

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 360 OF 2015S

STATE

Vs

WAME KUBUISAVUSAVU WAQAVANUA

Counsels : Mr. M. Vosawale for State
Ms. A. Tuiketeki and Mr. E. Navuda for Accused
Hearings : 9, 10, 11, 12, 15 and 16 April, 2019.
Summing Up : 18 April, 2019.
Judgment : 23 April, 2019.

JUDGMENT

1. On 9 April 2019, the following information was put to the accused, in the presence of his counsel:

"Statement of Offence

MURDER: *Contrary to section 237 (a), (b) and (c) of the Crimes Act of 2009.*

Particulars of Offence

WAME KUBUISAVUSAVU WAQAVANUA *between the 23rd day and the 24 day of November 2015 at Raiwai, Suva in the Central Division murdered WATISONI ROKOSAWA".*

2. The charge was explained to him in the i-taukei and English language, and he said he understood the same. He pleaded not guilty to the same. Before myself and three assessors, the matter proceeded to trial for 6 days. On 18 April, 2019, I delivered my summing up to the assessors, who after 1 hour deliberation, unanimously returned with an opinion that the accused was not guilty of murder, but guilty of the lesser offence of the manslaughter of the deceased.
3. The Easter weekend intervened. I then adjourned to today to deliver my judgment. This is my judgment.
4. I had reviewed the evidence called in the trial, and I had directed myself in accordance with the summing up I delivered to the assessors on 18 April 2019. The assessors' opinion was not perverse. It was open to them to reach such conclusion on the evidence.
5. Assessors are there to assist the trial judge come to a decision on whether or not the accused was guilty as charged. They offer their opinions, which might assist the trial judge. However, the trial judge is not bound by their opinion, but it must be treated with respect, as it represents the public's opinion on the case.
6. On my assessment of the case, I agree entirely with the unanimous opinion of the three assessors. I had heard all the prosecution's witnesses' evidence, including the defence's sole witness. I had considered the exhibits tendered by the parties.
7. On the first element of murder, as described in paragraphs 9 (i) and 10 in the summing up, I find as a matter of fact that, the accused, at the material time, hit the deceased's head with a tree branch, wherein he fell to the tarsealed road, and became unconscious thereafter. This conclusion was arrived at after carefully considering Mr. Tikiko Delai's (PW1) evidence, and the accused's statements in his police caution interview statements, which was tendered as Prosecution Exhibit No. 5.
8. On the second element of murder, as described in paragraphs 9 (ii) and 11 of the summing up, I find as a matter of fact that, the accused's hitting the deceased's head with a tree branch, as described in paragraph 7 hereof, caused the deceased's "severe traumatic brain injury, severe intra-cranial haemorrhage, base of skull fracture and severe traumatic head injury", leading to his

death. In other words, the accused's abovementioned wilful act was a substantial cause of the deceased's death. Without the above wilful act, the deceased would not have died.

9. On the third element of murder as described in paragraphs 9 (iii) (a), 9 (iii) (b), 12, 13 and 14 in the summing up, I find as a matter of fact, that the accused did not intend to cause the deceased's death, at the time he hit his head with a tree branch. He had no intention to kill the deceased at the material time. However, I find that at the time he hit the deceased on the head with a tree branch, he intended to cause him serious harm.
10. Also, I find as a matter of fact that, he was not reckless in causing the deceased's death. He was trying to implement a citizen arrest and trying to implement minimum force in arresting the deceased, who had broken into his car and was trying to steal therefrom, at the time. In my view, he was reckless as to causing serious harm to the deceased, at the material time.
11. Alternatively, the accused was provoked into causing the deceased's death. He had obviously worked hard to buy his family a Mitsubishi Pajero. The deceased had deliberately smashed the window of his car, lied to the accused when he asked Tikiko and the deceased who broke into his car, and later they taunted him by laughing at him a while later. The deceased and Mr. Tikiko appeared to show no regard to the accused's desire to protect his property and protect himself when he came to question them. The area was renowned for 20 car break-ins per month. In my view, on the alternative, the accused was provoked into causing the deceased's death.
12. Given the above, I agree with the three assessors' unanimous opinion, and I find the accused not guilty of murder, and acquit him accordingly on that charge. However, I find him guilty of the lesser offence of the manslaughter of the deceased, at the material time. I convict him accordingly of the manslaughter of the deceased.




Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Ms. A. Tuiketeti, Barrister & Solicitor, Suva.**