

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 369 of 2022

STATE

vs.

- 1. MACIU VAKATUTURAGA**
- 2. JOSHUA BULL**
- 3. ISIRELI RASEISEI**

Counsel: Ms. S. Shameem for the State
Ms. S. Serukai with Ms. S. Tivao for 1st and 2nd Accused
Mr. J. Cakau for 3rd Accused

Dates of Hearing: 5th, 6th, 7th, 8th, 9th and 12th August 2024

Date of Closing Submission: 16th August 2024

Date of Judgment: 07th February 2025

JUDGMENT

1. The Acting Director of Public Prosecutions filed this Amended Information, charging the three Accused with one count of Manslaughter contrary to Section 239 (a), (b), & (c) (ii) read with Section 45 of the Crimes Act. The particulars of the offences are:

COUNT 1

Statement of Offence

MANSLAUGHTER: *Contrary to Section 239 (a) (b) & (c) (ii) read with Section 45 of the Crimes Act 2009.*

Particulars of Offence

MACIU VAKATUTURAGA, JOSHUA BULL and ISIRELI RASEISEI on the 14th day of February, 2022 at Suva in the Central Division, as either principals or either aiding and abetting each other, assaulted **MIKAELE TIKOIVALENIBULA** which caused the death of the said **MIKAELE TIKOIVALENIBULA** and at the time of the assault, were reckless as to the risk that their conduct would cause serious harm to **MIKAELE TIKOIVALENIBULA**.

2. The three Accused pleaded not guilty to this offence; consequently, the matter proceeded to a hearing, which commenced on 5th of August 2024 and concluded on 12th August 2024. The Prosecution presented evidence from sixteen witnesses, while the three Accused provided evidence for the Defence. Subsequently, the Court heard the oral closing submissions from the learned Counsel for both the Prosecution and the Defence. Furthermore, the Court instructed the parties to file additional written submissions, which they submitted as directed. I must extend my gratitude to the learned Counsel for the Prosecution and the Defence for their comprehensive written submissions on the contested issues, which greatly assisted me in making this judgment. Having carefully considered the evidence presented, along with the respective written and oral submissions of the parties, I now pronounce the judgment in this matter.

Burden and Standard of Proof

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

Elements of the Offence

4. The main elements of the offence are:

- i) The Accused,
- ii) Engaged in conduct
- iii) That conduct caused the death of the Deceased,
- iv) The Accused was reckless as to a risk that his conduct will cause serious harm to the Deceased.

Admitted Facts

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

Admitted Facts for 1st Accused Maciu Vakaturaga

1. *The Deceased is Mikaele Tikoivalenibula, hereafter referred to as 'Mikaele'.*
2. *On 14th February, 2022, Mikaele was wearing a green basketball vest and green shorts.*
3. *One of the Accused person is Maciu Vakaturaga, hereafter referred to as 'Maciu'.*
4. *Maciu's highest level of education is tertiary level at the Fiji National University (FNU).*
5. *At the time of the incident, Maciu was a Police Officer based at Samabula Police Station.*
6. *On 14th February, 2022, at around 1pm, Nitesh Kumar was withdrawing money from an ANZ Bank ATM at Samabula when he was punched by Mikaele. Nitesh Kumar then went to Samabula Police Station to report the matter.*
7. *Mikaele was arrested on 14th February, 2022 by Ledua Baleimainiusiladi, Isimeli Kiso and Basilio Tabua and taken to Samabula Police Station.*
8. *Mikaele was intoxicated prior to his arrest.*
9. *On 14th February, 2022, Maciu was off-duty but he was at the Samabula Police Station wearing a red/maroon coloured t-shirt and shorts.*

10. *Mikaele was kept in custody at the Samabula Police Station on 14th February, 2022.*
11. *Mikaele was rushed to the CWM Hospital on the night of 14th February, 2022 where he was pronounced dead by Dr. Saula Tunisau.*
12. *On 17th February, 2022, a Post Mortem examination was conducted on Mikaele by Pathologist Dr. James Kalougivaki.*
13. *On 4th March, 2022, Maciu participated in an Identification Parade conducted by Inspector Napolioni Komaitai at the CID Headquarters in Suva in which he was identified by Aliko Mosese.*
14. *Inspector Ilisapeci Waqerau was also present during the Identification Parade.*

Agreed Documents

15. *The contents of the following exhibits are not in dispute and are tendered by consent:*
 - i) *Sketch Plan of Samabula Police Station dated 15th February, 2022 at 1038hrs drawn by PC 6948 Gabirieli [Tab 28 of Disclosures 2];*
 - ii) *Sketch Plan of Cell Block 1 at Samabula Police Station dated 15th February, 2022 at 1038hrs drawn by PC 6948 Gabirieli [Tab 28 of Disclosures 2];*
 - iii) *Fiji Police Forensic Chemistry Laboratory Alcohol and Drug Analysis Results of the Deceased [Tab 38 of Disclosures 2];*
 - iv) *Cyber Crime Unit Digital Extraction Report and CCTV DVD/Footage from Ziayan Investment [Tab 40 of Disclosures 2];*
 - v) *Forensic Biology & DNA Laboratory Results [Tab 5 of Additional Disclosures 1];*
 - vi) *Post Mortem Report of the Deceased dated 17th February, 2022 [Tab 39 of the Disclosures 2];*
 - vii) *Crime Scene Work Booklet [Tab 28 Disclosures 2].*

Admitted Facts for 2nd Accused Joshua Bull

1. *The Deceased is Mikaele Tikoivalenibula, hereafter referred to as 'Mikaele'.*
2. *On 14th February, 2022, Mikaele was wearing a green basketball vest and green shorts.*
3. *One of the Accused person is Joshua Bull, hereafter referred to as 'Joshua'.*
4. *Joshua's highest level of education is Form 7 at Labasa Sangam College.*
5. *At the time of the incident, Joshua was a Police Officer based at Samabula Police Station.*
6. *On 14th February, 2022, at around 1pm, Nitesh Kumar was withdrawing money from an ANZ Bank ATM at Samabula when he was punched by Mikaele. Nitesh Kumar then went to Samabula Police Station to report the matter.*
7. *Mikaele was arrested on 14th February, 2022 by Ledua Baleimainiusiladi, Isimeli Kiso and Basilio Tabua and taken to Samabula Police Station.*
8. *Mikaele was intoxicated prior to his arrest.*
9. *On 14th February, 2022, Joshua was on duty and was at the Samabula Police Station wearing his blue Police uniform.*
10. *Mikaele was kept in custody at the Samabula Police Station on 14th February, 2022.*
11. *Mikaele was rushed to the CWM Hospital on the night of 14th February, 2022 where he was pronounced dead by Dr. Saula Tunisau.*
12. *On 17th February, 2022, a Post Mortem examination was conducted on Mikaele by Pathologist Dr. James Kalougivaki.*
13. *On 4th March, 2022, Joshua participated in an Identification Parade conducted by Inspector Napolioni Komaitai at the CID Headquarters in Suva in which he was identified by Aliko Mosese.*
14. *Inspector Ilisapeci Waqerau was also present during the Identification Parade.*

Agreed Documents

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- v) *Forensic Biology & DNA Laboratory Results [Tab 5 of Additional Disclosures 1];*
- vi) *Post Mortem Report of the Deceased dated 17th February, 2022 [Tab 39 of the Disclosures 2];*
- vii) *Crime Scene Work Booklet [Tab 28 Disclosures 2].*

Admitted Facts for Isireli Raseisei

1. *The Deceased is Mikaele Tikoivalenibula, hereafter referred to as 'Mikaele'.*
2. *On 14th February, 2022, Mikaele was wearing a green basketball vest and green shorts.*
3. *One of the Accused person is Isireli Raseisei, hereafter referred to as 'Isireli'.*
4. *Isireli's highest level of education is tertiary level at Fiji National University (FNU).*
5. *At the time of the incident, Isireli was a Police Officer based at Samabula Police Station.*
6. *On 14th February, 2022, at around 1pm, Nitesh Kumar was withdrawing money from an ANZ Bank ATM at Samabula when he was punched by*

- Mikaele. Nitesh Kumar then went to Samabula Police Station to report the matter.*
7. *Mikaele was arrested on 14th February, 2022 by Ledua Baleimainiusiladi, Isimeli Kiso and Basilio Tabua and taken to Samabula Police Station.*
 8. *Mikaele was intoxicated prior to his arrest.*
 9. *On 14th February, 2022, Isireli was on duty and was at the Samabula Police Station.*
 10. *On 14th February, 2022, at around 6pm, Isireli assisted in the compiling of the*
 11. *Police docket of Aliko Mosese who was also in the custody at Samabula Police Station.*
 12. *Mikaele was kept in custody at the Samabula Police Station on 14th February, 2022.*
 13. *Aliko Mosese and Mikaele were sharing the same Cell at the Samabula Police Station.*
 14. *Isireli was wearing a shirt and sulu.*
 15. *On 14th February, 2022, Aliko Mosese called out to Isireli and informed him that the Deceased had urinated in the Cell.*
 16. *Isireli went to their Cell with a mop. He told Aliko Mosese to exit the Cell and he told the Deceased to mop the urine.*
 17. *Mikaele was rushed to the CWM Hospital on the night of 14th February, 2022 where he was pronounced dead by Dr. Saula Tunisau.*
 18. *On 17th February, 2022, a Post Mortem examination was conducted on Mikaele by Pathologist Dr. James Kalougivaki.*
 19. *Inspector Ilisapeci Waqerau was also present during the Identification Parade.*

Agreed Documents

20. *The contents of the following exhibits are not in dispute and are tendered by consent:*

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Evidence of the Prosecution

6. The Prosecution alleged that the first Accused assaulted the Deceased while he was in the cell room of Samabula Police Station on the evening of 14 February 2022 and that the second Accused aided and abetted the first Accused by kicking the Deceased in the stomach. Following the first incident, the third Accused assaulted the Deceased inside the same cell. The second incident was separated from the first by a duration of time; however, there is no evidence to establish precisely how many minutes or hours elapsed between them. The Prosecution claimed that the second Accused again aided and abetted the third Accused in assaulting the Deceased.
7. The Prosecution presented evidence from sixteen witnesses in three clusters. The first cluster of witnesses testified about the events leading to the arrest of the Deceased by the Samabula Police Officers, followed by the Deceased's escort to the Police Station. The second group of witnesses described the incidents that allegedly occurred inside the Police Station's cell room. The final set of Prosecution witnesses provided evidence concerning the conduct of the identification parade for the first and second Accused. In this judgment, I do not wish to

produce the evidence presented by the Prosecution *in extenso*. Still, I will briefly summarize them to outline the main factual background. I will discuss relevant facts in detail in the evaluation of evidence.

8. As I mentioned previously, the first group of witnesses provided testimony outlining the circumstances surrounding the arrest of the Deceased. The Deceased tried to steal money from the first Prosecution witness, Mr. Nitesh Kumar, when he was withdrawing money from the ATM near Samabula. Mr. Kumar reported the incident to the Police. Consequently, the Police officers arrested the Deceased while he was still around the Samabula area. He had resisted the arrest, but the Police officers managed to arrest him and escorted him to the Samabula Police Station.
9. After being escorted, the Deceased was placed in the cell room of the Police Station. He was behaving in an unruly manner, shouting in the cell. According to evidence provided by Alik Mosese, who was detained in the same cell as the Deceased that day, the Deceased had attempted to push the door open, preventing the Officer from closing it after bringing Alik back to the cell following his interview. The Officers eventually managed to push him inside and secure the cell door.
10. Alik further testified, explaining that the Deceased continued to behave aggressively and urinated inside the cell. Alik asked the Police Officers at the Station to come and clean it. Three Police Officers came; one was in civilian clothes, and the other two wore Police uniforms. As the Police Officers tried to open the cell door, the Deceased started to shake it and swore at the Police Officers. Once the door was opened, the Officer, who was in civilian clothes, punched the Deceased on the right side of the face. The Deceased punched the Officer back. The Officer then threw several more punches on the shoulder and chest of the Deceased. The Deceased tried to cover his face and move, but he slipped on his urine and fell on the cell bed. The Deceased's right side of the face hit the surface of the mattress and the cement. One of the two Officers, who was in Police uniform, then kicked the Deceased on his knee, asking him to go inside. Alik noticed that someone had mopped the urine on the cell floor while this was happening.

11. A few days later, Aliko identified the first Accused at the identification parade as the Officer in civilian clothes who had initially assaulted the Deceased, while the second Accused was the Officer in Police uniform who had kicked the Deceased when he fell. However, during the hearing, Aliko first identified the first Accused as the Officer who assaulted the Deceased and the third Accused as the Officer who kicked him. He then mentioned that he was confused and had mistakenly pointed out the third Accused. I will shortly discuss the probative value of the evidence concerning the identification of the two Accused at the identification parade and the subsequent dock identification.
12. According to Aliko's evidence, no one entered the cell after the assault incident. He noticed that the Deceased was sleeping and then discovered that he was not breathing. Aliko subsequently informed the Police Officers, who later found the Deceased to be dead.
13. PC Ritran Sami serves as the key witness for the Prosecution regarding the second alleged assault carried out by the third Accused, which was allegedly aided and abetted by the second Accused. Ritran Sami reported for duty on the afternoon of 14 February 2022 and heard the screaming and shouting of the Deceased in the cell. He approached the cell to inquire what was occurring. The Deceased shouted and swore at Ritran, prompting him to inform PC Emosi and PC Bull. They then went to the cell to check on the Deceased.
14. Thereafter, Ritran went outside to smoke with the second Accused. They heard a loud banging on the cell door. Assuming the cell door had been broken, Ritran and the second Accused went to investigate. He discovered that the Deceased was pushing against the door while PC Tuvoli attempted to lock up another suspect, Aliko. The second Accused and PC Emosi managed to push the Deceased inside and lock the cell. They all then went to the Charge room to continue their normal Police work.
15. The third Accused approached PC Ritran and inquired about the commotion coming from the cell as he passed the Charge room. After a short time, Ritran heard a quarrel inside the cell, prompting him to investigate. He discovered the third Accused inside the cell while the Deceased was mopping the floor. The second Accused and Aliko were outside the cell. The Deceased was speaking Fijian, which Ritran did not understand. Suddenly, the third Accused

struck the left side of the Deceased's jaw with his hand. The Deceased collapsed onto the concrete bed, face down. Ritran noted that the Deceased's body had gone limp, rendering him unable to get up. With the help of the second Accused, the third Accused pushed the Deceased onto another bed in the cell and locked the door.

16. PC Emosi is another vital witness for the Prosecution. He was on duty at the Police Station when this alleged incident occurred. At around 4 p.m., he took the Deceased to the toilet. Subsequently, he saw PC Viliame bringing Aliko back to be locked in the cell from the Crime room. As they attempted to open the cell door, the Deceased tried to push it, attempting to force his way out of the cell. PC Viliame, assisted by the second Accused and PC Emosi, succeeded in locking the door.
17. The first Accused arrived and requested the key from PC Emosi for the handcuff that had been used to lock the cell door. He then proceeded to the cell. After some time, the second Accused entered the Charge room, stating that something had occurred in the cell, but he did not elaborate on the incident. Meanwhile, the Deceased continued to scream and act aggressively. Aliko called out for a mop as the Deceased had urinated in the cell. The third Accused subsequently arrived and asked for the key to the cell. PC Emosi witnessed the second Accused taking a mop to the cell, and PC Ritran followed him closely.
18. Having briefly outlined the main points of the Prosecution's case, I will now summarize the defence provided by the three Accused in a nutshell.

Evidence of the Defence

19. The first Accused vehemently denied the allegation, asserting that he never assaulted the Deceased, as the Prosecution claimed. He did not contest the fact that he visited the Deceased in the cell but stated that the visit was solely for the purpose of ascertaining what was happening. He was not on duty that day; however, he had to come to the station to submit his witness statement regarding another matter. Upon his arrival at the Station, he heard the shouts of the Deceased, who was both drunk and aggressive, coming from the cell. He approached the cell and attempted to take the Deceased to the toilet, but the Deceased

resisted and tried to force open the cell door. The first Accused succeeded in pushing back the Deceased and closing the door with the assistance of the second Accused, who had come to help him. He categorically denied that Aliko was in the cell during his visit, as Aliko was outside the Station smoking with other Police Officers. The first Accused then left the Police Station after addressing the matter that had brought him there.

20. The first part of the evidence provided by the second Accused corroborated the account of the events described by the first Accused concerning his encounter with the Deceased during his visit to the cell. The second Accused confirmed that Aliko was not in the cell when the first Accused visited with him. The third Accused arrived at the Police Station around 7 p.m. He was the driver of the vehicle of the Officer-in-charge of the Police Station that day. The third Accused instructed the second Accused to fetch a mop to clean the cell. Once he received the mop, the third Accused handed it to the Deceased, asking him to clean the cell floor. Aliko was standing behind PC Ritran, who was also outside the cell. The Deceased and the third Accused were inside the cell. The Deceased continued swearing at the third Accused while mopping the floor. The third Accused was standing a foot away from the Deceased and suddenly swung his right hand, striking the right side of the Deceased's face. The Deceased fell onto the cement bed and did not get up, remaining lying down. The third Accused told the Deceased to get up, but he did not comply. He then grabbed the Deceased by the collar and pushed him to the other bed in the cell.
21. The second Accused stated that he had no time to intervene and assist the Deceased, as the third Accused seized the Deceased by the collar, pushed him onto the other bed, and locked the door. The second Accused asserted that he neither aided nor abetted the first or the third Accused.
22. The third Accused concurred with the account of the incidents provided by both the Prosecution and the second Accused concerning his visit to the cell, where he asked the second Accused to fetch a mop to clean up, as the Deceased had urinated there. He remained by the door while Aliko, the second Accused, and PC Ritran stayed outside. The Deceased mopped the floor, continuously swearing at him. Subsequently, he began to lean towards the third Accused, who responded by tapping the Deceased on the hand. The Deceased then

slowly sat down. He then requested that the Deceased move to his cell bed, and he complied with the request. With this explanation, the third Accused denied the allegation of assaulting the Deceased.

23. Doctor James Kalougivaki conducted the post-mortem of the Deceased on 17 February 2022. He presented the findings in detail. I will address the pertinent aspects of his evidence in due course when I reach the evaluation of the evidence.

Causation

24. The Prosecution's case is that the assault by the first Accused and the subsequent assault by the third Accused led to the death of the Deceased. Therefore, causation is the central legal plank of this matter; thus, it is prudent to briefly discuss the scope and boundaries of the concept of causation.

25. The element of causation is a key component of result offences. In **Nacagilevu v State [2016] FJSC 19; CAV 023.2015 (22 June 2016)**, the Supreme Court of Fiji outlined that the relationship between the unlawful conduct and the resultant outcome of the act constitutes causation, which connects to the *actus reus* of the offences of murder and manslaughter. The learned authors of Archibold set forth a four-step approach to determining causation, which states:

- i) Factual causation,
- ii) Legal causation,
- iii) Whether the cause was a more than minimal cause,
- iv) Whether there was a *novus actus interveniens* (*vide: Archibold 2025 17A-8 at 2149*)

26. The factual causation pertains to whether the resulting outcome would not have occurred but for the alleged conduct of the Accused. Consequently, the Accused's conduct is *sine qua non* to the result. This is commonly referred to as "the but for test." In this instance, the onus is on the Prosecution to prove beyond reasonable doubt that the death of the Deceased would

not have occurred but for the assault by the first Accused and the subsequent assault by the third Accused.

27. The Prosecution must then establish that the two alleged actions of the first and second Accused are legally blameworthy. The learned authors of Archbold expounded that the element of fault is the determining factor of legal causation (*vide; Archbold 2025 17A-10 at 2150*). Blackstone states that not every factual cause is a legal cause. Blackstone suggests a subjective, common-sense approach to determining legal causation, stating that:

“The isolation of a legal cause from amongst a possible multitude of factual causes is a process involving subjective common sense rather than objectively measurable criteria, but when seeking to apportion possible criminal responsibility in this way, one must, in practice, look for some kind of abnormal and culpable behaviour” (Blackstone’s Criminal Practice 2023, A1.27 at 11)

28. The Accused's liability persists if his conduct is one of the causes of the outcome. It need not be the sole or immediate cause, provided it constitutes a substantial and operative cause of the result. Therefore, the alleged conduct is sufficient to remain a substantial and operative cause, rather than being referred to as “the substantial and the operative cause” (*see R v McKinnon (1980) 2 NZLR 31, R v Kuka (2009) NZCA 572*). Thus, the liability arising from the Accused’s alleged conduct is not diminished by other actions taken by the same Accused or another person who contributed to the outcome as long as the alleged conduct remains substantial and operative rather than an insubstantial or insignificant cause.
29. All the more so, the Accused is not responsible for the result if the causal link between the alleged conduct of the Accused and the result is broken by an intervening act that becomes a substantial and operative cause of the result, thus making the causative effect of the Accused’s conduct exhausted or spent. This is known as “*novus actus interveniens*”. The intervening act could be an act of a third party, an act of the victims or an unforeseeable natural event sometimes referred to as an act of god. (*vide; Baba v State [2023] FJCA 149; AAU113.2020 (2 August 2023)*)

30. The House of Lords in **R v Latif (1996) All ER 353, p. 364** expounded the general principle of the intervening act of a third person, where Lord Steyn observed that:

“The general principle is that the free, deliberate and informed intervention of a second person, who intends to exploit the situation created by the first, but is not acting in concert with him, is held to relieve the first actor of criminal responsibility (see H L A Hart and T Honoré Causation in Law (2nd edn, 1985) pp 326ff; Blackstone Criminal Practice (1995) pp 13–15, para A1.27–A1.29).

31. Thus, a free, deliberate, and informed act of intervention could sever the chain of causation from the first act, thereby diminishing the legal liability of the initial person, even though his act remains a substantial and operative cause of the result. Such an intervening act must be a substantial and operative cause of the result and must effectively transform the previous conduct into part of the history.
32. The Supreme Court of Canada in **R v Maybin (2012) SCC 24, (2012) 2 SCR 30** expounded that both “reasonable foreseeability” and “intentional independent act” approaches are useful in determining when an intervening act exonerates the Accused of his legal responsibility for Manslaughter. In Maybin, two brothers had repeatedly punched the victim at a busy bar over an argument that erupted between one of the brothers and the victim. One of the brothers struck a blow that rendered the victim unconscious. A bouncer, who came to the scene within seconds, then hit the victim in the head. There was no conclusive medical evidence to ascertain with certainty which blows caused the death. Hence, the trial Judge acquitted the two brothers and the bouncer. The majority decision of the Court of Appeal found that the assaults of the three Accused contributed to the cause of the death, and the two brothers could have reasonably foreseen the risk of harm caused by the intervening act of the bouncer. The Supreme Court concurred with the conclusion of the Court of Appeal and found that it was open to the trial Judge to conclude that the nature of the intervening act and the accompanying risk of harm were reasonably foreseeable. In recapitulating its decision, the Supreme Court of Canada held that:

“Courts have used a number of analytical approaches to determine when an intervening act absolves the Accused of legal responsibility for manslaughter. These approaches grapple with the issue of the moral connection between the Accused’s acts and the death; they acknowledge that an intervening act that is reasonably foreseeable to the Accused may well not break the chain of causation and that an independent and intentional act by a third party may in some cases make it unfair to hold the Accused responsible. In my view, these approaches may be useful tools depending upon the factual context. However, the analysis must focus on first principles and recognize that these tools do not alter the standard of causation or substitute new tests. The dangerous and unlawful acts of the Accused must be a significant contributing cause of the victim’s death.

33. Consequently, the standard test remains the determination of whether the alleged act is a substantial and operative cause of the result. The approaches of reasonable foreseeability, as well as voluntary, deliberate, and informed acts of intervention, serve as the tools to ascertain whether the intervening act has severed the chain of causation between the initial act and the outcome. Premathilaka JA, in the ruling delivered in **Baba v State (supra)**, observed that:

*“[19] The argument ‘novus actus interveniens’ is raised in three situations; conduct on the part of the victim (see *Nga Ba Min v Emperor* AIR 1935 Rang 418, *R v Blaue* [1975] EWCA Crim 3; [1975] 3 All ER 446 and *Nga Moe v The King* AIR 1941 Rang 141), conduct by an unconnected third party (see *R v Jordan* (1956) 40 Cr App R 152) and occurrence of a natural event/act of God [see *Hallett v R* [1969] SASR 141]. The suitable tests to determine whether a subsequent event is a ‘novus actus interveniens’ are the ‘operating and substantial cause’ test and the ‘foreseeability’ test. In the first and third situations, the better approach to apply is considered to be the ‘foreseeability’ test.*

*[20] In *Jordan and R v Smith* (1959) 2 QB 35 the ‘operating and substantial cause’ test was applied to the second situation i.e. a conduct by an*

unconnected third party namely medical treatment given by medical personal. In Jordan, the victim was recovering well from a stab wound inflicted by the Accused. It had 'mainly healed 'when he was given a drug to which he was allergic and in abnormal quantity and the victim died of an allergic reaction. The Court held that further evidence as to the cause of death ought to have been allowed. On the other hand, in Smith, the Accused was held to have been rightly convicted of murder even though the victim had been dropped twice while being taken for medical treatment after he was stabbed and the resulting treatment was also incorrect and harmful, because at the time of death the original wound is still an operating cause and a substantial cause and the death can properly be said to be the result of the wound. Only if the second cause is so overwhelming as to make the original wound merely part of the history can it be said that the death does not flow from the wound.

34. In appraising the legal concept of causation, particularly the "*novus actus interveniens*" and the evidence presented by the Prosecution, it is evident that the main gravamen of the Prosecution is that both assaults, initially by the first Accused, along with the subsequent assault by the third Accused, despite being separated by time and lacking evidence of them acting in concert, remained substantial and operative causes of the Deceased's death at the time he passed away. The Prosecution adduced evidence to establish that the subsequent assault by the third Accused did not sever the chain of causation stemming from the first assault. Therefore, the Prosecution argues that both the first and third Accused are guilty of Manslaughter as principal offenders.

35. Rebutting the Prosecution's claim, the first Accused presented his defence on two fronts. He denied the allegation that he assaulted the Deceased. The learned Counsel for the first Accused strongly emphasized that Alik's evidence is grossly discredited and unreliable, as it is riddled with contradictions and inconsistencies. Consequently, there is no evidence to establish beyond reasonable doubt that the first Accused assaulted the Deceased. Additionally, the learned Counsel for the first Accused argued that the subsequent assault by the third Accused constituted a *novus actus interveniens*; thus, the chain of causation

regarding the first Accused's assault was broken, absolving him of liability for the Deceased's death.

36. The defence presented by the second Accused regarding the first incident of the assault closely mirrors that of the first Accused. The second Accused maintained that he did not kick the Deceased when he fell after the assault by the first Accused. In relation to the second incident, the second Accused denied allegations of aiding the third Accused in assaulting the Deceased.
37. As previously outlined, the third Accused refuted the allegation of assault against the Deceased. He testified that he simply tapped the Deceased's hand when the latter tried to lean on him while he was mopping the floor.

Amended Information

38. Taking into account the legal principles related to causation and how the Prosecution presented its case, I can summarily determine the issue of the correctness of the amended Information raised by the Defence. Considering the aforementioned reasons, I conclude that the Amended Information filed by the Prosecution on 15 July 2024 is not defective and did not mislead or prejudice the three Accused in their defence against the charges.

Evaluation of Evidence

39. I shall first embark on the evaluation of the evidence presented before the Court to determine whether the Prosecution has proven beyond reasonable doubt that the first Accused assaulted the Deceased in the cell and that the third Accused subsequently assaulted the Deceased after the first assault. Moreover, I must consider whether the second Accused aided or abetted the first and third Accused in assaulting the Deceased.
40. The Court needs to consider two aspects in deciding the testimonial trustworthiness of the evidence: the credibility of the witness evidence and the reliability of the evidence. Credibility is linked to the correctness or the veracity of the evidence, while reliability is

related to the accuracy of the evidence. In doing that, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (**vide; Matasavui v State [2016] FJCA 118; AAU0036.2013 (the 30th of September 2016, State v Solomone Qurai (HC Criminal - HAC 14 of 2022).**

41. The three Accused are not required to give evidence. They do not have to prove their innocence, as it is presumed by law. However, in this case, the three Accused have chosen to provide evidence for their respective defences. Therefore, the evidence presented by the Accused must be taken into account when determining the facts of this case.
42. There is no legal burden on the Accused to prove his innocence by providing evidence. The archaic yet highly distinguished passage of Lord Reading C.J. in **Abramovitch (1914) 84 L.J.K.B. 397** states that:

"If an explanation has been given by the Accused, then it is for the jury to say whether on the whole of the evidence they are satisfied that the Accused is guilty. If the jury think that the explanation given may reasonably be true, although they are not convinced that it is true, the prisoner is entitled to be acquitted, inasmuch as the crown would then have failed to discharge the burden impose upon it by our law of satisfying the jury beyond reasonable doubt of the guilt of the Accused. The onus of proof is never shifted in these cases; it always remains on the Prosecution."

43. The effect of Lord Reading CJ's passage in **Abramovitch (supra)** was emphasized by the New Zealand Court of Appeal in **The Queen v Strawbridge — [1970] NZLR 909**, where North P, discussing the scope of the Woolmington guideline, adopted the passage from **Rex v. Greenacre 8 C. & P. 35**, highlighting the significance of **Abramovitch (supra)**, where it observed that:

“.....In our opinion the true ratio of Woolmington's case emerges in the following passage from the opinion of the Lord Chancellor when he was discussing Rex v. Greenacre 8 C. & P. 35. He said:

". . . But while the Prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence, This is the real result of the perplexing case of Rex v Abramovitch.

44. Consequently, if the Court believes that the evidence presented by the Accused is either true or may be true, it must find the Accused not guilty of the offence. Even if the Court rejects the Accused's account, that does not automatically imply that the Prosecution has proven the Accused's guilt. The Prosecution must demonstrate that it has established, on the evidence accepted by the Court, beyond a reasonable doubt, that the Accused committed the offence specified in the information. (**vide; Naidu v State [2022] FJCA 166; AAU0158.2016 (24 November 2022), Liberato and Others v The Queen ((1985) 159 CLR 507 at 515), Abramovitch (1914) 84 L.J.K.B 397)**)

First Accused

45. It is prudent to evaluate the credibility and reliability of evidence given by Aliko, who is the primary witness of the Prosecution regarding the assault committed by the first Accused. It is apparent that the narration of events testified by Aliko in respect of the alleged assault of the Deceased, which occurred at the cell involving the first Accused, is almost identical to the testimonies of Ritran and the second Accused regarding the assault by the third Accused despite the different identity of the assailants.
46. PC Emosi stated that Aliko called the officers at the station, requesting them to clean the cell after the first Accused had visited it. The testimonies of PC Emosi, Aliko, and Ritran regarding the incident involving the Deceased when Aliko was returned to the cell were

consistent. No evidence was presented before the Court to determine whether Aliko was brought back to the cell before the first Accused's visit.

47. According to PC Emosi, the third Accused came and asked for the key to the cell after Aliko called the officers, asking them to clean the cell. The second Accused said the third Accused requested him to bring a mop to the cell. When he got the mop, the third Accused was inside the cell. Ritran's evidence also suggests that the second and third Accused went to the cell to clean it with a mop after the Deceased had urinated inside of it.
48. Furthermore, Aliko stated that he was standing outside the cell with the two Officers, who were dressed in Police uniforms, when the first Accused assaulted the Deceased, causing him to fall. The account of events concerning Aliko and the two Officers was indistinguishable from the evidence presented by the second Accused and Ritran regarding the incident involving the third Accused. According to Aliko, the Deceased fell onto the cement bed after being assaulted by the first Accused. Coincidentally, both Ritran and the second Accused also said that the Deceased fell in nearly the exact location after being attacked by the third Accused.
49. There appears to be reasonable doubt as to whether Aliko was referring to the same incident involving the third Accused, despite his assertion that it was the first Accused who assaulted the Deceased. Both the first and third Accused were dressed in civilian clothing that day and had driven a vehicle belonging to a senior Police Officer. The second Accused and Ritran were in Police uniforms. Moreover, the first Accused arrested Aliko on the 13th of February 2022, creating doubt about whether Aliko wanted to incriminate the first Accused to take revenge for his arrest.
50. Furthermore, Aliko initially identified the first and third Accused as the two Officers who visited the cell and assaulted the Deceased during his evidence, thereby casting doubt on whether Aliko was genuinely confused about the accuracy of his identification of the assailant who attacked the Deceased. During cross-examination by the learned Counsel for the first and second Accused, Aliko explicitly stated that the first Accused was never present

at the Police Station on 14th February 2022, retracting his earlier claim implicating the first Accused in the assault.

51. Another pertinent feature of Alikı's evidence is his assertion that no one visited the cell after the assault by the first and second Accused until he alerted the Police Officer upon discovering that the Deceased was not breathing. This part of Alikı's evidence completely undermines the foundation of the Prosecution's claims against the three Accused. The Court received no explanation or clarification from the Prosecution regarding this matter.
52. There is no point in discussing the evidential value of the two identification parades conducted by the Police a few days after the incident to identify the first and second Accused, as the officer who oversaw the identification parade acknowledged in his testimony that it was executed unfairly, without following the proper guidelines and rules.
53. Taking all these factors into account, the undeniable conclusion I arrive at is that it is unsafe to regard Alikı's evidence as credible and reliable; therefore, I reject his evidence as the truth. From this finding, I conclude that the Prosecution has failed to prove beyond reasonable doubt that the first Accused assaulted the Deceased in the cell, thus substantially contributing to the eventual death of the Deceased.

Third Accused

54. I shall now proceed to determine whether the Prosecution has proven beyond reasonable doubt that the third Accused assaulted the Deceased at the cell, and that was a substantial and operative cause of the death of the Deceased. PC Ritran is the Prosecution's key witness regarding the incident involving the third Accused.
55. PC Ritran vehemently denied the proposition put forward by the learned Counsel for the third Accused during the cross-examination, which stated that his view of the events occurring inside the cell was obstructed by the presence of the second Accused and Alikı, who stood in front of him outside the cell. The lighting was sufficient for him to observe what was happening clearly. According to Ritran, the third Accused was inside the cell while

the Deceased was mopping the floor. The second Accused and Aliko were outside the cell. The Deceased spoke in Fijian, which Ritran did not understand. Suddenly, the third Accused struck the left side of the Deceased's jaw with his hand, causing the Deceased to collapse face down onto the concrete bed. Ritran noted that the Deceased's body had gone limp, rendering him unable to get up. With the assistance of the second Accused, the third Accused pushed the Deceased onto another bed in the cell and locked the door. The second Accused, in his evidence, endorsed the testimony of PC Ritran, affirming that the third Accused assaulted the Deceased, making him fall on the cement bed.

56. The evidence provided by the third Accused corroborates the accounts given by Ritran and the second Accused insofar as going to the cell to clean it with a mop and subsequently asking the Deceased to clean it while the second Accused, Aliko and Ritran remained outside. However, his account differs from that of Ritran and the second Accused concerning the reason and circumstances of the Deceased's fall. He stated that the Deceased attempted to lean on him while mopping the floor; as a result, he tapped his hand. The Deceased then slowly sat down on the wet floor.
57. Doctor Kalougivaki testified, thoroughly detailing the nature of the injuries, both external and internal, that he observed in the Deceased during the post-mortem examination, as well as the likely causes of these injuries and the probable time frame between their occurrence and the eventual death of the Deceased. The doctor explained that both the external and internal injuries could have been caused by blunt force. He further stated that one of the potential causes of such fatal internal head injuries is the Deceased falling at a certain speed and then suddenly stopping from wherever the head hit during the fall. This sudden stop could result in fatal internal bleeding in the brain.
58. As explained by the Doctor, the estimated time of death was midnight on 14 February 2022. Based on the nature of the injuries sustained by the Deceased, the Doctor asserted that the injuries could have occurred between 30 minutes and 2 hours before death. However, this estimation depends on the nature of the injuries and their effects on the Deceased's brain. Considering the evidence provided by Ritran, Emosi, the second Accused, and the third

Accused, it is evident that the incident involving the third Accused and the Deceased took place after 6:45 p.m. or 7 p.m. on the evening of 14 February 2022.

59. The learned Counsel for the third Accused questioned Ritran during the cross-examination, asking about his failure to promptly report or inform his Superior Officers about the third Accused. Ritran explained that he thought that other Senior Officers at the Police Station would take necessary actions about it. Hence, he decided not to mention it. Considering his relatively junior position in the force and the complete breakdown of the proper order of the Police Station that night, I do not find Ritran's failure to report the incident that he witnessed undermines the credibility and accuracy of his evidence. Therefore, I conclude that Ritran's evidence, which the second Accused corroborated, is credible and reliable. Thus, I accept that Ritran's evidence is true.
60. The Court heard evidence from both the Prosecution and the Defence, confirming that the Deceased was heavily intoxicated and extremely aggressive and violent towards the Police Officers. The floor of the cell was wet and slippery due to urine left by the Deceased. Therefore, it was argued by the learned Counsel for the third Accused that the Deceased's physical vulnerability and the wet, slippery floor were the reasons for such a severe and fatal fall. Thus, the vulnerability of the Deceased caused his fall and eventual death.
61. The rule commonly known as the "*eggshell rule*" or "*thin skull rule*" states that the Accused must take his victim as he finds him. Accordingly, the victim's vulnerability due to an existing physical condition or adverse circumstances usually does not diminish the Accused's responsibility if it is a substantial and operative cause of the eventual result. (*vide; Blackstone's Criminal Practice 2023, A1.30 at 12 and Archbold 2025 17A-14 at 2157*). Hence, the third Accused could not seek refuge from the vulnerability of the Deceased due to his drunkenness and the wet and slippery floor to absolve his responsibility for the death of the Deceased.
62. The defence of the third Accused was that he never assaulted the Deceased, a claim that the Prosecution disproved beyond reasonable doubt. In light of this finding, I conclude that there

is no dispute that the third Accused acted recklessly regarding the risk that his actions would inflict serious harm on the Deceased.

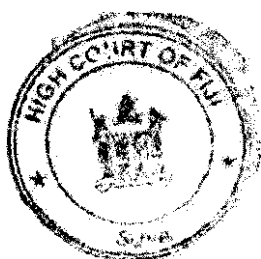
63. Taking into account the facts mentioned above, I conclude that the Prosecution has successfully proven that the third Accused is guilty of Manslaughter as charged in the Information.

Second Accused

64. The conclusion that the Prosecution failed to prove beyond reasonable doubt that the first Accused assaulted the Deceased allows me to make a further conclusion that the Prosecution failed to prove beyond reasonable doubt that the second Accused aided or abetted the first Accused to assault the Deceased, leaving only one issue to be determined, i.e. whether the second Accused aided or abetted the third Accused when he assaulted the Deceased.
65. The Prosecution alleges two matters concerning the second Accused. The first is that the second Accused aided and abetted the third Accused by failing to take positive action to prevent the third Accused from assaulting the Deceased. Common law does not impose a general duty on individuals to prevent crime. This would be inconsistent with the principle of individual autonomy. Requiring such a duty, which compels a person to assist another, constrains their freedom of choice. (*vide: Strathboss Kiwifruit Ltd v Attorney-General [2018] NZHC 1559*).
66. The Prosecution presented no evidence to establish that the second Accused had a duty to take positive action to prevent the third Accused's actions. Nonetheless, it is evident that the purpose of the second Accused's visit was to hand over the mop to the third Accused for cleaning the cell. The second Accused then remained outside the cell as he was with another detainee, Alik. Ritran testified that the third Accused suddenly assaulted the Deceased. The second Accused claimed he had no time to intervene and prevent the assault. Therefore, there is no evidence to establish that the second Accused intended to aid or abet the third Accused in assaulting the Deceased merely by being present at the scene of the incident. Furthermore, there is no evidence to prove that the second Accused's omission actually aided or abetted

the third Accused in committing the offence (*vide; Section 45 (2) (a) and (3) (a) of the Crimes Act*).

67. The second part of the Prosecution's allegation against the second Accused emerged through the testimony of Ritran, who stated that the second Accused assisted the third Accused in pushing the Deceased to the other cell bed when he fell and was unable to get up. The act alleged to have aided or abetted must occur prior to or contemporaneously with the commission of the offence (*vide: Larkins v Police [1987] 2 NZLR 282*). The offence of Manslaughter had already been completed by the third Accused when the second Accused assisted him in pushing the Deceased to the other cell bed in the cell. Therefore, I find that the second Accused's assistance to the third Accused in pushing the Deceased does not constitute an act of aiding or abetting under Section 45 of the Crimes Act.
68. I accordingly conclude that the Prosecution failed to prove beyond reasonable doubt that the second Accused either committed the offence of Manslaughter as a principle or aided or abetted the first or the third Accused to commit the offence under Section 45 of the Crimes Act.
69. In conclusion, I find the first and second Accused not guilty of Manslaughter as charged in the Information and acquit them accordingly. Furthermore, I find the third Accused guilty of Manslaughter as charged in the Information and convict him of it.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe".

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

At Suva

07th February 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

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Vosarogo Lawyers for 3rd Accused.