect on one or more of the accused. At a meeting arranged to discuss company business, the discussion turned to his alleged practice of witchcraft and the deceased was asked to account for himself. He was told it had been noted that he had been seen practicing dubious rituals. This verbal challenge turned violent and the deceased was set upon by the first and second accused and perhaps others too. He was assaulted, by both the first and second accused and the assault ended with the first accused picking the deceased up, swinging him around and dashing his head first on to a concrete floor. The deceased sustained severe injuries to the skull and brain as a result and died some 27 hours later.
- 5] The evidence against the first and second accused came from admissions they made in their respective interviews under caution. The admissibility of the records of these interviews was tested in pre trial proceedings and the Court found them to be voluntary and admissible. There was no contest to their provenance or content at trial.
- 6] The prosecution case against the third and fourth accused was founded on two hypotheses. First, the reported accusations of the deceased himself in the hours before his demise, in which he is said to have named both the third and the fourth accused as two of his assailants. Secondly circumstantial evidence that the State claimed was enough to place them in the joint enterprise.

### The Dying Declarations

- 5] The declarations of the deceased were admitted into evidence as *res gestae* exceptions to the rule against hearsay evidence (see separate Ruling).

- 6] These utterances were far from satisfactory evidence against the persons he named. The deceased was *in extremis* at the time and was reported to be slipping in and out of consciousness, talking in a “low” voice and vomiting and bleeding. The doctor first receiving the deceased at Nadi hospital opined that anything the deceased said at that time would be “unreliable”.
- 7] A matter of some concern to the Court was the evidence of the three “family “witnesses (PW5, PW7 and PW8). They all gave evidence four years later which was inconsistent with their respective statements made to the Police two days after the event, and there was evidence of a family meeting to discuss the evidence and the roles of their suspected perpetrators. This Court believes that the family’s suspicions and accusations were misplaced and their frequently stated “desire for justice” was coloured by an overriding desire for vengeance. There is credible evidence before the Court that two of the persons said to be named by the deceased were not even present at the time of the assault.
- 8] I discount the evidence of the deceased’s declarations as totally unreliable and it would be dangerous to convict the third and fourth accused on the “strength” of it. It smacks of collusion.

#### The circumstantial evidence

- 9] The second limb of the State case against the third and fourth accused is what they claim to be circumstantial evidence bringing them into the common enterprise.
- 10] This “evidence”, including phone calls between the parties and the use of the third accused’s vehicle is not evidence at all against the third and fourth accused. Circumstantial evidence must provide irresistible inferences of culpability. The evidence relied on by the State does not do that. It is capable of inferences other than complicity and as such it is mere speculation.

- 11] Having rejected the dying declaration evidence and the evidence by circumstance of the third and fourth accused's involvement in the joint enterprise, I find them each not guilty of murder and not guilty of the lesser offence and I acquit each accordingly.

### The First Accused

- 12] The assessors have expressed a unanimous opinion that the first accused is guilty of the lesser offence of manslaughter. The Court rejects those opinions and finds him guilty of murder.
- 13] The differences between the two offences is of course the recklessness as described in sections 237 and 239 respectively of the Crimes Act 2009..
- 14] To throw a person head first on to a concrete floor is reckless in the extreme. Any sober and reasonable person would appreciate that indulging in such conduct would risk mortal damage to the head the part of the body most vulnerable to injury.
- 15] In his closing address to the assessors, counsel for the first accused made a passing reference to provocation, despite the fact that his client had never run the defence of provocation at trial .He then, in the absence of the assessors, asked the Court to leave the defence of provocation to the panel in the Summing up. The Court gave anxious consideration to this request, not wishing to deny the accused any defence that might be available to him, but in reviewing the evidence it was determined that there was not enough evidence before the Court to justify leaving that defence to the assessors. .
- 16] The first accused did not give evidence (as is his right) meaning that there was no evidence before the Court of loss of control, nor any evidence of proportionate retaliation, two of the three limbs of evidence necessary for the defence to be left. I follow the judgment of Marsoof J.A. in the Supreme Court case of Praveen Ram CAV 0001 of 2011 (9 May 2012) para.44. in coming to that finding.

17] I find the first accused guilty of murder and convict him accordingly.

### The Second Accused

18] There is no doubt that the second accused, on his own admission was a party to the assault along with the first accused. I reject Counsel's submission that by hitting the deceased legs with a broom, he was merely following witchcraft practice by beating the evil spirits out of the victim's body. There can be no doubt that he was acting in concert with the first accused. As a secondary party he must bear some responsibility for the resultant death but not a responsibility for the recklessness. The prosecution has not proved that the second accused could have contemplated that the commission of the offence was a probable consequence of the enterprise that he joined to assault the deceased; in terms of section 46 of the Crimes Act 2009.

19] As a result, I accept the assessor's opinion and find the second accused guilty of manslaughter and I convict him accordingly.

### 20] Summary

1. First accused guilty of murder and convicted
2. Second accused guilty of manslaughter and convicted
3. Third accused not guilty and acquitted
4. Fourth accused not guilty and acquitted.

That is the Judgment of the Court.



**P.K. Madigan**  
Judge