

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case. No. HAC 085 of 2021

BETWEEN: THE STATE

A N D: KOROTOLU TASERE

Counsel: Mr. Alvin Singh for the State.
Ms. Kumar and Ms. Sharma for the Accused.

Dates of Hearing : 13th to 15th November, 2024
Date of Judgment : 29th November, 2024

JUDGMENT

1. The Director of Public Prosecutions charged the accused by filing the following information:

Statement of Offence

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

Particulars of offence

KOROTOLU TASERE on the 15th day of July, 2021 at Sigatoka in the Western Division murdered SIMELI NASIRI.

2. In this trial, the prosecution called three witnesses and after the prosecution closed its case, this court ruled that the accused had a case to answer in respect of the offence of murder as charged.

BURDEN OF PROOF AND STANDARD OF PROOF

3. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no obligation on the accused to prove his innocence. An accused is presumed to be innocent until he or she is proven guilty. The standard of proof is one of proof beyond reasonable doubt.

ELEMENTS OF THE OFFENCE

4. To prove the above count the prosecution must prove the following elements of the offence of murder beyond reasonable doubt:
 - (a) The accused
 - (b) engaged in a conduct; and
 - (c) the conduct caused the death of the deceased; and
 - (d) the accused intended to cause the death; or
 - (e) was reckless as to causing the death of the deceased by his conduct. The accused is reckless with respect to causing the death of the deceased if;
 - (i) he was aware of a substantial risk that death will occur due to his conduct; and
 - (ii) having regard to the circumstances known to him, it was unjustifiable for him to take that risk.
5. What this court will have to consider with regard to this particular state of mind is whether the accused was 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.
6. The first element is concerned with the identity of the person who committed the offence. This element of the offence is not in dispute.
7. The second element relates to the conduct of the accused. To engage in a conduct is to do an act which is a voluntary act by the accused or is a result of the will of the accused.
8. The third element is the conduct of the accused that caused the death of the deceased. Conduct means an act done by the accused it can be anything such as punching, kicking, stomping, strangling etc. The law requires a link between the conduct of the accused and death of the deceased. This court must be sure that the conduct of the accused caused the death of the deceased.

9. In other words whether punching and kicking the deceased several times on his face, mouth and neck and his ribs caused the death of the deceased. It is also kept in mind that the act need not be the sole cause but should substantially contribute to the death of the deceased. The above two elements are not in dispute as well.
10. With regards to the final two elements of the offence which concerns the state of mind of the accused the prosecution must 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 by his conduct.
11. The prosecution has to prove only one of the two limbs of this element. In this case the prosecution is alleging that the accused was reckless as to causing the death of the deceased by his conduct.
12. It is for the prosecution to prove beyond reasonable doubt that it was the accused who was engaged in a conduct and the conduct caused the death of the deceased and the accused was reckless as to causing the death of the deceased by his conduct.
13. The prosecution says that it was the accused who had punched the deceased multiple times on his face, mouth and around his neck which resulted in the death of the deceased.
14. If this court is satisfied that the prosecution has proved all the above elements beyond reasonable doubt then this court must find the accused guilty of murder.
15. If on the other hand, this court finds that the prosecution has failed to prove any of these elements beyond reasonable doubt then this court must find the accused not guilty of murder.

ADMITTED FACTS

16. In this trial the prosecution and the defence have agreed to certain facts titled as final admitted facts. These facts are part of the evidence and I have accepted these admitted facts as accurate, truthful and proven beyond reasonable doubt.
17. The following are the admitted facts by Prosecution and Defence;
 - i) That the Post Mortem report in this case was prepared by Doctor Daniella John MBBS Senior Forensic Officer Pathology Registrar based with Fiji Police Force.
 - ii) That the Post Mortem was conducted on the 21st of July 2021 at Sigatoka Hospital Mortuary.

- iii) That the Post mortem was conducted on one Simeli Nasiri (Deceased), male 61 years of age.
- iv) That as per post mortem examination of Simeli Nasiri died on the 15th of July 2021 at about 9.30 am.
- v) That it was admitted that the cause of death was a) Disease or condition directly leading to death: “Extensive Intracranial Hemorrhaging” b) Antecedent Causes; Traumatic Head Injury. c) other Significant conditions contributing to the death, but not related to the conduction or disease
- vi) External Causes; History of assault.
- vii) Admitted Document
Post Mortem Report of Simeli Nasiri

PROSECUTION EVIDENCE

PW1: Jone Navale

- 18. The eye witness Jone Navale informed the court that on the afternoon of 15th July, 2021 he was drying Kava in the sunny weather when he heard noises from inside the house of Korotolu Tasere the accused. He said the noises sounds like punches. He said the distance from where he was standing to where the sound was coming from was about 10 to 15 meters away. He said he went to the house of the accused to look inside.
- 19. When he looked through the louvre blades of the windows of the house he saw the accused Korotolu Tasere punching his father. His father's name was Simeli Nasiri. He said the distance from where he was standing to the place where the accused was punching his father was about 4 meters away.
- 20. He said on that day it was fine and the weather was clear. He said it was daytime and the light from outside went through the inside of the house and he could clearly saw what was happening from inside.
- 21. There was no obstruction to his view. He saw four punches thrown by the accused to his father Simeli Nasiri. His father was lying on the floor.
- 22. He said he saw Simeli was badly injured. He saw Simeli's nose mouth and face was injured all over. He said the accused was drunk as he could see it from his behavior. The deceased was lying there unable to talk and his breath was taking turn. He said he walk away to look for assistance in the village. He pointed and identified the accused to be the person punching Simeli on that date.
- 23. In cross examination the witness stated that Simeli Nasiri the accused father is related to his dad. He said the accused and himself used to accompany each other before this incident. He said he saw Simeli threw

the punches and was standing inside the house. He said he was looking from the window close to the front door.

24. He said on that day the accused behavior was different from the normal Korotolu Tasere he knew. He did not hear anyone calling out for help. He left out to call Litiana when he called back the accused was not there.

PW2: Makelesi Liku

25. She is the mother of the accused and wife of the deceased. She resides at Draubuta village for the past 30 years with her family. She said she has four children and the accused is her eldest son.
26. The witness said that she plants for a living. She recalls that she was at her farm on that day when she heard some yelling. There was people drinking and she was worried that her son the accused was likely to be part of the group. She rushed back to her house thinking about her husband when she arrived she saw people gather at her home.
27. She said her husband suffered a stroke and could not walk. Her husband was bedridden. Her son the accused was sleeping in another house and he was not at home when she went to the farm.
28. She said her son is a bright student and was educated at Navosa before he attended Fiji institute of Technology. The accused was an obedient son. He was very obedient to his father the deceased and listens to what he was told to do. The accused used to assist in bathing his father or cleaning him when he asks for assistance.
29. He said he was worried about the accused because he might get angry from the place he was drinking and he might have done something to his father.
30. She said when she left home that morning she had locked the door. She said she saw a lady namely Litiana Rakai at her home when she return from the farm.
31. When she returned home she saw her husband lying down, blood oozing out from his mouth and nose and she did not know what happened to him. She saw her son the accused standing outside the house when she came.
32. She said she hugged her husband, and was telling her husband to look at her. Despite her effort of trying to revive her husband there was no response for him. She was holding on to his wrist when she felt that he was gone.

33. She was only aware of the seriousness of his injuries after her medical examination report was released. She was not told on how her husband had receive the injuries.
34. The accused left their home after his father passed away. She said the accused had never before assaulted his father. She said the accused normally stays at home but at times missing from home. His relationship with other family members are good. The accused was admitted twice at Lautoka hospital. He was injured in his first admission and second he had a stomach ache. She said she has not talked to the accused since her husband passed away.
35. In cross examination she said after the accused was remanded the he was taken to the hospital. He was remanded because of the death of her husband. She said apart from the last time she received a call from St Giles has not received any other call.
36. He said prior to 2021, he normally was sitting and thinking. She said the accused never displayed any unusual behavior. She said her husband cannot really walk without the support of a walking stick. She said when she saw the accused outside the house on the day of the incident the accused was drunk.
37. She said when the doctor called her from saint Giles asking about his history she told them that the accused was an obedient child and was a good boy.
38. She said that there was no change on the accused behavior when he returned from camping. He stares for a period of time and sitting alone.

DC 4702 Asaeli Sivo

39. He is the interviewing officer in this case. He conducted the interview in i-taukei and translated the caution interview notes into English. Both copies of the interview shown to him and he confirms the same. He tendered both interview notes as PEX 1 and PEX 2.
40. He confirms that the accused admitted in his caution interview that punched his father on his mouth and eyes He said he punched his jaw twice, once on his mouth his nasal twice and twice the side of his face.
41. He punched his father eight 8 times. He said the injuries is from the power from of his punch. He said he continuous punch his ribs when he was lying down. He said during the interview the accused was normal. He disagreed that the accused was hallucinating.

PW4: Dr Kiran Gaikwad

42. He was the psychiatrist who first examine the accused on the 3rd of March 2022. He is the principal medical officer at St Giles hospital. He has been working as a forensic unit in St Giles for almost 13 years. He has junior registrars working under him.
43. He has done about 300 assessment on patients and prepared reports for the same. On 3rd march 2022 he received a High Court case no. 085 of 2021 State v Korotolu Tasere for psychiatric assessment. He prepared an evaluation report dated 03.03.22 marked as PEX 3.
44. He confirmed that the accused assessed and interviewed four times. The date are 27.1.22, 3.2.22, 16.02.22 and 1.3.22 at St Giles hospital.
45. He said Dr. Myrielle Allen a senior consultant psychiatrist also assisted in providing for the report. She also participated in the interviews with the accused. Accused was aware of the murder charge against him. He claims that he was punched by his father first and he replied in self defence he said he punch his father several times and kicked him on the face and chest. He said his father was alive when he left the place.
46. According to Dr Gaikwad the accused claim that he punched his father the deceased in self defence as father punched him first and he got angry and punched him several times. He said he was drinking all night with his friends in the morning he had scuffle with his friends. He left on the way home he met his nephew who made allegations against him and he had a fist fight with his nephew. He also mentioned that he gets aggressive when he is drunk.
47. He said the accused admits that he was under the influence of alcohol and marijuana at the time of the incident as he was drinking with his friends the whole night He denies any unreal voices (auditory hallucinations telling him order to do what he did.
48. The doctor said that he had conducted personal interviews, mental status examination, going through collateral information from his mother and also the disclosures. He also consulted the Senior Psychiatric Consultant Dr. Allen who agreed with his findings. He reached to these conclusions based on the information he gathered.
49. He said the accused was cooperative in behavior. The accused claims that he was doing well and he does not have any issues. He denies of having any symptoms of mental illness his mood is good and he eats and sleeps well. The accused denied any perceptual disturbances such as hearing unreal voices (auditory hallucinations) or seeing imaginary things. He does not have any delusions.

50. His conclusions after the numerous examinations done of the accused that the accused was fit to plead, He is competent to stand trial, he was under the influence of alcohol and Marijuana at the time of the alleged offending (According to Mental health Act 2010 section (3) (1) (k) a person is not to be regarded as having Mental Disorder by reason only That (k) the person takes or has taken alcohol or any other drug, volatile substance or other capable inducing intoxication or an altered state of mind.
51. He said he knew Doctor Sheetal. She is a senior medical officer at ST Giles hospital. Doctor Sheetal had examined the accused when Doctor Gaikwad was on leave has made a report on 20th August 2023 about 1 2 years from the date of the offending. Doctor Sheetal report was put to him in that she concluded that the accused has a mental illness called Schizophrenia and substance abuse disorder. She further stated that the accused was under the influence of mental illness and did not have control of his conduct.
52. Doctor Gaikwad maintained when he made the assessment at that time. There was no indication that the accused was suffering from schizophrenia at that time. He said Doctor Sheetal's report was made about one year and 5 months later after his assessment and he was not aware on what indications and criteria she adopted to come to that conclusion. He said he cannot comment on her report as he was not present there.
53. He said he stand by on his opinion because when he made the assessment. He had gone through all disclosures, personal information provided by the accused, mental status examination and collateral information provided by his mother. It was clear that he was under the influence of alcohol and Marijuana at the time of the offending.
54. In cross examination he rebutted the assumption made by accused counsel and stated that behavioral changes can happened due to the use of marijuana or its symptoms where they are under the influence of drugs.
55. Further in cross examination he confirmed that during the examination of the accused there was no mention of any medication and there was no medication given at that time.
56. He said during intoxication there may be some symptoms of hallucination but that happens only during the period of use of substance such as marijuana. While the effect of the substance has gone there are no more symptoms present.
57. He maintained that the accused was not suffering from any mental illness or disorder when he committed the offence but was influenced due to use of alcohol and marijuana.

Prosecution closes its case.

58. Pursuant to section 231 of the criminal procedure Act I find that the prosecution has presented evidence touching on all the elements of the offence of Murder. I find there is case to answer against the accused. The accused is given his rights whether to give evidence on the stand and to be cross examined, remain silent or call witnesses to give evidence on his behalf. The accused opted to call witnesses to give evidence on his behalf.

DEFENCE CASE

DW1: Doctor Sheetal

59. She is the psychiatrist who conducted the second examinations of the accused and had compiled a report. She was employed with St Giles hospital as a senior medical officer for the last 6 years. She confirmed that she had examined the accused Korotolu Tasere on 20th August 2023. She tender her psychiatrist report as DEX 1.
60. She admitted that she was unable to obtain collateral information from any of his family members and has not used any information provided by his mother. She admitted that the only information she relied upon was from the accused himself and the observations from the treating team where the accused was observed for six weeks.
61. She admitted that she was not provided with the disclosure of this case. She did not rely on the report made by her senior Doctor Gaikwad prepared a year ago
62. She said the accused was diagnosed with Schizophrenia but she cannot confirm the exact date when the accused had this mental disease. She agreed that If Doctor Gaikwad was there she would not have prepared the report. She confirmed that she did not refer to disclosures in this case or obtain information from the accused mother.
63. She was questioned on the report made by Dr Gaikwad and her report; whether these report 100% sure to ascertain the mind of the accused at the time of the incident. She answered that she does not have collateral information from the mother of the accused or any other witness on his mental status at that time. They also do not have Dr Gaikwad's report on the issue of intoxication.
64. In cross Examination she agreed that she relied only on the word of the accused with observation team conducted over 6 weeks. She did not see the report made by Dr. Gaikwad. Doctor Sheetal agrees that it was important disclosures for this case to be considered in formulating her

report. She agrees that she did not have access to as Dr. Gaikwad was out of the country.

DIRECTION ON EXPERT EVIDENCE

65. This court has heard the evidence of Dr. Daniella John, a pathologist Dr. Gaikwad An expert witness is entitled to express an opinion in respect of his or her findings and Dr. Sheetal both psychiatrist who had been called as experts on behalf of the prosecution and the defence. Expert evidence is permitted in a criminal trial to provide the court with information and opinion which is within the witness expertise. It is by no means unusual for evidence of this nature to be called the Post mortem report of the deceased and psychiatrist valuation **reports** of Korotolu Tasere the accused is before this court and what the doctors said in their evidence as a whole is to assist this court.
66. When coming to my conclusion about this aspect of the case I have borne in mind that if, having given the matter careful consideration, I do not accept the evidence of the experts I do not have to act upon it. Indeed, this court does not have to accept even the unchallenged evidence of the doctors.
67. I have also kept in mind that this evidence of the doctors relate only to part of the case, and that whilst it may be of assistance to me in reaching my decision, I must reach my decision having considered the whole of the evidence.

ANALYSIS

68. The prosecution alleges that on the morning of the 15th of July, 2021, Jone Navale (PW1) saw the accused punched the deceased multiple times on his face, mouth, his nasal and the side of his face .the deceased was a stroke patient and was bedridden.
69. The prosecution submitted when (PW3) Makelesi arrived at her home that morning she saw the deceased lying down with blood coming out of his mouth and nose. She cried and hugged the deceased her husband and was calling him to look into her eyes. She saw one of the eyes of the deceased with blood clot. She hold the deceased wrist until the deceased was gone.
70. In the caution interview statement of the accused tendered in as evidence for the prosecution. The accused on Q & A 195 to 197 said the following;
- Q195: Where did your punch land on your father?
Ans: I punched his mouth and eyes.
 - Q196: How many times did you punch your father?
Ans: I punch his jaw twice and once on his mouth.

- Q197 After That?
Ans: I punch his nasal, twice on his eyes, twice on the side of his face.
- Q267: Korotolu Tasere what about his broken ribs that is in the Post mortem report?
Ans: I continuously punched his ribs whilst he was laying down.

71. The prosecution also submit that the accused in his caution interview notes have admitted that he punched the deceased jaw twice, once on the mouth, once his nasal, twice on his eyes and twice on the side of his face including several punches on his ribs
72. The attack on the deceased was so severe that the deceased died at the scene of crime. The time of death highlighted in the post mortem report was 9.30 am on 15.07.21. As a result of the accused actions the post mortem report of the deceased revealed the cause of death extensive intracranial, hemorrhaging, traumatic head injuries, multiple traumatic injuries, history left cerebrovascular accident with right hemiplegia multiple, History of assault.
73. The cause of death of the deceased was due Extensive Intracranial Hemorrhaging prosecution further stated that the injuries were caused by the punches thrown by the accused and landed all over the body of the deceased. The prosecution submits that the numerous punches was so forceful and the punches landed on the face, mouth, neck, jaw, and nasal bridge including the ribs of the deceased who was a bedridden stroke patient lying on the floor of the house.

Evaluation of the Psychiatrists Evidence

74. The prosecution also submitted that the evidence of Doctor Gaikwad a psychiatrist at St Giles hospital for about 12 years' experience was clear that although the accused was under the influence of alcohol and marijuana he was aware of his actions at the time of the offending. His findings was that the accused was fit to plead in court. The accused was competent to stand trial, or The doctor is fully aware of Section 3 (1) k) of the Mental Health Act 2010 provides; a person is not to be regarded as having a mental disorder by reason only that – the person takes or taken alcohol or any other drug, volatile substance or any substance capable of inducing intoxication or an altered state of mind. Dr Gaikwad had made the assessment on the 3rd of March 2022.
75. On the other hand, the defence was relying on that issue of insanity. They have called Doctor Sheetal a psychiatrist of 6 years' experience who had examined the accused and prepared a report on the 20th August 2023 confirm that the accused was suffering from a mental illness namely substance induced psychosis and schizophrenia.
76. It was clear that the two psychiatrists have given two conflicting reports on the status of mind of the accused at the time of the commission of the

offence. Dr Gaikwad a psychiatrist examined the accused about six months from the date of the offence. He obtained information on 03. 03. 22 from the accused himself and interviewed the accused of the following dates 27.01.22, 03.02.2022, 16.02.22 and 01.03.2022.

