

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.**

Judgment : **12 August, 2020.**

JUDGMENT

1. On 3 August 2020, in the presence of his counsels, the following information was put to the accused:

“Statement of Offence

MURDER: *Contrary to Section 237 of the Crimes Act 2009.*

Particulars of Offence

JEKOPE ROKOVUKI NAIMAWI, on the 10th day of January 2019 at Nasinu in the Central Division, murdered MARAIA TALA.”

2. The accused said he understood the information and pleaded not guilty to the same. The matter then proceeded to trial for 6 days before myself and three assessors. Yesterday, I delivered my summing up to the three assessors. After

40 minutes deliberation, the three assessors returned with their opinions. Assessors No. 1 and 3 were of the opinion that the accused was guilty as charged. Assessor No. 2 was of the opinion that the accused was not guilty as charged, but guilty of the lesser offence of manslaughter.

3. Obviously, the majority of the assessors had accepted the prosecution's version of events, while the minority had rejected the same, but found the accused guilty of the manslaughter of the deceased. The mixed opinion from the assessors was not perverse. It was open to them to reach such conclusion on the evidence.
4. I had reviewed the evidence called in the trial and I had directed myself in accordance with the summing up I gave the assessors yesterday.
5. Assessors are there to assist the trial judge come to a decision on whether or not the accused was guilty as charged. They represent the public and their opinions must be treated with respect. However, the final decision on whether or not the accused was guilty as charged, the law places on the shoulders of the trial judge. He or she was obliged to consider the opinions of the assessors, but was not bound by them.
6. In this case, it was the evidence that will guide my decision. The prosecution's case largely hinged on the acceptance or otherwise of Ms. Jennifer Tuitoga's (PW3) evidence. She was the 15 year old Form 4 student neighbour of the accused. Her family house was approximately 20 to 30 footsteps from the accused's house. Her family and the accused's family knew each other well. They were part of the same neighbourhood. She woke up on 10 January 2019, to witness the accused, his wife the deceased and their friends drinking homebrew among pine trees next to their house.

7. Ms. Tuitoga saw the accused and his wife arguing and fighting during the homebrew party. She witnessed the accused throwing the bucket of homebrew on the deceased. She witnessed their verbal fights. She witnessed the deceased fleeing from the party to seek refuge in their house. She hid the deceased under her bed. She witnessed the accused carry the deceased to their house. She ran to the accused's house and peeped into the same through the louver windows. She saw the accused open the benzene bottle and poured the same on the deceased. She saw him light a match. She saw him throw the lighted match at the benzene soaked deceased. She saw the deceased burning as a result. I had carefully watched and assessed Ms. Tuitoga's demeanour and character, while she was giving evidence in court for two days. In my view, her evidence was that of an innocent child whose desire was nothing but to tell the truth. She told us what she innocently witnessed on the 10th of January 2019. She basically witnessed the accused committing the murder of his wife on 10 January 2019. I accept Ms. Tuitoga's (PW3) evidence. She was a very credible witness.
8. On 24 January 2019, the accused was medically examined by Doctor Liaquat H.K. Niazi (PW8) at the Makoi Banabai Health Centre. The doctor recorded his medical examination in a medical report, which was tendered as Prosecution Exhibit No. 2. In D (10) of the report, the doctor asked the accused to give him a brief history of the case before he medically examined him. The accused admitted to the doctor that he and his wife had an argument and that he had burnt her, as he was drunk. This admission, appear to support Ms. Tuitoga's (PW3) version of events, as described above.
9. On 24 January 2019, Sergeant 1853, Luke Lewabeci (PW6) formally charged the accused at the Nasinu Police Station in the English Language. He recorded the formal charging, and tendered the same as Prosecution Exhibit No. 1. According

to PW6, the accused admitted to him that he poured premix fuel on his wife and lit the fire, as he was angry with her. This admission again appears to support Ms. Tuitoga's (PW3) version of events.

10. As to the cause of the deceased's death, I accept the evidence of Doctor Avikali Mate (PW9). In fact, her evidence was not seriously contested by the defence. Doctor Mate did the post-mortem examination on the deceased on 23 January 2019. She tendered her post-mortem report as Prosecution Exhibit No. 4. According to her, the cause of the deceased's death was sepsis, bilateral Lobar pneumonia, infected full thickness burns - 45% of total body surface area, pericardial and pleural effusion Ascites.
11. Because of the above, I accept the prosecution's version of events. I find, as a matter of fact that, the accused, on 10 January 2019, poured benzene on his wife and set her alight, causing her serious burn injuries as described in her post-mortem report, leading to her death on 22 January 2019.
12. I also find, as a matter of fact, that when he poured benzene on his wife and set her alight, he, by those actions, intended to cause her death. Alternatively, by pouring benzene on his wife and setting her alight, on 10 January 2019, he was reckless in causing her death on 22 January 2019. As a result of the above, I accept the opinions of Assessors No. 1 and 3, the majority, and reject the opinion of Assessor No. 2, the minority. I therefore find the accused guilty of murdering his wife, and I convict him accordingly.



Solicitor for State :
Solicitor for Accused :


Salesi Temo
JUDGE

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