

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE NO. HAC 85 OF 2016

BETWEEN : STATE

AND : AVINAASH KAMAL

Counsel : Mr S Seruvatu for State
: Ms P Reddy for Accused

Date of Hearing : 21st – 23rd August, 2019

Date of Summing Up : 24th August, 2019

Date of Judgment : 24th August, 2019

J U D G M E N T

- [1] The Accused is charged with manslaughter contrary to section 239 of the Crimes Act. It is alleged that the Accused on 2 December 2015 at Nadi engaged in a conduct which caused the death of Amresh Kamal.
- [2] Following my summing up, the assessors unanimously found the Accused guilty. I direct myself in accordance with my summing up.
- [3] The prosecution carries the burden of proof to prove the charge beyond reasonable doubt. The Accused elected to remain silent. There is no burden on him to prove anything.
- [4] There are three ingredients that must be proved for the offence of manslaughter:
1. That the Accused engaged in a conduct.
 2. That this conduct caused the death of the victim.
 3. That the Accused was reckless as to a risk that the conduct will cause serious harm to the victim.

- [5] The relationship between the Accused and the victim is not in dispute. The victim was the Accused's father. He was 40 years old while the Accused was 18 years old at the time of the alleged incident.
- [6] The first element was not disputed by the Accused. He admitted throwing a burning kerosene stove at his father following an argument with him. As a result of that conduct the father was set ablaze and sustained 35 % third degree burns of the total body surface area. The admissions made by the Accused in his caution interview are consistent with the admissions in his Admitted Facts. In that regard I reject the evidence of the Accused's mother that the incident was accidental as untrue. I accept that the Accused's admission that he threw a burning kerosene stove at his father in anger after an argument with him as true. I feel sure that the Accused engaged in a deliberate conduct, which was not accidental.
- [7] The victim sustained third degree burns to his legs. The doctor gave evidence that the third degree is the most serious burn injuries. The victim was hospitalised on 2 December 2015. He was immobile and kept in isolation in the Burns Unit because of the severity of his injuries. A surgical team cleaned and dressed his wounds in the surgical theatre. Within a week, the victim developed bacterial infection in the blood and pneumonia. He was placed on antibiotics and was monitored daily by Intensive Care Specialists.
- [8] Despite all these care the victim passed away on 17 January 2016 at the hospital. The post mortem examination revealed that the deceased died of blood clots in the vessel that pumped blood from his heart to his lungs. The pathologist in his evidence said that the primary cause of death was triggered by the complications that the patient developed as the result of his burn injuries. I feel sure that the victims' death was caused by the injuries sustained as a result of throwing a burning kerosene stove at him and not by medical care which was not applied in good faith and with common knowledge and skill.
- [9] I accept the admission made by the Accused that he knew that throwing a burning kerosene stove at a person will set the person ablaze as true. I feel sure that the Accused knew that there was a substantial risk of serious harm to his father when he threw burning kerosene stove at him and setting him ablaze and that he was not justified in taking that risk.

[10] The prosecution has satisfied guilt beyond a reasonable doubt. The Accused is convicted of manslaughter as charged.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused