

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 212 of 2016

STATE

V

SERUPI BABA

Counsel : Ms. R. Uce for the State.
: Ms. L. Vateitei for the Accused.

Dates of Hearing : 15, 16, 17 and 20 July, 2020
Closing Speeches : 21 July, 2020
Date of Summing Up : 21 July, 2020

SUMMING UP

Madam and Gentlemen Assessors

1. It is now my duty to sum up this case to you.

ROLE OF JUDGE AND ASSESSORS

2. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of facts, however, which witness to

accept as reliable, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. If I do not refer to a certain portion of evidence which you consider as important, you should still consider that evidence and give it such weight as you wish.

3. So, if I express an opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of facts.
4. You decide what facts are proved and what inferences you properly draw from those facts. You then apply the law as I explain it to you and form your own opinion as to whether the accused is guilty or not.
5. State and Defence Counsel have made submissions to you about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsel in this case. Their submissions were designed to assist you as judges of facts. However, you are not bound by what they said. You can act upon it if it coincides with your own opinion. As representatives of the community in this trial it is you who must decide what happened in this case and which version of the facts to accept or reject.
6. You will not be asked to give reasons for your opinions and your opinion need not be unanimous. Your opinions are not binding on me but it will assist me in reaching my judgment.
7. In her closing speech the defence counsel told you that the original medical cause of death certificate, caution interview and charge statement were not tendered. I direct you to disregard this submission since all the photocopies of these documents were

properly tendered in court. Accordingly, you are to concentrate on the documents as tendered in court.

8. The counsel also stated that the author of the medical cause of death certificate was not called as a witness by the prosecution. I direct you not to speculate why the author of this document was not called as a witness. It is the prerogative of the prosecution who they wish to call to give evidence and it is not for the defence to tell the prosecution who they ought to call as a witness. You are not to speculate why this person was not called to give evidence.
9. You are also not to speculate why the medical examination form of the deceased was not tendered in court after the case of assault was reported to the police.

BURDEN OF PROOF AND STANDARD OF PROOF

10. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no obligation on the accused to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he or she is proven guilty.
11. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of the accused person's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt, then you must express an opinion that he is not guilty.
12. Your decision must be based exclusively upon the evidence which you have heard in this court and nothing else. You must disregard

anything you must have heard about this case outside of this courtroom.

13. You must decide the facts without prejudice or sympathy for either the accused or the deceased. Your duty is to find the facts based on the evidence without fear, favour or ill will.
14. At this point in time, I must give each one of you a word of caution. This caution should be borne in mind right throughout until you reach your own opinion. This case involves a loss of life this certainly shocks the conscience and feelings of our hearts.
15. It is quite natural given the inherent compassion and sympathy with which human beings are blessed. You may perhaps have your own personal, cultural, spiritual and moral thoughts about such an incident. You must not, however, be swayed by such emotions and/or emotive thinking. You act as judges of facts in this case not to decide on moral or spiritual culpability of anyone but to decide on legal culpability as set down by law, to which every one of us is subject to in the present day society that we live in.
16. Evidence is what the witnesses said from the witness box, documents or other materials tendered as exhibits. You have heard questions asked by the counsel and the court they are not evidence unless the witness accepts or has adopted the question asked.

INFORMATION

17. The accused is charged with the following offence: (a copy of the information is with you).

Statement of Offence

MURDER: contrary to section 237 of the Crimes Act 2009.

Particulars of Offence

SERUPI BABA, on the 12th day of March, 2016 at Nadi in the Western Division murdered **UNAISI BABA**.

18. In order to prove the offence of murder the prosecution must prove beyond reasonable doubt the following:
 - (a) the accused
 - (b) engaged in a conduct; and
 - (c) the conduct caused the death of the deceased; and
 - (d) the accused intended to cause the death; or
 - (e) was reckless as to causing the death of the deceased by his conduct. The accused is reckless with respect to causing the death of the deceased if;
 - (i) he was aware of a substantial risk that death will occur due to his conduct; and
 - (ii) having regard to the circumstances known to him, it was unjustifiable for him to take that risk.

19. What you will have to consider with regard to this particular state of mind is whether the accused was aware of a substantial risk that death will occur due to his conduct and having regard to the circumstances known to him, it was unjustifiable for him to take that risk.

20. The first element is concerned with the identity of the person who committed the offence. This element of the offence is not in dispute the defence agrees that it was the accused and no one else. This element is therefore proven beyond reasonable doubt.

21. The second element relates to the conduct of the accused. To engage in a conduct is to do an act which is a voluntary act by the accused or is a result of the will of the accused. Like the first element the defence agrees that it was the accused who had engaged in a conduct. This element of the offence is also proven beyond reasonable doubt.

CAUSATION

22. The third element is the conduct of the accused that caused the death of the deceased. Conduct means an act done by the accused it can be anything such as punching, kicking, stomping, stabbing, strangling etc. The law requires a link between the conduct of the accused and death of the deceased. You must be sure that the conduct of the accused caused the death of the deceased.
23. In other words whether the punching of the deceased on her face and mouth, falling sideways and hitting her head on the floor and beating her with a mango branch and an electrical wire caused the death of the deceased.
24. You should remember that the act of the accused need not be the sole cause but should substantially contribute to the death of the deceased.
25. The defence is disputing this element of the offence by saying that the deceased did not die as a result of the conduct of the accused as mentioned above but due to septicemia and bed sores. The accused relies on the medical cause of death certificate which stated the severe head injury was caused due to left hemispheric infract as a consequence of bedsores and septicemia. The defence is also

contending that when the deceased was evacuated to the Lautoka Hospital from Nadi Hospital no surgical intervention was carried out within one hour of being brought to the hospital which was crucial to save the deceased.

26. A person is deemed to have caused another person's death if his conduct or act leads to the death of the deceased even if his conduct or act is not the sole or immediate cause of death. This is so even if the deceased was not taken to the hospital in time to save her life, or even if she refused medical treatment.
27. In this case, the defence also submits that the accused is not responsible for the death of the deceased because the medical cause of death certificate issued by the CWM Hospital does not state that the cause of death was head injuries but septicemia due to bed sores. Furthermore, the defence also contends that no post mortem examination was conducted on the deceased hence the cause of death is not known.

Madam and Gentlemen Assessors

28. In respect of whether or not the conduct of the accused caused the death of the deceased or not you will have to consider the evidence of Dr. Alan Biribo carefully. Dr. Biribo told the court that a junior officer at the CWM Hospital had completed the medical cause of death certificate by copying the information from the front of the medical folder and that the order of the cause of death noted in the death certificate was incorrect. The doctor also told you about the reason why the post mortem was not conducted on the deceased and also why there was no surgical intervention when the deceased was presented at the Lautoka Hospital.

29. You will have to consider if the conduct of the accused caused the injuries leading to the death of the deceased as long as the doctors who had attended to the deceased had treated her according to common skill and expertise, and in good faith. Here death did not occur immediately after the conduct, in law a person remains liable for the death of another if it occurs at any time within one year and a day of the conduct provided the death is caused by the deliberate conduct of the accused.
30. It is a matter for you to decide whether the accused's conduct caused the injuries on the deceased and her subsequent death, and that the medical cause of death was incorrectly written in respect of the cause of death and the reason why the post mortem was not conducted on the deceased. You will have to also consider whether the doctors had acted with common knowledge and skill and in good faith to treat the deceased of the injuries sustained as a result of the conduct of the accused, and whether the deceased would have died anyway with the best treatment available.
31. With regards to the final two elements of the offence which concerns the state of mind of the accused the prosecution must 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 by his conduct.
32. The prosecution has to prove only one of the two limbs of this element. In this case the prosecution is alleging that the accused intended to cause the death of the deceased.
33. It is for the prosecution to prove beyond reasonable doubt that the accused was engaged in a conduct and the conduct caused the death of the deceased and the accused intended to cause the death of the

deceased by his conduct. A person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events.

34. The prosecution says the accused punched the deceased many times on her face also beat her with the mango stick and an electrical wire. During this process she was also punched on her cheek and she fell sideways hitting her head on the floor.
35. If you are satisfied that the prosecution has proved all the above elements beyond reasonable doubt then you must find the accused guilty of murder.
36. If on the other hand, you find that the prosecution has failed to prove any of these elements beyond reasonable doubt then you must find the accused not guilty of murder.
37. If you accept that the accused did not intend to cause the death of the deceased or you are not sure whether he intended to cause the death of the deceased then consider the offence of manslaughter which is a lesser charge than murder.
38. Manslaughter has the first two elements of murder, that is to say that the accused engaged in a conduct which caused the death of the deceased and the accused intends that conduct will cause serious harm to the deceased.
39. Manslaughter is the killing of someone by unlawful conduct if you are satisfied that the accused was engaged in a conduct which caused the death of the deceased and the accused intended that conduct will cause serious harm to the deceased then you must find the accused guilty of manslaughter.

40. In this case there is evidence that the accused had punched the face of the deceased several times and also beat her with a mango stick and an electrical wire. The deceased fell on the floor when she was punched on her cheek falling sideways and hitting her head on the floor.
41. Whether the accused intended to cause the death of the deceased by his conduct or intended to cause serious harm to the deceased by his conduct is a matter entirely for you to decide on the basis of the facts and circumstances of the case.

CIRCUMSTANTIAL EVIDENCE

42. The prosecution also relies on circumstantial evidence since there is no eye witness to prove that the accused was responsible for the injuries seen on the deceased and that there is no other reasonable explanation for the injuries other than that the accused caused it.
43. The law on circumstantial evidence is that if, upon considering a series of pieces of evidence, you are satisfied beyond reasonable doubt that the only reasonable inference to be drawn is the guilt of the accused, and there is no other reasonable explanation for the circumstances which is consistent with the accused person's innocence, then you may find the accused person guilty of either the offence of murder or manslaughter.
44. A case of circumstantial evidence relies on a variety of sources of evidence. One example of how it works is this. One day you find your house broken into. The item stolen is clearly identifiable by you because you have put your initial on your DVD recorder. The day after the burglary, your DVD recorder with your initials is found inside your neighbour's house. His son is seen to be spending a lot of

money at a nearby shop. His fingerprints are found on your kitchen door. On the basis of all this evidence, you are entitled to draw a reasonable inference that your neighbour's son committed the burglary in your house, because there is no other reasonable inference that you can draw from the evidence which is consistent with the son's innocence.

45. However, if for instance you did not initial the stolen items and cannot be sure that this item in your neighbour's house is yours, and if there are no fingerprints found then the evidence of the neighbour's son's spending would not be sufficient for you to draw an inference of his guilt. This is because there are other possible reasonable hypotheses for his sudden wealth.
46. Therefore, with circumstantial evidence you must look at all the evidence together and ask yourselves whether the only reasonable inference you can draw from the evidence is the guilt of the accused person. You must ask yourselves whether there can be any other explanation for the evidence which is also consistent with the accused innocence.
47. Remember that in considering circumstantial evidence you must be satisfied beyond reasonable doubt that the only reasonable inference available to you is the guilt of the accused before you can find him guilty. If you find that there are other reasonable inferences you can draw which are consistent with the accused's innocence or if you have a reasonable doubt about it, then you should find the accused not guilty.
48. This is the law on circumstantial evidence.

ADMITTED FACTS

49. In this trial the prosecution and the defence have agreed to certain facts which have been made available to you titled as amended admitted facts.
50. The admitted facts are part of the evidence and you should accept these admitted facts as accurate, truthful and proven beyond reasonable doubt.
51. I will now remind you of the prosecution and defence cases. In doing so it would not be practical of me to go through all the evidence of every witness in detail. It was a short trial and I am sure things are still fresh in your minds. I will refresh your memory and summarize the important features. If I do not mention a particular piece of evidence that does not mean it is not important. You should consider and evaluate all the evidence in coming to your opinion in this case.

PROSECUTION CASE

52. The prosecution called five witnesses to prove the charge against the accused.
53. The first witness Esita Sekula informed the court that on 12th March, 2016 she was at her home at the Rakiraki Settlement, Sonaisali. During the day she heard screams coming from the house of the accused which was approximately 5 metres away.
54. After the witness heard the screams she became uncomfortable and afraid the screaming continued for quite some time. As a result of what she was hearing she was walking inside her house.

55. After a while the screaming stopped, she then saw a carrier come in front of the accused house, some men went inside the house and carried Una (the deceased) into the carrier and left.
56. In cross examination the witness agreed she did not see what was happening inside the house or who was screaming. When Una was carried on to the carrier there was a cloth covering her.
57. In re-examination the witness clarified that although there was a cloth over Una her head was not covered and her hair was not tied up.
58. The second prosecution witness Etuate Nete stated that he was renting the house of the accused and the deceased. The accused is his cousin brother and Una the deceased was brought up with him in Kalabo.
59. On 12th March, 2016 the witness came home at about 5am, he slept till 1pm, he woke up because he was hungry. When the witness woke up he saw the accused leaving the house before the witness entered the kitchen he noticed that Una was lying on the floor. The witness tried to wake her so that he could give her fare to go to her family's house because the accused and Una were fighting, but there was no response from Una.
60. When the witness first saw Una, she was lying face down so he turned her and then he saw blood on her mouth and bruises on her arms, face and her neck were swollen as well. The accused then realised that Una was seriously injured since she was not responding. The witness also recalled when Una was lying down he

could see assault marks on her arm, her uniform was below her neck and he could see marks on the neck as well.

61. The witness called a carrier, he packed Una's clothes in a bag and he also got a pillow and a mattress which was spread inside the carrier. The witness thereafter with the help of the carrier driver carried Una inside the carrier and took her to the hospital.
62. In cross examination the witness agreed when she saw Una on the floor there was no one in the house since he had seen the accused leaving.
63. The third witness Dr. Alan Biribo graduated with MBBS degree from the Fiji School of Medicine in the year 2002. Thereafter he completed one year internship program at the CWM Hospital.
64. From 2004 the witness began work as a Medical Officer, at the moment he is a Neurosurgeon at the CWM Hospital. The curriculum vitae of the witness was marked and tendered as prosecution exhibit no.1.
65. As a Neurosurgeon the witness deals with surgical treatment of brain, spine and peripheral disorders. In March 2016 a patient by the name of Unaisi Baba was transferred to the CWM Hospital from the Lautoka Hospital for treatment under the care of the witness. The patient was treated for at least 2 to 3 days at the Lautoka Hospital.
66. The medical records of Unaisi Baba kept by the CWM Hospital was marked and tendered as prosecution exhibit no. 2. The patient had a complicated head injury which was a deranged coagulation disorder that was bleeding. Due to some problems with the patient's blood clotting the patient was transferred to the CWM Hospital.

67. The background information received was that on 12th March, 2016 the patient had been assaulted by her husband and was found in an unconscious state at her home. She was taken for initial treatment to the Nadi Hospital and from there she was immediately evacuated to Lautoka Hospital for tertiary care because the deceased had a severe head injury and her conscious level was low.
68. According to the notes in the Lautoka Hospital medical folder of the patient there were two indicators of the injuries suffered:
- a) The clinical indicator showed that the patient had a head trauma she was intubated and her pupils were unequal which meant raised intracranial pressure which was in contact with the skull so the chances of brain fracture was quite high which was life threatening.
 - b) The radiological indicator by CT scan showed left subdural hemorrhage which was causing midline shift. Subdural hemorrhage according to the doctor was a terrible brain injury to sustain. The doctor explained in respect of the midline shift the pressure of the bleeding in the brain was such that it had pushed the contents on the left side of the brain to the right side.
69. The Lautoka Hospital medical report of the deceased from 12th March, 2016 to 16th March 2016 was marked and tendered as prosecution exhibit no.3.
70. The doctor further stated that from the notes contained in the Lautoka Hospital medical folder of the deceased a surgical intervention could not be done within one hour of her presentation since she was unstable which would have been harmful. The

operation required was a major one the team at the Lautoka Hospital had transfused fresh frozen plasma to stabilize the patient.

71. The patient was received at the CWM Hospital on 16th March upon examination the patient's condition was classified as category 1 which was life threatening so an immediate medical surgery was performed.
72. After the surgery the patient was kept at the CWM Hospital for about three months since there were lots of complications. When she was brought to the CWM Hospital she had severe head trauma which appeared to have been caused by blunt force trauma. According to the doctor some examples for the causes of blunt force trauma were:
 - a) By direct blow to the head with an object or body part; or
 - b) By fall against the floor; or
 - c) By motor vehicle collision; or
 - d) By sporting collision.
73. In the professional opinion of the doctor the patient had suffered a severe brain injury.
74. Even though the patient was severely disabled with a poor long term prognosis she was discharged to receive home care on 21st June, 2016 since they were fighting a losing battle, the deceased chances of survival was very less.
75. The patient was readmitted on 4th July, 2016 since her level of consciousness had decreased, she was getting seizures and was not normal. Upon examination it was noted that the patient had infection the primary one being bedsores which was confirmed by increased white blood cell count and very low blood pressure.

76. The CT scan of the brain showed that the patient had developed a stroke on the left side of the brain the left hemisphere. The stroke on the left side of her brain was due to the primary injury on the left side of the brain.
77. The patient passed away on the 5th July, 2016 less than 24 hours after she was brought to the hospital on the second occasion. According to the doctor there was no post mortem conducted due to an oversight. The death certificate of the patient was released to the family which was completed by a junior staff at the hospital.
78. When the doctor was shown the medical cause of death certificate he mentioned that the date of death was 5th July, 2016 and not the 5th April, 2016 as mentioned in the death certificate due to an omission on the part of the person completing the death certificate.
79. In cross examination the doctor stated that the cause of death mentioned in the death certificate was not written in the correct order. The doctor agreed that in isolation septicemia and bed sores could be a possible cause of death.
80. The doctor also agreed that it was important for a post mortem to be conducted when it was suggested that in the absence of the post mortem report there was no conclusive cause of death available for the court to make a decision the doctor responded by saying that in the medical context it was quite clear what the cause of death was.
81. The doctor agreed that in the context of record or information keeping without the post mortem report the cause of death could not be established.

82. In re-examination the doctor clarified that whoever wrote the medical cause of death certificate had simply cut and paste what was written in the front of the medical folder. The cause of death according to the medical folder was that the head injury caused the stroke in the brain and then septicemia.
83. The doctor also agreed that although there was no post mortem conducted the patient's medical folder confirmed the cause of death and the correct order of the cause of death mentioned in the medical cause of death certificate should have been septicemia, as a consequence of bed sores as a consequence of left hemispheric infract which was as a consequence of severe head injury. According to the doctor the primary cause of death was severe head trauma.

Madam and Gentlemen Assessors

84. You have heard the evidence of Dr. Alan Biribo who was called as an expert witness on behalf of the prosecution. Expert evidence is permitted in a criminal trial to provide you with information and opinion which is within the witness expertise. It is by no means unusual for evidence of this nature to be called. The medical folders of the deceased are before you and what the doctor said in his evidence as a whole is to assist you.
85. An expert witness is entitled to express an opinion in respect of his or her findings and you are entitled and would no doubt wish to have regard to this evidence and to the opinions expressed by the doctor. At this point I would like to caution you about the Lautoka Hospital medical folder of the deceased. Dr. Biribo was not the author of the notes contained in this folder accordingly he had only read the notes made by another doctor at the Lautoka Hospital to explain what

treatment was given to the deceased when she was brought over from Nadi Hospital.

86. When coming to your own conclusions about this aspect of the case you should bear in mind that if, having given the matter careful consideration, you do not accept the evidence of the expert you do not have to act upon it. Indeed, you do not have to accept even the unchallenged evidence of the doctor.
87. You should remember that the evidence of the doctor relates only to part of the case, and that whilst it may be of assistance to you in reaching your opinions, you must reach your opinion having considered the whole of the evidence.
88. The third witness Sgt. 2387 Yagavito Lavasari was the charging officer who had charged the accused for the offence of murder in the English language. The accused was cautioned and given all his rights, the witness had typed the charge statement on the computer which was in question and answer format. The accused was well before and after the charging and he did not make any complaints.
89. The witness was the second investigating officer in this case the charging started at 12.00hrs which concluded at 12.40 hours. The accused gave the answers in the charge statement without any threat, force, assault or promise or inducement. The accused signed the charge statement after reading it, he was also given a chance to add or alter anything in the charge statement.
90. The charge statement of the accused dated 21st October, 2016 was marked and tendered as prosecution exhibit no.4.

91. As an investigating officer the witness had received the medical cause of death certificate of the deceased. The copy of the medical cause of death certificate of Unaisi Baba was marked and tendered as prosecution exhibit no.5.
92. The final witness was Eparama Delalovi at the present time he is not employed by the Fiji Police Force, however he had caution interviewed the accused on 22nd March, 2016 at the Nadi Police Station in the English language in the presence of a witnessing officer. This caution interview was conducted when the deceased was alive.
93. The accused was given his rights before the interview, he willingly gave his answers there was no threat, assault, intimidation or inducement made to the accused. After reading the interview the accused signed the caution interview and did not make any complaints, he was also given the opportunity to alter or correct the interview. The caution interview of the accused was marked and tendered as prosecution exhibit no. 6.
94. In cross examination the witness stated that he had interviewed the accused for the offence of act with intent to cause grievous harm.

CAUTION INTERVIEW AND CHARGE STATEMENT

Madam and Gentlemen Assessors

95. The answers in the caution interview and the charge statement are for you to consider as evidence but before you accept the answers, you must be satisfied that the answers were given by the accused and they are the truth. It is entirely a matter for you to accept or

reject the answers given in the caution interview and the charge statement.

96. It is for you to decide whether the accused made those admissions and whether those admissions are the truth. If you are not sure whether the accused made the admissions in his caution interview and the charge statement then you should disregard those admissions. If you are sure that those admissions were made by the accused, then you should consider whether those admissions are the truth. What weight you choose to give to those admissions is a matter entirely for you.
97. This was the prosecution case.

DEFENCE CASE

Ladies and Gentleman Assessors

98. At the end of the prosecution case you heard me explain options to the accused he has those options because he does not have to prove anything. The burden of proving the accused guilty beyond reasonable doubt remains on the prosecution at all times.
99. The accused chose to remain silent and did not call any witness that is his right and you should not draw any adverse inference from the fact that the accused decided to remain silent and not call any witness.
100. From the line of cross examination the defence takes the position that the accused did not commit the offence as alleged. The cause of death mentioned in the medical cause of death certificate issued by

the CWM Hospital does not suggest that the assault by the accused had caused the death of the deceased. The cause of death noted in the medical cause of death certificate was septicemia due to bed sores and not by the assault of the accused.

101. Furthermore, when the deceased was evacuated from the Nadi Hospital the doctors at the Lautoka Hospital had not performed any surgery within an hour of her presentation which led to her condition getting worse. Had a surgery been done within an hour she would have returned to recovery. There was no post mortem conducted as well hence there is no conclusiveness on the cause of death.
102. The defence is also saying that the accused did not intend to kill the deceased he was angry with the deceased who was suspected of having an affair outside her marriage. The medical folders exhibited also do not connect the accused to the allegation and there is no conclusiveness on the cause of death.
103. This was the defence case.

ANALYSIS

104. The prosecution alleges that the accused had assaulted the deceased very badly at their home at the Rakiraki Settlement, Sonaisali. The accused had not only punched her several times but also used a stick and electrical wire to beat her. During the assault the deceased had fallen on the floor injuring her head. The prosecution submits the assaults were so severe that the screams by the deceased made the next door neighbour Esita uncomfortable and nervous.
105. The deceased was unconscious when she was taken to the Nadi Hospital and then evacuated to the Lautoka Hospital. At the Lautoka

Hospital the deceased could not be surgically intervened within an hour due to her unstable condition. The deceased was given treatment to stabilize her condition after about 2 to 3 days due to blood clotting the deceased was transferred to the CWM Hospital, upon arrival and upon observing the deceased condition an immediate surgery was performed.

106. The prosecution submits the deceased died as a result of the injuries she had sustained on her head from the assaults by the accused. Upon her death a medical cause of death certificate was written by a junior officer who had copied and pasted what was written on the front medical folder. The cause of death noted was not in the correct order which was due to an omission by this junior officer.
107. A post mortem could not be conducted due to an oversight at the hospital but according to the medical folders of the deceased the fact that the post mortem was not conducted did not affect the cause of death noted in the medical folder of the deceased which was that the deceased died due to severe head injury.
108. The prosecution submits that on the totality of the evidence it was the accused who had assaulted the deceased so badly that she suffered a terrible head injury resulting in left hemispheric infract as a consequence she developed bedsores and septicemia which resulted in her death. The extent of the injuries shows the accused had the intention to kill the deceased, the doctors tried their best to save the deceased but could not. The prosecution is asking you to consider the evidence of the Dr. Biribo and the admissions made by the accused when he was caution interviewed and charged by the police in this regard.

109. On the other the accused is denying the allegation. The defence submits that although the accused had assaulted the deceased he did not have any intention to kill her. The defence is asking you to consider the fact that the cause of death mentioned in the medical cause of death certificate issued by the CWM Hospital is inconclusive the assaults as suggested by the prosecution did not cause the death of the deceased. The cause of death noted in the death certificate was septicemia due to bed sores.
110. When the deceased was evacuated from the Nadi Hospital the doctors at the Lautoka Hospital did not perform any surgery within an hour of her presentation which led to her condition getting worse. Had a surgery been done at the time the deceased would have recovered. There was no post mortem conducted hence there is no conclusiveness on the cause of death.
111. The defence is also contending that the medical folders exhibited do not connect the accused to the allegation since there is no conclusiveness on the cause of death. The admissions made by the accused in his caution interview and the charge statement is consistent with what the defence is saying that the assaults by the accused was not life threatening and it was the lack of proper treatment by the doctors at the Lautoka Hospital that got the condition of the deceased from bad to worst and eventually her death due to bedsores and septicemia.

Madam and Gentlemen Assessors

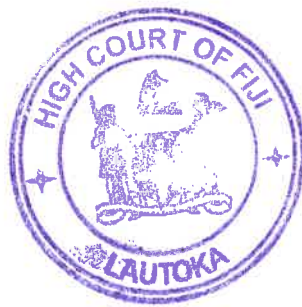
112. You heard the evidence of all the witnesses. If I did not mention a particular piece of evidence that does not mean it's unimportant. You should consider and evaluate all the evidence in reaching your opinion.

113. You have also seen all the witnesses giving evidence keep in mind that some witnesses react differently when giving evidence.
114. Which version you are going to accept whether it is the prosecution version or the defence version is a matter for you. You must decide which witnesses are reliable and which are not. You observed all the witnesses give evidence in court. You decide which witnesses were forthright and truthful and which were not. Which witnesses were straight forward? You may use your common sense when deciding on the facts. Assess the evidence of all the witnesses and their demeanour in arriving at your opinions.
115. In deciding the credibility of the witnesses and the reliability of their evidence it is for you to decide whether you accept the whole of what a witness says, or only part of it, or none of it. You may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified. You can accept part of a witness's evidence and reject other parts. A witness may tell the truth about one matter and lie about another, he or she may be accurate in saying one thing and not be accurate in another.
116. You will have to evaluate all the evidence and apply the law as I explained to you when you consider the charge against the accused have been proven beyond reasonable doubt. In evaluating evidence, you should see whether the story related in evidence is probable or improbable, whether the witness is consistent in his or her own evidence or with other witnesses who gave evidence.

117. It is up to you to decide whether you accept the version of the defence and it is sufficient to establish a reasonable doubt in the prosecution case.
118. If you accept the version of the defence you must find the accused not guilty. Even if you reject the version of the defence still the prosecution must prove this case beyond reasonable doubt. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused at any stage of the trial.
119. The accused is not required to prove his innocence he is presumed innocent until proven guilty.
120. In this case the accused is charged with one count of murder, however, you are to also consider the offence of manslaughter in reaching your opinions.
121. Your possible opinions are:-
1. **MURDER - ACCUSED - GUILTY OR NOT GUILTY.**
 2. If you find the accused not guilty of murder then you are to consider whether the accused is guilty or not guilty of **MANSLAUGHTER.**
 3. If you find the accused guilty of murder then you are not to consider the offence of manslaughter.

Madam and Gentlemen Assessors

122. This concludes my summing up you may now retire and deliberate together and once you have reached your individual opinions please inform a member of the staff so that the court can be reconvened.
123. Before you do so, I would like to ask counsel if there is anything they might wish me to add or alter in my summing up.




Sunil Sharma
Judge

At Lautoka
21 July, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.
Messrs. Astas Law, Sigatoka for the Accused.