

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 075 OF 2020

STATE

V

1. ONISIMO RABOILIKU

2. SEMESA BULIKALOUGATA

3. NAVITALAI KANAVO

Counsel:

Ms S. Swastika for State

Mr E. Maopa for 1st Accused

Mr S. Heritage for 2nd Accused

Ms A.Tubuitamana for 3rd Accused

Dates of Hearing:	14 -16 July 2025
Dates of Closing Submissions:	01, 04 August 2025
Date of Judgment:	13 August 2025

JUDGMENT

(Murder reduced to involuntary Manslaughter)

1. The Courts in Fiji are inundated with complaints against officers at the Remand Centres. This case concerns one such complaint of torture alleged to have taken place at Natabua Correction Centre. In the information filed by the Director of Public Prosecutions (DPP), four correction officers were originally charged with Murder and associated offences. The information was later amended by the DPP to make one of the accused a State witness who was granted immunity. He was subsequently discharged upon a *nolle presequi* being filed by the DPP.

2. The Accused persons are jointly charged with one count of Murder on the following information as amended.

ONISIMO RABOILIKU, SEMESA BOLIKALOUGATA AND NAVITALAI
HANAVO are charged with the following offence:

COUNT ONE
Statement of Offence

MURDER: Contrary to Section 237 and 45 of the Crimes Act 2009.

Particulars of Offence

ONISIMO RABOILIKU, SEMESA BOLIKALOUGATA AND NAVITALAI
KANAVO, on the 13th of April, 2020 at Lautoka in the Western Division,
murdered JONE MASIREWA.

3. The Accused persons pleaded not guilty to the charge. At the ensuing trial, the Prosecution presented the evidence of six witnesses. Being satisfied that there was case for each Accused to answer, the Court put the Accused to their defence. The 1st and the 2nd Accused elected to give evidence under oath. The 3rd Accused elected to remain silent.

The Burden of Proof

4. At the end of the trial, the Counsel filed written closing submissions. Having considered the evidence presented at the hearing and the respective submissions of the Counsel, I now proceed to pronounce the judgment as follows.
5. The Accused persons are presumed innocent until proven guilty. The onus or the burden of proof rests on the Prosecution throughout the trial. That onus never shifts to the Accused. There is no obligation or burden on the Accused to prove their innocence or anything. The Prosecution must prove each Accused's guilt beyond reasonable doubt. Although the Accused are jointly charged, the case against each Accused must be considered separately. Elements of the Offence of Murder.
6. First and foremost, the Prosecution must prove the identity of the Accused in relation to the alleged offence. The offence of Murder consists of three elements. The Prosecution must prove beyond reasonable doubt both physical element (*actus reus*) and the mental element (*mens rea*) of the offence of Murder. The physical element consists of willful

conduct on the part of the accused. The second element is causation which requires the Prosecution to prove that the conduct of the accused caused the death of the deceased. The law requires a rational link to be established between the conduct of the accused and the death of the deceased. A conduct may usually cause an injury which is the sole cause of death. But it is sufficient if it is an operating, substantial or significant cause of death. Finally, the fault element. It must be proved that each accused at the time of his conduct, either intended to cause the death of the deceased or was reckless as to causing the death of the deceased. Each element of the offence must be proved beyond a reasonable doubt against each accused.

7. The Prosecution is running its case on the basis not that each accused shared a common intention to kill¹, but was reckless as to causing the death of the deceased. Unlike in a case based on common intention², the Prosecution must prove that each accused was reckless as to causing the death of the deceased although they are jointly charged. There is a legal basis to try all three accused in the same action together because each of them was engaged in the alleged unlawful conduct in the same transaction. Even though the accused are jointly charged, the Court is required to consider evidence against each accused separately which I will do in this case.

