

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 63 B of 2015

BETWEEN : STATE

AND : SHALENDRA KRISHNA SAMI

Counsel : Mr A. Singh and Ms Lata for the State
Ms J. Singh and Ms Ali [LAC] for the Accused

Dates of Hearing : 05, 07, 08, 09 March 2019

Closing speeches : 13 March 2019

Date of Summing up : 18 March 2019

Date of judgement : 20 March 2019

JUDGEMENT

1. The Accused is indicted for the offence of murder contrary to Section 237 of the Crimes Act No 44 of 2009. The particulars of the offence are as follows;
Shalendra Krishna Sami on the 16th day of April 2015 at Lautoka in the Western Division murdered Chandra Baskaran.
2. The Information was filed by the State on 17 July 2015 and the Accused's plea was taken on 22 July 2015. He pleaded not guilty and the trial was commenced on 05 March

2019. The prosecution called 8 witnesses. The Accused opted to give evidence and no other witnesses were called for the defence.

3. On 18 March 2019 soon after the summing up, the three assessors returned with a unanimous opinion and they found the Accused guilty of murder.
4. Having directed myself in accordance with the summing up, I concur with the opinions of the assessors as to the guilt of the Accused. I will now give the reasons for my judgement.
5. Section 237 of the Crimes Act define the offence of murder as follows;
A person commits an indictable offence if-
 - a) the person engages in conduct; and
 - b) the conduct causes the death of another person; and
 - c) the first mentioned person intends to cause, or is reckless as to causing, the death of the other person by the conduct.
6. The prosecution relied on the second limb of Section 237(c) and conducted its case to align with the argument that the Accused was reckless as to causing the death of the deceased by his conduct. The prosecution mainly relied on the caution interview of the Accused and they presented the evidence of the other witnesses to bolster the prosecution case.
7. The Accused took up the position that he acted in self defence. Further the counsel for the Accused contended that some of the answers in the caution interview were fabricated.
8. I have considered the evidence adduced in this case. Further I have summarized the evidence in my summing up. I have directed the assessors on accepting the admissions contained in the caution interview and on the concept of self defence.
9. Prior to the commencement of the trial it was informed that the Accused does not wish to challenge the caution interview statement. On that basis the interviewing officer tendered the caution interview statement of the Accused in evidence. However during the cross examination of the interviewing officer, it was suggested by the defence counsel that answers to questions 33, 36 and 70 were fabricated by the police.

10. I have considered the evidence given by the interviewing officer, D/Sgt 1898 Arvind Singh. The interviewing officer denied any fabrication and said that what is recorded in the statement are the answers given by the Accused. I am satisfied that the Accused was given all his rights at the caution interview and he was not abused, threatened or assaulted by any police officer. I am satisfied that the Accused was treated fairly and there is no reason to believe that it was recorded through trickery or unfair treatment. Further I am satisfied that the caution interview statement is not fabricated, particularly the answers to the questions 33, 36 and 70. Further I am satisfied that the contents of the statement are true and accurate. Therefore, I decide that the court can safely rely on the statement as a true narration of the incident and I accept the contents of the Accused's caution interview statement.
11. According to the caution interview statement of the Accused he had a fight with his deceased brother, Basakaran on 16 April 2015. When the deceased came with a knife the Accused had got hold of the deceased's hand and had started struggling with him. The Accused stated in his caution interview statement that "In this struggle I pushed his hand so hard that the knife struck his neck, upon seeing that I pushed the knife further inside his neck."
12. Then the Accused had pulled the knife out and the deceased had fallen down. When the knife was also dropped on the floor, the Accused had picked it up and had struck the deceased's back again with the knife.
13. The mother of the Accused and the deceased, Savitri testified that the Accused confessed to her that he killed the brother. The confession made by the Accused to his mother was not disputed by the defence during the trial. I accept the evidence given by the mother of the Accused to be credible.
14. Dr James J.V. Kalougivaki was called by the prosecution to give evidence on the cause of death. He explained that both stab wounds were fatal, and each wound could cause instant death independent of the other. He said both stab wounds reflected significant amount of force used in infliction of the injuries. He also said that it is possible that the second stab injury was inflicted while the deceased was in a prone position.
15. The wife of the deceased, Rajeshni Devi and a neighbour, Pushpa Wati confirmed that fights between the two brothers were not unusual. Even on the day of the incident

Pushpa Wati had not paid much attention when she heard the noise of the two brothers fighting.

16. I am of the view that the prosecution witnesses gave reliable evidence. Their evidence was not challenged or discredited. I accept the evidence adduced by the prosecution.
17. The Accused gave evidence that he acted in self defence. However, the Accused's evidence was inconsistent and evasive. I am not inclined to accept his evidence as it lacks credibility and reliability.
18. I have considered whether the Accused could rely on self defence to save himself from criminal liability of his conduct. Section 42 of the Crimes Act sets out self defence as follows;

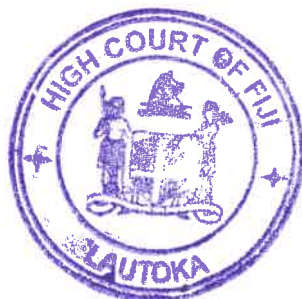
- (1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self defence.
- (2) A person carries out conduct in self defence if and only if he or she believes the conduct is necessary-
 - a) to defend himself or herself or another person; or
 - b) to prevent or terminate the unlawful imprisonment of himself or herself; or
 - c) to protect property from unlawful appropriation, destruction, damage or interference; or
 - d) to prevent criminal trespass to any land or premises; or
 - e) to remove from any land or premises a person who is committing criminal trespass,and the conduct is a reasonable response in the circumstances as he or she perceives them.

19. The defence of self defence was discussed in *Aziz v State* [2015] FJCA 91; AAU112.2011 (13 July 2015) and it was observed that;

“ The defence of self defence is now, as a result of the words “ if and only if”, available as a statutory defence. The defence will exonerate an accused person in the event that the prosecution fails to establish beyond reasonable doubt that the conduct of the accused was not a reasonable response to the circumstances

as they were perceived by the accused. This is the only basis upon which the use of force in self defence will negate criminal responsibility for an offence.”

20. As per the evidence adduced in the present case, fights between the brothers had not been an uncommon occurrence. The prosecution tendered the admissions of the Accused to establish the circumstances which prevailed at the time of the offence. It very clearly shows that the first injury to the neck was caused as a result of pushing the deceased’s hand so hard and only upon seeing the knife striking the neck, the Accused had pushed it further into the deceased’s neck. The second injury on the back had been inflicted after the deceased had fallen onto the floor. The prosecution thereby established that there was no reason for the Accused to perceive that it was necessary for him to push the knife further into the neck of the deceased and to stab him again when the deceased fell down. It is clearly an act of retaliation out of proportion.
21. Therefore, I am satisfied that the prosecution proved beyond reasonable doubt that the conduct of the Accused was not a reasonable response to the circumstances as they were perceived by the Accused. Thus, I decide that the Accused cannot resort to the defence of self defence in the circumstances of this case. I am satisfied that the prosecution proved beyond reasonable doubt that the Accused did not act in self defence. Upon the direction given at the summing up, the assessors rightly excluded that the defence of self defence is not available to the Accused.
22. For the foregoing reasons I am satisfied that the prosecution has proved its case beyond reasonable doubt. Therefore, the assessors’ opinion is justified, and I agree with them.
23. I find the Accused guilty and convict him for the offence of murder.




Rangajeeva Wimalasena
Acting Judge