

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

Crim. Case No: HAC 147 of 2023

STATE

vs.

KERESI VUALIKU

Counsel: Mr. S. Seruvatu with Mr. A. Takalaivuna for the State
Mr. L. Cati for Accused

Dates of Hearing: 26th to 28th August 2024

Date of Closing Submission: 24th September 2024

Date of Judgment: 15th October 2024

JUDGMENT

- The Acting Director of Public Prosecution filed this Information on the 22nd of May 2023, charging the Accused, Ms. Keresi Vualiku, with one count of Manslaughter, contrary to Section 239 of the Crimes Act. The particulars of the offence are:

COUNT 1

Statement of Offence

MANSLAUGHTER: *Contrary to Section 239 of the Crimes Act 2009.*

Particulars of Offence

KERESI VUALIKU on the 1st day of April 2023 at Lami, Suva in the Central Division, drove vehicle registration no. KV 697 in a reckless manner that caused serious harm to SEVULONI QUQUMAI which resulted in the death of the said SEVULONI QUQUMAI.

2. Consequent to the plea of not guilty entered by the Accused, the matter proceeded to the hearing. The hearing commenced on the 26th of August 2024 and concluded on the 28th of August 2024. The Prosecution presented the evidence from five witnesses. The Accused exercised her right to remain silent, producing no evidence for the Defence. The Court then heard the submissions of the learned Counsel for the Prosecution and the Defence. In addition to their respective oral submissions, the learned Counsel for the Prosecution and the Defence filed their written submissions. Having considered the evidence and the respective oral and written submissions, I now pronounce the judgment on this matter.

Burden and Standard of Proof

3. I first draw my attention to the burden and standard of proof. The Accused is presumed to be innocent until she is proven guilty. The burden of proof of the charge against the Accused is on the Prosecution. It is because the Accused is presumed to be innocent until she is proven guilty. The standard of proof in a criminal trial is "proof beyond reasonable doubt". The Court must be satisfied that the Accused is guilty of the offence without any reasonable doubt.

Elements of the Offence

4. The main elements of the offence are:
 - i) The Accused,
 - ii) Engaged in conduct (Reckless driving)
 - iii) That conduct caused the death of the Deceased,

- iv) The Accused was reckless as to a risk that her conduct will cause serious harm to the Deceased.

Admitted Facts

5. The Accused tendered the following admitted facts under Section 135 of the Criminal Procedure Act.

1. *The name of the person charged is Keresi Vualiku [“Keresi”]*
2. *Keresi was born on 19 July 1984 and was 38 years old in April 2023.*
3. *Keresi was legally married to Sevuloni Ququmai [“the Deceased”] for approximately 17 years and have one child together namely Helen Grace.*
4. *Keresi and the Deceased resided in Qauia settlement with their daughter for approximately 20 years.*
5. *Keresi currently owns motor vehicle namely a Wish Model, black in colour whose number plate is KV 679 [hereby referred to as “Motor Vehicle”] which she owns and drives.*
6. *On 31 March 2023, Keresi and the Deceased attended a Kava Barrel.*
7. *On 01 April 2023, in the early hours of the morning Keresi drove her motor vehicle along the roads in Qauia settlement.*
8. *On 01 April 2023, one Ruci Tawake assisted Keresi in carrying the Deceased’s body into her motor vehicle.*
9. *It is not disputed that Asirami Vuniluvu is a resident of Qauia settlement.*
10. *It is not disputed that Mereoni Aiufouu is a resident of Qauia settlement.*
11. *It is not disputed that Mereseini Makelesi is a resident of Qauia settlement.*
12. *It is not disputed that Mereoni Aiufouu is a resident of Qauia settlement.*
13. *It is not disputed that Ruci Tawake is a resident of Qauia settlement.*
14. *On 02 April 2023, Keresi went with the Deceased to the Lami Health Centre where he was examined by Dr. Shinam Chand.*
15. *On 03 April 2023, the Deceased was presented at the CWM Hospital.*
16. *On 07 April 2023, the Deceased was admitted at the Intensive Care Unit (ICU) at the CWM Hospital and was put on life support.*

17. *On 11 April 2023, the Deceased was pronounced dead at CWM Hospital.*
18. *On 13 April 2023, a Post Mortem Report was conducted by Dr. Daniella John, the Senior Forensic Pathology Registrar, Forensic Science Services, Republic of Fiji Police Force, Suva.*
19. *It is agreed that the admissibility of the following documents are not in dispute and the same are tendered by consent and annexed as follows:-*
 - a) *The Photographic Booklet dated 22nd April 2023.*
 - b) *The Post Mortem Report dated 13th April 2023.*

The Prosecution's Case

6. The Prosecution alleged that the Deceased, who was the husband of the Accused, on the 1st of April 2023, had jumped on the roof of the car registration number KV 697, driven by the Accused, when she was driving it alone on the gravel road through their village. The Accused continuously drove the car despite the Deceased demand to stop it. The Deceased then fell over from the car and tumbled over the gravel road until he went and hit the light post. The Accused then stopped the car and came to assist the Deceased. She managed to put the Deceased into the vehicle with the help of a passerby and took him home.
7. The Deceased had visited the Lami Medical Centre on the 2nd of April 2023, complaining of severe head pain. He informed Doctor Shinal Chand, who was the Medical Officer at the Lami Medical Centre that he was assaulted on the 31st of March 2023 and the Doctor noticed a bruise below his lower eyelid. The Deceased was subsequently transferred to CWM Hospital and admitted. His condition gradually deteriorated, and he eventually died on the 11th of April 2023. The post-mortem examination was conducted, and the report was tendered in evidence. The post-mortem report states that the external cause of the death was an alleged history of assault.

Evaluation of the Evidence

8. Considering the evidence presented by the Prosecution, it is apparent that there is a contradiction regarding the cause of the death of the Deceased. The central plank of the Prosecution's allegation is that the Deceased died due to the reckless driving of the Accused. Meanwhile, Doctor Chand testified, saying that the Deceased informed her that he was assaulted on the 31st of March 2023 when he visited the Lami Medical Centre on the 2nd of April 2023, complaining about severe head pain. Moreover, Doctor Daniella John had reported on the post-mortem report that the external cause of the death was an alleged history of assault.
9. The offence of Manslaughter ends the life of a person unnaturally. Therefore, Manslaughter is an acceleration of the death of someone. The act of Manslaughter completes with the death of the person. Hence, the said act or conduct must be the operating and substantive cause of the death. (*vide*; **R v Mckinnon (1980) 2 NZLr 31**). According to the Information, the Prosecution must prove beyond reasonable doubt that the reckless driving of the Accused was the operative and substantial cause of the Deceased's death. Moreover, the Prosecution must establish beyond reasonable doubt that the Accused was reckless as to the risk that her conduct of reckless driving would cause serious harm to the Deceased.
10. Based on the evidence presented by the Prosecution, it is apparent that the Court needs to determine two main issues, i.e. the causation and the fault element of the offence. I shall first turn to the issue of causation. As I mentioned before, the Prosecution must prove beyond reasonable doubt that the alleged conduct of reckless driving was the operating and substantive cause of the death.
11. It is essential to consider the admissibility of Doctor Chand's evidence that the Deceased informed her that he was assaulted on the 31st of March 2023 when he visited her on the 2nd of April 2023.
12. It is a basic evidential rule in Common Law that hearsay evidence is inadmissible in criminal proceedings. Accordingly, any statement other than one made by a person while giving oral

evidence in the proceedings as evidence of facts or opinion is inadmissible in evidence. (*vide*; *Archbold, 2018 Ed,11.1*). The Fiji Court of Appeal in **Goundar v State [2020] FJCA 4; AAU29.2015 (the 27th of February 2020)** outlined the scope of the rule against hearsay, where Nawana JA held that:

“This court, in that case, had the opportunity to consider the ambit of hearsay evidence, which has, however, gone through changes in many jurisdictions to allow its inclusion in a much wider sense than it was some decades before. This court adopted the determination as regards hearsay as explained in the case of Subramaniam v Public Prosecutor [1956] 1 WLR 965 at 969, which could, in my view, be adopted for this case as well, as the matter in issue touches upon the fundamental exclusionary perimeters of hearsay. It was held:

“Evidence of a statement made to a witness ... may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made.

13. Accordingly, the conversation between Doctor Chand and the Deceased that took place on the 2nd of April 2023 at the Lami Medical Centre is admissible insofar as the Deceased had made that statement. However, that statement is not admissible as evidence of the truth of what was in the statement.
14. However, the truthfulness of the facts in the above statement by the Deceased is admissible under the principle of *res gestae*, which is an exception to the rule against hearsay.
15. Prematilaka JA, in **Nadim v State [2015] FJCA 130; AAU0080.2011 (2 October 2015)**, found that the evidence admissible under the principle of *res gestae* is the facts closely linked to the transaction disputed before the Court; without it, the main issue may not be adequately comprehended. Prematilaka JA held that:

“It can be broadly defined as matters incidental to the main fact and explanatory of it, including acts and words which are so closely connected therewith as to constitute a part of the transaction, and without a knowledge of which the main fact might not be properly understood. They are the events themselves speaking through the instinctive words and acts of the participants; the circumstances, facts and declarations which grow out of the main fact, are contemporaneous with it and serve to illustrate its character”

16. Prematilaka JA then identified three main situations where the *res gestae* principle is admissible and relevant. They are that:

“The admissibility and relevance of res gestae may be gathered from a large body of legal literature and judicial decisions and it could be summarised and condensed into three different situations.

- i) The facts which though not in issue are so connected with a fact in issue as to form part of the same transaction are relevant, whether they occurred at the same time and place or at different times and places.*
- ii) Facts which are (a) occasion (b) cause or (c) effect, immediate or otherwise, of relevant facts or facts in issue and facts which constitute the state of things under which they happened and facts which afford an opportunity for their occurrence or transaction, are relevant.*
- iii) (a) Facts showing or constituting motive for any fact in issue or relevant fact, (b) facts showing or constituting preparation for any fact in issue or relevant fact and (c) facts showing or constituting previous or subsequent conduct influencing or being influenced by any fact in issue or relevant fact, are relevant.”*

17. The fact contained in the statement made by the Deceased is connected with the facts of the central issue of the case, i.e., the causation of the death. The facts explain the circumstances and the reasons why the Deceased was having severe head pain and visited the Lami Medical Centre on the 2nd of April 2023. The fact in the statement also links to the findings of the Post-Mortem Report. Hence, the fact in the statement assists the Court so as to comprehend the events that caused the severe head pain complained by the Deceased on the 2nd of April 2023 and also the findings of the post-mortem report.
18. I, accordingly, admit the fact contained in the statement made by the Deceased to Doctor Chand as evidence of facts. I must now proceed to appraise the probative value or the evidential trustworthiness of the said statement of the Deceased so as to determine the issue of causation.
19. The Prosecution did not present any evidence to explain the nature or the extent of that assault claimed by the Deceased. Doctor Chand testified that she found some bruises below the left lower eyelid, suggesting that the alleged assault might have caused those bruises. Doctor Daniella John explained that she saw a fracture in the left eye, and it had gone to the middle of the skull. Moreover, she had noticed a black eye on the left side of the eye.
20. There is no evidence before the Court explaining whether there was an assault on the Deceased on the 31st of March 2023, if it was, the nature and the extent of that assault and also the injuries caused to him by that assault. Hence, it is difficult to ascertain whether this alleged assault, as claimed by the Deceased, caused the severe head pain which ultimately caused his death or the injuries he sustained from falling from the moving vehicle driven by the Accused on the 1st of April 2023 were the operative and substantive cause of the death. Therefore, there is a reasonable doubt regarding the causation of the death.
21. Be that it as may, I now proceed to consider the fault element of this offence. The first Prosecution's witness testified, saying that she first saw the Deceased walking up to the road, and then after a while, she saw him on the top of the moving vehicle driven by the Accused, asking her to stop the car. No evidence explains why the Deceased asked the Accused to stop the vehicle. The Accused and the Deceased were married. There is a doubt whether the

Accused was running away from a threat caused by the Deceased and the Deceased wanted to stop her. The Accused stopped when she saw the Deceased fall from the moving car. With the help of a passerby, she took the Deceased home in the same vehicle. This evidence creates reasonable doubt about whether the Accused was escaping from danger connected to the Deceased; hence, whether she had the necessary knowledge to comprehend there was a risk that her conduct would cause serious harm to the deceased, yet she continued with it recklessly.

22. In consequence of the reasons discussed, I conclude that the Prosecution failed to prove the offence of Manslaughter as charged in the Information beyond a reasonable doubt. I, hence, find the Accused not guilty of this offence as charged in the Information and acquit accordingly.
23. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in blue ink, consisting of a large, stylized initial 'R' followed by a smaller signature.

Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

15th October 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

August Legal for Accused.