8. A person is reckless if he/she was aware of a substantial risk that death will occur and having regard to the circumstances known to him/her, he/she was unjustified to take that risk³. The Court must first decide whether there was a “substantial” risk that death will occur. The test to be applied in this regard is objective in nature and raises a question of law. The risk is substantial if a reasonable and sober person would consider the risk to be substantial at the time it was taken. If the court finds the risk to be substantial, then it must decide whether the accused was aware that the substantial risk is such that it involves death. Then the court must consider whether, in the circumstances known to the accused, he/she was justified in taking the risk he took. Whether the risk that took was justified is a question of fact⁴ for the court to determine on the basis of a subjective test. Suliasi Tubuna (PW2) was granted immunity to be a State witness. He is an alleged

¹ Section 46 of the Crimes Act

² Section 46 of the Crimes Act does not apply to the present case as the Prosecution rely on recklessness
Section 21 (2) (a) of the Crimes Act 2009

⁴ Section 21(3)

accomplice. The approach the courts must take in evaluating evidence of an accomplice who has been granted immunity is settled in this jurisdiction.

9. In *Singh v State*⁵ the Court of Appeal discussed the law relating to accomplice evidence:

[21] Fiji has followed the common law rule of practice, which had crystallized into a rule of law, and adopted by the UK courts for many years that it was obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a person when that person is an alleged accomplice of the accused.

[22] It is of interest however to take note of the development of the law in regard to accomplice evidence in the UK, Canada and Seychelles. **In the UK, the requirement that it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of an alleged accomplice has now been abrogated by section 32 of the Criminal Justice and Public Order Act of 1994.**

[23] In the Canadian Supreme Court case of *Vetrovec –v- The Queen /1982) 1 SCR 811*, it was said:

“None of the arguments put forward to look for corroboration of accomplice evidence can justify an invariable rule regarding all accomplices. **All that can be said is that the testimony of some accomplices may be untrustworthy.** But this can be said of many other categories of witnesses. **There is nothing inherent in the evidence of an accomplice which automatically renders him untrustworthy.** To construct a universal rule singling out accomplices, then, is to fasten upon this branch of law of evidence a blind and empty formalism. Rather than attempt to pigeon-hole a witness into a category and then recite a ritualistic incantation, the Trial Judge might better direct his mind to the facts of the case, and thoroughly examine all the factors which might impair the worth of a particular witness. If, in his judgment, the credit of the witness is such that the jury should be cautioned, then he may instruct accordingly. **If on the other hand, he believes the witness to be trustworthy, then, regardless of whether the witness is technically an ‘accomplice’ no warning is necessary.”**

[24] The Court of Appeal of Seychelles said in the cases of *Jean Francois Adrienne & another –v- The Republic CR App SCA 25 & 26/2015* and the case of *Dominique Dugasse & others –v- The Republic /SCA 25, 26 & 30 of 2010*: that it is not obligatory on the courts to give a corroboration warning in cases involving accomplice evidence and that it should be left at the discretion of judges to look for corroboration when there is an evidential basis for it.

[25] Reference was made to such an evidential basis by Lord Taylor C.J., giving the judgment of the court in *Makanjuola*, 1995 1 WLR 1348 and *R-v- Easton* 1995 2 Cr. App. R. 469 CA when he said.

Where, however, the witness has been shown to be unreliable, he or she may consider it necessary to urge caution. In a more extreme case, if the witness is shown to have lied, to have made previous false complaints, or to bear the defendant some grudge, a stronger warning may be thought appropriate, and the judge may suggest it would be

⁵ [2018] FJCA 146; AAU134.2014 (4 October 2018)

wise to look for some supporting material before acting on the impugned witness's evidence.

10. In *Singh -v- The State*⁶ the Supreme Court at paragraph 31 stated:

A further warning was required in this case due to the fact that Narayan was given immunity from prosecution. The reason that such a warning is required is that a person seeking immunity from prosecution may be tempted to implicate another person falsely in order to achieve his objective.

