

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

High Court Criminal Case No. HAC 192 of 2015

BETWEEN : STATE

AND : GEETA DEVI

Counsel : Mr Tuenuku For the State
Ms Radrole and Ms N. Sharma For the Accused [LAC]

Dates of Hearing : 13, 14, 15 August 2019

Closing Speeches : 16 August 2019

Date of Summing Up : 19 August 2019

SUMMING UP

Ladies and gentleman Assessors,

1. I must now sum up the case to you. You must then retire to consider your opinions. I will direct you on the law that applies. You must accept those directions I give you on matters of law. You are to decide the facts of the case, based on the evidence that has been led before this Court. You will then apply those directions to the facts and give me your opinions as to whether the Accused is guilty or not guilty.

2. You are bound by the directions I give you as to the law. But you are not obliged to accept any opinion I may express or appear to have expressed while going through evidence. If you do not agree with that opinion you will ignore it and form your own opinion with that evidence.
3. You must base your opinion only on evidence given by the witnesses, the documents, pictures or other exhibits tendered in Court. But a few things that you heard in this Court are not evidence. Opening submission, closing submissions, statements, arguments and comments made by the counsel and this summing up are not evidence. But you may consider those as a guidance when you evaluate evidence and the extent to which you do so is entirely a matter for you. I must say that the purpose of the closing speech is to outline the evidence that each party rely on to fall in line with their respective arguments. It is not an exercise to introduce new evidence or to give evidence from bar table. If you heard any new information which you did not hear in the evidence given by the witnesses in this case, you must disregard such information.
4. If you have acquired any knowledge about the facts of this case outside this Court room, you must exclude that information too from your consideration. Make sure that external influences play no part in forming your opinion. You will also not let any sympathy or prejudice sway your opinions.
5. I will give you only a summary of evidence. I will not go through every word uttered by the witnesses in this case, and if I leave out something that seems to be important, nothing stops you from taking that into account. Because you decide the facts.

6. After this summing up, you may give your individual opinion as the representatives of the community. You may reject or accept any evidence in forming your opinion. Your opinions need not be unanimous. And you need not give reasons for your opinions.
7. Your opinions will assist me in giving my judgment. I will give the greatest weight to your opinions in my judgment. However, I am not bound to conform to your opinions.

Ladies and gentleman Assessors,

8. I will now mention some considerations that may assist you in evaluating evidence. As I said before you may reject the whole evidence of a witness, accept the entirety or even accept only a part of a witness's evidence and may reject the rest. You have to decide whether a witness has spoken the truth or correctly recalled the facts and narrated it.
9. You have seen the demeanor of the witnesses and how they gave evidence in Court. You have seen whether they were forthright or evasive in giving evidence. But you may also bear in mind that some witnesses have good memory, some may not remember every detail and it is also likely that some may perceive the same incident differently and narrate differently. You have to use your common sense in assessing the reliability and credibility of witnesses. Remember, that many witnesses are not comfortable in giving evidence in a Court room, they may act in anxiety and get distracted in this environment.

10. According to the law the Prosecution must prove its case beyond reasonable doubt. For the Prosecution to discharge its burden of proving the guilt of the Accused, it is required to prove that she is guilty beyond reasonable doubt. The burden of proof remains on the Prosecution throughout the trial. For this purpose, the Prosecution must prove every element of the offence beyond reasonable doubt.
11. The Accused need not prove her innocence. The fact that the Accused did not give evidence does not imply that she is guilty. You must not assume that she is guilty because she did not give evidence. It is not her task to prove her innocence. The burden is on the Prosecution to prove the guilt of the Accused. That means you must be satisfied that the State has proved every element of the offence beyond reasonable doubt. That doubt should be a reasonable one and if you are left with a reasonable doubt you must find the Accused not guilty. If you are not left with any such doubt and if you are sure that the Prosecution proved every element of the offence, you must find her guilty.
12. Another consideration may be; Does the evidence of a particular witness seem reliable when compared with other evidence you accept? Did the witness seem to have a good memory? You may also consider the ability, and the opportunity, the witness had to see, hear, or to know the things that the witness testified about. These are only examples. It is, as I have said, up to you how you assess the evidence and what weight, if any, you give to a witness's testimony. When you evaluate evidence, you should see whether the version of a witness is probable or improbable.
13. A charge can be proved with direct or circumstantial evidence or with both types of evidence. In some instances, you may find that some facts can be proved by

direct evidence. For example, if there is reliable evidence from a witness who actually saw the Accused committing the offence; or if there is a video recording of such an incident that plainly demonstrates her guilt; or if there is reliable evidence of the Accused herself having admitted it, these would all be good examples of direct evidence against the Accused.

14. Sometimes the Prosecution has to rely on circumstantial evidence to prove an element or elements of the offence. That simply means that the Prosecution is relying upon evidence of various circumstances related to the crime and the Accused, which the Prosecution says, when taken together with other evidence will lead to the sure conclusion that it was the Accused who committed this crime. A common example of circumstantial evidence is fingerprint evidence. Suppose a person's fingerprints are found on an object at the scene of a crime, such as a murder weapon. It could be inferred that the person has handled that weapon and been present at that place. The inference could be drawn even though there is no direct evidence that the person was seen there.
15. On some occasions evidence like fingerprints may be the only circumstance relied upon by the Prosecution as proof of guilt. However, it is not unusual to find a criminal case that evidence is given of a number of facts and circumstances. One witness proves one thing and another proves another thing. None of those things alone may be sufficient to establish guilt but, taken together, one circumstance building upon the other, they may lead to the conclusion that the Accused is guilty of the crime.
16. Therefore, you must first consider all the evidence and decide what facts have been proved. From those facts you are entitled to draw proper inferences. An inference

is a logical deduction from facts that have been proved. It must not be mere speculation or guesswork. It is not sufficient that the proved circumstances are merely consistent with the Accused having committed the crime. To find her guilty you must be satisfied so as to feel sure that an inference of guilt is the only rational conclusion to be drawn from the combined effect of all the facts proved. It must be an inference that satisfies you beyond reasonable doubt that the Accused committed the crime. If the inference to be drawn from the circumstantial evidence falls short of that standard then your opinion must be not guilty.

17. You should be careful to distinguish between arriving at conclusions based on reliable circumstantial evidence, and mere speculation. Speculating in a case amounts to no more than guessing or making up theories without good evidence to support them.
18. The Accused is charged for murder with another person named, Sundar Kaur contrary to Section 237 of the Crimes Act No. 44 of 2009 as per the first count in the Information. I do not wish to reproduce the particulars of offence as the Information is before you. Also, there is an alternative count of accessory after the fact to murder, which I will explain to you later.
19. You can see that the Accused, Geeta Devi is charged with Sundar Kaur for the alleged offence of murder. That means according to the allegation put forward by the Prosecution two persons are allegedly responsible for murder. Although only Geeta Devi was tried in this case you have to bear in mind that the charge is jointly laid against two persons. When more than two persons are jointly charged the legal principle of joint enterprise comes into play to decide the liability of each person. I will now explain to you what is basically meant by joint enterprise.

20. Usually, a person is liable in law only for the acts committed by him or her and only for his or her conduct. Such acts or conduct alone attract criminal liability if they are unlawful. The principle of joint enterprise is an exception to that general rule. The law says that where two or more persons form a common intention, to do something unlawful together, and while doing something to further that purpose, if an offence is committed of such a nature that its commission was a probable consequence of that purpose, each of those who had formed the common intention and had taken part in furtherance of that intention, is deemed to have committed the offence. You have to consider the case against the Accused separately and decide whether the Accused formed a common intention with another to perform a criminal or an unlawful purpose. The Accused persons' agreement to act together need not have been expressed in words. It may be the result of planning or it may be a tacit understanding reached between them on the spur of the moment. Their agreement can be inferred from the circumstances.
21. You must consider the following factors as matters of law to ascertain whether the Accused committed the offence in joint enterprise;
- (i) The case for the Accused must be considered separately. That is, you must find evidence as to what this particular Accused did to demonstrate that she too had shared the intention in common to prosecute the unlawful purpose;
 - (ii) The Accused must have been actuated by that common intention with the doer of the unlawful purpose at the time the offence was committed and should have contributed in some meaningful way towards performing the unlawful purpose;

- (iii) The Accused should have known that the commission of the offence is a probable consequence of the performance of that unlawful purpose.
- (iv) Common intention must not be confused with same or similar intention entertained independently of each other. Instead, it should clearly be distinguished from similar intention. That is, if you find evidence to show that the Accused did not share the intention in common with the other and that she was actuated by her own intention which was, however, similar to the intention of the other, you can find the Accused guilty only for what she has committed and not for anything else;
- (v) There must be evidence, either direct or circumstantial, of pre-arrangement or some other evidence of common intention. Sometimes, however, such common intention could occur on the spur of the moment;
- (vi) The mere fact of the presence of the Accused at the time of the offence is not necessarily evidence of common intention.

22. Now let me now explain to you the elements of the offence of murder. Section 237 of the Crimes Act No. 44 of 2009 reads 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.

23. Therefore, in order to prove the offence of murder the Prosecution must establish beyond reasonable doubt that;

- i) The Accused;
- ii) Engaged in a conduct; and
- iii) The said conduct caused the death; and
- iv) The Accused intended to cause the death of the deceased; or the Accused was reckless as to causing the death of the deceased by her conduct.

24. The first element relates to the identity of the person who committed the offence. The identity of the Accused is not disputed in this case.
25. The second element relates to the conduct of the Accused. To engage in a conduct is to do an act which is the product of the will of the Accused and it was not accidental. The Prosecution has to prove beyond reasonable doubt that the conduct of the Accused was deliberate and not accidental. Conduct can be anything such as stabbing, strangling, poisoning, punching, chopping etc, and if that conduct causes the other person to die, then the third element comes into play.
26. The act of the Accused need not be the sole or principal cause, but the act should substantially contribute to the deceased's death. Therefore, if you are satisfied beyond reasonable doubt that the conduct of the Accused substantially contributed to the death of the deceased, that is sufficient to satisfy the third element that the 'conduct caused the death of the deceased'.
27. With regard to the final element which concerns the state of mind of the Accused, the Prosecution should prove beyond reasonable doubt, either, that the Accused intended to cause the death of the deceased or that the Accused was reckless as to causing the death of the deceased. The Prosecution should prove only one of the two limbs of this element. It is not possible to have direct evidence regarding an

Accused's state of mind as no witness can look into the Accused's mind and describe what it was at the time of the alleged incident. However, you can deduce the state of mind of the Accused from the facts and circumstances you would consider as proved.

28. In order to conclude that the Accused intended to cause the death of the deceased, you should be sure that she meant to bring about the death or that she was aware that death will occur in the ordinary course of events as a result of her conduct. You should consider all the evidence and draw appropriate inferences to ascertain whether the Accused had the intention to cause the death of the deceased.
29. In the event you find that the Accused did not have the intention to cause the death of the deceased or you are not sure whether she had that intention, you should then consider whether the Accused was reckless as to causing the death of the deceased. An Accused will be reckless with respect to causing the death of the deceased, if;
 - A) She was aware of a substantial risk that death will occur due to her conduct;
and
 - B) Having regard to the circumstances known to her, it was unjustifiable for her to take that risk.
30. What you have to consider with regard to this particular state of mind is whether the Accused did foresee or realize that death was a probable consequence or the likely result of her conduct; and yet she decided to go ahead and engage in the conduct regardless of that consequence.

31. The Accused must foresee that death was a probable consequence or the likely result of her conduct and after realizing that, if she decided to go ahead and engage in that conduct regardless of the likelihood of death resulting, then she was reckless as to causing the death of the deceased. In order to constitute the offence of murder by recklessness, actual awareness of the likelihood of death occurring must be proved beyond reasonable doubt.
32. If you are satisfied that the Prosecution has proved the above elements beyond reasonable doubt, then you must find the Accused guilty of murder. If not, you must find the Accused not guilty to murder.
33. In the event you believe that the Prosecution could not prove the offence of murder you must consider the alternative count of accessory after the fact to murder.
34. The law says that a person who receives or assists another who has, to his or her knowledge, committed an offence, in order to enable him or her to escape punishment, is said to have an accessory after the fact to the offence, which in this case murder.
35. In this case the Prosecution must prove beyond reasonable doubt the following elements to prove the alternative count of accessory after the fact of murder.
 - i) The Accused
 - ii) Assisted another
 - iii) Who to her knowledge had committed an offence
 - iv) In order to enable her to escape punishment

36. If you believe that the Prosecution could not prove the offence of murder, then only you must consider whether the Accused committed the alternative offence of accessory after the fact of murder. If you are satisfied that the Prosecution presented evidence in respect of the elements of the alternative count and if you are satisfied that the offence of accessory after the fact of murder is proven beyond reasonable doubt you must find the Accused guilty to the alternative count. If not, you must find the Accused not guilty to the alternative count as well.

Ladies and gentleman Assessors,

37. At the beginning of the trial each of you were given a copy of the agreed facts and it is before you. Those are the facts that the Prosecution and the defence have agreed to accept as evidence proved beyond reasonable doubt. You can rely on those facts as evidence without looking for any further proof.
38. Now I will refresh your memory and give a brief outline of the evidence adduced in this case. However, you should consider the entirety of the evidence adduced in this case when forming your opinions. The Prosecution called six witnesses to prove the case against the Accused.
39. The Prosecution tendered two statements given by the first witness Koyal Radhika and presented her for cross-examination by the defence. Section 134 of the Criminal Procedure Act allows written statements by any person to be tendered in any criminal proceedings subject to the conditions stated in that section. This Court has granted leave to the Prosecution to tender the two statements of Koyal Radhika and to present her for cross-examination pursuant to Section 134 of the Criminal Procedure Act. Therefore, you can consider the contents of the two

statements as oral evidence given by her in this Court. However, it is up to you to decide whether you believe that evidence or not and what weight you would attach to her evidence.

40. According to Koyal Radhika on 01 November 2015 at about 6.00 am she had seen her mother sitting on the bed and the deceased, Sanjini Lata was standing inside her mother's room, when she went to that room. Koyal had seen the deceased's hands were tied up with a blue cloth and tears were coming out from the deceased's eyes. The witness had heard the deceased was saying to her mother "please don't do anything". According to her evidence she had then started watching TV and that time the Accused, Geeta Devi had been making roti in the kitchen.
41. According to Koyal when she was having breakfast, she had seen the Accused referred to as bhabhi, going inside her mother's room and closing the door. Koyal further stated the following;

"I did not know what was happening inside. My niece asked for roti then bhabhi opened the door from inside, bhabhi came and gave roti to my niece. The door was opened, and I saw my mum was beating Sanjini with a pipe (rod) at that time I was in the kitchen. Mummy was sitting on the bed and beating Sanjini I saw mum using the iron rod on Sanjini's bum. Sanjini was crying slowly. Sanjini was wearing a stripe top and her skirt was not on only her panty was on. After I had my breakfast my mother called me inside the room and bhabhi came out and I saw both legs of Sanjini was tied with a rope and a rope was tied to the edge of the bed where the iron rod was. My mother told me to press the iron rod but I cannot then I went out

of the bedroom. When I left the bedroom only my mum and Sanjini were in the room and I went to the sitting room then I heard Sanjini crying out loudly and I do not know where bhabhi was.”

42. According to the evidence, Koyal Radhika had then seen the Accused coming again when she was in the sitting room. The Accused had cut the blue cloth with a kitchen knife and had dragged the deceased to the bathroom. Koyal Radhika’s evidence about what happened afterwards is as follows;

“My mother went with bhabhi. She was on wheelchair. Bhabhi took Sanjini inside the bathroom and my mother was standing at the door of the kitchen. After that bhabhi dragged Sanjini outside on the cement where mummy was. I did not ask anything to mum because I was afraid she will assault me too. I saw Sanjini sleeping on the cement outside. After that bhabhi again took Sanjini in the bathroom, left her there and on the light. Mummy was in the kitchen and bhabhi went to her room.”

43. Koyal Radhika has further stated that one old lady referred to as Dadi also came with the Accused when her mother was inside the room with the deceased. Koyal had seen that the deceased was bleeding from her backside and she had also seen blood on the iron rod. According to her evidence she had been later sent to buy cassava with her niece. She had seen rubbish was burning in her compound when she returned.

44. The witness confirmed under cross-examination that the two statements tendered by the Prosecution are her statements. She was asked during cross-examination whether there was anyone else present apart from the deceased and her mother

when the witness went to the room after brushing her teeth, by referring to her statement. The witness confirmed that there was no one else present during that time.

45. Under cross-examination the witness denied that dhadhi and the Accused went to her mother's room. She said that dhadhi saw the incident from the kitchen. She denied that dhadhi and the Accused told her mother to stop what they were doing. The witness further denied that dhadhi and the Accused were chased out of the house by her mother.

46. The witness confirmed that when the deceased cried out loudly the Accused went to the room. She said that the Accused then came out and took a kitchen knife to cut the blue cloth. However, the witness denied that the Accused untied the rope that was used to tie the deceased's legs. The witness said that the deceased was dragged by the Accused to the bathroom. The witness confirmed under cross-examination that the deceased was moving and was heavily breathing when she was dragged to the bathroom by the Accused. The witness said that she did not see anything after the deceased was dragged to the bathroom and the light was switched on.

47. During cross-examination Koyal Radhika agreed that her mother was abusive and controlling. But she said that she will listen to her or obey her only at times. She said even on that day when her mother asked her to press the iron rod, she did not listen to her. The witness denied that her mother does farming.

48. During re-examination the witness said that the deceased's hands were tied to a rafter and her mother tied the hands. She also said that her mother is in a wheelchair and she cannot even stand up.
49. The Prosecution witness, Inspector Rusila Cakacaka said that she was the scene of crime officer and the photographer for this case. She explained the pictures taken by her. She tendered the pictures of broken rods in bedroom number 2. She also tendered photographs of the rafter and said that she noticed marks on the rafter resulted by tying something hard to the rafter. She tendered a picture with an officer pointing to the rafter to show the height to the rafter. The witness tendered the booklet with the pictures as Prosecution Exhibit 3.
50. The witness was not cross-examined by the defence.
51. The Prosecution called WDC 3961 Meredani Naba to give evidence. She said that she interviewed the Accused. The caution interview of the Accused was tendered as evidence by the witness. The original caution interview statement and the typed statement were marked as Prosecution Exhibit 4 and 5. The witness was not cross-examined by the defence.
52. The caution interview of the Accused is before you, the answers in the caution interview are for you to consider as evidence. But before you accept the answers, you must be satisfied about the truthfulness of the answers given by the Accused. There was no suggestion by the defence that the answers given by the Accused were fabricated. You have to take into consideration whole of the statement in order to determine whether the Accused has made admissions to this offence in the caution interview. If you are not satisfied or not sure that the Accused has

actually made admission in her caution interview, you must ignore the caution interview. Furthermore, you will see that the caution interview contains admissions as well as explanations, or excuses commonly known as 'mixed statements'. The contents of the caution interview are admissible as evidence and you have to consider the answers given by the Accused as a whole in deciding where the truth lies.

53. If you are satisfied, that the Accused has made admissions in her caution interview, then it is for you to decide whether it is truthful, and what weight you give them as evidence. It is for you to decide whether you consider the whole of admission or part of it or none of it as truthful, reliable and credible. You must consider all other evidence adduced during the course of the hearing in deciding the truthfulness, credibility and reliability of the admissions made in the caution interview. Remember it is for you to decide what weight you give to the admissions, explanations or excuses contained in the caution interview.
54. It must also be noted that the caution interview of an Accused person is only admissible against the maker of the statement. Although the Accused was confronted with the caution interview of Sundar Kaur, the contents of Sundar Kaur's caution interview cannot be used as evidence against the Accused in this case. If this Accused is implicated or mentioned in Sundar Kaur's caution interview you must not consider that as evidence against this Accused.
55. The Prosecution witness Mohammed Faiyaz Ali gave evidence that the Accused was his tenant and she was living beside his house. He said that the Accused informed him that the deceased had gone missing and he went with the Accused

to the Police Station to lodge a report. He said that on their way back the Accused told him that her mother in law killed the deceased.

56. Under cross-examination he confirmed that he had not seen Sundar Kaur doing farming in that land.
57. The fifth Prosecution witness, Mohammed Tafzan Ali said that he met the Accused on 01 November 2015. He said it was a Wednesday and the Accused was crying. He said that the Accused did not tell him anything at that time but later she came home and told him that Sanjini was dead. He further said that "she told me that she has been killed then after that she was being taken away to have a bath then after that at the same time she passed away."
58. The witness also said that the Accused told him that once the deceased passed away after the bath, the Accused wrapped her in a tarpaulin and burnt the deceased. He further said that the Accused told him that she put the remains in the septic tank afterwards.
59. During the cross-examination the witness confirmed that she was told by the Accused that her mother in law killed the deceased and she is afraid of her mother in law. The witness said under cross-examination that he cannot recall whether the Accused told him that she was in another room when the deceased screamed.
60. Dr. James Kalougivaki gave evidence that he did the post mortem regarding this case. He said that he examined burnt skeletonized remains of the deceased. He gave evidence that through DNA testing the remains matched the reference samples taken from the toothbrush of the deceased. He further said that the cause

of death could not be ascertained as only partial skeleton remains were present and due to the extreme decomposition and effects of conflagration by fire.

61. The pathologist was not cross-examined by the defence.
62. That was the case for the Prosecution.
63. After the closure of the Prosecution case the Accused was explained her rights. You must bear in mind that although those options were given, still the burden is on the Prosecution to prove the guilt of the Accused and she need not prove her innocence. The Accused chose to remain silent and no witnesses were called for the defence. I must remind you that you must not draw any adverse inference from the fact that the Accused remained silent. It is her right.

Ladies and gentleman assessors,

64. The Prosecution case is that on 01 November 2015 the Accused and Sundar Kaur murdered the deceased, Sanjini Lata. According to the Prosecution evidence Sundar Kaur was assaulting the deceased in her room on 01 November 2015 and the Accused too had been seen going inside the room once and closing the door. Once again, the Accused had gone inside the room to cut the cloth and to drag the deceased out. The deceased had been moving and breathing heavily when the Accused dragged her to the bathroom.
65. According to the caution interview of the Accused the Accused had poured water on the deceased when she was taken to the bathroom and she had tried to revive her. The Accused has stated in her caution interview that she later wrapped the

body of the deceased with a tarpaulin and put it on fire with Sundar Kaur. She has also stated that the remains were put into the septic tank.

66. The Prosecution relies on direct as well as circumstantial evidence in this case. The Prosecution tendered the photographs of the crime scene, post mortem report and the caution interview of the Accused apart from the evidence given by the witnesses. The cause of death is not ascertained and the Prosecution argues that Sanjini Lata was alive even when the Accused was dragging her out to the bathroom.
67. The position of the defence according to the line of cross-examination is that the Accused did not take part in the assault and the Accused had only intervened to revive the deceased. However, it is not denied that the Accused took part in burning the body of the deceased.

Ladies and gentleman assessors,

68. I have now given you the directions of law and summarized the evidence adduced in this case. It is a matter for you to decide whether the Prosecution adduced evidence in respect of the ingredients of the offence of murder that I have discussed before. You have to consider whether the Prosecution proved the ingredient which constitutes the offence of murder beyond reasonable doubt.
69. As it was mentioned before the Accused does not have to prove her innocence.
70. The first count against the Accused in this case is murder. If you decide that the Prosecution proved the offence of murder beyond reasonable doubt you must find

the Accused guilty to the first count. If you find the Accused not guilty of murder, then you must consider the alternative count of accessory after the fact of murder.

71. Your possible opinions are;

- 1) The Accused is Guilty or not Guilty of murder.
- 2) If you find the Accused not Guilty of murder, then alternatively you are to consider whether the Accused is guilty or not guilty to the second count of accessory after the fact of murder.
- 3) If you find the Accused Guilty of murder, then you are not to consider the alternative count.

72. You may now retire and consider your opinions. Before you do so, may I ask the counsel of both parties whether you wish to request any redirections?

73. When you are ready with your opinions, the Court will reconvene for you to inform your opinions to Court.



Rangajeeva Wimalasena
Acting Judge

Solicitors

Solicitors for the State: Office of the Director of Public Prosecutions

Solicitors for the Accused: Office of the Legal Aid Commission