

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 377 of 2017

STATE

vs.

1. NOA RAVUTANASAU
2. MELACI TIKOMAIRARATOGA

Counsel: Ms. Kantharia B with Ms. J. Fatiaki for the State
Ms. Prakash A for Accused 1
Ms. Ratidara L for Accused 2

Date of Hearing: 31st October 2019, 1st, 4th, 5th, 6th November 2019

Date of Closing Submission: 07th November 2019

Date of Summing Up: 14th November 2019

Date of Judgment: 20th November 2019

JUDGMENT

1. The first and second accused are charged with one count of Murder, contrary to Section 237 read with section 45 of the Crimes Act. The particulars of the offence are that:

Statement of Offence

MURDER: *Contrary to Section 237 read with section 45 of the Crimes Act of 2009.*

Particulars of Offence

NOA RAVUTANASAU and MELACI TIKOMAIRARATOGA on the 30th day of November 2017, at the TOTAL SERVICE STATION car park at Suva in the Central Division as joint principals or either aiding and abetting the other murdered RUSIATE VAKALAKOVI.

2. The hearing commenced on 29th October 2019 and concluded on 6th day of November 2019. The prosecution presented the evidence of seven witnesses. The defence decided to exercise their right to remain silent, hence, no evidence was adduced for the defence. The learned counsel for the prosecution and the defence then made their respective closing addresses. Subsequently, I made the summing up.
3. The three assessors returned with a split opinion. One assessor found both the accused guilty of murder while two assessors found the two accused not guilty of murder, but found them guilty of manslaughter.
4. Having carefully taken into consideration the evidence presented by the prosecution, the respective closing addresses of the counsel, the summing up and the opinions of the assessors, I now proceed to pronounce my judgment as follows.
5. The prosecution alleges the first and the second accused had assaulted the deceased on his face and stomach by punching, kicking and stepping on, in the early morning of the 30th of November 2017 at the car park of Total Service Station. The said assaults by the first and second accused had ruptured and damaged the liver of the deceased and also caused severe injuries to the head of the deceased, causing hemorrhage in the brain of the deceased. Due to these injuries the deceased had succumbed to death.
6. The defence through their cross examination of the witnesses of the prosecution tries to establish the first and second accused had acted in self-defense as the deceased came and assaulted them.

7. According to the evidence presented by the prosecution, the deceased had started swearing at the first accused when he was going to the car park with the second accused. The deceased was at the railings when he started swearing at the first accused. The first accused had told the deceased on several occasions that he does not want to fight with the deceased. However, the deceased kept on coming towards the first accused, swearing and challenging him to fight. The deceased had told that he was not afraid of the built of the first accused. When the first accused ignored and said that he does not want to fight, the deceased had punched the first accused on his face with his both hands. The first accused had fallen down on the ground. The deceased had kept on punching the first accused even after he fell down on the ground. The second accused had tried to stop the deceased and in that process she was also got punched by the deceased.
8. According to the evidence of Mr. Sakopo, when the first accused got up, the deceased was still challenging the first accused to fight. The first accused then punched the deceased when he came towards the first accused lifting his fist up in the air. There is no specific evidence whether the first accused had punched the deceased twice or more. The deceased then fell down and the first accused and the second accused then kicked the deceased.
9. According to Mr. Leone, who went and helped the deceased, the deceased was aggressive. The deceased wanted to fight with Leone as well and had punched Leone when he tried to take the deceased to the hospital.
10. Mr. Sakopo who claimed in his evidence that he saw the entire incident, initially said the first accused not only kicked the deceased but also stepped on the stomach of the deceased. However, during the cross examination, Mr. Sakopo changed his earlier version and said the first accused never stepped on the deceased. The evidence of Mr. Dharmendra and Mr. Bainivalu are not precise to confirm whether they have actually saw the incident clearly. Mr. Dharmendra said that his view of the incident was obstructed by the crowd. Mr. Bainivalu is not specific whether he saw the incident or he heard the sounds of punching and shouting.


11. In view of the evidence presented by the prosecution, it is clear that the deceased had ignited this commotion by swearing and challenging the first accused. He had then punched the first accused until he fell down on the ground. The deceased continued his assault on the first accused even after he fell down on the ground. When the first accused got up, the deceased had come toward the first accused lifting his fist up in the air. The first accused had then punched the deceased. The first and the second accused then kicked the deceased when he was lying on the ground. According to Mr. Sakopo, the first accused had stopped the kicking on the deceased when the crowd shouted to stop it.

12. Accordingly, it appears the first and second accused assaulted the deceased in order to defend themselves from the assault of the deceased. I now take my attention to consider whether the responses of the two accused by assaulting the deceased were reasonable. The both accused were drunk, so did the deceased. This incident had unleashed suddenly and unexpectedly. The first accused had tried to avoid the confrontation on several occasions. Taking into consideration the circumstances prevailed at the time of this incident, I find the two accused were not in a position to make a fine judgment of the situation. They have instantly and instinctually responded to the threat came from the deceased by punching him and then kicking him when the deceased fell down. In view of these reasons, there is a reasonable doubt whether the two accused have responded reasonably in exercising their rights of self-defense when the deceased aggressively assaulted the first accused. Therefore, I find the prosecution has failed to prove beyond reasonable doubt that the two accused guilty of the offence of murder. Moreover, the prosecution has failed to prove beyond reasonable doubt that the two accused guilty of the alternative offence of manslaughter.

13. In view of the reasons discussed above, I have cogent reason to disagree with the opinion of the first assessor, who found both accused guilty of murder. I concur with the opinions of the second and the third assessors who found the two accused not guilty of murder. However, I have cogent reasons to disagree with the opinion that the two accused guilty of manslaughter by the second and third assessors.

14. In conclusion, I hold the two accused not guilty of the offence of murder as charged in the information and acquit them from the same accordingly.
15. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
20th November 2019

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the 1st Accused.
Office of the Legal Aid Commission for the 2nd Accused.