11. Bearing in mind the legal principles discussed above, I now proceed to summarise the evidence led in the trial.

Case for Prosecution

PW1 Jone Nawalu (Nawalu)

12. On 13 April 2020, Nawalu was remanded at the Natabua Remand Centre. With him were five remandees in the Segregation Block including Jone Masirewa (Masirewa-the deceased) and Amani Naivaluwaqa. Masirewa looked healthy when he first met him. On the morning of 13 April 2020, after having tea, they were on stand-by in the line-up for counting. Raboiliku (1st Accused) and Semesa (2nd Accused), the officers at the correction centre, called him and Masirewa to the ground at the back and then tortured, blaming them for being disrespectful to the officers. He knew only Raboiliku and Semesa and did not know the names of the other officers who were present there. They were told to roll on the ground. When they were rolling, Semesa started kicking him using his safety boots and then ordered to duck walk.
13. The same thing happened to Masirewa. He was not sure who kicked Masirewa. He then said Semesa kicked Masirewa also. Masirewa started calling for help, *please help, I want to live*, but he was kicked continuously for about four minutes. Raboiliku commanded the officers to kick him and Masirewa. When he turned back, he saw Raboiliku beating Masirewa on the head using the front metal part of the hose of the fire extinguisher. Raboiliku kept on beating Masirewa for about two minutes. Masirewa fainted, knocked out and was about to pass out.

⁶ (unreported CAV 7 of 2005 delivered 19 October 2006)

14. He could see the boot marks on Masirewa's ribs and felt the top front of his head soft. One of the officers told him to lift Masirewa up. He tried, but he was not able to make Masirewa stand up. He just managed to place Masirewa on the railings. Masirewa's eyes were closed, and hands down.
15. Referring to the photographic booklet that was tendered in evidence, Nawalu described the exact place where they were tortured and the metal nose of the fire extinguisher that was used on Masirewa. He identified Raboiliku and Semesa in Court.
16. Under cross-examination by Mr Maopa, Nawalu denied that Masirewa was already injured when he was taken from the courts on the 11th April. He agreed that they were confined to the segregation block for the nurse to monitor their temperature due to COVID-19. He denied Masirewa swearing at the Magistrate and the correctional officers; he was only asking for a towel. He disagreed that it was just an exercise for them be disciplined for swearing; they were in fact tortured. He agreed that when Masirewa became unconscious, Raboiliku was yelling out from a distance for other officers to check Masirewa. He saw Raboiliku hitting Masirewa about six times with the nozzle of the hose.
17. Under Cross examination by Mr. Heritage, Nawalu agreed that he saw Semesa kicking Masirewa only once. He agreed that Semesa used his foot to turn Masirewa while he was lying on the ground; checked Masirewa's pulse and called out that Masirewa was not breathing. Under re-examination, Nawalu confirmed that Semesa used his leg not to turn Masirewa but to kick.

PW2 Suliasi Tubuna

18. In 2020, Tubuna was based at Lautoka Remand Center as a Class-C Temporary Corrections Officer. On 13 April 2020, he was completing his night shift under the command of his Second-in-Charge (2IC) Raboiliku. Before handing over the inmates to the officers of the next shift, he started the head counting between 7.30 -8 am with other duty officers under the command of 2IC Raboiliku.

