

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 037 OF 2019S

STATE

VS

JEKOPE ROKOVUKI NAIMAWI

Counsels : **Ms. J. Fatiaki for State**
Ms. S. Hazelman and Mr. E. Radio for Accused

Hearings : **3, 4, 5, 6, 7 and 10 August, 2020**

Summing Up : **11 August, 2020.**

SUMMING UP

A. ROLE OF JUDGE AND ASSESSORS

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my 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 fact.

2. State and Defence Counsels 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 Counsels, in this case. Their submissions were designed to assist you, as the judges of fact. However, you are not bound by what they said. It is you who are the representatives of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.
3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

B. THE BURDEN AND STANDARD OF PROOF

4. As a matter of law, the onus or burden of proof rest 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 is proved guilty.
5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is not guilty.
6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accused or the victim. Your

duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

C. THE INFORMATION

7. You have a copy of the information with you, and I will now read the same to you:
“... [read from the information]...”

D. THE MAIN ISSUE

8. In this case, as assessors and judges of fact, each of you will have to answer the following question:
- (i) Did the accused, on 10 January 2019, at Nasinu in the Central Division, murder Maraia Tala?

E. THE OFFENCE AND ITS ELEMENTS

9. The accused was charged with murdering Maraia Tala on 10 January 2019, at Nasinu in the Central Division, by pouring premix benzene fuel on her and setting her alight, contrary to section 237 of the Crimes Act 2009. For the accused to be found guilty of “murder”, the prosecution must prove beyond reasonable doubt, the following elements:
- (i) that the accused did a wilful act; and
- (ii) that wilful act caused the death of the deceased; and
- (iii) at the time of the wilful act, the accused either;
- (a) intended to cause the death of the deceased; or
- (b) is reckless as to causing the death of the deceased.
10. On the first element of murder, a “wilful act” is a voluntary act by the accused. It is a feeling of strong determination to do something that he wanted to do. It is what he wanted to happen in a particular situation. This is the physical element

of the offence of murder. For example, if A assaults B in what manner whatsoever, A thereby did a “wilful act” to B.

11. On the second element of murder, “the wilful act must cause the death of the deceased”. This simply meant that the accused’s wilful act, substantially contributed to the death of the deceased. The accused’s wilful act must be a substantial contributor to the death of the deceased. In other words, the accused’s wilful act was a substantial cause of the deceased’s death. Continuing from the above example, when A assaulted B, it caused serious injuries to the body of B, thereby resulting in B’s death. A’s assaulting B, set in motion a chain of events that led to B’s death, and as such, was a substantial cause of B’s death. B would not have died, but for A’s assault.
12. The third element of murder concerned its fault element. There are two fault elements for murder, as described in paragraphs 9(iii) (a) and 9(iii) (b). It would appear that the prosecution is running its case on both fault elements. It need only satisfy one fault element, to prove the charge of murder. We will therefore begin by discussing the first fault element, and then move on to the second fault element.
13. On the first fault element, the prosecution must make you sure that when the accused did “the wilful act”, he “intended to cause the death of the deceased”. You cannot cut open the accused’s head, to find out what his intentions were, at the time he allegedly assaulted the deceased to death. But you can examine his conduct at the time, that is, what he said and did, and the surrounding circumstances, to infer whether or not he intended to kill the deceased, when he allegedly assaulted her. If you find that he intended to kill the deceased, at the material time, that would be sufficient to support the third element of murder, that is, an intention to kill.

14. As to the second fault element of murder, the prosecution must make you sure that when the accused did “the wilful act”, he “was reckless as to causing the death of the deceased”. A person is reckless with respect to a result, if he was aware of a substantial risk that the result will occur and having regard to the circumstances known to him, it was unjustifiable to take the risk. The question whether taking a risk was unjustifiable is one of fact for you. Was the accused aware of a substantial risk that the victim would die if he assaulted her? If he was aware of the substantial risk that the deceased would die if he assaulted her, and he nevertheless took the risk, he was reckless. If otherwise, he was not reckless.
15. If you are sure that all the elements of murder, as expressed above, are satisfied by the prosecution beyond a reasonable doubt, then you must find the accused guilty as charged. If you find that some of the elements of murder, as described above, are not satisfied beyond a reasonable doubt by the prosecution, then you must find the accused not guilty as charged. It is a matter entirely for you.

F. **THE PROSECUTION'S CASE**

16. The prosecution's case were as follows. The accused (DW1) was born on 1 September 1987. He attended Ratu Sukuna Memorial School up to Form 3 level. He earned his livelihood as a carpenter. The deceased was Maraia Tala. She was born on 23 August 1983. The accused and the deceased had been living in a defacto relationship for 5 years prior to the alleged incident. At the time, the accused was 31 years old, while the deceased was 35 years old. They lived in their own house at Naiyalayala Settlement in Kalabu with their 2 year old daughter.
17. According to the prosecution, the accused and the deceased were a loving couple, but every now and then the two would argue and fight. On 10 January

2019, a Thursday, the accused, the deceased and some of their friends were drinking liquor among pine trees near their residence. They were drinking home brew. According to the prosecution, the drinking went on throughout the morning and into the late afternoon. According to the prosecution, the accused and the deceased began to fight, and the accused allegedly assaulted her many times.

18. According to the prosecution, the accused later took the deceased to their house in the afternoon. He was allegedly seen pouring benzene on the deceased and setting her alight. The deceased was later taken to CWM Hospital. She died 12 days later on 22 January 2019 as a result of the burnt injuries to 45% of her body. The matter was reported to police. An investigation was carried out. On 25 January 2019, the accused was taken to Nasinu Magistrate Court charged with murdering the deceased. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged. That was the case for the prosecution.

G. **THE ACCUSED'S CASE**

19. On 3 August 2020, the information was put to the accused, in the presence of his counsels. He pleaded not guilty to the charge. In other words, he denied the murder allegation against him. When a prima facie case was found against him, at the end of the prosecution's case, wherein he was called upon to make his defence, he (DW1) chose to give sworn evidence and called a witness (DW2), in his defence. That was his constitutional right.
20. The accused's case was very simple. On oath, he denied the State's allegation against him. He admitted the deceased was burnt in his house, at the material time. He admitted, only himself and the deceased were in the house, at the material time. He said, the deceased accidentally kicked the gallon of benzene, she slipped and allegedly sat on the benzene. He said, he heard the benzene

explode and the deceased caught fire. He said, they later took her to CWM Hospital between 5 pm and 6 pm on 10 January 2019. He denied admitting the murder allegation to police when formally charged on 24 January 2019. He appeared to say that the above was nothing but a fabrication by police, and asks you to disregard the same.

21. Because of the above, the accused is asking you as assessors and judges of fact, to find him not guilty as charged. That was the case for the defence.

H. **ANALYSIS OF THE EVIDENCE**

(a) Introduction:

22. In analysing the evidence, please bear in mind the directions I gave you in paragraphs 4, 5 and 6 hereof on the burden and standard of proof. In the acceptance and/or rejection of the evidence presented at the trial and your role as assessors and judges of fact, please bear in mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analysing the evidence, we will first discuss the “Agreed Facts” and its significance. Then we will discuss the State’s case against the Accused with reference to the three elements of murder as described in paragraphs 9(i), 9(ii), 9(iii)(a) and 9(iii)(b) hereof. Then we will discuss the defence’s case, and the need to look at all the evidence.

(b) The Agreed Facts:

23. The parties submitted an “Agreed Facts”, dated 3 August 2020. There are 20 paragraphs of “Agreed Facts”. Because the parties are not disputing those 20 paragraphs of “Agreed Facts”, you may take it that the prosecution had proven those 20 paragraphs of “Agreed Facts” beyond a reasonable doubt. As such, you may treat them as established facts.

24. The significance of the “Agreed Facts” was that it provided background information about the case. It stated who the parties were to this proceeding, and their relationships. It somehow sets the stage for what allegedly unfolded on 10 January 2019, the date of the alleged murder. You must read the “Agreed Facts” carefully.

(c) The State’s Case Against the Accused:

25. We will now examine the State’s case against the accused. Under this head, we will discuss the three elements of the offence of murder, as described in paragraphs 9(i), 9(ii), 9(iii)(a) and 9(iii)(b) hereof, and the type of evidence the prosecution had called upon to prove those elements beyond a reasonable doubt.

First Element: The Accused did a Wilful Act (Paragraph 9(i) and 10 hereof):

26. It was the prosecution’s case that the accused, at the material time, poured benzene on the deceased, and later set her on fire. It must also be remembered that, at the material time, when the accused allegedly poured benzene on the deceased, and lit her on fire, there were only two adult persons at the crime scene, that is, the deceased and the accused. In proving its case against the accused, the state had relied principally on two types of evidence. First, they relied on the verbal evidence of Jennifer Tuitoga (PW3). You have heard the evidence of PW3 given on 4 and 5 August 2020. You had observed her demeanour in the courtroom, and how she responded to the questions thrown at her by the prosecution and defence counsels. I will not bore you with the details of her evidence, as I am sure the same are still fresh in your minds. Of all the State’s witnesses, she was the only one who said, she saw the accused pour benzene on the deceased’s back, lit a match stick and threw the same on the deceased. She said, she saw the deceased caught fire as a result. If you accept this evidence, that would be sufficient for the prosecution to have made you sure of the first element of murder, as described in paragraphs 9 (1) and 10 hereof.

27. Second, the State relied on two alleged confessions made by the accused to two State witnesses, first, Doctor Liaquat Hayat Khan Niazi (PW8) and Sergeant 1853 Luke Lewabeci (PW6). According to PW8, he medically examined the accused on 24 January 2019 at Makoi Banabai Health Centre. PW8 said he recorded his examination in a medical report, which was tendered in court, as Prosecution Exhibit No. 2. PW8 said, when recording D (10) of the report, the accused admitted to him that he had an argument with his wife and burnt her as he was drunk. PW8 said, he blamed his wife for having extra marital affairs and that he had no intention to kill himself or anyone else. PW6 said, when he formally charged the accused at Nasinu Police Station on 24 January 2019, the accused allegedly made the following statement, **“...I wish to say that I didn’t expect Maraia Tala to die. I just poured the premix and lit the fire as I was just angry on her...”**
28. Regarding the alleged confession made to PW6, I must direct you as follows. A confession, if accepted by the trier of fact- in this case, you as assessors and judges of fact – is strong evidence against its maker. However, in deciding whether or not you can rely on a confession, you will have to decide two questions. First, whether or not the accused did in fact make the statements contained in his police charge statements? If your answer is no, then you have to disregard the statements. If your answer is yes, then you have to answer the second question. Are the confessions true? In answering the above questions, the prosecution must make you sure that the confessions were made and they were true. You will have to examine the circumstances surrounding the taking of the statements from the time of his arrest to when he was first produced in court. If you find he gave his statements voluntarily and the police did not assault, threaten or made false promises to him, while in their custody, then you might give more weight and value to those statements. If it’s otherwise, you may give it less weight and value. It is a matter entirely for you.

29. If you accept either of the above alleged confessions, or both of them, that would be sufficient for the prosecution to have made you sure of the first element of murder, as described in paragraphs 9(i) and 10 hereof. If you reject PW3, PW8 and PW6's evidence as not credible, you must find the accused not guilty as charged. If you accept PW3 or PW8 or PW6's evidence as credible, that would entitle you to consider the second element of murder, as described in paragraphs 9(ii) and 11 hereof. It is a matter entirely for you.

Second Element: The Wilful Act Caused the Death of the Deceased (Paragraphs 9(ii) and 11 hereof):

30. It was the prosecution's case that the accused, by allegedly pouring benzene over his wife's lower back and setting her alight, resulting in her been burnt to 45% of her body, these wilful acts caused her to suffer serious burn injuries that later caused her death. On this issue, the prosecution relied principally on Doctor Avikali Mate's (PW9) evidence. PW9's curriculum vitae was tendered as Prosecution Exhibit No. 3. She did a post-mortem on the deceased on 23 January 2019 at the CWM Hospital. She tendered her post-mortem report as Prosecution Exhibit No. 4. In lay man's terms, PW9 said 45% of the deceased's skin was burnt on 10 January 2019. She said, the skin is the largest organ in the body and offers protection to the same. Between 10 January to 23 January 2019 (13 days), without protection to 45% of the body, the same was infected by bacteria. PW9 said the bacteria went into the blood, which in turn goes to and infect the organs, that is, the lungs, kidneys, spleen, brain, heart etc. PW9 said because of the above infections, the deceased died on 22 January 2019.
31. Doctor Mate's evidence and conclusion were not seriously contested by the defence. If you accept Doctor Mate's evidence as credible, that would mean that the prosecution had made you sure that the accused's act of pouring benzene on the deceased and setting her alight on 10 January 2019, was a substantial

contributor to the death of the deceased on 22 January 2019, as a result of her burnt injuries. This will entitle you to move on and consider the final element of the offence of murder, as described in paragraphs 9(iii)(a) or 9(iii)(b), and 12, 13 and 14 hereof. If otherwise, you will have to find the accused not guilty as charged. It is a matter entirely for you.

Third Element: At the Time of the Wilful Act, the Accused Intended to Cause the Deceased's Death or was reckless in causing the same (Paragraph 9(iii)(a) or 9(iii)(b), 12, 13 and 14 hereof):

32. It was the prosecution's case that when the accused allegedly poured benzene on the deceased and set her alight, he intended to cause her death. When considering this issue, please take on board the directions I gave you in paragraphs 9(iii)(a), 12 and 13 hereof. As I have said before, you cannot cut open the accused's head, to find out what his intentions were, at the time he poured benzene on the deceased and set her alight. However, you will have to examine his conduct at the time, that is, what he said and did, and the surrounding circumstances, to infer whether or not he intended to kill the deceased, when he allegedly poured benzene on her and set her alight. On this issue, the evidence and witnesses relied upon to prove the first element of murder in paragraph 26 to 29 hereof are also relevant in discussing the third element of murder under this heading.
33. As to the fault element in paragraph 9(iii)(b), 12 and 14 hereof, the question becomes: was the accused reckless in causing the deceased's death? Was the accused aware of a substantial risk that the deceased would die if he poured benzene on her body and set the same alight? Was it unjustifiable to take the risk of pouring benzene on her and setting her alight? If the accused was aware of a substantial risk that she would die if he poured benzene on her and set her

alight, and nevertheless took the risk, he would be reckless in causing her death. If otherwise, he would not be reckless. It is entirely a matter for you.

(d) The Accused's Case

34. I had summarized the accused's case to you in paragraphs 19 to 21 hereof. I repeat the same here. If you accept the accused's version of events, you must find him not guilty as charged. If otherwise, you must still assess the strength of the prosecution's case and decide accordingly. It is a matter entirely for you.

(e) The Need to Consider all the Evidence:

35. The prosecution called 10 witnesses. They submitted 6 exhibits. The defence called 2 witnesses. Altogether, you have 12 witnesses, on whose evidence you will have to make a decision. You must compare and analyse all the evidence. You must compare and analyse all the witnesses' evidence together. If I didn't mention a piece of evidence you consider important, please take it on board in your deliberation. If you find a witness credible, you are entitled to accept the whole or some of his/her evidence in your deliberation. If you find a witness not credible, you are entitled to reject the whole or some of his/her evidence, in your deliberation. You are the judges of facts.

I. SUMMARY

36. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's guilt, you must find him guilty as charged. If you do not accept the prosecution's version of

events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty as charged.

37. Your possible opinions are as follows:

(i) Murder: Accused: Guilty or Not Guilty

38. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.



Solicitor for State :
Solicitor for Accused :

A handwritten signature in blue ink, appearing to be "Salesi Temo".

Salesi Temo
JUDGE

Office of the Director of Public Prosecution, Suva
Legal Aid Commission, Suva