

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 107 of 2022**

**STATE**

**V**

**BRADLEY ROBERT DAWSON**

**Counsel** : Mr. Alvin Singh with Ms. Sheenal Swastika for the State  
Mr. Anil Prasad for the Accused

**Dates of Trial** : 30 September and 1-4, 7-8 and 11 October 2024

**Closing Submissions** : 8 November 2024

**Judgment** : 11 December 2024

## **JUDGMENT**

[1] As per the Information filed by the Director of Public Prosecutions (DPP), the accused, Bradley Robert Dawson, is charged with the following offence:

### ***Statement of Offence***

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

### ***Particulars of Offence***

**BRADLEY ROBERT DAWSON**, on the 9<sup>th</sup> day of July 2022, at Turtle Island Resort, in the Western Division, murdered **CHRISTE JIAO CHEN**.

[2] The accused pleaded not guilty to the charge and the ensuing trial was held over 8 days. Thereafter, the Learned Counsel for the State and the Defence made their closing submissions in that order.

## The Burden of Proof and the Standard of Proof

[3] Section 14 of the Crimes Act No. 44 of 2009 (Crimes Act) stipulates as follows:

*In order for a person to be found guilty of committing an offence the following must be proved –*

*(a) the existence of such physical elements as are, under the law creating the offence, relevant to establishing guilt;*

*(b) in respect of each such physical element for which a fault element is required, one of the fault elements for the physical element.*

[4] Section 57 of the Crimes Act No. 44 of 2009 (Crimes Act) provides that the prosecution bears a legal burden of proving every element of an offence. The Section reads as follows:

*(1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.*

*(2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.*

*(3) In this Decree (Act)—*

*"legal burden", in relation to a matter, means the burden of proving the existence of the matter.*

[5] Section 58 (1) of the Crimes Act stipulates that a legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

## Legal Provisions and the Elements of the Offences

[6] As could be observed the accused is charged with one count of Murder, contrary to Section 237 of the Crimes Act. Section 237 of the Crimes Act reads as follows:

*"A person commits an indictable offence if —*

*(a) the person engages in conduct; and*

*(b) the conduct causes the death of another person; and*

*(c) the first-mentioned person intends to cause, or is reckless as to causing, the death of the other person by the conduct."*

- [7] Therefore, in order to prove the count of Murder, the prosecution must establish beyond reasonable doubt that;
- (i) The accused;
  - (ii) On the specified day (in this case on the 9 July 2022);
  - (iii) At Turtle Island Resort, in the Western Division;
  - (iv) Engaged in a conduct; and
  - (v) The said conduct caused the death of Christe Jiao Chen (the deceased);  
and
  - (vi) The accused intended to cause the death of the deceased; or the accused was reckless as to causing the death of the deceased by his conduct.
- [8] To further elaborate on these elements in respect of this count.
- [9] The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond any reasonable doubt that the accused and no one else committed the offence.
- [10] The second element relates to the specific day on which the offence was committed. The third element relates to the place at which the offence was committed. The prosecution should prove these elements beyond reasonable doubt.
- [11] The fourth element relates to the conduct of the accused. Section 15(2) of the Crimes Act defines as to what is meant by the term conduct. To engage in a conduct is to do or perform an act. As per Section 16(1) of the Crimes Act conduct can only be a physical element if that act is voluntary; and as per Section 16(2) of the Crimes Act conduct is only voluntary if it is the product of the will of the accused. The prosecution has to prove beyond reasonable doubt that the conduct of the accused was deliberate and not accidental.
- [12] When dealing with the fifth element, whether the said conduct of the accused caused the death of the deceased, what must be borne in mind is that, at law, the act of the accused need not be the sole or principal cause of the death, but the act should substantially contribute to the deceased's death. Therefore, Court must be satisfied beyond reasonable doubt that the conduct of the accused substantially contributed to the death of the deceased. This would be sufficient to satisfy the element that the 'conduct caused the death of the deceased'.

**[13]** With regard to the final element which concerns the state of mind of the accused, the prosecution should prove beyond reasonable doubt, either, that the accused intended to cause the death of the deceased or that the accused was reckless as to causing the death of the deceased. The prosecution should prove only one of the two limbs of this element. As stated previously, it is not possible to have direct evidence regarding an accused's state of mind as no witness can look into the accused's mind and describe what it was at the time of the alleged incident. However, Court can deduce the state of mind of the accused from the facts and circumstances that it would consider as proved. Intention or recklessness of an accused can be inferred based on relevant proven facts and circumstances.

**[14]** Section 19 (1) of the Crimes Act provides that a person has intention with respect to conduct if he or she means to engage in that conduct. In order for Court to conclude that the accused intended to cause the death of the deceased, Court should be sure that he meant to bring about the death or that he was aware that death will occur in the ordinary course of events as a result of his conduct. Court will have to consider all the evidence and draw appropriate inferences to ascertain whether the accused had the intention to cause the death of the deceased.

**[15]** In the event Court finds that the accused did not have the intention to cause the death of the deceased or is not sure whether he had that intention, Court will then have to consider whether the accused was reckless as to causing the death of the deceased. In terms of the provisions of Section 21 (1) of the Crimes Act, an accused will be reckless with respect to causing the death of the deceased, if;

- a. He was aware of a substantial risk that death will occur due to his conduct; and
- b. Having regard to the circumstances known to him, it was unjustifiable for him to take that risk.

**[16]** What Court must consider with regard to this particular state of mind is whether the accused did foresee or realise that death was a probable consequence or the likely result of his conduct; and yet he decided to go ahead and engage in the conduct regardless of that consequence. The accused must foresee that death was a probable consequence or the likely result of his conduct and after realising that, if he decided to

go ahead and engage in that conduct regardless of the likelihood of death resulting, then he was reckless as to causing the death of the deceased. In order to constitute the offence of murder by recklessness, actual awareness of the likelihood of death occurring must be proved beyond reasonable doubt by the prosecution.

[17] It must also be stated that Section 21 (4) of the Crimes Act states as follows: *“If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element.”*

[18] It must be said at the outset that the prosecution is basing its case on the fact that the accused intended to cause the death of the deceased by his conduct.

### **The Admitted Facts**

[19] Section 135 of the Criminal Procedure Act No. 43 of 2009 (“Criminal Procedure Act”), deals with “Admission of facts”. The Section is reproduced below:

*135. — (1) An accused person, or his or her lawyer, may in any criminal proceedings admit any fact or any element of an offence, and such an admission will constitute sufficient proof of that fact or element.*

*(2) Every admission made under this section must be in writing and signed by the person making the admission, or by his or her lawyer, and—*

*(a) by the prosecutor; and*

*(b) by the judge or magistrate.*

*(3) Nothing in sub-section (2) prevents a court from relying upon any admission made by any party during the course of a proceeding or trial.*

[20] Accordingly, the prosecution and the defence have consented to treat the following facts as “Admitted Facts”:

1. It is admitted that the accused in this case is Mr. Bradley Robert Dawson (hereinafter referred to as the accused), American National, 38 years of age at the time of the alleged offending, IT Officer of 2023 Elzey Avenue, Memphis Tenancy, United States of America. The accused’s date of birth is 11<sup>th</sup> October 1983.

2. It is admitted that the deceased in this case is Ms. Christie Chen (hereinafter referred to as the deceased), 36 years of age at the time of death, Pharmacist of Denver, United States of America.
3. It is admitted that the accused and the deceased got legally married on 19<sup>th</sup> February 2022. The accused and the deceased were in a relationship since November of 2021.
4. It is admitted that the accused and the deceased arrived into Fiji from United States of America on flight, FJ 811, on 7<sup>th</sup> July 2022, at around 5.00 a.m.
5. It is admitted that the purpose for their visit to Fiji was to celebrate their holiday honeymoon at Turtle Island Resort.
6. It is admitted that the accused and the deceased were transferred to Turtle Island Resort on 7<sup>th</sup> July 2022 via boat from Lautoka Wharf.
7. It is admitted that the accused and the deceased were occupying bure No. 15 at Turtle Island Resort.
8. It is admitted that the accused was found to be in possession of the following items at the time he was arrested at Matacawalevu on 10<sup>th</sup> July 2022:
  - a. A black wallet.
  - b. Passport of the accused.
  - c. Driving licenses of the accused and deceased.
  - d. United explorer visa card under the name of the deceased.
  - e. Visa card under the name of the accused.
  - f. Master card under the name of the accused.
  - g. Health card under the name of the accused.
  - h. Capita Savor Master Card.
  - i. Global entry card under the name of the accused.
  - j. Cash (notes) and coins amounting \$1,093.00 (USD).
9. It is admitted that the post-mortem of the deceased was conducted by Dr. Avikali Mate on 12<sup>th</sup> July 2022.
10. Documents to be tendered by consent:
  - a. Post-Mortem Report of the deceased.
  - b. Passport of deceased.
  - c. Passport of accused.

**[21]** Since the prosecution and the defence have consented to treat the above facts as “Admitted Facts” without placing necessary evidence to prove them, the above facts are proved beyond reasonable doubt.

**Case for the Prosecution**

**[22]** The prosecution, in support of their case, called the following 14 witnesses:

1. Nikotimasi Valuvakarua (Supervisor, Food and Beverages Department, at Turtle Island Resort).
2. Milika Radrotini (MDA Assistant at Turtle Island Resort).
3. Apete Tuimoala (Security Officer at Turtle Island Resort).
4. Detective Sergeant 4943 Martin Koli.
5. Corporal 3202 Ilisapeci Ratusaki.
6. Sergeant 3049 Josateki Seuseu.
7. Manoa Ratulele Vasuitaukei (Resident of Matacawalevu Village).
8. Bale Saukuru (Resort Manager at Turtle Island Resort).
9. Tomasi Mawi (House Keeper at Turtle Island Resort).
10. Mark Andrew Breasley (Australian National who was holidaying at Turtle Island Resort).
11. Dr. Carolyn Shivangani Murti (Medical Officer).
12. Corporal 4949 Pita Davuiqalita Varomusu.
13. Dr. Avikali Mate (Pathologist).
14. Assistant Superintendent of Police (ASP) Ilario Belo.

**[23]** The prosecution also tendered to Court the following Exhibits:

- PE1 (A) - Original hand written copy of the Caution Interview Statement of the accused.
- PE1 (B) - Typed copy of the Caution Interview Statement of the accused.
- PE2 - Photographic Booklet of the Crime Scene at Turtle Island Resort.
- PE3 - Photographic Booklet – Post Mortem.

- PE4 - Rough Sketch Plan of the Crime Scene.
- PE5 - Fair Sketch Plan of the Crime Scene.
- PE6 - Video Footage of the Crime Scene (DVD).
- PE7 - Post Mortem Report of the deceased.
- PE8 - Search List in relation to the accused.
- PE9 - United States of America Passport of the accused.
- PE10 - Global Entry Card of the accused.
- PE11 - Freedom Visa Card of the accused.
- PE12 - Custom Cash Master Card of the accused.
- PE13 - Discover Card of the accused.
- PE14 - Tennessee Driver's Licence of the accused.
- PE15 - Tennessee Driver's Licence of the deceased.
- PE16 - United Healthcare Card of the accused.
- PE17 - Discover Cash Back Debit Card of the accused.
- PE18 - United Explorer MileagePlus Visa Card of the deceased.
- PE19 - Covid 19 Vaccination Card of the deceased.
- PE20 - Capital One-Savor One-Master Card of the accused.
- PE21 - HID Prox Card II.
- PE22 - Black wallet.
- PE23 - US Dollars 1093.00 in notes and coins.
- PE24 - Small zip lock plastic bag.



**[24] Evidence of Nikotimasi Valuvakarua**

- (i) The witness testified that he is the Supervisor Food and Beverages Department at Turtle Island Resort. He is 45 years of age. He has been employed at the Turtle Island Resort for more than 15 years.*
- (ii) The witness said that the Turtle Island Resort is a 5-star Resort and is located in the Yasawa Group of Islands in Nanuya. There are total of 15 rooms (bures). The Resort can cater to around 40 tourist at a given time – mainly couples.*
- (iii) The Turtle Island Resort is totally different to other Resorts in the Yasawa Group, which caters mainly for backpackers.*
- (iv) Usually between June to July and December to January the Resort caters to family bookings. Otherwise (during the rest of the year) it caters only to couples.*
- (v) The witness said that he is the Bar and Dining Supervisor. His responsibility includes to check on stocks and to ensure that proper meals are provided to the guests. The Resort serves breakfast, lunch and dinner at the main dining rooms.*
- (vi) To arrive at the Resort, it would usually take 3 to 4 hours by boat from the Lautoka Wharf. The neighboring islands are Vuaki, Matacawalevu, Blue Lagoon and Nanuya Island Resort or NIR (which is part of the Blue Lagoon).*
- (vii) To travel from Turtle Island Resort to Matacawalevu one has to go by fibre boat and it would take about 5 to 10 minutes for this travel. Matacawalevu is more of a village.*
- (viii) The witness testified to the events which took place in July 2022. On 7 July 2022, which was a Thursday, the witness said he was on duty at Turtle Island Resort. He recalls the accused Bradley and Christe arriving at the Resort. The couple arrived around 12.00 (midday) on the Vomo boat. He knew that the couple were from the United States of America (USA) and they were there at the Resort for their honeymoon.*
- (ix) The witness said that he met the couple on the beach once they got off from the boat. He had introduced himself to the couple. The couple had introduced themselves as Brad and Christe. Thereafter, the Manager in charge of the Resort had introduced the island to them and taken them to their bure (Bure 15).*
- (x) The witness testified that he had next met the couple that evening – during the serenading at 5.30 p.m. They do serenading from Bure to Bure. They always sing to the guests at 5.30 p.m. for them to wake up and to call them for cocktails.*
- (xi) The witness said that the couple were a very nice couple – both individuals were very friendly.*
- (xii) On the next day – 8 July 2022 (which was Friday) - he did not meet them again in the morning because he was busy. In the evening he had met them at the dining room when they came out from the Pontoon Dine Out. The Pontoon*

*Dine Out is a place that drifts away from the beach. They always take the guests there for dinner. So the witness had met the couple after dinner. The witness could not recall the exact time he had met the couple.*

- (xiii) At the dining room the couple were sitting at the bar and having drinks. When asked as to how the couple appeared to be, the witness said that Christe was arguing with Bradley – from their reactions it seemed that they were arguing. They had been drinking coconut and vodka. He remembers this because the bar was not busy at the time. The bar normally closes at 11.00 p.m. and they were the last couple who left the bar that night.*
- (xiv) The witness said that from the bar, the couple had been hanging around on the beach. Then they went to the baka tree where they have the Family Fun Night (which is held on Fridays). The Family Fun Night normally starts at 8.00 p.m. and ends around 1.00 a.m., where drinking of kava and dancing takes place. The witness testified that he could not recall how many other couples were there at the Family Fun Night, nor as to the exact time the couple had joined the Family Fun Night. However, it was a busy night.*
- (xv) The witness said that Milika (Radrotini) picked Brad to dance with her and he had picked Christe and went to the dance floor. Milika and Brad had led the way and the witness and Christe had followed. This was an open area surrounded by trees. There were bright lights on whereby they could see each other's faces clearly.*
- (xvi) After dancing with the witness for about 2 minutes, Christe had left him and clung on to Brad – Christe had walked away from him and moved to Brad and they were clinging on to each other. It seemed that Christe didn't want to dance with anyone else.*
- (xvii) The witness said that from her reaction on her face, Christe appeared to be sad and upset at the time. It seemed that the couple were arguing. However, Bradley's back was facing him.*
- (xviii) By the way he had looked at her when she was dancing, Christe appeared to be drunk. He couldn't recall whether Brad or Christe were drinking kava.*
- (xix) Thereafter, the witness had continued to dance with Milika.*
- (xx) The Family Fun Night had ended around 12.00 midnight. The witness had seen the couple leave the kava area under the baka tree. They had left after midnight. That is the last time the witness had seen the couple.*
- (xxi) The witness identified the accused in the dock as Bradley.*
- (xxii) The witness was cross examined by the defence. The defence also put several suggestions to the witness in line with the defence case.*
- (xxiii) The witness said that the couple had been drinking coconut and vodka at the bar and at the baka tree. It was suggested to the witness that on 8 July 2022, only Brad was drinking kava and Christe was drinking coconut and vodka. The witness said that he saw them both drinking coconut and vodka at the bar.*

*(xxiv) When asked as to at what stage he saw them arguing with each other, the witness said when they came to the bar back from the Pontoon Dine Out and then when they were dancing.*

*(xxv) The Defence highlighted the following omissions in the evidence given by the witness vis a vis his statement made to the Police.*

*i. In his testimony in Court the witness said that he saw the couple arguing with each other when they came to the bar back from the Pontoon Dine Out and then when they were dancing.*

*However, this is not found in his statement.*

*ii. In his testimony in Court he stated that Brad and Christe were drinking coconut and vodka at the bar and then at the baka tree.*

*However, in his statement made to the Police there is no mention that Brad and Christe were drinking coconut and vodka at the bar (only mentioned is that they were drinking coconut and vodka at the baka tree).*

*iii. In his testimony in Court he stated that Christe appeared to be sad and upset.*

*However, no mention is made of this fact in his statement made to the Police.*

*(xxvi) It was suggested to the witness that from her looks, Christe looked heavily intoxicated. The witness replied that she was drunk.*

*(xxvii) It was suggested to the witness that Christe did not like Brad dancing with another woman. The witness agreed to this suggestion.*

*(xxviii) It was suggested to the witness that Christe fell on the dance floor. The witness denied this suggestion. Later he said, I cannot recall. When asked by Court whether he had seen Christe fall on the dance floor that night, the witness said, no.*

*(xxix) The witness agreed that all the time he saw Christe arguing with Brad and not Brad arguing with Christe. In re-examination, the witness said that since Bradley's back was facing him, he could not see whether Brad was arguing as well.*

## **[25] Evidence of Milika Radrotini**

*(i) The witness testified that she is the MDA Assistant (Managing Director's Apartment Assistant) at Turtle Island Resort. She is 31 years of age. She has been working at the Turtle Island Resort for the past 6 years.*

- (ii) *Even in the year 2022, she was working at the Turtle Island Resort in the same role. At the time, the MD was Mr. Richard. He is from the United States of America.*
- (iii) *The witness testified to the events which took place on 8 July 2022. The witness said that around 9.30 p.m. that day she went to the baka tree since it was Family Fun Night. This usually take place on Fridays. It is for all in house guests, including couples and the staff. At the Family Fun Night, drinking of kava and dancing takes place. That night, most of the staff had been present at the Family Fun Night. She could not recall how many people were present.*
- (iv) *The witness said that as she reached the baka tree, she sat beside Brad and Christe. They were a couple who had joined the Resort the day before. She had stood up and asked Brad for a dance. Then she went to the dance floor with Brad. Niki (Nikotimasi) took Christe and followed them to the dance floor. Niki is another staff member of the Resort.*
- (v) *The witness said that she did not get to dance with Brad for long because his partner Christe went to him and stayed with him. She could sense that Christe did not like that the witness had asked Brad to dance with her. When asked to explain further, the witness said that she sensed this because Christe had started clinging on to Brad. From the way Christe had acted – her expressions said it all.*
- (vi) *Thereafter, the witness had continued dancing with Niki. After a while, the witness and Niki went back to the kava mat. Brad and Christe went for a smoke.*
- (vii) *The witness could not recall as to how long the Family Fun Night had lasted. She also could not recall seeing Brad and Christe coming back to the kava mat. She said she was not there until the end.*
- (viii) *In cross examination the witness said that Brad and Christe appeared to be a happy couple. They were enjoying the night – dancing and drinking. They were enjoying the entertainment. The witness confirmed that Christe was drunk that night. She does not recall the time the couple left the kava mat.*

**[26] Evidence of Apete Tuimoala**

- (i) *The witness testified that he is the Security Officer at Turtle Island Resort. He is 56 years of age. He resides at Vuaki Village. He has been working as a Security Officer at the Turtle Island Resort for the past 30 years.*
- (ii) *As the Security Officer, his duties were to look after the guests at the Resort and to keep the Resort property safe. His usual working hours starts at 7.30 p.m. and he knocks off at 7.30 a.m. It is usually o 12 hour shift. He normally looks after the dining room area where the guests have dinner, drink and have other activities.*
- (iii) *There is another Security Officer whose location is at the other end of the island – roughly 100 – 200 metres away from his location.*

- (iv) *The witness testified to the events which took place on the night of 8 July 2022. He said he was on security duty that night at the location of the dining room area. He started his shift at 7.30 p.m. He could not properly recall whether the Resort was busy that night. That night the guests and the staff were drinking grog and entertainment was going on. They had finished drinking grog around 1.00 a.m.*
- (v) *Around 2.00 a.m. (early in the morning on 9 July 2022) he had seen a man walking towards the beach. He had flashed his torch light towards the person and asked him whether he needs anything. That person had said, no and that he was just taking a walk. The witness recognized the person as the guest staying at Bure 15. Thereafter, the person had turned and gone back towards his bure.*
- (vi) *When asked whether he knows the name of the person, the witness said he does not know the name. But it was the person who was staying in Bure 15.*
- (vii) *Prior to seeing the man at that time, the witness said that he had seen the couple (this man and his wife) leaving the grog session to go to their bure. The couple were holding hands when they were leaving. He had said goodnight to them. They had also replied and gone to their bure. The couple seemed happy at the time.*
- (viii) *The witness confirmed that it was later the same night that he saw the man walking towards the beach.*
- (ix) *In cross-examination the witness said that he has been in the established staff of Turtle Island Resort for the past 30 years. He has been serving as the Security Officer for the past 15 years. He agreed that he was a very experience person at the Resort.*
- (x) *The witness said that normally there are only two Security Officers on duty. He and the second Security Officer work every day. However, if it's Kids Week/Kids Camp there will be three Security Officers on duty (one additional Security Officer).*
- (xi) *The witness said that on 8 July 2022 there was a Kids Camp. So there was a third Security Officer on duty. His name is Petero Mataca. The location of the Kids Camp is away from Bure 15. From Bure 15 to the Kids Camp, the distance would be around 200 metres. The witness agreed that next to the Kids Camp is where the kayaks are anchored.*
- (xii) *The witness testified that from Bure 14 to Bure 15 the distance was between 10 to 15 metres. Later he showed the distance to be more than 20 metres.*
- (xiii) *He said that on 8 July 2022, he saw the couple walking on the beach – when they were going towards their bure after the grog session. They were holding hands and laughing. When they went past him then he saw them. He saw them at a very close distance (about 2 metres away). There were lights in the area. The witness agreed that they were a happy couple.*

- (xiv) *The witness said that around 2.00 a.m. he had seen someone walking towards the beach. He said that (initially) he did not know the person, but when he flashed the torch on the person he knew who the person was.*
- (xv) *When asked as to how confident he was that it was the same person staying at Bure 15, the witness answered, "Because I have met him a lot. I said goodbye to him. It was the same person I met later."*
- (xvi) *The witness agreed that he only saw this person going towards Bure 15. However, he did not see the person enter Bure 15.*
- (xvii) *The witness said that after the grog session had ended, he had switched off the lights only in that area. Roughly around one hour later he had seen this person walking on the beach.*
- (xviii) *The Defence highlighted the following omission in the evidence given by the witness vis a vis his statement made to the Police.*

*In his testimony in Court he stated that about one hour after switching off the lights, he saw the person walking on the beach.*

*However, in his statement made to the Police this is not recorded.*

- (ix) *The witness said that he had informed this to the Police. However, it is not recorded.*
- (xix) *It was suggested to the witness that he was making up this story. The witness denied this suggestion and said that he did inform the Police about this matter.*

**[27] Evidence of Detective Sergeant 4943 Martin Koli**

- (i) *The witness testified that he is 38 years of age and currently serving in the CID Branch at the Lautoka Police Station. He has been serving at the Lautoka Police Station for the past 6 years. He has been serving in the Fiji Police Force for the past 13 years. He was promoted as Sergeant in March 2022.*
- (ii) *The witness said that in the year 2022 he was based at the Lautoko Police Station-in the CID Unit. He recalls that on 11 July 2022, he was on duty. He had started work at 7.00 a.m. that day. He had received instructions to conduct the caution interview statement of Bradley Dawson, the accused in this case. This was while at the Turtle Island Resort.*
- (iii) *The witness said that he was part of the investigating team that went to the Turtle Island on 10 July 2022 to investigate an alleged case of Murder that had happened on the island. The deceased was a female person. The complaint about the incident was made on 9 July 2022, by a member of the staff of the Turtle Island Resort. The team could not travel to Turtle Island on the same day since the weather was not good. Therefore, they had travelled to the island the next day.*

- (iv) *The team was led by SSP Iakobo (Waiseva). The team comprise of the CSI team, the CID team and also the Acting ASP Crimes, ASP Belo.*
- (v) *From Lautoka Police Station to the Turtle Island one has to travel by boat. It would take approximately 4 hours by boat. There was no Police Station on the island.*
- (vi) *The witness said that he had received instructions from SSP Iakobo (who was the Divisional Crimes Officer) to conduct the caution interview statement of Bradley Dawson. The recording of the interview was done at the Staff Quarters at Turtle Island Resort. The Witnessing Officer for the recording of the interview was Detective Inspector Silio Finau. During the recording of the caution interview, it was only the accused, the witness and Inspector Silio who were present in the room.*
- (vii) *The witness said that prior to the recording of the caution interview he had seen the accused but had not met or talked to him. The first time he spoke to him was during the recording of the caution interview. The accused appeared emotional at the time.*
- (viii) *The recording of the caution interview statement of the accused had commenced at 12.44 hours, on 11 July 2022 at the staff quarters at Turtle Island Resort.*
- (ix) *Thereafter, the witness testified to the manner in which he recorded the caution interview statement of the accused over a period of two days. The statement had been recorded in the English language and was handwritten in the form of question and answer. Detective Inspector Silio Finau was present throughout the interview as the Witnessing Officer.*
- (x) *The witness said that the recording of the caution interview had been suspended on the first day at 15.48 hours. Thereafter, the accused had been transported by seaplane to the mainland. They had travelled by seaplane from the island and got off at Nadi. This journey had taken approximately 1 ½ hours. From Nadi they had travelled by vehicle to the Lautoka Police Station. This journey had taken a further 45 minutes. They had arrived at the Lautoka Police Station around 7.00-8.00 p.m. The accused had been locked up in the cell to rest for the day.*
- (xi) *The recording of the caution interview statement had continued on 12 July 2022, at the Lautoka Police Station, commencing at 9.15 a.m. and concluded at 18.40 hours. Detective Inspector Silio Finau was present as the Witnessing Officer during the recording of the interview on the second day as well.*
- (xii) *The original handwritten version of the caution interview statement of the accused was tendered to Court as Prosecution Exhibit PE1 (A).*
- (xiii) *The witness testified that he had prepared a typed version of the caution interview statement himself. The typed version had been prepared on the night on 12 July 2022. The typed copy of the caution interview statement of the accused was tendered to Court as Prosecution Exhibit PE1 (B).*

- (xiv) *The caution interview statement had been signed by the accused, the witness and the Witnessing Officer Silio Finau (in that order) on the first day. However, on the second day, the accused had exercised his right to remain silent and had thus refused to sign the statement.*
- (xv) *Sergeant Koli testified that he had granted the accused all his rights under the Constitution while recording his caution interview statement. At the very inception, the accused had been administered with the first hour procedures and permitted to contact a lawyer from the Legal Aid Commission.*
- (xvi) *Thereafter, the allegation had been clearly put to him that he was being questioned regarding the death of his wife, Christe Chen. He had been duly cautioned to the effect that he is not obliged to say anything unless he wishes to do so, but whatever he says will be put into writing and given in evidence in Court.*
- (xvii) *The accused had been given the right to consult a lawyer of his choice at his own expense or to be provided the services of a legal practitioner from the Legal Aid Commission. The witness testified that the accused did not wish to exercise this right since he had already talked to a Legal Aid lawyer through the phone.*
- (xviii) *The accused had also been given the right to communicate with his next of kin, a religious counsellor or a social worker. The accused had informed that he will contact his mother later. Within 15 minutes of the commencement of the interview, the interview had been suspended for the accused to speak with a staff member from the USA Embassy. It is recorded that one Mrs. Swain of the USA Embassy had spoken to the accused by phone.*
- (xix) *Furthermore, the witness testified to the several instances where the interview had been suspended on the first day – for the accused to have his lunch and to have a smoke respectively.*
- (xx) *Sergeant Koli testified that on the second day too (on 12 July 2022) the accused had been duly granted all his rights under the Constitution while recording his caution interview statement.*
- (xxi) *When the accused was given the right to consult a lawyer of his choice at his own expense or to be provided the services of a legal practitioner from the Legal Aid Commission, the accused had requested to consult a lawyer of his choice. Accordingly, he had contacted Mr. Iqbal Khan over the phone. The recording of the interview had been suspended for over one hour for the accused to consult with his lawyer.*
- (xxii) *The witness said that the recording of the interview had been further suspended at the request of the accused for him to be taken to a doctor for treatment of the cuts he had on his body. Accordingly, the accused had been taken to the Lautoka Hospital for examination and treatment.*
- (xxiii) *Furthermore, the witness testified to the several instances where the interview had been suspended on the second day – for the accused to speak with his counsel, to visit the washroom and to have a smoke respectively.*



- (xxiv) Sergeant Koli testified that at the conclusion of the recording of the caution interview statement, the accused had been given his statement to read but he had refused to do so and also did not want the statement read back to him.
- (xxv) The witness testified that the caution interview statement had been recorded fairly and the accused had not been compelled in any manner whatsoever to make any admissions that could be used in evidence against him. In fact, from Questions 112 to 159 the accused had mostly refused to answer the questions or exercised his right to remain silent.
- (xxvi) The witness said that at any time before or during the recording of the caution interview statement neither he nor any other officer present assault, threaten or put pressure on the accused or give any false promises to the accused.
- (xxvii) The witness further testified that the accused had made no complaints to him at any time during the recording of his caution interview statement.
- (xxviii) The witness was cross examined at length by the defence. The defence also put several suggestions to the witness in line with the defence case.
- (xxix) As per the Grounds of Voir Dire filed earlier in these proceedings, the accused is challenging the voluntariness and fairness of the caution interview statement made by him. The cross examination was in line with the said Grounds of Voir Dire filed.
- (xxx) It was suggested to the witness that the accused was not granted all his rights in terms of Section 13 (1) of the Constitution of the Republic of Fiji 2013 ("Constitution"). The witness denied this suggestion and emphasized that the accused was granted all his rights as enriched in the Constitution during the recording of his caution interview statement. The witness referred to the relevant parts of the caution interview to show that these rights had been granted by him to the accused.
- (xxxi) It was suggested to the witness that the answers found from questions 86 to 96 of the caution interview were not given by the accused. The witness denied this suggestion and said that those answers were given by the accused.

**[28] Evidence of Corporal 3202 Ilisapeci Ratusaki**

- (i) The witness testified that she is 42 years of age and currently attached to the Crime Scene Investigation (CSI) Unit at Labasa Police Station. She has been serving in the Fiji Police Force for the past 20 years since 2004. She joined the CSI Unit of the Police Department in 2007 – thus she has been serving in this unit for the past 17 years. She was promoted to the rank of Corporal in May this year.
- (ii) The witness explained the role of the CSI Unit in Crime Scene Investigations. She testified to the specific training and experience she has acquired in the field of CSI. Her specific role is taking photographs at the crime scene.
- (iii) The witness testified that in the year 2022 she was stationed at the CSI Unit of the Lautoka Police Station. Her supervisor was Sergeant 3049 Josateki Seuseu.

- (iv) *The witness recalls to attending a murder crime scene in Turtle Island in July 2022. The CSI Team comprised Sergeant Josateki, Corporal 4949 Pita Varamusu and herself. She was detailed to be a Photographer at the crime scene. She had used a Cannon camera for this purpose. All photographs taken by her at the crime scene was downloaded into a computer and printed in colour. She had then prepared a Photo Booklet. The original of the booklet had been handed over to the Investigating Officer in this case Corporal Netava Yaloyala.*
- (v) *The witness explained that she took photographs of the crime scene in Bure 15 of the Turtle Island Resort and also took photographs during the post-mortem examination. She had prepared two separate Photo Booklets with the photographs taken.*
- (vi) *The photographs at the crime scene were taken under the supervision of Sergeant Josateki Seuseu, who was the Team Leader. Corporal Pito Varomusu assisted in placing numbers for ease of reference.*
- (vii) *The Photographic Booklet of the Crime Scene at Turtle Island Resort, containing a total of 119 photographs, was tendered to Court as Prosecution Exhibit PE 2. The Photographic Booklet – Post-Martem, containing a total of 30 photographs (the numbering continued from 120 to 149) was tendered to Court as Prosecution Exhibit PE 3.*
- (viii) *At the back of each page of the two Photo Booklets, the witness has placed the seal “Crime Scene Unit/Western” and placed her name and signature therein.*
- (ix) *The witness testified that the date the report of the incident was lodged was 9 July 2022. Photos at the crime scene were taken at Turtle Island Resort, on 10 July 2022 and 11 July 2022. The team had returned to Viti Levu on 12 July 2022.*
- (x) *The witness said that the post-mortem examination was conducted on 12 July 2022, at the Lautoka Mortuary, by Dr. Avikali Mate. The photographs of the post-mortem examination was taken by her during that time.*
- (xi) *During her testimony, the witness explained to Court the photographs taken by her. The photos were projected on a screen during the hearing for better viewing.*

**[29] Evidence of Sergeant 3049 Josateki Seuseu**

- (i) *The witness testified that he is 56 years of age and currently attached to the Crime Scene Investigation (CSI) Unit at the Lautoka Police Station. He has been serving in the Fiji Police Force for the past 25 years.*
- (ii) *Currently he is an Acting Inspector and is Acting OIC Forensic Science Services, Western Division. He has been serving in the Forensic Science Services of the Fiji Police Force for the past 19 years.*
- (iii) *The witness explained the role of the Forensic Science Services in Crime Scene Investigations. The Unit is responsible for attending to crime scenes*

- throughout the Western Division, Crime Scene Management, Crime Scene Photographing and uplifting and safe keeping of Crime Scene Exhibits. The Unit also conducts sketching of the crime scenes and finger printing. He testified to the specific training and experience he has acquired in this field.
- (iv) The witness testified that in the year 2022 he was stationed at the Forensic Science Services of the Lautoka Police Station. He held the rank of Sergeant at the time.
  - (v) The witness said that in the afternoon on 9 July 2022 (which was a Saturday), he had received a call from Inspector Operations, Western Division Command Centre informing him of a case of alleged Murder at the Turtle Island Resort in Yasawa.
  - (vi) He was assigned to be part of the team to attend to the crime scene at Turtle Island Resort. The witness had immediately contacted his colleagues of the CSI Team Corporal 4949 Pita Varamusu and WDC 3202 Ilisapeci (she was WDC at the time). The Forensic Team had been headed by him. The Investigation Team had been headed by SP Iakobo Waiseva, who was the Divisional Crime Officer, Western Division at the time.
  - (vii) The witness said that they could not go to Turtle Island on 9 July 2022, since they could not arrange for a boat. As such, they left to Turtle Island the next morning (Sunday 10 July). The team comprised of CID Officers, CSI Officers and other officers. They had travelled by Police boat from the Fisheries Wharf at Lautoka. It took under 2 hours for the travel. The team had arrived at Turtle Island around 9.00 a.m.
  - (viii) On arrival at Turtle Island, they were briefed about the incident by the Duty Manager of the Resort. They had been concerned when neither the deceased nor the accused Bradley had turned up for breakfast or lunch (on Saturday). So they had sent out one of the staff to check on the bure.
  - (ix) The witness testified that at Turtle Island they were taken by buggy (cart) straight to the crime scene, which was Bure 15. At the time, a Police Officer from the Nacula Police Post (PC Ame) was already there guarding the scene.
  - (x) The witness said that they had then cordoned the crime scene. PC Ame was placed as the crime scene guard. The CSI Team comprising the witness, Corporal Pita and WDC Ilisapeci then entered the Bure 15. Only the three of them had entered the crime scene at the time.
  - (xi) The witness acted as the Crime Scene Recorder and Sketcher. Corporal Pita was the Crime Scene Examiner – he was the main person at the crime scene who dictated the investigation. WDC Ilisapeci was the Crime Scene Photographer.
  - (xii) Upon entering the Bure 15, the CSI Team had video recorded the whole crime scene. The crime scene was then photographed (without any numbers being placed). Thereafter, according to the Crime Scene Examiner's findings, CSI numbers were placed. This was done by Corporal Pita. Thereafter, the crime scene was photographed again with the CSI numbers in place.

- (xiii) The witness could not clearly recall as to what exact time they had entered Bure 15 to conduct the crime scene investigations.*
- (xiv) The photographs were later downloaded onto a computer and developed (printed) by the Photographer and Photographic Booklets were prepared. The witness was shown Photographic Booklet of the Crime Scene – Prosecution Exhibit PE2. The witness identified the photographs therein. The photos were projected on a screen during the hearing for better viewing.*
- (xv) The witness testified that the deceased's body was found in the toilet of Bure 15 as depicted in Photographs 14 to 21 and also in Photographs 26 to 39.*
- (xvi) After photographing of the relevant crime scene, the deceased's body was put into a body bag and transported by aircraft to the Lautoka Hospital Morgue. This would have taken place before 12.00 noon that day.*
- (xvii) The CSI Team had continued crime scene investigations until 6.00 p.m. and then suspended work for the day. The investigations had continued on 11 July 2022 (which is a Monday) – for probably half a day.*
- (xviii) The witness testified that he had prepared a Rough Sketch Plan of the crime scene. This included the whole area that was cordoned. The witness had taken measurements and drawn up the Rough Sketch Plan. The Rough Sketch Plan prepared by the witness was tendered to Court as Prosecution Exhibit PE4. The Rough Sketch Plan is dated 11 July 2022, at 1440 hours. The witness has placed his signature on the plan.*
- (xix) The Rough Sketch Plan has a legend where numbering goes from 1 to 52. The numbering in the plan corresponds to the CSI numbers on the photographs, as depicted in the Photographic Booklet PE2.*
- (xx) The witness said that during the investigations \$33USD were found in the bure. This was found in a knapsack bag (this is depicted in Photo 83 of the Photographic Booklet PE2). In addition, the deceased's passport was also found in the bure. The accused's passport nor any identification documents of the accused were found. No credit cards or access cards of the accused were found in the room.*
- (xxi) The witness said that from his investigations it can be concluded that the assault on the deceased was mainly done inside the toilet. The size of the toilet where the deceased's body was found measured 1.8 metres x 0.83 metres. From his experience, the witness explained as to how the assault on the deceased probably would have taken place inside the toilet. The witness also commented on the blood splatters that were found inside the toilet. The witness said that the broken piece of the toilet cistern had blood like stains on it.*
- (xxii) The witness testified that later he had prepared a Fair Sketch Plan of the crime scene. This was based on the Rough Sketch Plan prepared by him earlier. The Rough Sketch Plan was drawn at the scene with pen and paper, while the Fair Sketch Plan was drawn later in the office. The Fair Sketch Plan prepared by the witness was tendered to Court as Prosecution Exhibit PE5.*

*(xxiii) The witness was cross examined by the defence and the defence version of events were put to him.*

**[30] Evidence of Manoa Ratulele Vasuitaukei**

- (i) The witness testified that he is residing at Matacawalevu Village in Yasawa. He is 52 years of age. Previously he was a Farmer by occupation. Currently he is at home.*
- (ii) The witness said that he is married with three children. He is from Matacawalevu Village in Yasawa. He has built his own house in the village.*
- (iii) He said that the neighbouring island is Turtle Island. The Turtle Island is opposite to or facing his village. From Turtle Island to Matacawalevu Village it would take 10 minutes by fiber boat. He said the distance would be about 2 km by sea. The sea can be rough in bad weather. Otherwise the sea is usually calm.*
- (iv) The witness said that during good weather someone can come by kayak from Turtle Island to his village.*
- (v) The witness testified to the events which took place on a Sunday in July 2022. When asked as to why he was in Court today, the witness said: "About Brad". He said he had met Brad on the beach. He had seen him walking on the beach coming towards the village. They had returned from church and were having lunch on the beachfront. On the beachfront there is a deck with a shed where they were having lunch. It was raining at the time.*
- (vi) Upon seeing him the witness had called out to Brad. Brad was wearing only a shirt and shorts at the time and his clothes were wet. Brad had told him that he needed a Policeman. The witness had told him don't worry that the witness is there for him and asked him why he wants a Policeman. Brad had said that he was from Turtle Island and that they had a fight. He said he came by kayak.*
- (vii) The witness said that on hearing that Brad was from Turtle Island, he was shocked and surprised since guests from Turtle Island are millionaires and well secured. If they come to the village they should be accompanied by someone from the Resort.*
- (viii) The witness had told Brad that he cannot call for a Policeman and that he has to refer him back to the island otherwise they will be searching for him.*
- (ix) Thereafter, the witness had called the staff at Turtle Island Resort and told them that one of their guest is in his village. They had told him to hold him there and that they were coming to get him.*
- (x) The witness said that about 10 to 20 minutes later three Policemen had come by boat. The boatman was a staff at Turtle Island Resort. The Police Officer came and said they are taking Brad back to the island. The Police had then taken Brad back to the island.*
- (xi) The witness testified that when he saw Brad, he had appeared normal.*
- (xii) The witness failed to identify the accused in Court.*

- (xiii) *In cross-examination, the witness was asked whether Brad told him that his kayak had capsized. The witness said no. The witness was asked whether Brad had told him that he wanted to contact the Dockman or a Police Officer. The witness said that Brad had only told him that he wanted to contact a Police Officer.*
- (xiv) *It was suggested to the witness that Brad had only told him that he had an argument and not a fight. The witness categorically stated that Brad had told him that they had a fight.*
- (xv) *The witness was asked whether the Police Officers had arrested him or searched him on the village. The witness said no, they had only taken him from the village. They took him calmly and in a good manner.*

**[31] Evidence of Bale Saukuru**

- (i) *The witness testified that she is Resort Manager at Turtle Island Resort. She is 36 years of age. She resides on the island. She has been working at the Turtle Island Resort for the past 10 years. She has been the Resort Manager at Turtle Island Resort since September 2022. Prior to that, she worked as an Executive Assistant to the owner.*
- (ii) *The witness testified that the Turtle Island is located right in the middle of the Yasawas – they are half way. The Turtle Island Resort is the 5-Star Luxury Resort in Fiji. Usually the Resort is only available for couples. However, two times in a year they do family time – from June to July and December to January. Rest of the time the Resort is only for adults.*
- (iii) *The witness said that from the mainland you can get to Turtle Island by seaplane or by boat/ferry. By seaplane it would take 30 to 35 minutes, by boat/ferry (South Sea Cruises) it would take approximately 5 hours. From Wailoaloa it is 2 hours by direct boat.*
- (iv) *The Turtle Island Resort is a 500 acres of privately owned land. The staff who work there live on the island. The Resort comprises of 14 bures for occupancy and one day room. The total staff is about 110 on average. It is a family owned business.*
- (v) *Turtle Island is surrounded by seven villages and two settlements. The closest ones are Yaqeta, Matacawalevu and Vuaki. From Turtle Island to Matacawalevu Village it would take 10 minutes by fiberglass boat. She said that people can easily travel by kayak from Turtle Island to Matacawalevu Village.*
- (vi) *The witness explained the category of bures that the Resort has and the prices per night for the bures. Bure 15 was a Grand Bure (the second category).*
- (vii) *The witness testified to the events which took place on 9 July 2022. She was on duty at the Resort that day. At the time she was working in the capacity of Executive Assistant to the owner.*
- (viii) *The witness said that on 9 July 2022, she had received the news from the owner (who was in the US on holiday at the time) of an incident – there was*

*an incident of death. She had been instructed to go and check on the kayaks. The witness said that in total the Resort had 10 kayaks (4 at the Kid's Camp and 6 at the main adult area). Since this was family time she had told her boss that she will be able to only confirm early in the morning next day (Sunday) as to whether any kayaks were missing.*

- (ix) The witness testified that on the next day when she physically counted the kayaks she noticed one missing from the Kid's Camp. It was a standard kayak, blue in colour. At the time the witness did not know as to where the missing kayak was.*
- (x) However, subsequently they had got a call from the Matacawalevu villagers that the kayak was there and for a team to come and get it. Thereafter, a team was sent to recover the kayak. The witness said that the General Manager took over matters from there.*
- (xi) In cross-examination the witness said that all bures have safes in it. She confirmed that even Bure 15 had a safe. The witness was shown Photograph 62 in the Photographic Booklet PE2. She pointed to where the safe is located in the said photograph.*

**[32] Evidence of Tomasi Mawi**

- (i) The witness testified that he is working in House Keeping at the Turtle Island Resort. He is 53 years of age. He resides at Drasa, Lautoka. He has been working at the Turtle Island Resort for the past 20 years.*
- (ii) As a House Keeper, his duties are to clean the guest bures and to organize the daily activities at the Resort. His usual working hours starts at 6.30 a.m. It is usually an 8 hour shift.*
- (iii) The witness testified to the events which took place in July 2022. On 7 July 2022, he was on duty. He had commenced work at 6.30 a.m. He had serviced Bure Nos. 14 and 15. After the early morning briefing, he had been raking the compound of the said two bures.*
- (iv) The witness said that Bradley and Christe, who were from America, came to the Resort that day. They had come to spend their honeymoon at the Resort. He had met them on their arrival at the island on 7 July 2022. He had greeted them and explained who he was. The couple had been really happy when they arrived on the island. The couple had been occupying Bure 15.*
- (v) The witness identified Bradley as the accused in the dock.*
- (vi) The witness said that he had seen the couple the night they checked in. He had seen them at the place where the grog session is held. The couple had been very happy.*
- (vii) The next day (8 July 2022) he had seen the couple early in the morning. They were on their way to the beach. They seemed very happy. He had met them again on the same day. He had gone and dropped them at the beach since they were going on a picnic. They had returned before sunset.*

- (viii) On the evening of 8 July 2022, he had seen both Brad and Christe again. They were where the grog session was held. He testified that he did not see them leaving for their room that evening.*
- (ix) The witness testified that Bure 15 has just one entry/exit door. You need a key to enter/access the bure. The bure has two keys. One key is with the guests and the other key is with the House Keeping. In this case the witness confirmed that the other key to Bure 15 was with him.*
- (x) On 9 July 2022, the witness said that he had started work at 6.30 a.m. There was a 'Do Not Disturb' signboard just outside of Bure 15. The witness explained that the signboard is made out of coconut timber and underneath it is written in Fijian 'Loko tani' which translates to 'Do Not Disturb'. He said whenever guests check in to the Resort, during the orientation it is explained to them as to what this signboard depicts.*
- (xi) Since he saw the signboard, he had continued his work outside of the bure and not entered the bure. He had checked in the morning and again at lunch time and seen the signboard present just outside Bure 15.*
- (xii) The witness said that the couple in Bure 14 had gone on a picnic that day. On his way back he had met the Guest Service Manager, Bill. Bill had informed him to go and check on the guests occupying Bure 15 since they did not turn up at breakfast and even at lunch that day.*
- (xiii) Accordingly, the witness went to check on Bure 15. The sign was still outside the door. He had called out the names of Christe and Brad from outside the bure. However, there was no response. He had then called on the Dock man- it is like a switchboard or operating room where all the incoming and outgoing phone calls are made through. The Dock man had no information about the couple.*
- (xiv) The witness said: "Then I felt a bit worried – whilst keeping on calling them – I then realized there is a problem. Guests normally are not like that. Once or twice when we call they respond."*
- (xv) The witness said that he had then taken his key and opened the door to Bure 15. When he opened the door and looked inside, he could not see anyone. First thing he did was to draw the curtains open. He had then collected the dirty towels and put it outside. These were the used towels. The witness then went besides the bed. On both sides of the bed, there were clothes. So he took the clothes and folded them nicely and placed them on the couch besides the bed. He had then started cleaning the bedsheets. Whilst he was doing this, he looked at the louvres of the washroom. When he looked through the louvres, he could see blood stains on the wall. When he saw the blood stains he had felt scared.*
- (xvi) The witness had then walked to the washroom. The door was closed. He had then pushed the washroom door open just to peep inside. At that stage he had seen Christe sitting beside the toilet seat leaning on the toilet. All her hair*



*was falling down covering her face. The witness demonstrated how the deceased had been placed at the time.*

- (xvii) The witness said that on seeing this, he felt really scared and traumatized. He left everything and came out of the room to look for the Manager. He said the time was around 1.00 p.m. He said Bradley was not to be seen at the time. Bure 15 is the last bure in the Resort. From Bure 15 he had run towards the Manager's office. He had spoken to the Manager (Rob). He had told him what he had seen at Bure 15. Thereafter, the Manager and he had gone back to Bure 15. He had stayed outside while the Manager had gone inside the bure to check.*
- (xviii) The Manager had asked him whether he had seen Bradley. The witness had said that he had not seen him. The Manager had then told the witness to go and rest. He did not return to Bure 15 again.*
- (xix) The witness was shown Photographic Booklet (Prosecution Exhibit PE2). He confirmed that Photo Nos. 2, 4 and 5 shows the overall view of the frontage of Bure 15. Photo No. 5 also depicts the 'Do Not Disturb' signboard. The witness said that when he saw the signboard in the morning it was positioned right in front of the front door to Bure 15.*
- (xx) Photos 6, 7, 8 and 9 of the Photographic Booklet showed the louvres of the washroom. The witness was shown Photo 16 of the Photographic Booklet. He confirmed that that was the exact position the deceased was at the time he first saw her on opening the washroom door.*
- (xxi) The witness said that the closest bure to Bure 15 is Bure 14. The distance between the two bures is about 15 metres.*
- (xxii) The witness was cross-examined by the defence.*
- (xxx) The Defence highlighted the following omission and inconsistencies in the evidence given by the witness vis a vis his statement made to the Police.*

- i. In his testimony in Court the witness said that he called out 'bula, bula' and called out Christie and Brad's name and then went inside the bure.*

*However, this is not found in his statement.*

- ii. In his testimony in Court he stated that the 'Laka Tani' or 'Do Not Disturb' signboard was just outside of Bure 15.*

*However, in his statement made to the Police it is stated that the 'Do Not Disturb' signboard was still hung on the door.*

- iii. In his testimony in Court he stated that when he saw Christie she was sitting beside the toilet seat leaning on the toilet.*

*However, in his statement made to the Police it is stated that he saw Christie lying on the floor on her side.*

*(xxiii) The witness testified that he had given his statement to the Police Officer in the iTaukei. However, the Police Officer had written down his statement in English.*

**[33] Evidence of Mark Andrew Breasley**

- (i) The witness testified via skype from New Castle, Australia. He testified from his boardroom in his office.*
- (ii) The witness said that he is 54 years of age. He is residing at Mary Ville, New Castle, Australia. He is a Mechanical Engineer by occupation and Director of his own company.*
- (iii) The witness said that he had first come to Turtle Island Resort in 1993 with his wife for his honeymoon. That was more than 30 years ago. Thereafter, he visits Turtle Island every second year with his wife and three children.*
- (iv) In 2022, he had returned to the Turtle Island Resort with his family. They had arrived around 5 July 2022 and were housed at Bure 14.*
- (v) Bure 15 was occupied by Christie and Brod. He had met them on Friday night. The witness explained that on the Turtle Island you have a cocktail party in the evening. When he had met the couple, they looked okay. They looked a normal couple. He did not notice anything different.*
- (vi) The witness said that he and his wife had left the party around 10.30 p.m. His children did not return with him and his wife at that time (they remained at the cocktail party). Around 12.30 a.m. he had heard a fair bit of noise coming along the pathway. He had heard two persons talking and going past their bure. They had assumed that it was Brad and Christie as they were occupying the last bure. Bure 15 is the last bure in the island. To go to Bure 15 one has to pass Bure 14.*
- (vii) The witness testified that around 12.40 a.m. they had heard some noises coming from the Bure 15. Some banging noise. Then some time later he heard a large scream and then nothing. The witness had gone outside to check whether there was anyone outside but there was no one at the time.*
- (viii) The witness said that the banging sound was heard about 10 or 15 minutes after he heard Brad and Christie walking towards their bure.*
- (ix) When asked how long after the banging did he hear the loud scream, the witness said that the banging and the loud scream took place over a period of around 10 to 12 minutes overall. He could not say whether the scream was from a male or a female person.*
- (x) When asked to explain more about the loud scream, the witness said that it was like falling and hitting onto something. It was a sharp scream. It was a loud scream that did not go on for long. Then there was nothing (no sound).*
- (xi) The witness said that after that night, he had not met the couple again.*

**[34] Evidence of Dr. Carolyn Shivangani Murti**

- (i) The Doctor testified that she is currently based at the Punjas Health Centre, Lautoka. She is 32 years of age.*
- (ii) She had obtained her MBBS Degree from the Latin American School of Medicine in Cuba in 2018. After completing her Degree she had undergone 2 years internship in Fiji – the first year at CWM Hospital and the second year at Lautoka Hospital. She completed her internship at the end of 2020. Thus she has been a Medical Practitioner for the past 4 years.*
- (iii) The witness said that in October 2021 she was posted as a Medical Officer at the Nacula Health Centre in Yasawa. While at the Nacula Health Centre she functioned as the Area Medical Officer. Since April 2023, she has been serving at the Punjas Health Centre.*
- (iv) The witness said that on 9 July 2022, she was serving at the Nacula Health Centre. Around 2.00 in the afternoon she had received an emergency call from one of the Managers of the Turtle Island Resort saying that there was a death in the Resort and for her to come and certify the death. She was told that it seemed to be a suspicious death.*
- (v) Thereafter, the witness had contacted Police Officer Sulueti, who was the Officer-in-Charge of the Nacula Police Station. PC Ame of the Nacula Police Station had been assigned to accompany the witness.*
- (vi) Accordingly, the witness, PC Ame and one of the nurses from the Nacula Health Centre had proceeded to the Turtle Island Resort. They had reached Turtle Island within an hour of receiving the call. They had travelled by fiber boat (the boat ride took around 20 minutes).*
- (vii) On arrival at the Turtle Island, they were met by the Managers and then taken to the villa (bure). The witness said that she remembers it was Bure 15. On arrival at Bure 15 they had worn their Personal Protection Equipment (PPE) and gone inside the bure – the witness, PC Ame and the nurse.*
- (viii) Since they were informed that the deceased's body was found in the toilet, they had made their way to the toilet. The witness said that she saw the deceased in a sitting position beside the toilet. Her neck was bent (forward) and her upper limbs (hands) were on top of the toilet pan. Her lower limbs (legs) were in a flexed position laterally. Her face was obscured by her hair (she was not able to see the face of the deceased). There were also blood stains all over the body and also pieces of glass. The cistern was also broken and part of her arm was caught/touching the cistern. The witness said that part of her arm was caught in the cistern.*
- (ix) The witness testified that she checked for carotid pulse (anterior neck) of the deceased. She found no pulse, no breathing and no signs of life on the deceased.*

- (x) *She had informed the Police Officer that it seemed like a suspicious death and that they should not touch or move anything. She had advised the Police to call the forensic team.*
- (xi) *The witness was shown Photo 26 in the Photographic Booklet (Prosecution Exhibit PE2). She confirmed that that is the position in which the deceased was found at the time she had seen the deceased on 9 July 2022.*
- (xii) *The witness was also shown Photo 35 in the Photographic Booklet. The photo shows the cistern being broken and blood spots on the wall. The witness said that it looked like blood spots on the wall, since there was blood on the deceased's body as well.*
- (xiii) *The witness said that after certifying the death, she had spent about 5 minutes at the bure. Thereafter, she had returned to the Nacula Health Centre.*
- (xiv) *In cross-examination the witness said that she would have reached the Turtle Island Resort around 3.30 p.m. that day.*
- (xv) *The witness said that the deceased's body was cold and neck was rigid. Rigor Mortis had already set in. So any sort of resuscitation of the deceased would not have helped at the time.*
- (xvi) *In relation to Photograph 26 in the Photographic Booklet, the doctor explained how she was able to check the pulse of the deceased, although she could not move the deceased's head. She explained that she could reach the location of the carotid pulse with her fingers.*
- (xvii) *It was suggested to the witness whether it was possible for a person to be only fainting and still be alive. The doctor said that in this case, it was clear cut that the deceased was no longer alive.*
- (xviii) *The doctor was asked as to how she came to the conclusion that it was a suspicious death. The doctor testified that the way the deceased's body found covered in blood, with a broken cistern and blood spots on the posterior wall and broken glass, she came to the conclusion that it was a suspicious death.*
- (xix) *As to the colour of the deceased's blood on her body, the doctor said that the blood was red in colour and it was dried blood/dried blood stains.*
- (xx) *The doctor said that she also conducted the Nasal Pharyngeal Swab (nps) or Covid test on the deceased following the Covid protocols.*
- (xxi) *The doctor further testified that she had conducted the medical examination of Bradley Dawson, on 11 July 2022, at 9.45 a.m., at the Nacula Health Centre. The Medical Examination Report of Bradley Dawson was tendered to Court as Defence Exhibit DE1.*
- (xxii) *As per the history as related by the person to be examined, as found in column D10 of the report, it is stated that he was a 38 year old male, US citizen, brought in by the Police for medical examination.*
- (xxiii) *As to the initial impression of the person to be examined, as found in column D11 of the report, it is stated that he was awake, alert and oriented.*
- (xxiv) *The Doctor testified as to the specific medical findings as found in column D12. Therein she has noted the following injuries:*

- *Right forearm: medial border – severe bruises noted.*
  - *Dorsal aspect of right elbow – bruises noted. Abrasions also noted – linear abrasions approximately 5 cm x 2 cm.*
  - *Left mid forearm: Small bruises approximately 1 cm x 2 cm in diameter horizontally.*
  - *Dorsal aspect of left elbow – bruises noted approximately 2 cm in length.*
  - *Abdomen – old surgical scar located on mid umbilical extending vertically from epigastric region to intra-umbilical region.*
  - *Bilateral legs (both legs): below knee – small multiple bruises noted. Right knee - two abrasions noted approximately 3 cm x 2 cm.*
- (xxv) *The doctor testified that she has not noted the age of the above injuries. She said the age of the injuries depends on the colour of the injuries – in respect of both bruises and contusions. If it's a fresh injury it would be bright red or red in colour. With time the colour of injury changes and then disappears.*
- (xxvi) *The doctor explained as to the probable cause for the above injuries. She said if the person had fallen down the said injuries could have been caused.*
- (xxvii) *As to her professional opinion (column D14), the doctor has noted multiple minor bruises on lower limb and minor bruises on upper extremities (entire length including shoulder, arms, forearms and hands).*
- (xxviii) *As per her summary and conclusions, the doctor concluded that minor external injuries – bruises (noted). The patient was physically fit.*
- (xxix) *The doctor had concluded her medical examination at 10.00 a.m. on 11 July 2022.*
- (xxx) *The doctor confirmed that she did not see or note any injuries on the accused's palm or wrist.*

**[35] Evidence of Corporal 4949 Pita Davuigalita Varomusu**

- (i) *The witness testified that he is 36 years of age and currently attached to the Crime Scene Investigation (CSI) Unit at the Lautoka Police Station. He has been serving in the Fiji Police Force for the past 11 years. He is currently Acting Sergeant.*
- (ii) *The witness said that he is a certified Crime Scene Examiner. His duties are to basically collate together evidence from the crime scene and tender it to Court. Prior to becoming a Crime Scene Examiner, he worked as a Photographer of the CSI Unit.*
- (iii) *The witness testified that in the year 2022 he was stationed at the CSI Unit of the Lautoka Police Station. He held the rank of Corporal at the time. In this case he was the Crime Scene Examiner. He was the team leader for examination on that particular day.*
- (iv) *The witness testified as to how he had been informed about this case. Around 7.00 in the morning on 10 July 2020 (Sunday), his team had left for Turtle Island. Sergeant Josateki was the Sketcher at the crime scene, while WDC*

*3202 Ilisapeci was the Crime Scene Photographer. They had reached Turtle Island after 9.00 in the morning.*

- (v) On arrival at Turtle Island, they had waited for the Resort Manager who had escorted them to the crime scene. It was Bure 15. At the time, a Police Officer from the Nacula Police Post (PC Ame) was already there guarding the scene.*
- (vi) The CSI Team comprising the witness, Sergeant Josateki and WDC Ilisapeci had changed their uniform/kit and proceeded with the examination. They had entered the Bure 15. Only the three of them had entered the crime scene at the time.*
- (vii) Upon entering the bure, the witness said that he took a video shot of the whole crime scene – this was before the examination was done. The video recording commenced from outside the bure and continued inside. He had carried out the video recording using a video recorder (the witness could not recall the make of the recorder). The duration of the video was over 7 minutes (almost 8 minutes). The video was downloaded at the CSI office and copied/burnt on a DVD by the witness.*
- (viii) The video footage of the crime scene (DVD) was tendered to Court as Prosecution Exhibit PE6. The full video recording was played in Court during the hearing.*
- (ix) The witness testified to the further crime scene investigations carried out by Sergeant Josateki, WDC Ilisapeci and himself that day. The crime scene was first photographed by WDC Ilisapeci (without any numbers being placed). As per his findings, CSI numbers were placed at the crime scene. Thereafter, the crime scene was photographed again with the CSI numbers in place.*
- (x) Sergeant Josateki had carried out the sketching at the crime scene.*
- (xi) The witness testified that the deceased's body was found in the toilet of Bure 15. After photographing of the relevant crime scene, the deceased's body was removed from the toilet and put into a body bag and transported by aircraft to the Lautoka Hospital Morgue. This would have taken place around 1.00 p.m. that day.*
- (xii) The CSI Team had continued crime scene investigations for about 4 hours on 10 July 2022 and then suspended work for the day. The investigations had continued on 11 July 2022 (which is a Monday).*
- (xiii) The witness was asked whether any of the samples or items found at the crime scene, fingerprints or the blood like samples were sent for testing at the labs. The witness said that all the exhibits collected were handed over to the Investigating Officer in this case and sent to the Biology Lab in Suva on 16 July 2022. However, he was not aware of the results. He stated further that some DNA samples were collected from the crime scene and also from the deceased's body during the autopsy and post mortem examination. However, no DNA samples had been taken from the accused person for the purpose of comparison. The witness said that the Investigating Officer in this case was Detective Corporal Netava.*

- (xiv) *The witness said that during the investigations the deceased's passport was also found in the bure. The accused's passport was not found at the time.*
- (xv) *The witness testified that the post mortem examination of the deceased had been conducted at the Lautoka Hospital Mortuary on 12 July 2022. He was present during the said examination, together with WDC Ilisapeci and the Investigation Officer in the case Detective Corporal Netava.*
- (xvi) *The witness was cross examined by the defence and the defence version of events were put to him.*

**[36] Evidence of Dr. Avikali Mate**

- (i) *The Doctor testified that she is 39 years of age and serving as a Senior Medical Officer and Pathology Registrar at the CWM Hospital, Pathology Department. She has been serving at the Pathology Department of CWM Hospital since 27 December 2022. Currently she is employed by the Ministry of Health and Medical Services.*
- (ii) *Prior to this, the doctor was employed by the Fiji Police Force. She was Senior Pathology Registrar at the Forensic Pathology Unit. She served in that capacity from 10 January 2012 to 26 December 2022 (a period of 10 years).*
- (iii) *The witness testified that she graduated with a Bachelor in Medicine and Bachelor in Surgery (MBBS) Degree from the Fiji School of Medicine in 2009. In 2014, she obtained a Post-Graduate Diploma in Pathology from the Fiji National University, College of Medicine, Nursing and Health Sciences.*
- (iv) *The witness said that a Forensic Pathology Registrar conducts post mortem examinations on deceased individuals to try and ascertain the cause of death. During her entire career she has conducted about 1,300 post mortem examinations. The findings of the examination are recorded in the form of a report. She has given evidence in Court in over 100 cases.*
- (v) *The witness recalls conducting the post mortem examination on the deceased Christe Jioo Chen on 12 July 2022, at the Lautoka Hospital mortuary. The examination had commenced at 11.00 hours. Her findings have been recorded in the form of a Post Mortem Examination Report.*
- (vi) *The Post Mortem Examination Report of the deceased, was tendered to Court as Prosecution Exhibit PE7.*
- (vii) *The body of the deceased was identified by one Jeremy R. Clark, Police Special Agent, USA. The observers present at the examination was Detective Sergeant 4943 Netava, who was the Investigating Officer in this case and who had ordered the conducting of the examination. The deceased was 36 years of age at the time.*

- (viii) *The estimated time of death has been given as approximately 13.00 hours, on 9 July 2022. This is the estimated time of death according to witnesses.*
- (ix) *The doctor explained in detail the external examination she conducted on the deceased and the injuries she noted on the face, right upper limb, back and left lower limb of the deceased.*

*The doctor elaborated on the injuries as follows:*

*On the face*

- *A laceration was noted just above the left eyebrow extending downwards along the inner margin or edge of the left eyebrow measuring about 55mm x 40mm.*
- *Swelling and bruising noted over and around both eyes or peri-orbital areas predominant on the left side with bruising extending downwards over the left cheek or maxillary area.*
- *Irregular bruising and swelling of the lips predominant over the lower lips. Reflection of the lips upwards and downwards showed irregular bruising and small lacerations on the inner parts of the upper and lower lips.*

*On right upper limb*

- *Linear, obliquely placed bruise and patterned bruise with round edges noted over the medial or inner part of the right upper arm.*
- *Multiple linear and small superficial incised wounds of varying sizes with surrounding bruises noted over the lateral and posterior aspect of the right upper arm.*

*Back*

- *Large gaping incised wound exposing the underlying subcutaneous tissue with an overlying skin flap and measuring about 160mm x 60mm noted over the lateral aspect of the right side of the upper back. Further examination showed the depth of distal or lower end of the wound reaching the subcutaneous tissue with and the proximal or upper end of the wound penetrating and tapering into the muscle structures.*
- *Multiple superficial incised wounds of varying sizes noted adjacent and below the large gaping incised wound on the lateral aspect of the right upper back.*
- *Irregular bruises of varying sizes noted over the lower back along the midline and left side with a laceration measuring about 10mm x 4mm noted within the bruise along the midline of the lower back.*



Left lower limb

- Irregular bruise noted over the lateral aspect of the left thigh or upper leg measuring about 45mm x 30mm.
- (x) The doctor then explained in detail the internal examination she had conducted on the deceased body and in particular the internal injuries corresponding to the above external injuries.
- (xi) In her opinion the doctor testified to the cause of death as follows:
  - (a) Disease or condition directly related leading to death was severe cerebral oedema with subarachnoid haemorrhage and traumatic brain injury;
  - (b) The antecedent cause of death was severe traumatic head injury.
- (xii) The doctor explained that death was caused to the deceased due to the blunt force trauma to the head suffered externally which had led to cause the severe traumatic head injury, which in turn led to swelling of the brain and bleeding underneath the second covering of the brain.
- (xiii) The doctor has noted multiple traumatic injuries – incise wounds to the back plus the right arm as the other significant conditions contributing to the death.
- (xiv) During her testimony, the doctor was shown the Photographic Booklet of the crime scene (Prosecution Exhibit PE2) and Photographic Booklet Post Mortem (Prosecution Exhibit PE3).
- (xv) The doctor testified that based on the findings of the post mortem examination, the crime scene pictures as shown in the Photographic Booklets and the history, the manner of death when considered holistically was homicidal.
- (xvi) The doctor said that the estimated time of death (approximately 13.00 hours, on 9 July 2022) was provided to her by the Police investigators. The doctor said that she could not specify with absolute certainty the actual time of death of the deceased. The reasons for this were two fold – the first reason was that the post mortem examination was conducted more than 48 hours after the supposed time of death. The second reason was that the decomposition process had already started. Due to these factors, it is difficult to give a closer range or the time of death.

**[37] Evidence of Assistant Superintendent of Police (ASP) Ilario Belo**

- (i) The witness testified that he is 49 years of age and currently serving at the Lautoka Police Station under the CID. He has been serving in the Fiji Police Force for the past 27 years.

- (ii) *In 2022 he was stationed at the Lautoka Police Station. He was acting ASP at the time. At the time he was the head of the CID at Lautoka Police Station, supervising all the investigations.*
- (iii) *The witness testified to the events which transpired on 9 July 2022. He said that on 9 July 2022, the Police had received a report from Turtle Island Resort that a tourist woman was lying inside a room and that her husband was found missing. He had received this call around 2.00 p.m.*
- (iv) *On receipt of this report, he had tried to arrange for a team to go to Turtle Island the same day and preserve the scene of crime. However, due to adverse weather conditions, they had decided to go to Turtle Island the next day.*
- (v) *Accordingly, around 5.00 in the morning on 10 of July 2022, the witness along with the Police team had reported for duty. The team had been headed by Divisional Crime Officer Western Division, SSP Iakobo Waiseva and comprised the witness, Inspector Silio, Sergeant Netava, Sergeant Koli, DC Peni, Corporal Semisi, PC Joape and the scene of crime officers – Sergeant Josateki, Corporal Pita, WDC Ilisapeci.*
- (vi) *The witness had proceeded to Turtle Island in a small fibre boat along with Sergeant Josateki, Corporal Pita, WDC Ilisapeci and DC Peni in a Nacula Police Past boat captained by Corporal Semisi. The witness had led the advance team. They had left from the Lautoka Wharf around 7.00 in the morning. The rest of the team had arrived later in another Police boat.*
- (vii) *The witness testified that it had taken over one hour to reach Turtle Island, since it was windy and the sea was rough while they were travelling. They had reached Turtle Island after 8.30 in the morning and had been met on arrival by the Manager of the Turtle Island Resort.*
- (viii) *The Manager of the Resort had transported the team (by buggy/cart) straight to Bure No. 15 which was the alleged scene of the crime (where the deceased's body had been found). At the time PC Ame from the Nacula Police Post was guarding the scene. The witness said that on reaching the said place, the scene of crime officers had taken over the scene and cordoned off the area.*
- (ix) *Upon further inquiries, it was found that one of the kayaks belonging to the Hotel was missing. The witness testified that the kayaks were kept about 20 metres away from Bure No. 15.*
- (x) *The witness said that he together with DC Atama and Corporal Semisi had begun searching the Coast of Turtle Island for the missing kayak in a fibreglass boat belonging to the Resort. While they were searching the coast, they had received a call from the Resort informing them that an European man was at Matacawalevu Village in the Yasawas. This village is in Matacawalevu Island – opposite the Turtle Island Resort.*
- (xi) *At the time the call was received, the witness and the other two officers were close to Matacawalevu Village. They had then proceeded to the village. At the village, they were taken to the dock where the accused was sitting with a group of iTaukei families, including the owner of the house Manoa (Ratulele).*

- (xii) *The witness testified that he had then introduced himself and his team to the accused and the accused had introduced himself as Brad. The witness had told the accused the reason for their presence – that they were looking for a kayak and a tourist who were missing from the Turtle Island Resort. The accused had confirmed that he was the person that brought the kayak and was the same tourist that was missing from the Turtle Island Resort.*
- (xiii) *ASP Belo said that at the time the accused had bruises on his leg. At the time he was wearing a round neck shirt and a ¾ trousers. His clothes were all wet. The witness had told the accused that he will take care of him. The accused had co-operated and then walked towards the boat with the witness.*
- (xiv) *Prior to getting on to the boat, the witness had gone on to search the accused for his identification. Upon searching the accused, he found a black wallet containing the accused's passport, assorted cards belonging to the accused and the deceased and some cash (US\$1,093.00). The witness had taken the said items into his custody. These items were in the pocket of the accused's ¾ trousers. It was wrapped in a small plastic bag.*
- (xv) *The witness had made a note of these items in a Search List. He had personally prepared the Search List in relation to the items taken into custody by him and signed the list. The accused too had signed the Search List. The Search List was tendered to Court as Prosecution Exhibit PE8.*
- (xvi) *The prosecution tendered to Court the following items that were taken in to custody from the accused:*

*United States of America Passport of the accused—Prosecution Exhibit PE9*

*Global Entry Card of the accused-Prosecution Exhibit PE10*

*Freedom Visa Card of the accused- Prosecution Exhibit PE11*

*Custom Cash Master Card of the accused- Prosecution Exhibit PE12*

*Discover Card of the accused- Prosecution Exhibit PE13*

*Tennessee Driver's Licence of the accused- Prosecution Exhibit PE14*

*Tennessee Driver's Licence of the deceased- Prosecution Exhibit PE15*

*United Healthcare Card of the accused- Prosecution Exhibit PE16*

*Discover Cash Back Debit Card of the accused- Prosecution Exhibit PE17*

*United Explorer MileagePlus Visa Card of the deceased- Prosecution Exhibit PE18*

*Covid 19 Vaccination Card of the deceased- Prosecution Exhibit PE19*

*Capital One-Savor One-Master Card of the accused- Prosecution Exhibit PE20*

*HID Prox Card II- Prosecution Exhibit PE21*

*Black wallet- Prosecution Exhibit PE22*

*US Dollars 1093.00 in notes and coins- Prosecution Exhibit PE23*

*Small zip lock plastic bag- Prosecution Exhibit PE24*

- (xvii) The accused had taken them to where he said he had left the kayak – just opposite the Turtle Island Resort. They had then looked for the missing kayak but could not locate it. The place the accused said he had left the kayak was about 200 - 300 metres from the deck on the same Matakawalevu Island – on the same coastline. It was a rocky part of the island. The witness said that his colleagues DC Atama and Corporal Semisi had gone to search for the kayak but with no success.*
- (xviii) Thereafter, the witness had travelled back to Turtle Island Resort with the accused and DC Atama and PC Semisi in the same fibre glass boat.*
- (xix) The witness testified that at this stage the accused started admitting that he had an argument with his wife and that is why he left the night before in the kayak and he was also thinking of his wife as the argument was another type of argument and it got heated up before he punched her in the toilet.*
- (xx) The witness said that at this stage he had stopped the accused and cautioned him (in terms of Judge's Rule No. 2), stating that he is not obliged to say anything unless he wishes to do so, but whatever he says will be taken down in writing and given in evidence. The witness testified that he had further explained to the accused in simple terms that whatever he says can be used against him in Court. He had then arrested the accused informing him that he was arresting him for the death of his wife. The accused had been arrested inside of the boat.*
- (xxi) The witness said that the accused had continued making verbal admissions. The accused had kept on saying that he was really thinking of his wife because of the argument they had the night before. The accused had stated that the deceased had spoken about divorce etc. that made him snap. They kept arguing until they reached the toilet where he punched her and the deceased fell back and hit the wall and the cistern. The accused had said the deceased fell between the cistern and the wall after he had punched her.*
- (xxii) The accused had then said that he left the bure, went straight to where the kayaks were kept and boarded one of the kayaks and went straight to the other side of the island.*
- (xxiii) The witness said that the accused had been very remorseful of what happened to the wife the night before. He had kept repeating that he had snapped and*

*that he was angry. He said that he saw the blood and got afraid and that is why he left in a kayak.*

*(xxiv) The witness said that on first meeting the accused at Matacawalevu Village, the accused had asked him how his wife was.*

*(xxv) When they had returned back to Turtle Island it was getting dark – so it could have been after 6.00 p.m.*

*(xxvi) On arrival at Turtle Island, the accused had been handed over to Sergeant Koli along with the property recovered from him. The accused was escorted to a dormitory where he was kept to rest and access the phone. These dormitories were used by the staff of the Resort for their accommodation. The accused had spent the night in the said dormitory.*

*(xxvii) The witness testified that he had not met the accused again that night. However, he had seen the accused the following morning (on 11 July 2022). DC Atama was detailed to be the Escorting Officer for the accused, while Sergeant Koli was to be the Interviewing Officer and Inspector Silio was assigned to witness the interview.*

*(xxviii) The witness said that on 11 July 2022, the accused had been escorted to the mainland and taken to the Lautoka Police Station by the caution interviewing officers.*

*(xxix) ASP Belo identified the accused in the dock as Bradley Robert Dawson, the person he had formally arrested.*

*(xxx) The witness was cross-examined at length by the defence and the defence version of the events were suggested to him.*

*(xxxi) Although in evidence in chief, the witness had said that the accused told him that he had punched his wife only once, in cross-examination the witness said that the accused had told him that he punched his wife a few times as recorded in his statement. The witness said that he refreshed his memory after having read through his statement.*

**[38]** At the end of the prosecution case Court decided to call for the defence. The accused was then explained his legal rights. I explained to him that he could address Court by himself or his Counsel. He could also give sworn evidence from the witness box and/or call witnesses on his behalf. He could even remain silent. He was given these options as those were his legal rights. I explained to the accused that he need not prove anything. The burden of proving his guilt rests entirely on the prosecution at all times.

**[39]** The accused exercised his right to remain silent. He also did not wish to call any witness in support of his case.

## Analysis

- [40] The prosecution in support of their case, called 14 witnesses- 5 staff members of the Turtle Island Resort; 2 other civilian witnesses; the Forensic Pathologist; the Medical Officer who first examined the deceased and pronounced her death and 5 Police Officers, who were part of the investigating team.
- [41] The accused exercised his right to remain silent.
- [42] The burden of proving each ingredient of the charge of Murder rests entirely and exclusively on the prosecution and the burden of proof is beyond a reasonable doubt. Therefore, it is incumbent on the prosecution to prove the elements of the charge beyond reasonable doubt. I have made reference to the elements that the prosecution has to prove in respect the charge of Murder, at paragraph 7 of this judgment. I have further elaborated on those elements in respect of the charge.
- [43] Accordingly, in this case, the prosecution has to prove beyond a reasonable doubt that the accused, Bradley Robert Dawson; on 9 July 2022; at Turtle Island Resort; engaged in a conduct; and the said conduct caused the death of the deceased, Christe Jiao Chen; and that the accused intended to cause the death of the deceased or the accused was reckless as to causing the death of the deceased by his conduct.
- [44] As I have stated before, in this case it has been agreed by the prosecution and the defence to treat certain facts as admitted facts without placing necessary evidence to prove them. Therefore, those facts are considered as proved beyond reasonable doubt.
- [45] Based on the said admitted facts it is admitted that the accused and the deceased arrived into Fiji from the USA on 7 July 2022, at around 5.00 a.m. The purpose for their visit to Fiji was to celebrate their holiday honeymoon at Turtle Island Resort. The accused and the deceased were transferred to the Turtle Island Resort on 7 July 2022, via boat from Lautoka Wharf and were occupying Bure No. 15 at the Turtle Island Resort. It is further admitted that on 10 July 2022, the accused was arrested at Matacawalevu and several items were found in his possession.
- [46] I have summarized the evidence of all witnesses led during the trial.

[47] The prosecution is relying on circumstantial evidence to establish its case. In a criminal case, the evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as the testimony of an eye witness. Circumstantial evidence is proof of one or more facts from which you could find another fact. Circumstantial evidence is evidence of facts that the Court can draw conclusions or inferences. However, these conclusions or inferences must be logical and reasonable.

[48] With regard to circumstantial evidence, the Fiji Supreme Court in (*Josateki*) *Lulu v The State* [2017] FJSC 19; CAV0035.2016 (21 July 2017); held as follows:

*[15] The direction given on circumstantial evidence by the trial judge in his summing up was as follows:*

*“In circumstantial evidence, you are asked to piece the story together from witnesses who did not actually see the crime committed, but give evidence of other circumstances and events, that may bring you to a sufficiently certain conclusion regarding the commission of the alleged crime.*

*In drawing that inference, you must make sure that it is the only inference that could be drawn, and no other inferences ... could have been possibly drawn from the said circumstances. That should also be the inescapable inference that could be drawn ... in the circumstances.*

*It is not sufficient that the proved circumstances are merely consistent with the accused person having committed the crime. To find him guilty you must be satisfied so as to feel sure, that the inference of guilt is the only rational conclusion that could be drawn from the combined effect of all the facts proved. It must be an inference that satisfies you beyond reasonable doubt, that the accused person committed the crime.”*

*[16] This was wholly correct, nor was his direction challenged before us. The proper direction is to be based on the following passages in Chamberlain v R (No 2) [1984] HCA 7; (1983) 153 CLR 521 per Gibbs CJ and Mason J at 535f:*

*“Similarly, in a case depending on circumstantial evidence, the jury should not reject one circumstance because, considered alone, no inference of guilt can be drawn from it. It is well established that the jury must consider “the weight which is to be given to the united force of all the circumstances put together”: per Lord Cairns, in *Belhaven and Stenton Peerage* (1875) 1 App. Cas. 278, at p. 279, cited in *Reg. v Van Beelen* (1973) 4 S.A.S.R. 353, at p. 373; and see *Thomas v The Queen* [1972] N.Z.L.R. 34, at pp. 37, 38, 40 and cases there cited.*

*It follows from what we have said that the jury should decide whether they accept the evidence of a particular fact, not by considering the evidence directly relating to that fact in isolation, but in the light of the whole evidence, and that they can draw an inference of guilt from a combination of facts, none of which viewed alone would support that inference. Nevertheless the jury cannot view a fact as a basis for an inference of guilt unless at the end of the day they are satisfied of the existence of that fact beyond reasonable doubt. When the evidence is circumstantial, the jury, whether in a civil or in a criminal case, are required to draw an inference from the circumstances of the case; in a civil case the circumstances must raise a more probable inference in favour of what is alleged, and in a criminal case the circumstances must exclude any reasonable hypothesis consistent with innocence (see *Luxton v Vines* [1952] HCA 19; (1952) 85 C.L.R. 352, at p. 358; and *Barca v The Queen* [1975] HCA 42; (1975) 133 C.L.R. 82, at p. 104.*

*Per Brennan J at 599:*

*The prosecution case rested on circumstantial evidence. Circumstantial evidence can, and often does, clearly prove the commission of a criminal offence, but two conditions must be met. First, the primary facts from which the inference of guilt is to be drawn must be proved beyond reasonable doubt. No greater cogency can be attributed to an inference based upon particular facts than the cogency that can be attributed to each of those facts. Secondly, the inference of guilt must be the only inference which is reasonably open on all the primary facts which the jury finds. The drawing of the inference is not a matter of evidence: it is solely a function of the jury's critical judgment of men and affairs, their experience and their reason. An inference of guilt can safely be drawn if it is based upon primary facts which are found beyond reasonable doubt and if it is the only inference which is reasonably open upon the whole body of primary facts."*

[49] In the instant case, the prosecution states that on the night of Friday 8 July 2022, the deceased and the accused had gone for dinner to the Pontoon Dine Out. After dinner the couple had been sitting at the bar having drinks. It appears that the deceased had been arguing with the accused at the time. Thereafter, the couple had gone to the baka tree where they have the Family Fun Night. Prosecution witness Milika Radrotini had picked Brad to dance with her while witness Nikotimasi had picked Christe to dance with him and they had proceeded to the dance floor.

[50] After dancing for about 2 minutes, Christe had left Nikotimasi and clung on to Brad – Christe had walked away from him and moved to Brad and they were clinging on to each



other. The witnesses testified that it seemed that Christie did not want Brad to dance with anyone else.

**[51]** After the Family Fun Night had ended around 12.00 midnight, the couple had left. They had left after midnight and proceeded to their bure.

**[52]** Prosecution witness Mark Breaskey testified that he had heard the deceased and the accused go towards their bure around 12.30 a.m. This would have been early in the morning on Saturday 9 July 2022. The witness testified that around 12.40 a.m. they had heard some noises coming from the Bure 15. Some banging noise. Then some time later he heard a large scream and then nothing.

**[53]** Prosecution witness Apete Tuimoala, Security Officer at Turtle Island Resort stated that around 2.00 a.m. he had seen a man walking towards the beach. He had flashed his torch light towards the person and asked him whether he needs anything. That person had said, no and that he was just taking a walk. The witness recognized the person as the guest staying at Bure 15. Thereafter, the person had turned and gone back towards his bure.

**[54]** Since neither the deceased nor the accused had come for breakfast or lunch on Saturday, witness Tomasi Mawi, the House Keeper at Turtle Island Resort had been instructed to check on the couple. On going into Bure 15, he had found the deceased dead in the toilet. The accused could not be found anywhere at the resort at the time. This was around 1.00 p.m. on Saturday 9 July 2022.

**[55]** Tomasi Mawi further testified that Bure 15 has just one entry/exit door. A key was needed to enter/access the bure. The bure has two keys. One key is with the guests (in this instance meaning with the deceased and the accused) and the other key is with the House Keeping. In this case the witness confirmed that the other key to Bure 15 was with him.

**[56]** It is clear from the above, that other than for the deceased and the accused, nobody else had access to their bure.

**[57]** Upon discovering the body of the deceased, Doctor Shivangani Murti, who was serving as a Medical Officer at the Nacula Health Centre in Yasawa, had been immediately called upon to check on the deceased. On checking for carotid pulse (anterior neck) of the

deceased, she found no pulse, no breathing and no signs of life on the deceased. The doctor had pronounced that the deceased was dead.

**[58]** The prosecution did not ascertain from Doctor Shivangani Murti the probable time of death of the deceased. However, from the evidence available her death would have taken place any time between 1.00 a.m. and 1.00 p.m. on Saturday 9 July 2022. It must be emphasized that during this period only the accused had access to Bure 15. As stated before the only other key to the bure was with Tomasi Mawi, the House Keeper at Turtle Island Resort. He has testified that he entered the bure only at 1.00 p.m. that day, when he had been instructed to check on the couple.

**[59]** The prosecution version is that the accused had caused injuries to his wife in Bure 15 of the Turtle Island Resort and then fled the scene. The accused was found the next day (Sunday 10 July 2022) at Matacawalevu Village. This was over 36 hours later. It is revealed in evidence that he had taken a kayak and left the Resort and was stranded at the village. At the time the accused was found, he had in his possession a black wallet containing his passport, assorted cards belonging to him and the deceased and some cash (US\$1,093.00).

**[60]** The State is also relying on the verbal admissions made by the accused to ASP Belo and on his caution interview statement made by the accused to Detective Sergeant Martin Koli.

**[61]** The original copy of the Record of Interview of the accused was tendered to Court as Prosecution Exhibit PE 1 (A) and the typed version of the Record of Interview of the accused was tendered to Court as Prosecution Exhibit PE 1 (B).

**[62]** The Defence is challenging the verbal admissions made by the accused to ASP Belo and his caution interview statement made to Sergeant Koli.

**[63]** As to the caution interview statement made by the accused to Sergeant Koli, the defence challenge is based on the grounds of voir dire filed by the accused earlier in this proceedings. It is clear that the grounds of challenge are primarily in relation to alleged breaches of Section 13 (1) of the Constitution.

**[64]** It must be mentioned that on 28 February 2024, this Court made a Ruling that the caution interview statement of the accused is admissible in evidence. This was after a

Voir Dire Hearing that was held before this Court. Court held: *“Taking into consideration the totality of the evidence led at the hearing, I am of the opinion that the prosecution has established beyond reasonable doubt that the recording of the Accused’s caution interview statement was conducted fairly and voluntarily, meaning that the statement was made by the Accused on his own free will, with full appreciation of the legal consequences.”*

[65] Having carefully considered the evidence of ASP Belo and Detective Sergeant Koli, led during the trial, I am of the opinion that the said verbal admissions made to ASP Belo and the admissions made in the caution interview statement were made voluntarily by the accused and that there was no general grounds of unfairness in the recording of the said statements. I am also of the view that the contents of the statements are true and accurate and that Court can rely and accept the statements as a true version of the incident which took place.

[66] I wish to highlight the following portion of the caution interview statement of the accused:

*Q.80: What happened after you had dinner?*

*A: Our dinner was pretty rocky because we had an argument about my previous wife but we got sort thing out and we went back to the bar.*

*Q.81: What happened when you went to the bar?*

*A: Christe started to have some shots but I went to have some kava and we danced to the entertainment.*

*Q.82: What happened after that?*

*A: Christe and I went back to our Bure because it was a long day.*

*Q.83: What happened when you went to your Bure?*

*A: On the way we were arguing about something which I could not recall because we were really drunk.*

*Q.84: What happened when you were inside your room?*

*A: We continued to argue and changed to go to bed.*

*Q.85: What happened after that?*

*A: We then went to bed and I turned to her to hug her and cuddle when she got angry and started to say that I hurt her and she does not know whether she wanted to be with me.*

*Q.86: What happened after that?*

*A: Our argument moved towards where the toilet was and that was when Christe pushed me and that was when I lost it and we had like of a scuffle.*

Q.87: *What happened during the scuffle?*

A: *I just seem like it was bad.*

Q.88: *During the scuffle with Christe did anything break?*

A: *The back of the toilet broke and the glass of the window broke and the toilet was a mess.*

Q.89: *When the scuffle was over, where was Christe?*

A: *In the bathroom next to the toilet.*

Q.90: *What was Christe doing?*

A: *She was hurt.*

Q.91: *Do you recall what part of Christe was hurt?*

A: *She was sitting looking down and there was blood and a cut was on her face.*

Q.92: *What did you do after that?*

A: *I took a walk on the beach to the dock and back and that was when someone shouted out to me and asked me if things was okay and I said yes I was taking a walk.*

Q.93: *What did you do after that?*

A: *I went back to the room when I checked Christe and she was still in her same position so I freaked out.*

Q.94: *What did you do after that?*

A: *I went out to stand for a minute and that was when I saw a kayak and I got in paddling to I don't know where.*

Q.95: *What did you do next?*

A: *I reached an island and pulled up the kayak and sat there.*

Q.96: *Bradley will you be able to take me and show us where everything took place?*

A: *I am sorry I just don't think I can go back there and face the other guests.*

[67] These admissions are further corroborated by the evidence of the Forensic Pathologist, Dr. Avikali Mate. She had conducted the post mortem examination of the deceased, on 12 July 2022. The Post Mortem Examination Report of the deceased, was tendered to Court as Prosecution Exhibit PE7.

[68] In her opinion the doctor testified to the cause of death as being due to the blunt force trauma to the head suffered externally which had led to cause the severe traumatic head injury, which in turn led to swelling of the brain and bleeding underneath the second covering of the brain.

- [69] The forensic evidence tendered by the prosecution (Photographic Booklet tendered as Prosecution Exhibit PE2) further corroborates this fact.
- [70] The defence totally denies the charge against accused. This was submitted to Court by Learned Counsel for the accused during the closing addresses in this case. The defence position is that due to the deceased being in heavy state of intoxication at the time, she lost control and fell down and thereby injuries were caused to her. The defence position is that, even if it is admitted that there was a scuffle between the accused and the deceased it would only mean that there was a scuffle between the two of them and no more and that did not lead to causing of injuries to the deceased which led to her death.
- [71] However, this Court cannot accept this version of the accused. If what the accused says is to be believed, there was no reason for the accused to have left the deceased in that state and leave the bure. After all this was his newly married wife and they had come to the Turtle Island Resort to celebrate their honeymoon.
- [72] Furthermore, the injuries sustained by the deceased cannot be attributed to a mere fall as a result of losing control of herself. As depicted in the post mortem report, the injuries on the deceased were extremely serious. The injuries were found on her face, right upper limb, back and left lower limb. The Pathologist Dr. Avikali Mate, has testified that those injuries could have only been caused by blunt force trauma.
- [73] This Court is of the opinion that the injuries to the deceased were caused as a result of the accused punching her several times while she was in the toilet.
- [74] Thereafter, he had left the bure leaving the deceased as she was. He made no attempt to assist the deceased who was severely injured at the time. Later he had come back to the bure to check on the deceased. Seeing her still in the same position he had freaked out and left the bure again. He had taken a kayak of the Turtle Island Resort and paddled away. He was found 36 hours later at Matacawalevu Village.
- [75] At the time he was found, the accused had in his possession a black wallet containing his passport, assorted cards belonging to him and the deceased and some cash (US\$1,093.00). This clearly portrays that the accused was not only fleeing after committing the offence but he had no intention of coming back to the Resort.

- [76] For the aforesaid reasons, I am of the opinion, the defence version cannot be believed as true and the said version is rejected.
- [77] Having analysed all the evidence in this case in its totality, I am of the opinion that the prosecution witnesses were all truthful, credible and reliable in their testimony.
- [78] The defence attempted to impeach the credibility of certain prosecution witnesses (namely Nikotimasi Valuvakarua, Apete Tuimoala and Tomasi Mawi) by highlighting certain inconsistencies and omissions in their statements made to the police, in comparison to the testimony given by her in Court. I have identified and made reference to the said inconsistencies and omissions when summarizing the evidence of the said witnesses.
- [79] In *Sivoinatoto v. State* [2018] FJCA 68; AAU0049.2014 (1 June 2018); the Fiji Court of Appeal discussed as to how a Court should deal with issues arising out of contradictions and omissions. His Lordship Justice Gamalath held as follows:

*[9] When a court is dealing with the issues arising out of "contradictions", "omissions", it is necessary for the Court to carefully examine the impact that such discrepancy could have on the total credibility of evidence of a witness. As decided in the case of **Appabhai v. State of Gujarat**. AIR 1988, S.C. 694, (1988 Cri.L.J.848) (a decision of the Indian Supreme Court).*

*"The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters, in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishment to their version perhaps for the fear of their testimony being rejected by the Court. The Courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy."*

*In the case of **Arjun and Others v. State of Rajasthan**, (1994) AIR - SC-2507, it was held that; (A decision of the Indian Supreme Court).*

*"A little bit of discrepancies or improvement do not necessarily demolish the testimony. Trivial discrepancies, as is well known, should be ignored. Under*

*circumstantial variety, the usual character of human testimony is substantially true. Similarly, innocuous omissions are inconsequential.”*

*[10] More often contradictions and omissions become the main tool used in courts to evaluate the testimonial trustworthiness of a witness's evidence. As defined in the Oxford Dictionary “contradictions” means ‘to offer the contrary’. On the other hand, if a witness has testified in the examination-in-chief on a certain thing which he has omitted to state in his statement to the police, it is called “omission”. If the said omission is on minor points, it is not contradiction and court will not take cognizance of those omissions. Court will take cognizance of those omissions which are on material points and they are called “contradictions by way of omissions”. In order to prove the omissions, it is necessary to find out as to what the witness has deposed before the court in the examination-in-chief.*

*[11] Any statement of a witness made to an investigating police officer does not form part of the evidence in trial. Court would not be looking into police statements of witnesses to find out the truth involved in a case. However, if any party to a law suit is depending on ‘contradictions’ or ‘omissions’ to assail the trustworthiness of the evidence of any witness, it is necessary not only to highlight the ‘contradictions’ or ‘omissions’, but also to prove them at trial, so that the court could consider the effect of them according to the criterion laid down in the decided decisions referred above.*

*[12] Whenever it appears in the proceedings of a trial that the witness's evidence is tainted with certain contradictions and/or omissions, opportunity should be given to such witness to explain the basis for such infirmities. If the explanation is plausible that would have a direct impact on the credibility issue.*

*[13] In the case of **Sri Cruz Pedro Pacheco v. State of Maharashtra**, 1998 (5) Bom. L.R. 521-1998 Crim.L.J.4628, it was decided that; (an Indian Decision)*

*“Credibility of the witness can be impeached only after obtaining his explanation for the contradictory statement and by pointing out that the explanation given by him is not true or unsatisfactory. Then only the Court will be in a position to consider whether or how far the credibility of that witness is affected in that court. It is absolutely necessary to give the witness an opportunity of explaining the alleged contradiction. It must be borne in mind that the trial has to be fair not only to the accused but also to the witness who may be the aggrieved party himself.”*

**[80]** I have duly considered the explanations offered by the said witnesses in respect of the inconsistencies and omissions in their evidence as highlighted by the defence. It is my opinion that the said explanations are reasonable and acceptable. As such, I am of the opinion that the reliability and credibility of the witnesses' evidence is unaffected.

[81] Considering the nature of all the evidence before this Court, I am satisfied beyond reasonable doubt, that it was the accused and no one else who had committed this crime.

[82] From the evidence it has been established beyond reasonable doubt that the accused, Bradley Robert Dawson, on 9 July 2022, at Turtle Island Resort, engaged in a conduct by punching the deceased several times while she was in the toilet at Bure 15. The said conduct substantially contributed to the death of the deceased, Christe Jiao Chen.

[83] As to the fault element, from the evidence available this Court is satisfied that the prosecution has established beyond reasonable doubt that by his conduct the accused intended to cause the death of the deceased. The extensive nature of the injuries found on the deceased (as depicted in the Post Mortem Report and the Photographic Booklets tendered in evidence by the prosecution) clearly establishes that the accused intended to cause the death of the deceased by his conduct. However, even if it is said that there may be some doubt that the accused intended to cause the death of the deceased by his conduct, I am of the opinion, when analysing the available evidence, that there is absolutely no doubt that the accused was reckless as to causing the death of the deceased. The accused was well aware of a substantial risk that death will occur due to his conduct and having regard to the circumstances known to him, it was unjustifiable for him to take that risk.

[84] Although not directly raised by the accused, the State wanted this Court to consider the defence of provocation. This is on the basis that in his caution interview statement the accused refers to an argument between himself and the deceased, wherein the deceased had pushed him making him lose control (he said he had snapped) and leading to a scuffle.

[85] Section 242 of the Crimes Act (Killing with Provocation), reads as follows:

*242.— (1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as defined in sub-section (2), and before there is time for the passion to cool, he or she is guilty of manslaughter only.*

*(2) The term “provocation” means (except as stated in this definition to the contrary) any wrongful act or insult of such a nature as to be likely when—*



*(a) done to an ordinary person; or*

*(b) done in the presence of an ordinary person to another person—*

*(i) who is under his or her immediate care; or*

*(ii) who is the husband, wife, parent, brother or sister, or child of the ordinary person— to deprive him or her of the power of self-control and to induce him or her to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered.*

*(3) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as stated in sub-section (2), the former is said to give to the latter provocation for an assault.*

*(4) An act which a person does in consequence of incitement given by another person in order to induce him or her to do the act and thereby to furnish an excuse for committing an assault is not provocation to that other person for an assault.*

*(5) An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who believes and has reasonable grounds for believing the arrest to be unlawful.*

**[86]** Therefore, in order for Court to consider the defence of provocation Court must be satisfied from the evidence in the case that all three elements of provocation as set out in Section 242 of the Crimes Act have been established. The three elements are:

That the accused had caused the death of the person who gave him the provocation:

(i) in the heat of passion,

(ii) caused by sudden provocation as defined in sub-section (2) of Section 242 and

(iii) before there was time for his passion to cool.

**[87]** To repeat once more, the term sudden provocation as defined in sub-section (2) of Section 242 means:

*any wrongful act or insult of such a nature as to be likely when—*

*(a) done to an ordinary person; or*

*(b) done in the presence of an ordinary person to another person—*

*(i) who is under his or her immediate care; or*

*(ii) who is the husband, wife, parent, brother or sister, or child of the ordinary person—*

*to deprive him or her of the power of self-control and to induce him or her to commit an assault of the kind which the person charged committed, upon the person by whom the act or insult is done or offered.*

**[88]** As I have stated before, the prosecution always bears the legal burden of proving every element of the offence of Murder. However, an accused who wishes to deny criminal responsibility for Murder by relying on provocation, bears what is known as an evidential burden in relation to that matter. This is stated in Section 59 of the Crimes Act.

**[89]** Section 59 of the Crimes Act is reproduced below and reads as follows:

*59. — (1) Subject to section 60, a burden of proof that a law imposes on a defendant is an evidential burden only.*

*(2) A defendant who wishes to deny criminal responsibility by relying on a provision of this Decree (other than section 28) bears an evidential burden in relation to that matter.*

*(3) A defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter.*

*(4) The exception, exemption, excuse, qualification or justification need not accompany the description of the offence.*

*(5) The defendant no longer bears the evidential burden in relation to a matter if evidence sufficient to discharge the burden is adduced by the prosecution or by the court.*

*(6) The question whether an evidential burden has been discharged is one of law.*

*(7) In this Decree (Now Act) —*

*"evidential burden", in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.*

**[90]** Therefore, where the accused adduces evidence that suggests a reasonable possibility that the matter exists, it is incumbent on the prosecution to disprove that matter. In

this case, from the evidence adduced I am satisfied that the prosecution has disproved the defence of provocation.

[91] Having considered all the evidence in its totality, I am of the opinion that the prosecution has proved the charge of Murder against the accused beyond reasonable doubt.

[92] In the circumstances, I find the accused guilty of the charge Murder with which he is charged.

[93] Accordingly, I convict the accused of the charge of Murder with which he is charged.



  
Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT LAUTOKA

Dated this 11<sup>th</sup> Day of December 2024

**Solicitors for the State:**

**Office of the Director of Public Prosecutions, Lautoka.**

**Solicitors for the Accused:**

**Anil Prasad Lawyers, Barristers & Solicitors, Lautoka.**