19. After the handover, on the instructions of 2IC Raboiliku, he went down to the Segregation Block where Masirewa and Nawalu were being kept. He unlocked the cells in the Segregation Block and strip searched the inmates. The officers are duty bound to report to the senior officers if something happened at night. Masirewa had been continuously swearing at the officers from the night before. On the morning (13 April 2020), the matter was reported to 2IC. He was instructed to get Masirewa drilled (disciplined) because he (Masirewa) was disobeying the orders. The drill included crawling and jogging. While Masirewa was being drilled, Semesa and Kanavo hit Masirewa. Masirewa was kicked and punched by Semesa and Kanavo under the command of 2IC Raboiliku.
20. Raboiliku commanded to hit Masirewa because Masirewa was not following the instruction. Kanavo slapped once on the face and kicked twice on the chest. The officers were wearing safety desert boots when they kicked. Masirewa was suffering and struggling to breathe. When fell on the ground, Masirewa gave him a small holy Bible and asked for forgiveness. He punched only Nawalu.
21. He was called for debrief and had to leave that place while Semesa was still following the command. Masirewa was crawling on the ground while being kicked continuously. By that time, Kanavo was already doing the breakfast in front. 2IC, Raboiliku, Semesa and some other officers on the day shift were with Masirewa when he left.
22. He did not notice anything on Masirewa's body when he left. The remandees can be disciplined if they disobeyed. The permitted disciplinary measures (drilling) include crawling, press ups and sit ups and, as a matter of policy, hitting and kicking are not allowed. When he was in the quarters, he was informed that the police had come to the remand center.
23. Under cross-examination by Mr Maopa, Tubuna admitted that there was no report made against Nawalu or Masirewa in his diary that they were disrespecting the officers. He maintained that 2IC Raboiliku commanded the officers to kick Nawalu and Masirewa. He was interviewed on the 14th and agreed having stated to police at Q112 that he was commanded by 2IC Raboiliku to make Masirewa roll and crawl. And in his statement dated 28 February 2025, five years later, after he was granted immunity by the State, it is recorded that *2IC, Raboiliku was yelling and dishing out command for Semesa to make*

Masirewa crawl and kick him. In his explanation, Tubuna said that he said everything to police, but they may have forgotten to record ‘kick’. When he locked the segregation block, he heard Masirewa calling for help, so he went there. As soon as Masirewa gave him the Bible, he tapped Semesa and went for debrief. Semesa could not leave the scene because he was still following the command.

24. Under cross-examination by Mr Heritage, Tubuna agreed that Semesa was a temporary Correctional Officer who had just joined Fiji Correction Services when the alleged incident occurred. He said the junior officers had no option but to follow the orders of the seniors whether they were lawful or unlawful. If the commands were not followed, they could be disciplined. Semesa kicked Masirewa whilst Masirewa was rolling on the ground. Tubuna agreed that he was initially charged with Murder and Assault Occasioning Bodily Harm. He denied giving untruthful evidence because he was granted immunity from Prosecution. In Court, Tubuna identified the boots the Correction Officers used to wear.
25. Under cross-examination by Ms. Tubuitamana, Tubuna confirmed that the incident happened before 7 am. When slapping happened, Raboiliku and Semesa, were present with Kanavo.

PW3 Petero Mataca (Mataca)

26. In 2020, Petero was based at Natabua Remand Centre as a Correction Officer. On 13 April 2020, he was doing the morning shift starting at 7 am. After the strip search, Nawalu and Masirewa, were left outside while six others were put inside the segregation block. Masirewa and Nawalu were being disciplined. They were rolling on the ground and crawling. When he came back after serving tea, he saw Nawalu bathing Masirewa at the fire hydrant. Masirewa was lying on the grass. Masirewa was breathing, but his eyes were closed. He turned Masirewa to lie down on his back. Masirewa was snoring and slanting on one side. Blood was coming out of Masirewa’s head and his lips had injuries. He told Semesa to inform 2IC about Masirewa’s condition that something wrong with him.
27. Raboiliku told him to move Masirewa to the Admin Block. He and Sowaqa carried Masirewa to the Admin Block and administered CPR (cardiopulmonary resuscitation) to

resurrect until the nurse arrived. The nurse came and checked the pulse and put Masirewa in the ambulance.

28. Under cross-examination by Mr Maopa, Petero said that when he was told to put Masirewa inside, Semesa and 2IC were present there but Tubuna was not there. 2IC was standing at the corner at Nukulau Block where Masirewa was lying down. He and Sowaqa applied CPR for 5 to 10 minutes. Masirewas stopped snoring.
29. Under cross-examination by Mr Heritage, Petero agreed that he was not present and did not see Masirewa was being disciplined. Semesa was there guarding when Nawalu bathing Masirewa.

PW4 Sergeant Pita (Sgt Pita)

30. On 13 April 2020, after 10 am, on the directions of Inspector Jitoko, Sgt Pita attended the alleged crime scene at the Natabua Prison and took photographs, uplifted physical evidence and prepared the sketches. He also took photographs of the deceased's body at Lautoka Hospital. He compiled the photographs and prepared a booklet (MFI-1). He tendered the photographic booklet and described the photographs in his evidence. The photographs included the muddy ground area at the back of the Nukulau and Makuluva Remand Blocks, alleged to be the crime scene, the blood like stains on the v-drain outside of the Makuluva block, the mop stick discovered from the crime scene, the fire hydrant which was attached to the Makuluva Block and a broken white PVC pipe. He saw the bruises on the side and the back of the deceased.

PW5 SP Sakiusa Jitoko

31. In 2020 SP Jitoko was attached to the Western Forensic Science Services Unit based at Lautoka Police Station. On 13 April 2020, he received a report of a death of an inmate of Natabua Remand Centre where some visible injuries found on the deceased. He instructed Sgt Pita and Constable Anasa to attend to the case with him. He participated at the magisterial inquiry at the Lautoka Hospital where Cpl Peter took the photograph of the deceased Masirewa. The body was still wet and dirty with some grass pieces. The deceased's head was clean shaven. He could see visible injuries around the deceased's

head, face, on his lips, on his chest, arms, and on his back. There were blood stains on both ears.

32. Then they proceeded to the Natabua Remand Centre where they examined the alleged crime scene where the deceased was alleged to have been assaulted. He instructed Sgt Pita to cordon off the area, uplift the evidential material and photograph everything important. He saw blood like stains on the drain. The ground was still wet and muddy, suggesting that it might have been cleaned or washed out. He recognized the photographs that were taken by Sgt Pita.
33. Under cross-examination by Mr Maopa, SP Jitoko agreed that according to the photographs, the marks on the back of the deceased were brownish. The post-mortem was conducted on 14 April 2020. There was no information that the victim was assaulted whilst he was in police custody.
34. Under cross-examination by Mr Heritage, SP Jitoko agreed that he could not confirm if the blood found on the drain belonged to Masirewa.

PW6 Dr. Daniella John

35. Dr. John tendered the Postmortem Report (PE2) she had prepared after performing the autopsy on Masirewa on 14 April 2020 and the Cause of Death Certificate (PE3). She described her findings, referring to her report. The deceased, according to investigative report, was rushed to Lautoka Hospital after developing shortness of breath at the remand center and collapsed in the ambulance. All resuscitative measures were unsuccessful. The estimated time of death was 9.37 am on 13.04.2020.
36. Upon external examination, she noted the injuries on the deceased's face, multiple small semicircular contused abrasions of varying dimensions scattered over the left forehead, left cheek and over the head, extending to the right occipital region, which were black in colour. She agreed that it would be possible for the deceased to sustain such injuries if he was assaulted by a metal end (as depicted in photo number 20) of a hose.

37. There were contusions noted over the right and left ear, contusions and lacerations on upper and lower lips that extended into the left cheek internally. The doctor described the injuries referring to the photographs in the photographic booklet (PE1). The semicircular-shaped abrasions (patterned bruises) would be indicative of having been caused by something with an edge that's circular in nature.
38. On the chest wall there were multiple linear contused abrasions with contusions of varying dimensions over the right lateral chest wall over the suprasternal notch. These abrasions could have been caused when being hit with something at an angle or rub up against something or if he fell or if something hit him while he was moving. There were contused abrasions noted over the right and left shoulder tip. Multiple contusions with contused abrasions were noted over the left flank area of the abdomen. They could have been caused by simple knocks, a simple fall or a heavier one where there is a bigger impact. Multiple contusions were seen over the mid to lower back and a linear abrasion on left lower limb.
39. Upon internal examination, the doctor observed evidence of injury on the scalp over the left and right frontal region, probably caused by some form of blunt force. In the trachea and bronchi, the bronchial lumen (airway) contained bloody saliva. Both lungs were hyperinflated, bigger than usual, and the visceral pleural surface showed contusions to the lateral and posterior surface.
40. The thoracic cage showed evidence of injury to the ribs with fractures of the right, 1st to 7th rib and left, 2nd to 6th rib, anteriorly in the front and 6th to 10th rib bilaterally both sides at the back. There was bleeding into the surrounding tissues.
41. Ribs bones are quite durable under stress because they are more elastic than the other bones in the body. A CPR with a significant force can break it. The fact that the deceased had a fractured first rib, which is well protected, going down all the way to the seventh position, suggests that there had been a significant impact to the chest. These types of rib fractures are normally seen in motor vehicle accidents, blunt force trauma due to significant multiple punches or something heavy fell on him. It is possible to sustain such fractures as a result of being kicked hard multiple times.

42. The external surface of the liver showed two linear lacerations over the right interior surface of the right lobe, probably caused by trauma with an extensive force. The peritoneal cavity of the abdomen was filled with 800ml of blood and blood clots. The spleen was ruptured, and hemorrhage was noted. The spleen rupture could be due to blunt force trauma such as hard kicking externally on the left side.
43. The doctor opined that the cause directly leading to death was severe hemoperitoneum or blood collecting in the abdomen. The antecedent causes could be a result of splenic rupture as a result of severe blunt abdominal trauma. Other significant conditions that would have contributed to the death were severe blunt chest trauma. The external causes for all these were severe polyblunt force trauma. Blunt force trauma includes every kind of injury that can result from high impact, like motor vehicle accidents or assaults or falls from a height. The doctor said that she would not be able to tell exactly how recent or how fresh those abrasions were. There are a lot of factors that need to be taken into account to determine the age of an abrasion. Splenic rupture is a medical emergency and needs to be treated immediately. The sooner you get help, the better it is, depending on the degree of rupture. Blunt force applied to the body by being kicked multiple times would probably cause bone breakage and internal injuries which were seen on the deceased.
44. Under cross-examination by Mr Maopa, doctor said that, by merely looking at the colour of the bruises, it's not possible to tell the age or when the trauma happened. There's not enough literature to say that red is within 24 hours, blue is after three days. The authors disagree and refrain from making comments based on colour changes. It's safer to say that a trauma has happened, without dating it.
45. Mr Maopa referred to a paragraph of medical review by Deborah Sullivan⁷, where it states: *Bruises typically change colour as they heal at first appearing red, purple, or darker than the surrounding skin.*
46. The doctor disagreed with this statement to be correct when it comes to dead bodies. That's a general consensus of doctors when they are treating living individuals. That's

⁷ Philosophy written by Jared Fenechar, updated on January 18, 2024

what is expected as a natural progression of how the bruise should look in living individuals. But from the forensic point of view, the authors have different views. She read forensic pathology from Knights, where it is stated that there is no agreement whatsoever on this issue. The word healing can only be used when referencing to someone who is a living individual with a healthy immune system.

47. The deceased got bleeding in his abdomen (severe hemoperitoneum/haemorrhage) with frank blood that looked recent. Such condition needs immediate medical attention and, for him to survive that long would have been a miracle. He died instantly so his injury would have caused him to seek immediate medical attention.
48. The severe blunt chest trauma may have been caused due to severe pressure/ compression on the chest. A significant force during a CPR could break ribs, mostly on the left side, where the pressure is normally applied, but not bilaterally on the right and back. In this case, there are rib fractures on all sides, left, right, and the back. A CPR is generally conducted on the front part of the body, mostly over the heart, to get the heart pumping. Broken ribs at the back are consistent with trauma. If the persons who applied CPR were not qualified, they were likely to cause rib fractures more often than not.
49. Under cross-examination by Mr Heritage, the doctor said that if the deceased was kicked for four minutes, straight on the ribs and the abdomen, there's a possibility of a splenic rupture. The cause of death is not so much the collection of the blood in the abdomen, but the splenic rupture. Because the spleen is filled with blood vessels, any small nick, it can bleed profusely. Hemoperitoneum in the abdomen, means he's lost blood internally, and if, when he's losing blood, it's not being replaced, he can go into what is called shock.

Evidence for Defence

DW1 - Onesimo Raboiliku (1st Accused)

50. In 2020, Raboiliku was the Chief Officer at the Lautoka Remand Centre. His primary roles were to look after the cleanliness of the institution, the discipline of the officers, and also the discipline of the inmates.

51. On 13 April 2020, at 6.30 am, he had a short briefing on the security and the issues regarding the operation of the institution because they were at the height of the COVID-19. He took over the institution from the officer-in-charge, who was on leave. On Saturday, the Police brought some remandees after 6 pm. The late admissions included Masirewa and Nawalu. He had known Masirewa since 1999 when he met him in Minimum Correction Center. When Masirewa was received at the checkpoint, he was limping and lagging. The officer who accompanied Masirewa complained that Masirewa was swearing at him. He turned to Masirewa and warned him to obey the officers and follow the procedures.
52. Because it was Covid time, Masirewa and Nawalu were taken directly to the Segregation Block. They had to be there for two days for their temperature to be monitored before they could be transferred to the dormitory. On Sunday (12 April 2020) one of the night guards came and complained that the inmates at the Segregation Block were swearing at them. During the unlock operation, he warned the inmates and explained the reason why they were being segregated.
53. On 13 April 2020, he reported for work at 6.30 am. He briefed the officers before allocating their responsibilities. He supervised the normal unlock procedure and went to inspect the ablution area, where he noticed a damaged white PVC pipe. He put it inside his pocket and went down to the Segregation Block where Masirewa and Nawalu (two inmates) were being kept. He questioned the two inmates about the complaint that they were continuously swearing at the officers. The two inmates denied the allegation.
54. When there's unrest among the inmates or when they are causing problems, it's the discretion of the duty officers to get them exercised to release their stress. They don't see it as a sort of disciplinary measure. The two inmates were then taken out of the cell to be strip-searched. He heard Kanavo's voice getting angry on the two inmates because of the overnight swearing incidents. Then he directed Kanavo to bring them and called Tubuna and Semesa to get them exercised. He went to the other side while Masirewa and Nawalu were on the ground with the two officers.
55. After a while, he went back to check on the two officers because when there is an exercise going on, there should be not less than three officers in attendance. He was at the far-

right end of the railings, 20 meters away from where the exercise was being done. He overheard two officers telling the two inmates to do the exercise, jog and to roll. The two inmates started arguing with the officers. Masirewa finally complied and started rolling.

56. He left them to call the nurse to arrange for temperature check-up and came back. The two inmates had stopped exercises and started arguing. He warned them to stop the arguments. He was concerned because the nurse was delaying all the operations. He went back again and ordered an officer to check on the nurse's quarters.
57. Masirewa signalled him as if he wanted to see him. He allowed Masirewa to come to him. Masirewa came to the chamber beside the railings and sat on the ground. He asked Masirewa: *What's the issue?* Masirewa was just looking down and didn't want to look at him as if he was ashamed. He took out the PVC pipe and tapped his head asking: *'Look at me and talk with me'*. Masirewa said: *'I don't want to stay in the segregation block'*. He explained the situation and warned them not to swear at the officers because they were all doing their job. The PVC pipe exhibited in Court (as depicted in photographs 67 and 68) was not the one he used to tap Masirewa. After talking to Masirewa, he told Semesa to pull out the fire hose and bath the two inmates and went away.
58. In a short while, he came back to check on Semesa and Tubuna, because Tubuna had already gone for the debriefing, leaving Semesa with the inmates. Semesa informed him that there's something wrong with Masirewa. Masirewa couldn't stand up as if he was fainted. He asked Semesa to take Masirewa in front. He kept on pressuring the officers to get the nurse quickly and then he called the ambulance driver.
59. The nurse came and said that Masirewa needed to be taken to the hospital. Masirewa was brought from the ground to the administration building, where two officers started CPR. He asked the officer conducting the CPR if he could feel the pulse. The reply was in the affirmative. They continued the CPR until the nurse arrived. The nurse came and took over the CPR. He and nurse accompanied Masirewa to the hospital. The nurse was continuing the CPR until Masirewa was handed over to hospital staff. The institution nurse later informed that Masirewa passed away.

60. Under cross-examination by Ms. Swastika, Raboiliku agreed that he was the senior-most officer as of 13 April 2020. He agreed that the junior officers were obliged to follow his instructions, but they were followed on their own accord. In the event of a breach of rules, the inmates were either segregated, disciplined or counselled. He was the deciding authority when it came to discipline. He agreed that he never heard Masirewa and Nawalu swearing at the officers; he just believed what his officers said. He agreed that he commanded to make Masirewa and Nawalu exercise.
61. He was interviewed on 16 April 2020. He could not recall if he told the police that Nawalu was rolling, who gave the PVC pipe, or that he saw Kanavo assaulting Masirewa. He could not recall giving an answer to Q171, which read: *I had to yell out to stop the fight because Jone Masirewa was down on the ground, and they started to kick him.*
62. There was dirt on their bodies and that's why he instructed to bathe them; not because they were covered in blood and dirt. He used a PVC pipe to tap Masirewa because he could not reach him from the railings. He denied that he was angry at Masirewa because of Masirewa's conduct.
63. Under cross-examination by Mr Heritage, Roboiliku said that Semesa was conducting exercise only on Nawalu. Under cross-examination by Ms. Tubuitamana he said that Kanavo was in charge of the tea operation started at 7 am.

DW2 - Semesa Bulikalougata

64. In 2020, Semesa was 20 years old and a newly recruited Correction Officer (Temporary Correction Officer Class C). They were trained in discipline, safe custody of the inmates and to obey and respect those at high ranks.
65. On 13 April 2020, he was doing the midnight shift from 12 am to 7 am. At around 6.30 am he was preparing for standby before changing the shift. He proceeded to the Segregation Block where Tubuna was conducting the head count. Tubuna took Nawalu and Masirewa to the ground at the back between the Nukulau and the Makuluva dorms. Tubuna informed him that he was under 2IC's instructions for Nawalu and Masirewa to be exercised and disciplined. Exercise included rolling, crawling and duck walk. He was

supervising Nawalu during the exercise for about 4 minutes. He has no idea what Masirewa went through as he was focused on Nawalu who was quarrelling with him. He denied kicking Masirewa. He just used his leg to assist him in rolling.

66. Masirewa was quarrelling with Tubuna. By that time, about four other officers were present at the ground. 2IC then gave instructions for Nawalu and Masirewa to be bathed. He pulled the hose from the Makuluva dorm and bathed Nawalu whilst Nawalu was speaking to Masirewa who was sitting on the ground. He could see that Masirewa was about to collapse. He placed his foot to assist him just to stop him from falling and hitting his head on the cement. At that time, 2IC was standing on the railings at the Nukulau Dorm. He checked Masirewa's pulse to know if he's still breathing or not. He did not feel his pulse. Masirewa had passed away. He told Raboiliku that Masirewa had knocked out. He could not confirm if Masirewa was still alive or dead. Referring to photographs Nos. 4 and 6, Semesa pointed out where Masirewa was lying and where Raboiliku was standing.

67. Nawalu said he kicked Masirewa. Nawalu was referring to what he did (placed his foot to save Masirewa from falling). