

**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  
**Date of Judgment** : 23 July, 2020

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**JUDGMENT**

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1. The Director of Public Prosecutions charged the accused by filing the following information:

**Statement of Offence**

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

### **Particulars of Offence**

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

2. The three assessors had returned with a majority opinion by two is to one that the accused was guilty of Murder as charged.
3. I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The prosecution called five witnesses and the accused exercised his right to remain silent and also did not call any witness.
5. The first witness Esita Sekula informed the court that on 12<sup>th</sup> March, 2016 she was at her home when she heard screams coming from the house of the accused. After the witness heard the screams she became uncomfortable and afraid the screaming continued for quite some time. After a while the witness saw some men go inside the house and carry the deceased into the carrier and leave.
6. Etuate Nete stated that he was renting the house of the accused and the deceased on 12<sup>th</sup> March, the witness came home at about 5am, when he woke up at about 1pm he saw the accused leaving the house. Before the witness entered the kitchen he saw the deceased lying on the floor he tried to wake her but there was no response from her.
7. When the witness first saw the deceased she was lying face down so he turned her over. At this time he saw blood on her mouth and bruises on her arms, face and her neck was swollen as well. The

accused then realized that the deceased was seriously injured. The witness also saw assault marks on the deceased arm, since her uniform was below her neck he could see marks on her neck as well. Thereafter the deceased was taken to the Nadi Hospital.

8. Dr. Alan Biribo informed the court that the deceased was transferred to the CWM Hospital from the Lautoka Hospital for treatment under his care.
9. The background information received was that on 12<sup>th</sup> 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.
10. 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.

11. 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. The operation required was a major one so the team at the Lautoka Hospital transfused fresh frozen plasma to stabilize the patient.
12. The patient was received at the CWM Hospital on 16<sup>th</sup> March upon examination the patient's condition was classified as category 1 which was life threatening so an immediate medical surgery was performed.
13. 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.
14. Even though the patient was severely disabled with a poor long term prognosis she was discharged to receive home care on 21<sup>st</sup> June, 2016 since they were fighting a losing battle, and the deceased chances of survival was very less.
15. The patient was readmitted on 4<sup>th</sup> 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.
16. 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.

17. The patient passed away on the 5<sup>th</sup> 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.
18. When the doctor was shown the medical cause of death certificate he mentioned that the date of death was 5<sup>th</sup> July, 2016 and not the 5<sup>th</sup> April, 2016 as mentioned in the death certificate due to an omission on the part of the person completing the death certificate.
19. The doctor stated that the cause of death mentioned in the death certificate was not written in the correct order. The doctor also agreed that it was important for a post mortem to be conducted in assault cases 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.
20. 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.
21. The doctor agreed that although there was no post mortem conducted the patient's medical folder confirmed the cause of death. In the professional opinion of the doctor the patient had suffered a severe brain injury.

22. The charging and the interviewing officers tendered the charge statement and the caution interview of the accused which this court accepts as being voluntarily given by the accused.
23. On the other hand the accused denied the allegation. The defence submits that although the accused had assaulted the deceased he did not have any intention to kill her. The cause of death mentioned in the medical cause of death certificate issued by the CWM Hospital is inconclusive since the assaults as suggested by the prosecution did not cause the death of the deceased. The cause of death noted in the medical cause of death certificate was septicemia due to bed sores.
24. Furthermore, 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 as well.
25. The defence also contended that the medical folders exhibited did not connect the accused to the allegation since there was 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 worse and eventually her death.
26. Upon considering the evidence adduced by the prosecution and the line of defence of the accused, I accept the evidence of all the

prosecution witnesses as truthful and reliable. Their demeanour was consistent with their honesty I have no doubt in my mind that it was the accused who had severely assaulted the deceased. The assaults were of such high intensity that the deceased fell on the floor and injured her head and became unconscious.

27. I also accept the opinion of Dr. Biribo who was the Neurosurgeon in charge of the deceased's treatment at the CWM Hospital that the deceased had suffered a severe head trauma as a result of significant blunt force and that the chances of the deceased survival was very less.
28. From the evidence of the doctor it is clear to me that the doctors from Nadi, Lautoka and CWM Hospitals had carried out the treatment of the deceased in accordance with their common skill and expertise and in good faith to save the deceased. The fact that the deceased was alive from the date of the alleged assault till 4<sup>th</sup> July for about four months is testimony of the fact that the doctors had managed and treated the deceased to the best of their ability and knowledge despite the severe injuries sustained by the deceased.
29. When the deceased was presented at the Lautoka Hospital she was unstable and any operation at that time would have been harmful to the deceased. I accept that this decision was made in the best interest of the deceased considering her situation at that time. Whilst the deceased was being stabilized blood clots were noted hence she was transferred to the CWM Hospital.
30. I reject the defence contention that since there was no post mortem conducted on the deceased the cause of death stated by the doctor was not conclusive. I agree with the doctor that in the medical context it was quite clear what the cause of death was which was

obvious from the medical folders of the deceased. There was no suggestion by the defence that the contents of the medical folders were not authentic and/or below the required standard of medical and surgical care.

31. The medical cause of death certificate which was incorrectly completed by a junior officer at the CWM Hospital is immaterial and insignificant when compared with the evidence of the doctor and the noting in the medical folders. Although, the work of the junior officer ought to have been supervised by Dr. Biribo and that such errors be avoided I accept the medical folders are the source documents which contains the details of the injuries sustained by the deceased and the treatment given and the correct cause of death as narrated by the doctor in court. Although there was no post mortem conducted which I accept was due to an oversight the deceased medical folders were sufficiently noted to confirm the cause of death.

32. I accept the accused had severely assaulted the deceased which was with the intention to cause her death in that he lied to the deceased that their son had been involved in an accident in Suva so that she comes home (Q. & A. 31 to 36 of the caution interview). Although not raised by the defence I have also directed my mind to whether the accused was provoked by the deceased to suddenly and temporarily lose his self-control. In this regard the following questions and answers in the caution interview of the accused are helpful:

*“Q.24 What actually transpires on this day?”*

*Ans: I was at home when I heard rumors that my wife was having an affair.*

*Q. 29 What did you do after hearing those rumors?*

*Ans: I same time change my clothes and walk down to her workplace.*



*Q. 38 Then what happened when you at home?*

*Ans: I ask her and she denied so I start punching her.*

*Q. 46 After that?*


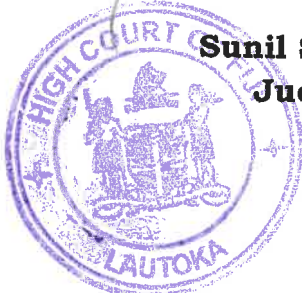
*Ans: She still denies having affair.*

*Q. 58 What was she telling you?*

*Ans: She was questioning me as to why I had believed those people who tell me those rumors about the affair.*

33. Considering the above, this court is satisfied that the accused was not provoked by the deceased in any way. The accused had acted upon a rumour told to him by someone which was denied by the deceased. According to the charge statement the accused was really angry and he wanted to teach the deceased a lesson. The three main elements of the defence of provocation are not available to the defence namely:
- 1) The act of provocation;
  - 2) The loss of self-control (both actual and reasonable); and
  - 3) Retaliation proportionate to provocation.
34. The defence has not been able to create a reasonable doubt in the prosecution case. This court is satisfied beyond reasonable doubt that the accused on 12<sup>th</sup> March, 2016 murdered Unaisi Baba.
35. I accept that the accused by his act of punching the deceased several times on her face and cheek until she fell sideways hitting her head on the floor and also beating her with a mango stick and an electrical wire caused the severe head injuries the extent of the injuries shows the accused intended to kill the deceased.

36. For the above reasons, I accept the majority opinion of the assessors that the accused is guilty of murder.
37. In view of the above, I find the accused guilty as charged and I convict him accordingly.
38. This is the judgment of the court.

  
**Sunil Sharma**  
**Judge**

**At Lautoka**  
23 July, 2020

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Messrs. Asta's Law, Sigatoka for the Accused.**