77. Dr. Gaikwad's conclusion was derived from the personal information provided to him by the accused, the disclosures of this case provided by the court, the collateral information provided by the mother of the accused and the mental status test of the accused at that time.
78. Dr Sheetal conclusion had derived from the information provided to her on 20th August 2023, by the accused and the observation made by her team during the observation period where the accused was admitted in St Giles Hospital. Dr Sheetal admitted that her report did not consider the disclosures of this case including the collateral information of the accused mother. She agreed that it was important for the report to consider these important pieces of information when compiling her report.
79. In cross examination of Dr Gaikwad, defence counsel question the doctor that when he prepared his report and what all he had stated he cannot be 100 percent sure that at that time when Korotolu Tasere committed this offence, he had control of himself? Dr Gaikwad answered stating the following; *"That's what I mention in the conclusion that he was under history of substance abuse of Marijuana and alcohol and that's why he acted till so with no control. But according to the mental health Act it cannot be considered as mental disorder because the person s acting under intoxication of substances abuse"*.
80. I accept the report tendered by of Dr Gaikwad to be credible and reliable as it was sourced on information from court disclosures for this case, personal information from the accused during examination collateral information from the mother and mental status of the accused at that time. These are important information that needs to be considered upon conducting examination of the accused to determine what his mental status is at the time of the commission of the offence.
81. Further Dr. Gaikwad had concluded nothing in the mental state examination apparent to conclude that the accused is a mentally disordered person at present. The accused was under the influence of alcohol and marijuana at the time of the alleged offence. He was aware of the nature and quality of the conduct and the conduct was wrong.
82. Further I accept Dr. Gaikwad psychiatric evaluation report tendered in as Prosecution evidence stating that the accused was fit to plea at that time.
83. I refuse to accept the report tendered by Dr Sheetal as the report did not consider information deriving from the court disclosures, collateral information provided by his mother and the mental status of the accused

at that time that the accused was under the influence of alcohol and marijuana at the time of the alleged crime.

84. I am of the view that the report prepared by Dr Sheetal was based only on the observation made by the team whilst the accused admitted under observation at St Giles hospital and the personal information provided by the accused almost 1 year and 5 months later from time of Dr Gaikwad's report.
85. Finally the prosecution submits that the accused was engaged in a conduct and the conduct caused the death of the deceased and the accused was reckless as to causing the death of the deceased by the said conduct.

DETERMINATION

86. Obviously, I find that the prosecution have submitted evidence proving the *actus reus* or the physical elements of the offence of murder through the evidence of Jone Navale (PW1), the post mortem report and the admissions made in the accused's caution interview statements.
87. In my view the accused is criminally responsible since as he was not suffering from a mental disease or impairment at the time of the allegation. In fact, the accused was under the influence of alcohol and Marijuana.
88. The law is clear under the Mental Health Act 2010 section 3 (1) (k) which reads and I quote;

"A person is not to be regarded as having a mental disorder by reason only that - the person takes or has taken alcohol or any other drug volatile substance or any other substance capable of inducing intoxication".
89. There is no doubt that due to the act of the accused he had caused the death of Simeli Nasiri, it was also proven that at the time of the offence the accused was aware of the nature and quality of his conduct.
90. I accept the opinion of Dr. Gaikwad, the accused was under the influence of alcohol and marijuana at the time of the offence, he was aware of the circumstances, nature and quality of his conduct. The psychiatrist gave a detailed account of the examination of the accused on his report dated 3rd March 2022.
91. After considering all the evidence adduced, this court is satisfied that the prosecution has proven all the elements of Murder beyond all reasonable doubt. This court is also satisfied that on the 15th July, 2021 the accused Korotolu Tasere was engaged in a conduct and the conduct caused the death of the Simeli Nasiri and the accused was reckless as to causing the death of the deceased by his conduct.

Conclusion

92. Having said the above I find the accused Korotolu Tasere guilty on one count of Murder contrary to section 237 of the Crimes Act 2009 and I convict him accordingly for the same.
93. This is the judgment of the court.



A handwritten signature in blue ink is written over a horizontal dotted line. The signature is stylized and appears to be 'Sekonaia V. Vodokisolomone'.

**Sekonaia V. Vodokisolomone
Acting Puisne Judge**

At Lautoka

29 November, 2024

Solicitors

**Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission**