

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 124 of 2020

[CRIMINAL JURISDICTION]

STATE

V

SAILOSI CABENAGAUNA NAIVALURUA

Counsel : Ms. S. Tivao for the State
Ms. T. Kean with Mr. E. Sau for the Accused

Hearing on : 03 - 10 February 2021

Summing up on : 11 February 2021

Judgment on : 11 February 2021

JUDGMENT

1. The accused is charged with the following offence;

Statement of Offence

Murder: contrary to section 237 of Crimes Act of 2009.

Particulars of Offence

SAILOSI CABENAGAUNA NAIVALURUA on the 21st day of April, 2020 at Suva in the Central Division murdered **TEVITA QALOBULA**.

2. The assessors were directed to consider the lesser offence of manslaughter if they find the accused not guilty of the above offence.

3. The assessors have returned with the unanimous opinion that the accused is not guilty of murder as charged, but guilty of manslaughter.
4. I direct myself in accordance with the summing up delivered to the assessors this morning and the evidence adduced during the trial.
5. The prosecution called five witnesses. The accused gave evidence in his defence.
6. Through the admitted facts the accused admitted that his conduct substantially contributed to the death of the deceased. According to PW4 whose evidence I accept as credible and reliable, the cause of death was hypovolemic shock that is caused by excessive blood loss and the amputation of the left hand of the deceased resulted in excessive blood loss.
7. It is pertinent to note that the deceased was alive after the incident on 21/04/20 and he had passed away on 23/04/20 at 3.30pm (even after the scene reconstruction). PW4 admitted that the deceased may have bled during the operation when the doctors were trying to replant the severed hand and this also would have contributed to the death.
8. Section 246 of the Crimes Act 2009 (“Crimes Act”) reads thus;

Meaning of causes death or harm

246. (1) In this Division, a person’s conduct causes death or harm if it substantially contributes to the death or harm.

(2) Without limiting the right of a court to make a finding in accordance with sub-section (1), a person is deemed to have caused the death of another person although the act is not the immediate or the sole cause of death in any of the following cases –

(a) if he or she inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. (In this it is immaterial whether the treatment was proper or


mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;

- (b) if he or she inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical-treatment or had observed proper precautions as to his or her mode of living;*
- (c) if by actual or threatened violence he or she causes such other person to perform an act which causes the death of such person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;*
- (d) if by any act or omission he or she hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;*
- (e) if his or her act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.*

9. Therefore, even if the surgical treatment the deceased had to undergo as a result of the injuries inflicted by the accused caused the death of the deceased, in terms of section 246(2)(a) of the Crimes Act, unless the doctors who were involved in treating the deceased had bad faith or they lacked common knowledge or skill, the accused is deemed to have caused the death of the deceased.
10. However, the accused does not admit that he meant to amputate the left hand of the deceased when he swung the cane knife at the deceased. There was no direct evidence to establish the aforesaid fact or strong circumstantial evidence to draw an irresistible inference to that effect. The explanation given by the accused as to how the incident take place which is consistent with the relevant admitted facts appear to be credible and probable.
11. Therefore, the conduct that caused the death of the deceased as established in this case was swinging the cane knife towards the deceased which resulted in the deceased's left hand being amputated.

12. In view of all the evidence presented in this case, it was evident that the accused did not have the intention to cause the death of the deceased, and he was not reckless as to causing death. However, the evidence clearly proves beyond reasonable doubt that the accused was reckless as to the risk of causing serious harm to the deceased through his conduct.
13. Even though the defence counsel did not properly venture in that line, I did note that certain evidence given by the accused raised doubts that the accused who was 20 years old at the material time may have been subjected to some form of harassment or bullying by the deceased at the workplace over a period of time.
14. All in all, in my judgment, the prosecution failed to establish the offence of murder, but the evidence adduced establishes the offence of manslaughter.
15. Therefore I agree with the unanimous opinion of the assessors. In the result, I find the accused not guilty of murder as charged, but guilty of the lesser offence of manslaughter under section 239 of the Crimes Act.
16. The accused is hereby acquitted of the murder charge and convicted of the offence of manslaughter under section 239 of the Crimes Act accordingly.




Vinsent S. Perera
JUDGE

Solicitors;

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused