

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 219 OF 2019

STATE

-v-

MOHAMMED AIYAZ AHMED

Counsel : Ms M. Lomaloma for State
: Ms A. Chand for Defence

Dates of Hearing : 27 January 2025 to 3 February 2025
State's Submissions : 07 February 2025
Date of Judgment : 11 February 2025

JUDGMENT

1. This case is about a heinous murder committed in a domestic setting in Fiji. The Accused was the husband of the deceased. He was arraigned on the following information filed by the Director of Public Prosecutions:

FIRST COUNT

Statement of Offence

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

Particulars of the Offence

MOHAMMED AIYAZ AHMED on the 20th day of November, 2019 at Lautoka in the Western Division murdered **SABINA AZMIN NISHA**.

SECOND COUNT

Statement of Offence

BREACH OF DOMESTIC VIOLENCE RESTRAINING ORDER: Contrary to Section 77 (1) (a) of the Domestic Violence Act 2009.

Particulars of Offence

MOHAMMED AIYAZ AHMED on the 20th day of November 2019 at Lautoka in the Western Division, having notice of the Domestic Violence Restraining order number 450/19 by which he was bound, without reasonable excuse, contravened the said order by stabbing **SABINA AZMIN NISHA**, a protected person, to death.

2. The Accused pleaded not guilty to the charges. At the ensuing trial, the Prosecution presented the evidence of nine witnesses. At the close of the Prosecution's case, the Court, being satisfied that there was a case for the Accused to answer on each count, put the Accused to defence. The accused elected to give evidence under oath.
3. The Counsel filed the written submissions on 3 February 2025. Having considered the evidence presented at the hearing and the respective submissions of the parties, I now proceed to pronounce the judgment as follows.

Burden of Proof and Standard of Proof

4. The Accused is presumed innocent until he is proven guilty. The onus or the burden of proof rests on the Prosecution throughout the trial, and it never shifts to the Defence. There is no obligation or burden on the Accused to prove his innocence. The Prosecution must prove each charge beyond reasonable doubt. If there is a reasonable doubt, so that the Court is unsure of the Accused's guilt, the Accused must be found not guilty and acquitted.

The Elements of the Offence of Murder

5. To prove the offence of Murder, the Prosecution must prove beyond reasonable doubt that the Accused Mohammed Aiyaz Ahmed was engaged in willful conduct with the intention of

causing the death of the deceased Sabina Azmin Nisha, or he was reckless as to causing the death of the deceased and that the willful conduct of the Accused caused the death of the deceased.

6. The charge of murder requires the prosecution to prove the accused's state of mind that demonstrates murderous intention or recklessness in causing the death of the deceased at the time of the alleged willful conduct. This necessitates drawing inferences based on all circumstantial evidence relevant to the issue of either intention or recklessness. Drawing inferences inevitably involves applying common sense alongside the fact-finder's understanding of the world and how it operates based on established facts.
7. On the second count, the Prosecution must prove that the Accused, Mohammed Aiyaz Ahmed, having notice of the Domestic Violence Restraining Order Number 450/19 by which he was bound, without reasonable excuse, contravened the said order by stabbing Sabina Azmin Nisha, a protected person.
8. The Prosecution's case is substantially based on circumstantial evidence. It also relies on the confessions/ admissions the Accused allegedly made to police in the caution interview and the charge statement. To test the admissibility of confessional statements, a *voir dire* inquiry was conducted where all confessional statements were held to be admissible.

Circumstantial Evidence

9. The circumstantial evidence can, and often does, clearly prove the commission of a criminal offence, but two conditions must be met. Firstly, the primary facts from which the inference of guilt is to be drawn must be proved. 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 that are so proved. Equally, it must be shown that when taken together, the only reasonable inference that can be drawn is incompatible with the innocence of the Accused. The drawing of the inference is not a matter of evidence: it is solely a function of

this court based on its critical judgment of men and affairs, common sense, experience and reason.

10. In a circumstantial case, the factfinder must look to the combined effect of several independent items of evidence when considering the charge. While each separate piece of evidence must be assessed as part of the inquiry, the ultimate verdict on each charge will turn on an assessment of all items of evidence viewed in combination. The underlying principle is that the probative value of several items of evidence is greater in combination than the sum of the parts. The analogy that is often drawn is that of a rope. One strand of the rope may not support a particular weight, but the combined strands are sufficient to do so.
11. Having discussed the relevant legal background, I shall now summarise the salient parts of the evidence presented in the trial that I consider important to resolve the issues in this case.

Case for Prosecution

PW 1 –Mohammed Imtiaz Khan (Khan)

12. Imtiaz is an advisory counsellor and a community police member in Drasa, Lautoka. He testified that Aiyaz is his neighbour and a chef at Drasa Madrassah. His father supported Aiyaz in building his own house. On 20 November 2019, at around 9 a.m., while walking his way home, he saw Aiyaz at one of his neighbour's houses, talking on the phone and looking worried. Then, Aiyaz came to him and informed him that his wife was not answering the phone and not opening the door. Aiyaz further said that *maybe she had done something*. All of a sudden, Aiyaz said – *'Maybe she had cut herself'*. Then he turned around and looked at Aiyaz. He saw Aiyaz's eyes red and full of tears. Aiyaz looked at him for a while and then put his head down.
13. He went to his wife and told her that Aiyaz must have killed his wife. He drove his car to Aiyaz's house, which is a minute's drive, together with Aiyaz. Aiyaz got out of the vehicle and started talking on the phone.

14. Because of what Aiyaz had said, he was a bit worried. He asked for the key to the house. Aiyaz said the key was locked inside. Then he took out his phone and took photos of the doors and the windows. The door was locked from inside. The padlocks were there. The windows were all secured, and the curtains were drawn. He went to the back of the kitchen, where he saw a chain link which could be removed to open the door. He pulled the chain link out. When he put his hand inside to try to open the door, he found a padlock. Aiyaz said that the key was hanging on the nail. He unlocked the padlock and went inside.
15. He saw Aiyaz's wife lying on the bed a little bit naked, and the legs were open. He called Imdad Ali because he saw Sabina was half naked. Aiyaz just had a side look and silently went out. When he looked inside, he saw the stabbing and the blood. He knew Aiyaz's wife was dead. He told Aiyaz that his wife had committed suicide because he feared that Aiyaz would run away if he said that she had been murdered. The police officers came from the Vitogo Police Post, and the forensic team came a bit later.
16. In his capacity as the Advisory Counselor, he received many complaints about the family dispute between Aiyaz and his wife, Sabina Nisha. Sabina used to smack Aiyaz. They blamed each other for having extramarital affairs. They came to him and told him that they had lodged DVROs against each other two to three months before the incident. They had two children who had moved to Sabina's sister, Maureen's house three weeks before the incident.
17. Under cross-examination, Imtiaz said that he broke the chain link and entered the house without waiting for the police because he was concerned that Sabina might still be alive. He agreed that Aiyaz was a hard-working family man and that Sabina was abusive towards him. Aiyaz admitted to having a relationship with a Fijian girl, and Aiyaz was telling him that his wife was having a relationship with the owner of Raju's Restaurant. He agreed that Aiyaz at no point in time, stopped him from calling the police or trying to destroy or tamper with any evidence or flee the scene.

PW2 - Imdad Ali

18. Imdad is Aiyaz's neighbour. The police officers came to his compound and asked him about the well, which was about 30m to 40 m away from his house.

PW3 - Shabana Ashbin Nisha

19. In November 2019, Nisha was working at Raju's Restaurant. Her sister, Sabina Nisha, was a waitress at the same restaurant. On 20 November 2019, she started work in the morning at around 6 a.m. Sabina was supposed to start work at 7 a.m., but she did not turn up. Nisha called Sabina's phone several times, but there was no response. She then called her other sister, Maureen, with whom Sabina and her children stayed in Naikabula. Maureen informed her that Sabina returned home on 19 November 2019.
20. After that, Shabana called Aiyaz to inquire about Sabina. Aiyaz suggested that Sabina was likely at home or at work. Shabana asked Aiyaz to check on Sabina, and he agreed. However, Aiyaz did not go to check until she called him again at around 9:15 a.m. Aiyaz mentioned he was busy at work but promised to see to Sabina. By the time she went to Drasa to check on her sister, a police team had arrived at the scene. She usually refrained from intervening in Sabina's matters, but she was aware that Sabina had filed a DVRO against Aiyaz.
21. Under cross-examination, Nisha agreed that there were talks that Sabina was having an extra-marital affair.

PW4 - WPC Rachna Chand

22. WPC Rashna charged Aiyaz when she was attached to the Uniform Branch of the Lautoka Police Station. The charge was conducted in Hindi, the language preferred by Aiyaz. She translated the charge statement into English. Aiyaz, Cpl. Vimal and she signed the original charge statement. The original Hindi charge statement and the translated version were

tendered in evidence marked as PE1(a) and PE1(b), respectively. She read the admissions made by Aiyaz at Q 18 in evidence.

23. Aiyaz appeared to understand the charge. He was not forced to make admissions. The statement was read back to Aiyaz after the charge. Aiyaz signed, having agreed with the statement.
24. Under cross-examination, WPC Chand agreed that Aiyaz couldn't read Hindi or English. She said that Aiyaz replied to Q 21, where he was asked whether he agreed with what had been written in his statement, in the negative. Aiyaz at Q25 indicated that he gave his statement of his own free will. She read the statement back to Aiyaz after she had put Q 21 to Aiyaz. Until then, Aiyaz had not known what was written in the statement.

PW5 Detective Inspector Salesh Kumar

25. Inspector Salesh interviewed Aiyaz at the Lautoka Police Station in the presence of Sgt. Ram Karan. Aiyaz signed only on the first page and refused to sign the rest. He translated the record from Hindi to English. He tendered the Hindi original marked PE2(a) and the English translation PE2(b). He read the admissions made by Aiyaz in evidence.
26. As part of the interview, Inspector Salesh accompanied Aiyaz for scene reconstruction in Drasa. The video (which is contained in two CDs) recorded by CSI Officer Sgt. Josateki, during the scene reconstruction and the English translation of the transcript of the same, which he prepared, were tendered in evidence (PE3). He described the events in the video as it was being played in Court. During the caution interview, the fingernail clippings and buccal samples of Aiyaz were obtained with his consent and were taken to the lab by CSI Officer Sgt. Josateki. He is not aware if there is another suspect by the name of Salman Hakim.

27. Aiyaz led the police team because he was the one who knew the places, how he went and what he did. Aiyaz voluntarily answered questions during the scene reconstruction and led the police officers throughout the scene reconstruction.

PW 6- Doctor Avikali Mate

28. Doctor Mate is a senior medical officer at the CWM Hospital Pathology Unit. Before joining the CWMH, she was based at the Fiji Police Force Forensic Pathology Unit for 11 years as the Senior Pathology Registrar. She had conducted more than a thousand autopsies. On 22 November 19, she conducted the postmortem examination on the deceased Sabina Azmin Nisha at the Lautoka Hospital. She tendered the postmortem report marked as PE4.
29. Upon the external examination of the body, she observed injuries on the head, neck, chest, and abdomen. On the head and face, there were two stab or incised wounds below the right eye and on the lateral aspect of the right cheek from the right ear. There were also another two incised wounds on the forehead, and bruises and abrasions noted over the nasal bridge. There were incised stab wounds on the upper lips, which had displaced the teeth. A deep incised stab wound was noted on her left cheek. This was the biggest injury seen on her face.
30. The neck showed two injuries, one being the incised stab wound on the right lateral aspect of the neck and the largest injury was seen along the neck extending from the left lateral to the front of the neck. This was open one cutting through the underlying neck structures, different layers from the muscle to the airways and the blood vessels. The other injuries were noted on her upper limbs. There were multiple stab wounds and bruises of varying sizes. The pattern of those was consistent with defensive injuries.
31. There were also incised wounds on her lower leg and knee and superficial incised wounds noted on the right lower chest extending from the right side towards the midline of the chest. There was a single incised stab wound on the abdominal area.

32. The injuries to the neck had damaged the two major blood vessels and the airway that sits in front of the neck. These are the vessels that take blood from the heart to the head and all structures in the head and brain. Both blood vessels were cut, causing a lot of blood loss, which led to the death of the deceased.
33. The injury to the neck had been inflicted by a sharp object that had a sharp edge like a sharp knife that could cut the surface of the skin. The direct cause leading to the death was exsanguination, which is excessive external blood loss, and this was due to the transaction of the neck vessels because of the severe injury to the neck.
34. Swabs were taken from the vaginal wall of the deceased, where there was white and grey mucus secretion that was consistent with semen. The swabs were then sealed and handed over to the crime scene officers for safekeeping and testing in the laboratory. Upon being shown, the doctor recognised the photographs in the photographic booklet taken during the postmortem examination and used them to describe the injuries she observed on the deceased.
35. Under cross-examination, the doctor said that the autopsy was conducted three days after the estimated time of death. The body had been taken straight into the cool storage and therefore, decomposition could not have altered her findings.

PW7 -Acting Inspector of Police_Josateki Seuseu

36. IP Josateki is attached to the Forensic Service Department at the Lautoka Police Station. He was a fingerprint supervisor and a crime scene investigator for this case. On 20 November 2019, he was instructed to attend the crime scene and to be the photographer cum crime scene recorder. He took photos of the crime scene. When he arrived at the scene in Drasa, the dead body was still there, and the suspect was also present. He also attended the postmortem examination and video-recorded the reconstruction of the scene. He compiled a photographic booklet, and the video was saved into a disk. The photographic booklet was

tendered marked as PE5 and described the crime scene, referring to the photographs. The two CDs were tendered marked as PE 6(a) and PE 6(b).

37. Photo No. 8 indicates the blood stain found in the bathroom. There was evidence of a struggle. Photographs 60 and 67 show the bathroom door where a red blood-like stain was found. Photo 97 shows the gloves and the socks that were recovered from the well. During the scene reconstruction, it was the Accused who was showing them.
38. IP Josateki also escorted exhibits, including the two socks and the hand gloves, to the Suva Laboratory for DNA analysis.
39. Under cross-examination, IP Josateki said that the chain link that Imtiaz had broken was not dusted for fingerprints because there was no sufficient surface area to uplift the required amount of characteristics in a fingerprint to work on for identification. There was no sign of breaking of the door. The killer would have entered and exited through the door.
40. He used his body to force open the door. He denied having contaminated the entry and exit points. There were some fingerprints on the wall in the deceased's room, but they could not be identified. He denied that he had assumed that the killer was Aiyaz because there was a DVRO between Aiyaz and the deceased. He is not aware of any investigation regarding another suspect named Salman Hakim. He participated in only one scene reconstruction, which was video recorded and is not aware of any other crime scene reconstruction.

PW 8 -Paulini Saurogo

41. Paulini is a senior scientific officer with the Fiji Police Force Forensic Biology and DNA Laboratory in Nasova. After outlining her qualifications and experience, she testified that she was the assigned scientific officer for this case. A DNA analysis was conducted on the exhibits, and she documented her findings in the DNA report, which was tendered and marked as PE 7. She received the post-mortem results as well as various crime scene exhibits, including the wet and dry swabs from the knife and the baton from the crime scene. There

were two submissions: Salome received the first one on 23 November 2019 from WDC Ilisapcci, while Gusu received the second one on 27 November 2019 from Sgt. Josateki.

42. She testified about the three-step analysis process: the first step is the extraction process, where DNA is isolated from the sample; the second step is quantitation to determine the amount of DNA in the sample; and the last step is analysis, which is capillary electrophoresis.
43. The reference buccal FTA sample and nail clippings of Mohammed Aiyaz Ahmed, blood samples of the deceased and Salman Hakim were used for comparisons and elimination of evidence samples which included fingernail clippings and vaginal swabs obtained from the deceased, wet and dry swabs from the kitchen knife handle, wet and dry swab from the baton handle, and the glove from the crime scene. The reference samples were compared with the findings of the evidence samples of fingernail clippings obtained from the deceased during postmortem examination
44. The low vaginal swab collected from the deceased was categorised into a female fraction and a male fraction. The female fraction of the complete female DNA profile was consistent with the reference DNA profile of the deceased. A mixed DNA profile was obtained from the male fraction, and at least two individuals had contributed DNA unequally in that fraction. The major contributor was Sabina Nisha, while the minor component was consistent with the reference DNA profile of Aiyaz Ahmed.
45. A mixed DNA profile was obtained from the fingernail clipping obtained from Aiyaz. At least two individuals had contributed DNA unequally to this sample. The DNA profile obtained from the major component of this sample was consistent with the reference DNA profile of Aiyaz Ahmed. The DNA profile obtained from the minor component was similar to the reference DNA profile of the deceased. The deceased's DNA was found under the left fingernail clippings of Aiyaz, suggesting that he had come in contact with the abrasion of the deceased.

46. A mixed DNA profile was obtained from the wet and dry swabs uplifted from the glove. At least three individuals had contributed DNA equally, and an unidentified DNA profile was obtained from the major component of this sample. A DNA profile obtained from the minor component of this sample was consistent with the reference DNA profile of the deceased. Therefore, the deceased cannot be excluded as a contributor as a minor component of this sample.
47. If the gloves were submerged in water, the DNA found on them would be affected. The reference sample of Salman Hakim did not match any of the evidence samples. If a person scratches another person's body, that's how the DNA profile of another person could have attached to his (scratcher's) nail clipping.
48. Under cross-examination, Paulini agreed that she did not do the entire analysis herself, although she signed the report. She did not witness how the DNA samples were uplifted. She had to be satisfied with the chain of custody by referring to the relevant documents provided and by liaising with the crime scene officer involved. The machines at the laboratory have a calibration certificate that is updated annually. She agreed that the exhibits that were not analysed could have contained some information about a third person. She agreed that the identity of the two other DNA contributors to the glove could not be verified.

PW9 - Corporal Ilisapeci

49. In 2019, Ilisapeci was based at the Lautoka Police Station as a Crime Scene Examiner. On 20 November 2019, she was instructed by Sgt. Josateki to attend to the case at Drasa and to be the Crime Scene Examiner cum sketcher. Sgt. Josateki was taking photographs of the crime scene. She sketched the layout of the house. She recognized the rough sketch plan and the fair sketch plan of the scene she prepared and tendered them marked as PE 8A and 8B. She uplifted the exhibits, numbered, labelled and packaged them at the scene. She swabbed the stains in the bathroom, the wall, the baton. She took the exhibits, biological samples and buccal swabs to Nasova Forensic Lab for DNA analysis.

50. Under cross-examination, Ilisapeci said that some exhibits, including the kitchen knife, were eliminated, and only those needed for analysis were taken to the lab. The kitchen knife that was in the kitchen was eliminated after the postmortem as it was not sharp and bigger. She took Aiyaz's underwear, which she believed was sent for forensic examination.
51. She did not find any blood stains on the baton. It was just swabbed and returned to the IO. She agreed, having stated in her previous statement that blood-like stains were found on the baton. She did not see this baton on the 1st day of her examination. She uplifted a button phone, a J2 Pro phone and a resignation letter in the deceased's handbag.

Case for Defence

DW1- Mohammed Aiyaz Ahmed (The Accused)

52. Aiyaz received education up to Class 5. In 2019, he was a cook at Drasa Islamic Orphanage. On 20 November 2019, he arrived at work around 2-3 a.m. as usual because he had to cook for the children. He received a call at around 8.30 a.m. from his wife's manager, who informed him that his wife had not come to work. He told the manager that there was a DVRO against him and that he could not talk to or call his wife. The first DVRO was taken in November 2019 by him against Sabina because they had problems. Sabina had taken another DVRO against him later.
53. After that, his wife's sister, Maureen, also called and asked her to go and check why his wife (Sabina) had not come to work. Maureen forced him to go and see why Sabina had not come to work. Before going, he called his cousin and asked him what he should do as there was a DVRO against him. His cousin advised him to go first to the Community Police Officer Jani (Imtiaz - PW1) and take him along. Imtiaz agreed to go with him. He denied saying to Imtiaz, '*Maybe my wife has cut herself*'. Imtiaz advised him not to touch anything and enter the house.

54. When he was rushing for work, he forgot his copy of the key, which was locked inside. Imtiaz broke the chain link, took the keys hanging inside, opened the back door and went inside the house. Imtiaz checked everything inside and informed him that Sabina was sleeping inside. Imtiaz had called the police, and the police officers arrived at around 10 a.m. The police officers checked inside the house and informed him that something had happened, and his wife had passed away. The last time he saw his wife alive was when he left for work in the morning at around 2.30 a.m. She was sleeping in her room at that time.
55. He was taken to the police station at night on 20 November 2019, and on the next day, he was interviewed by Sgt Saleh in the presence of another officer. In the interview, he first denied killing his wife. He later made the admission that he killed his wife because the police officers assaulted him and made him confess. He knew Salman Hakim, a taxi driver who used to do jobs for his wife
56. Under cross-examination, Aiyaz admitted that he and Sabina had obtained DVROs against each other. She filed hers in August 2019 and later asked for the custody of her children and belongings. A no-contact order was also attached to the DVRO. He was the one who first obtained a DVRO against her.
57. Because of the DVRO, they were supposed to live separately in different sections of the house. He was supposed to stay in his room and use the back part of the house. He only shared the bathroom and the kitchen, which he did not use most of the time. He never used to go to the sitting room or other rooms, but he used the kitchen way and the porch to go to work.
58. Imtiaz, the Advisory Counselor, knew about his family problems. He used to go to Imtiaz before the DVRO was obtained. Imtiaz did not have any grudge against him to lie and give evidence against him.
59. He agreed that, before the incident on the 19th, his children and Sabina had been staying with Maureen at Naikabula for about two weeks. Only Sabina returned on 19 November 2019.

When he returned home at night, he saw the light in her room. When he called out for his children, she heard him calling out and opened the door, and then she went away. Thereafter, he slept in his room, and Sabina slept in her room.

60. He agreed that when he woke around 2 a.m., she saw Sabina still sleeping. He denied returning to his room to take out the knife that was under his mattress and proceeded to Sabina's room where he punched, slit the throat and stabbed her multiple times while she was lying on the bed. He admitted receiving a call from Sabina's manager around 7 a.m. and not going to Drasa to check on his wife until 9 a.m. The reason, he said, was that he was supposed to do his work and that there was a DVRO against him.
61. Salman Hakim committed suicide on the day of the incident because Hakim was having problems with his wife. He could not say Sabina was having an affair with her manager, but he suspected them to be so. He does not know how to read Hindi, although he studied up to Class 5 at Tavua Primary, where both Hindi and English were the media of instruction.
62. The DVRO obtained by Sabina was shown to Aiyaz and tendered in evidence (PE9) by the Prosecution during re-examination. According to that DVRO (PE9), the protected persons were Mohammed Aiyaz Ahmed, Ghazala Zain Nisha, and Mohammed Zahid Zain; it does not have a non-contact order. He took out a DVRO against Sabina because she used to go to places and say that he was doing this and that. He had locked the house before leaving. Without the key, he could lock the padlock. Once it is locked, no outsider can enter the house without the key.

Evaluation / Analysis

63. There is no direct evidence from eyewitnesses in this case. The Prosecution substantially relies on circumstantial evidence, the confessions/admissions and the scientific (DNA) and the medical evidence to prove the charges. The Defence completely denies the charges and challenges the evidence of the Prosecution. Let me analyse the scientific evidence first.

The Scientific (DNA) Evidence

64. The Prosecution substantially relies on scientific (DNA) evidence to prove the charge of Murder. The Defence did not challenge the admissibility of DNA evidence on the basis that the Accused's buccal sample and nail clippings were obtained unlawfully or unconstitutionally. The interviewer IP Saleh testified and confirmed that these samples were obtained during the caution interview with the consent of the Accused. The Accused, in his evidence, did not deny that the biological samples were obtained, and they were obtained with his consent.
65. Paulini (W8) tendered the DNA report she prepared (PE7) and explained the procedure she followed to obtain its findings. There was no challenge to the expertise or scientific procedures at the laboratory other than the question on the accuracy of the machines used. PW8 said that the machines have a calibration certificate that is updated annually. I am satisfied that the machines were in order.
66. The Defence, in its written submission, contends that the Prosecution failed to prove the DNA collection process and the chain of custody for the exhibits to eliminate doubt that they were contaminated or tainted. However, the evidence of the crime scene (CSI) officers who collected the exhibits/samples from the crime scene (PW 7 and PW9) or the scientific officer (PW8) was not challenged on the basis that they were contaminated or tainted.
67. Paulini (PW8) agreed that she did not witness how the DNA samples were collected. She further said that she had to rely on the chain of custody by referring to the relevant documents provided and by liaising with the CSI officers involved. The CSI officers (PW7, PW9) explained how the exhibits/samples were collected from the crime scene, sealed, numbered, labeled and then handed over to the Laboratory in Nasova.
68. Although, she was not fully involved in the entire analysis process, PW8, as the Senior Scientific Officer, based on her records, confirmed the receipt of exhibits/samples at her

laboratory and the accuracy of its findings. According to her, there had been two submissions: Salome received the first one on 23 November 2019 from WDC Ilisapeci, while Gusu received the second submission on 27 November 2019 from Sgt. Josateki. PW8 tendered a detailed report (PE7) as to what was received, by whom and who handed them in. I am satisfied that the collection of exhibits/samples and the scientific process at the laboratory were proper and that the exhibits/ samples were not contaminated or tainted.

69. The findings of the DNA analysis no doubt implicated the Accused and excluded Salman Hakim. From the low vaginal swab collected from the deceased, a mixed DNA profile was obtained of which the minor component was consistent with the reference DNA profile of the Accused. According to the Accused's evidence, he had had no contact with his wife for the three weeks before the incident. In his caution statement, the last time he had had sex with his wife was two months before she took out the DVRO on him (Q89). The deceased had come home on 19 November 2019 and slept in her room while the Accused had slept in his room. There is no plausible explanation from the Accused in his evidence as to how his sperms were detected from the low vaginal area of the deceased. The explanation perhaps is found in his answer to Q179 of his caution statement where he admitted removing the deceased's trousers to have sex with her. Imtiaz saw her body half naked. The only reasonable inference I can draw from this evidence is that the Accused left his sperms on the deceased before leaving home on 20 November 2019.
70. A mixed DNA profile was obtained from the fingernail clippings obtained from the Accused. The deceased's DNA was found under the left fingernail clippings of the Accused, suggesting that he had come in contact with the abrasion of the deceased. PW8 opined that if a person scratched another person's body, that's how the DNA profile of another person could have attached to his (scratcher's) nail clipping. In his caution statement, the Accused said he got hold of the deceased's neck with one hand and cut her neck. The only reasonable inference is that the Accused got deceased's DNA during this encounter.
71. A mixed DNA profile was obtained from the wet and dry swabs uplifted from the gloves. A DNA profile obtained from the minor component of this sample was consistent with the

reference DNA profile of the deceased. Although the DNA profile of the Accused could not be obtained from the gloves, they were recovered as per the statement and direction of the Accused. The absence of the Accused's DNA on the gloves could be explained by PW8's evidence that the DNA found on the gloves would be affected if submerged in water.

Confessional Statements

72. The confessions are contained in the record of caution interview PE2(a) and PE2(b), the charge statement PE1(a) and PE1(b), the video and transcripts of the scene reconstruction (PE3). After an extensive *voir dire* hearing, this Court ruled all confessional statements admissible. In making this ruling, the Court acknowledged that the caution statements were provided voluntarily by the Accused.
73. The main issue to be decided at the trial proper is whether the confessions/admissions contained in those documents are truthful. If it is found that the Accused, for whatever reason, had not told the truth to the police, the Court should not rely on those statements.
74. The Court is supposed to look at evidence holistically to test the truthfulness of those statements. I would first look at the alleged confessional statements contained in the record of caution interview. Then I would compare them with other evidence to satisfy myself if the Accused told the truth to the police.

Q48: When your wife took out the DVRO on you?

A: 1 month ago.

Q:49 Was there any dispute between you and your wife?

A: Yes, from the time we took out the DVRO on one another.

Q:50 Was there any fight between you two?

A: No.

Q:51 What was the reason for you to take out the DVRO on your wife?

A: I saw love bites on my wife's neck. She used to talk to someone which I didn't like, that is why I took out the DVRO on her.

.....

Q: 61 Why did your wife took (sic) out in the DVRO?

A: She took out DVRO Orders on me that whatever she will do I cannot stop her what she's doing. For me not to have any contact with her. For me not to follow her and not to threat (sic) her

.....

Q: 70 Did your wife always return back from work?

A: *No. From last two weeks she was staying with her sister with my children.*

75. The answers given by the Accused mentioned above are consistent with the evidence he gave in Court. Imtiaz (PWI) also confirmed how the Accused and the deceased were fighting and blaming each other about extramarital affairs, the DVROs obtained and how he counselled them to resolve their disputes. The Accused, in his evidence, does not deny what Imtiaz said in this regard. Imtiaz's evidence about what transpired at the Accused's house on 20 November 2019, his interactions with the Accused on that day and the days preceding, are consistent to a great extent with the caution statement of the Accused. The following confessional statements are directly linked to the Murder charge.

Q: 153 *Can you tell me what you know?*

A: *Yes, I was the one to kill my wife.*

Q:154 *How did you kill her?*

A: *I stabbed her with a kitchen knife.*

.....

Q167: *so yesterday in your answer, in Q154, you have mentioned that you used a kitchen knife for stabbing, so how can you explain to me what kind of knife was that?*

A: *About 6 inches long with a white handle.*

Q:168 *How does it look like?*

A: *It was a small knife which had a blade points and it is known as charco in Hindi.*

Q:169 *How that knife came to you?*

A: *I brought it from my room.*

Q:169 *Where was it in your room?*

A: *I put it under my mattress.*

Q:170 *For how long it was being kept there under your mattress?*

A: *1 year.*

Q:171 *When did you bring that knife?*

A: *Last year.*

Q:172 *Did you always put a knife in your bedroom?*

A: *Yes.*

Q:173 *Why do you keep it?*

A: *Before it was in the kitchen but lately I bought it and put it in my room.*

Q:174 *Why do you use it and put it in your room?*

A: *For my self defence.*

.....

Q176: *In your answer in Q153, you have mentioned that you killed your wife, so can you explain to me why did you kill your wife?*

A: *Yes, when my wife started working she always came late night and sometimes she does not come home and whenever she used to come home, I used to see her very busy in her mobile phone talking to someone, upon asking she got angry and she said no one can stop her from talking to anyone else. After sometime I felt suspicious that she is having an affair with the driver so I advised her to leave her job but she said she cannot leave her job but can leave me then she said that she has a man in her life and will always keep him. I kept on forgiving her and then went to the workplace, met her boss and informed him to stop my wife from working 3 months back and she went and she went and put up a false report at Vitogo Police Post that I am forcing her to have sexual*

intercourse with me. Then I took out the DVRO on her so she could not create any more problems with me. After sometimes, my wife also took out DVRO on me, in that DVRO order, it was written that she wants the children's custody and house belongings. So on 29 November 2019, she came alone to my house and then she was in the bedroom, and that is when I planned to finish her so that my children can stay with me and the house belongings will be with me.

Q: 177. How did you finish your wife?

A I saw the love bite on my wife's neck, I got angry and thought that today, that small knife that I'm keeping under my mattress, I will use to kill my wife.

Q:178 What happened next?

A: Then on 19th of November, 2019, I saw my wife was sleeping. Before going to work, I removed the knife which was under the mattress and went inside her room and pushed her face and when she woke I then got hold of her neck with one hand and cut her neck with the knife then I stabbed the knife in her stomach.

Q:179 What happened next?

A: Then I removed her trousers to have sex with her but I didn't do anything. I pulled her trousers halfway up.

.....
Q:181: What hand did you use to stab your wife's neck?

A: Right hand.

Q:182: When you attack your wife, what type of clothes your wife was wearing?

A: Black trousers which is in Hindustani called sutna and a red t-shirt.

Q:183: What was the position of your wife when you attack?

A: She was lying on her bed on her right hand.

Q:184: How many times did you attack your wife?

A: Two times on the neck and one time on the stomach.

Q:185: When you attack on your wife, did she make any noise?

A: I didn't give her any chance to make any noise.

Q:186: What happened next?

A: Then I took the knife to the bathroom to clean

Q:187: What happened next?

A: Then I also cleaned my body with water.

Q:188: What were you wearing when you attacked your wife?

A: I was only wearing an underwear.

Q:189: Can you recall the time when you attacked your wife?

A: About 2am to 2.30am.

Q:190: What was the date when you attacked your wife?

A: 20th November, 2019.

Q:191: How do you know that it was on 20th November, 2019?

A: Because after that I went to work.

Q:192: When you went inside the bathroom, then what happened?

A: I cleaned the knife and bathed myself.

Q:193: What did you do to the underwear that you were wearing?

A: I took it off, after bath I put it on.

Q:194: Where is the underwear now?

A: It is inside my bag at the police station.

.....
Q:204: Where did you throw the knife?

A: I throw it inside the well.

Q:205: Where is the well located?

A: It is near to one Feroz's house.

Q:206: Where is this Feroz's house?

A: It's near to my house in Drasa, Lautoka.

Q:207: *From which door did you come out from the house?*
A: *I came out from the kitchen door.*
Q:208: *Did you close the door after you came out?*
A: *No, I only pushed it.*
Q:209: *Where did you go when you came out from the kitchen door?*
A: *Then I went to the porch and opened the iron grilled door by opening the padlock by the key and then went back inside the kitchen and hung the key on the nail and pulled the door.*
Q:210: *What happened next?*
A: *Then I came in the porch, pulled the grilled door and then came out and locked the padlock from outside and then I headed towards my workplace.*
Q:211: *What time did you leave your house?*
A: *3am to 3.30am.*
Q:212: *How did you know that it was 3am to 3.30am?*
A: *That is the time I usually go to work.*

.....
Q:220: *Did you only throw the knife into the well or something else?*
A: *With the knife and I also throw my hand gloves.*
Q:221: *What type of hand gloves was it?*
A: *It was the same hand gloves which I wore to hold the knife when I killed my wife.*
Q:221B: *(which was a typing error) And what was the color of the hand gloves?*
A: *Black.*
Q:222: *In which hand did you wear the hand gloves?*
A: *Right and left hand.*

.....
Q:228: *Why were you wearing the gloves?*
A: *To hold the knife so that I won't get any prints in the knife.*
Q:229: *Can you tell me about the knife that you use to attack your wife? How does it look like?*
A: *It is a white color handle and on the handle my name was written on it.*
Q:230: *What name did you put on the handle of the knife?*
A: *Aiyaz.*
Q:231: *Was it written in capital letters or small letters?*
A: *In capital letters.*

76. During the caution interview, the Accused agreed to participate in a scene reconstruction. In the video recorded scene reconstruction, he voluntarily led the police team to various places. He demonstrated how he killed his wife, how he washed himself and the knife in the bathroom, how he locked the door and proceeded to his workplace after throwing the knife and the gloves into the well near Imdad's house.
77. The video screened in Court showed all these and is consistent with other evidence led in the trial, particularly the scientific evidence produced by Paulini Saurogo (PW8) as to the gloves allegedly found in the well. The blood-like stains the CIS officers found in the bathroom suggest that the killer had gone to the bathroom. The Accused, in the caution statement, said

that he pushed the deceased's face, got hold of her neck with one hand, cut her neck with the knife and stabbed her in her stomach (Answer to Q: 178). He said he had attacked his wife two times, on the neck and the stomach (Answer to Q: 184). The injuries found on the deceased at the postmortem are consistent with the caution statement of the Accused.

78. The Accused had told the police that the knife and the gloves he wore to avoid fingerprints on the knife were thrown into a well. The video showed Accused voluntarily leading the police team to the well where the gloves and the knife were thrown. As a result, the gloves were found floating in the well. The knife, however, was not recovered. IP Satesh explained the police divers' unsuccessful efforts to find the knife in the well bed, which was laden with stones. The Accused, upon those gloves being shown, confirmed them to be the ones he had thrown into the well after killing his wife. The wet and dry swabs obtained from the gloves were sent to the Forensic Laboratory, where they were analysed for DNA.
79. The DNA test results for wet and dry swabs uplifted from the (left) glove and blood-like stain uplifted from the (right) glove confirmed that the DNA profile obtained from these representative samples was consistent with the reference DNA profile of the deceased. There is no plausible explanation as to how the DNA profile of the deceased was present on the gloves other than that given by the Accused in his caution statement. Therefore, the only reasonable inference that can be drawn is that the Accused told the truth in his caution interview.
80. The absence of the Accused's DNA on the gloves and the inability of the analyst to establish the identity of two unknown DNA contributors to the gloves do not prevent this inference from being drawn, given the PW8's acceptable explanation. PW8 explained that had the gloves been submerged in water, the DNA found on it would have been affected. The Accused had told the police that the gloves were given to him by a friend who was an animal slaughterer. Therefore, the presence of two unidentified DNA profiles on the gloves, in my opinion, would not affect the credibility of the Prosecution's version.

81. The Defence contended that the absence of any evidence on Accused's underwear implicating him, which he said (in the caution statement) he was wearing at the time of the killing raises a reasonable doubt on the accuracy of the caution statement and the propriety of the police investigation.

82. Ilisapeci (PW9), during her examination-in-chief, did not state that the underwear of the Accused was retrieved from the crime scene. However, during cross-examination, she conceded that she did. She also believed it had been sent for forensic examination. Nonetheless, the forensic DNA report (PE 7) does not indicate that a male underwear was sent to the laboratory. The Accused, in his caution statement, said:

Q:193: What did you do to the underwear that you were wearing?

A: I took it off, after bath I put it on.

Q:194: Where is the underwear now?

A: It is inside my bag at the police station.

83. The underwear was not among the items put to the Accused after Q265 of the caution interview as being sent to the forensic laboratory. PW9 had gone to the crime scene before the Accused was caution-interviewed. Therefore, she could not have known the evidential significance of the underwear. PW9 was not refreshing her memory by reviewing notes while giving evidence. It seemed she was uncertain if the underwear had been sent for analysis at all when she replied, 'I believe so' when asked whether it was sent. If the Accused wore his underwear after the bath and it remained with him until the interview, PW9 could not have obtained it from the crime scene or sent it to the laboratory. Therefore, PW9's evidence, based on speculation, could not affect the truthfulness of the caution statement or the propriety of the police investigation.

84. The Accused, in his charge statement too, confessed to the Murder in similar terms. I would reproduce below the alleged confession made by the Accused in his charge statement:

Q 18: Do you wish to make any statement?

A: Answer: Yes, I am Mohammed Aiyaz Ahmed wish to make a Statement. I want someone to write down what I said. I have been told that I need not to say unless I wish to do so and that whatever I say may be given in evidence. I want to say that in the month of Rozat 2019,

I saw a bite mark on my wife's neck. When I asked her, she ignored me. A minute later, my wife namely Sabina Yashmin Nisha came to me and said it was a lipstick mark. I know very well how to differentiate between a love bite and a lipstick mark. The month of Rozat is declared to be the most pure month of our culture. I and my wife started having fights every day. I told my wife, I want to set her out from where she was working but the boss namely Raju didn't sack her from work. I have to ask my wife not to work and stay home. My wife didn't listen to me and started to go out with her boss anywhere she wanted. My families and my friends started to tell me that I am sending my wife with another man. I felt so bad after hearing those words, I told my wife many times not to spoil our family reputation. Time came by staying under one roof, I and my wife started sleeping in separate rooms because there was a domestic violence restraining order. Since this month, my wife left me alone and went to her parents' house with my kids. After a week she returned back without my kids because she had to drop my kids to her sister's place. On Wednesday 20th November 2019, early in the morning at 3 a.m, I brushed my teeth and went to my wife's room. I punched her and then suddenly she woke up. I picked up the kitchen knife and cut her neck. I stabbed once in her stomach, she couldn't shout because I have put my hand on her mouth. After that I bathed, I took the knife and headed toward my workplace in Drasa Madarzal. Whilst walking on the road, I saw one Imdad who has a well in which I threw a kitchen knife and gloves. While throwing the kitchen knife and gloves, my sock fell into the well. After that, I straight went to my workplace and started working. I have two children, I have committed a crime, why I have committed the crime, I don't know either, I want to spend my whole life with my children.

85. Answer to Q21 of the charge statement, where he was asked whether he agreed with what had been written in his statement, the Accused replied in the negative. However, the statement was read and understood by the Accused at Q23 only after Q21 was answered. Therefore, the Accused could not have known what was written in his statement, either to agree or disagree by the time he answered Q 21. Answering Q25, he indicated that he gave his statement of his own free will. No allegation was mounted against WPC Chand or the witnessing officer that they assaulted or forced to confess. In cross-examination, there was no challenge to the charge statement that police fabricated it. The charge statement is consistent with what the Accused told the police in his caution interview and other evidence led in the trial. I have no reason to reject the truthfulness of the charge statement of the Accused.
86. Even if I were to entertain the Defence's argument that the Accused involuntarily provided the confessional statements, I would not be deterred in the circumstances of this case from acting upon the confessions in the interest of justice under Section 14 (2)(k) of the Constitution. This section underscores the importance of ascertaining the truth, which is paramount in a criminal trial. The recovery of the gloves used to kill the deceased, as per the Accused's statement and directions, indicates that the Accused was truthful with the police.

87. Having analysed the evidence led in the trial and the confessional statements of the Accused, I conclude that the confessional statements are truthful statements of the Accused given to police of his own free will.

Post-Criminal Conduct of the Accused/ Motive

88. Imtiaz (PW1) is the first person to have come into contact with the Accused on 20 November 2019, following the tragic incident. He has had a good relationship with the Accused all the time. The Accused himself admitted that Imtiaz had no grudge against him and had no reason to lie. His evidence is mostly consistent with what the Accused communicated to the police. There is no reason for me to reject PW1's evidence.
89. The importance of Imtiaz's evidence is twofold. Firstly, he spoke about the Accused's post-criminal conduct. At around 9 a.m., he saw the Accused at one of his neighbour's houses, talking on the phone and looking worried. Then, the Accused came to him and informed him that his wife was not answering the phone and not opening the door. The Accused further said that *'maybe she had done something'–'Maybe she had cut herself'*. Imtiaz saw the Accused's eyes red and full of tears and found his words strange and suspicious.
90. This conduct of the Accused is consistent with his guilt. The injuries, according to the postmortem report, could never have been self-inflicted. Suicide was never part of the Defence case theory. The Accused appeared to know that his wife had cut injuries even before entering the house, which was locked from inside. His knowledge about the cut injuries and deliberate attempt to mislead Imtiaz as to the cause of death is consistent with his guilt.
91. Imtiaz agreed that the Accused, at no point in time, stopped him from calling the police or was trying to destroy or tamper with evidence or flee the scene. The Accused would have brought more suspicion upon himself if he acted in such a manner. Therefore, the fact that

he did not run away from the scene or try to destroy evidence would not negate the Accused's post-criminal conduct consistent with his guilt.

92. Secondly, Imtiaz's evidence confirmed the truthfulness of the Accused's caution statements regarding the long-standing family dispute, which triggered a strong motive to kill his wife.
93. Shabana (PW3)'s evidence also supports the premise of the Accused's post-criminal conduct. Shabana forced the Accused to go and check on the deceased, as she (the deceased) was not responding to calls. The Accused agreed to go and check, but he did not go until around 9.15 a.m. when Shabana called him again. The Accused admitted receiving a call from the deceased's manager around 7 a.m. and not going to check on his wife until 9 a.m. The reason, he said, was that he was supposed to do his work and that there was a DVRO against him.
94. These reasons seem untenable. The Accused could have gone home, which was not that far from his workplace and come back to work. He said that before coming to work around 2.30 a.m., he saw his wife sleeping in her room. This shows that despite the DVRO, he was not prevented from going to the deceased's room. Then why didn't he go to check on his wife until 9.30 a.m., and why did he accompany Imtiaz? I am sure he was feeling guilty

Evidence of the Defence

95. The evidence of the Accused is not appealing to me. He vehemently denied killing his wife, contrary to what he said in his caution statement and charge statement. His explanation was that the confessions were obtained by force using police brutality. Having watched the video recorded scene reconstruction and heard evidence at a lengthy *voir dire* hearing, the Court was satisfied that all confessional statements were made by the Accused voluntarily. The recovery of incriminating evidence on his direction and statement confirms that he had told the truth to the police.

96. Although the Accused agreed mostly with what Imtiaz said in his evidence, he denied saying the words, '*Maybe my wife has cut herself.*' His denial appeared self-serving. He agreed that Imtiaz did not have any grudge against him to lie and give evidence against him. Although the Accused said that the DVRO prevented him from going to see his wife, delayed his visit home to check on her, and decided to accompany Imtiaz, he had gone to see his wife around 2.00 a.m. while she was still sleeping in her room. I observed the demeanour of the Accused. He was not straightforward and honest.

97 I reject the evidence of Defence.

Defence of Provocation

98. During the trial, the Court inquired from the Defence Counsel if the Defence wished to raise the defence of provocation, given the line of cross-examination and the account in the charge statement. She did not clarify the Defence's position, although she undertook to inform the Court of its position after consulting the Accused.

99. The Court could understand the Defence Counsel's difficulty in running the defence of provocation when she has decided to deny the allegation completely. However, there is a general duty on the courts to consider a defence, even if it was not expressly relied upon by the accused at trial. The scope of that duty concerning provocation was explained by Lord Devlin in **Lee Chun Chuen v R**¹ as follows:

Provocation in law consists mainly of three elements – the act of provocation, the loss of self-control, both actual and reasonable, and the retaliation proportionate to the provocation. The defence cannot require the issue to be left to the jury unless there has been produced a credible narrative of events suggesting the presence of these three elements.

100. In **Praveen Ram v The State**², the Supreme Court observed that a trial judge must decide whether, on the evidence, he should direct the assessors and himself on the availability of any alternative defence or verdict that is not raised by the defence.

¹ (1963) AC 220

² [2012] 2 Fiji LR 34

101. In **Regina v Duffy**³, the gist of the defence of provocation was summarised by Devlin J. in a single sentence in his summing-up, which was afterwards treated as a classic direction to the jury⁴:

Provocation is some act, or series of acts, done by the dead man to the accused, which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self- control, rendering the accused so subject to passion as to make him other for the moment not master of his mind.

102. In **Codrokadroka v State**⁵ the Court of Appeal prescribed the approach that should be taken on provocation concerning Sections 203 and 204 of the Penal Code as follows:

1. The judge should ask himself/herself whether provocation should be left to the assessors on the most favourable view of the defence case.
2. There should be a "credible narrative" on the evidence of provocative words or deeds of the deceased to the accused or to someone with whom he/she has a fraternal (or customary) relationship.
3. There should be a "credible narrative" of a resulting loss of self-control by the accused.
4. There should be a "credible narrative" of an attack on the deceased by the accused which is proportionate to the provocative words or deeds.
5. The source of the provocation can be one incident or several. To what extent a past history of abuse and provocation is relevant to explain a sudden loss of self-control depends on the facts of each case. However cumulative provocation is in principle relevant and admissible.
6. There must be an evidential link between the provocation offered and the assault inflicted.⁷

103. The charge statement, which was reproduced in paragraph 84 above, reveals that in the month of Rozat 2019, the Accused saw a bite mark on his wife's neck. When he asked her, she ignored him. A minute later, his wife came to him and said it was a lipstick mark. He knew how to differentiate between a love bite and a lipstick mark. The month of Rozat is declared the purest month of Muslim culture. He and his wife started having fights every day. He told his wife he wanted to set her out from where she was working, but the boss,

³ [1949] 1 All E.R. 932

⁴ Masicola v State [2021] FJCA 176 (29 April 2021)

⁵ [2008] FJCA 122; AAU0034.2006 (25 March 2008)

namely Raju, didn't sack her from work. He had to ask his wife not to work and to stay home. His wife didn't listen to him and started to go out with her boss anywhere she wanted. His family and his friends started to tell him that he was sending his wife with another man. He felt so bad after hearing those words. He told his wife many times not to spoil their family reputation. He and his wife started sleeping in separate rooms because there was a domestic violence restraining order. His wife left him and went to her parents' house with his kids because she had to drop them at her sister's place. On 20 November 2019, early at 3 a.m., he brushed his teeth and went to his wife's room. He punched her, and then suddenly, she woke up. He picked up the kitchen knife and cut her neck. He stabbed once in her stomach; she couldn't shout because he had put his hand on her mouth. After that, he bathed, took the knife and headed toward his workplace in Drasa Madarzah. Whilst walking on the road, he saw a well near Imdad's house. He threw the kitchen knife and gloves into the well. After that, he went to his workplace and started working. He committed a crime. Why he committed the crime, he didn't know. He wanted to spend his whole life with his children.

104. The Accused, in his evidence, did not maintain this narrative. To sustain the defence of provocation, there should be a "credible narrative" on the evidence of provocative words or deeds of the deceased to the accused⁶. In his evidence, the Accused agreed that he could not say if the deceased was having an affair with her manager, but he suspected them to be so, thus weakening the narrative concerning the provocative act on the part of the deceased. The deceased does not seem to have offered any provocation to the Accused by words or deeds.
105. The Accused had intended and pre-planned the attack. He had hidden the knife underneath his mattress for a long time. He took the opportunity to kill his wife when she was alone in her room. He used gloves and tried to destroy incriminating evidence. I do not see, even on the most favourable view of the Accused's version as revealed in his charge statement, a credible narrative of an act of provocation, loss of self-control, both actual and reasonable, and an act of retaliation proportionate to the provocation as expected by law relating to the partial defense of provocation.

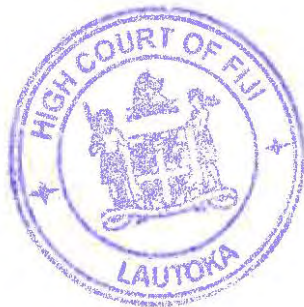
⁶ Codrokadroka v State [2008] FJCA 122; AAU0034.2006 (25 March 2008)

106. The Accused did not say in his evidence that the deceased was having an affair with the taxi driver, Salman Hakim either. He knew Salman Hakim because he (Hakim) used to do jobs for his wife. He took out a DVRO against his wife because she used to go to places and say that '*he was doing this and that*'. There also, no "credible narrative" of provocative words or deeds of the deceased to the Accused was available.
107. There was a subtle attempt, however, by the Defence to blame Salman Hakim for the killing and connect his suicide to the death of the deceased. The Accused cleared this doubt when he said that Hakim took his life because of the problems he had with his wife. The DNA report shows that Salman Hakim's reference DNA profile did not match any of the evidence samples uplifted from the crime scene. The results of the DNA analysis excluded any involvement of Salman Hakim.
108. Imtiaz (PW1) confirmed that the door was locked from inside and all entry points, including the windows, were properly closed. No outsider could have entered the house without the keys to the padlock which the Accused said he forgot to take when he left the house. The only inference that was available on evidence was that the Accused, before leaving the house, locked the padlock without taking the key out.
109. There is no doubt that the Accused was engaged in a wilful conduct to kill the deceased. There is no dispute that the death was caused as a result of exsanguination emanating from sharp cut injuries to the neck as described by Dr Avikali Mate (PW6). It is not difficult to infer from the Accused's words and deeds that he intended to cause the death of the deceased. The severity of the injuries and their numbers, the weapon used, the area of the body targeted, and the failure to save the life all point to the Accused's murderous intent. I am satisfied that all the elements of Murder are made out.
110. There is no dispute that the DVRO obtained by the deceased was in force when the Accused entered the section of the house reserved for the deceased. Quite surprisingly, under the DVRO tendered in evidence (PE9), the protected persons were Mohammed Aiyaz Ahmed, Ghazala Zain Nisha, and Mohammed Zahid Zain. The name of the deceased is not mentioned as one of the protected persons, which should obviously be a typographical error. It does not

have a non-contact order. However, the Court is not prevented from coming to the finding that the Accused violated the conditions of the DVRO, which he admitted being in force when he killed the deceased.

111. The Prosecution proved each charge beyond reasonable doubt. I find the Accused guilty on each count.

112. The Accused is convicted on both counts accordingly.



Aruna Aluthge
Judge

11 February 2025
At Lautoka

Solicitors:

Director of Public Prosecution for State

Messrs Anishini Chand Lawyers for Defence