

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 152 OF 2017**

**BETWEEN** : **STATE**

**AND** : **RIZWAN HAZRAT ALI**

**Counsel** : **Mr. A. Singh for the State**  
**Mr. I. Khan with Mr. S. Heritage for the Accused**

**Hearing on** : **28<sup>th</sup> - 31<sup>st</sup> of July 2020 & 05<sup>th</sup> of August 2020**

**Summing up on** : **12<sup>th</sup> of August 2020**

**Judgment on** : **21<sup>st</sup> of August 2020**

### **JUDGMENT**

1. The accused, Rizwan Hazrat Ali was charged with 1 count of Murder contrary to section 237 of the Crimes Act of 2009. He pleaded not guilty to the charge and the matter was taken up for trial.
2. The charge was;

#### **COUNT 1**

##### *Statement of Offence*

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

### *Particulars of Offence*

*Rizwan Hazrat Ali, on the 12<sup>th</sup> of June 2017, at Sigatoka in the Western Division, murdered Sela Macanawai Degei.*

3. The ensuing trial lasted for 5 days. The prosecution called 6 witnesses and the defence called the accused to give evidence in this trial.
4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused guilty to the alleged count of Murder.
5. I direct myself in accordance with the law and the evidence led in this case, inclusive of which I have discussed in my summing up to the assessors.

### **Analysis**

6. When analyzing the evidence I am mindful that PW2 is the most important witness for the prosecution and the prosecution case is basically rested upon her. I am also mindful that PW2 is a close relation of the deceased, who has been staying with him. Therefore, her evidence should be considered carefully regarding the credibility and the reliability of its contents. In other words, the ultimate question would be whether her evidence before us would be trustworthy and reliable.
7. The PW2 has got her employment with Khan's brothers, because of Sela, the deceased. The incident arose because of her. Sela has come to the accused in anger and has gone on punching him. All the witnesses admit that the accused tried to defend him. One important point to consider would be the issue who brought the knife, PE3. The accused states that it was brought by Sela, the deceased and he carries it with him. The PW2 states that she saw the knife PE3 in the accused's t-shirt pocket just before the deceased being stabbed. She described it to be sharp side in and identified by the brown handle of it. When

you consider the knife, as for PE1 (G), the knife is of 22 cm and the blade is of 12 cm and the handle is 10 cm. The handle is much heavier compared to its thin blade and if put in a top pocket of a shirt, there is a strong likelihood of falling off. Therefore, it is unlikely that PW2's evidence to be correct on the said issue. Furthermore, the defence denies that there was a top pocket in the t-shirt the accused wore at the time of the incident. That t-shirt was recovered by the police as it is contained in the search list DE2. However that was not produced in court to substantiate on the prosecution version.

8. Further, the PW2 states that she saw the knife twice at the scene of the incident. Firstly, in the accused's t-shirt pocket and secondly when he threw it away. She did not see it any time in between. Later she states that she saw it thrice and saw the accused pulling it out of his pocket too. Again she states that she saw the knife also when the accused cut his hand with it before throwing it away, altogether on 4 occasions. Anyway, the PW2 admits that she did not see the accused stabbing the deceased.
9. The PW2 is the only witness to state that the accused injured his-self with the knife, before throwing it away. She pointed to the left lower arm in demonstrating as the place of injury, whereas it is not disputed that injury was in the right palm of the accused. Later she states that she could not recollect which arm was that. However, it should be noted that the injury was 6 cm long and 1 cm deep. There is sufficient evidence to assume that the accused is a right hander. Therefore it is highly unlikely that the injury suffered by the accused was self-inflicted. There is a strong possibility of it being a defense injury.
10. The PW2 did not disclose anything of seeing a knife at the scene in her 1<sup>st</sup> statement, which was made about 3 hours after the incident. After about 4 months, the police come in search of the PW2 and taken her to the police station to record a further statement. There is no reason given in obtaining the 2<sup>nd</sup> statement. The name of the officer who recorded the same is not disclosed and it

states that it is self-recorded. Though it is taken in question and answer format, only the answers are shown.

11. In the light of the above, it would be dangerous to rely on the evidence of the PW2. There is no other evidence to support her evidence in relation to major issues. Therefore, it gives rise to a reasonable doubt regarding the prosecution version of the way the incident occurred.
12. Though the accused's version may not be very true, in absence of any reliable evidence by the prosecution, it creates a huge doubt in the prosecution case. Therefore, I am not convinced beyond a reasonable doubt of the accused's guilt.
13. Therefore the assessors were incorrect in opining that the accused is guilty. In the light of the available evidence I disagree with the opinion of the assessors.
14. I acquit Mr. Rizwan Hazrat Ali of the alleged offence of Murder.
15. This is the Judgment of the Court.



**Chamath S. Morais**  
**JUDGE**

**Solicitors for the State** : **Office of the Director of Public Prosecutions, Lautoka**  
**Solicitors for the Accused** : **Messrs. I. Khan & Associates, Lautoka**