IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. 52 of 2014

THE STATE

v

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 : 30 January 2018

RULING
(NO CASE TO ANSWER)

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1. At the end of the Prosecution case, Counsel for all four accused made applications to the Court.

2. Mr. Khan in recognizing that his clients have a case to answer makes application for the Court to reduce the charge from murder to manslaughter. He submits that the illegal act was done on the spur of the moment and it not being premeditated it must be homicide to the lesser degree.

3. This Court is unaware of any such distinction in law and in any event it will be for the assessors properly directed and then the Court to decide after hearing **ALL** the evidence which of the two offences have been proved, if any.

4. I find that there is a case to answer against the first and second accused on the offence of murder.

5. Section 231(1) of the Criminal Procedure Act 2009 provides:

> *"231(1) When the evidence of the witnesses for the Prosecution has been concluded. After hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the Court shall record a finding of not guilty if it considers that there is* ***no evidence*** *that the accused person (or any one of several accused) committed the offence ".* (Emphasis added.)

6. When referring to the phrase "no evidence" Goundar J. said in ***Ratu Inoke Takiveikata*** HAC 005.2004 (28 February 2011):

> *"The phrase, "no evidence" has been interpreted to mean that there is no evidence on an essential element of the charged offence. If there is some evidence on the essential elements of the charged offence, the application for a case to answer cannot succeed. The credibility, reliability and weight are matters for the assessors and not for the trial Judge to consider at a "no case to answer" stage".*

7. Both Mr Raza make no case applications for their respective clients. They argue that the evidence against their clients is prejudicial, tenuous and incredible. By those very submissions

they acknowledge that there is inculpatory evidence before the Court.

8. There is both direct evidence and circumstantial evidence before the Court against their clients and being so it will always be prejudicial. Whether it is so tenuous or incredible is not for the Court to decide on at this stage of the trial.

P,K. Madigan
Judge.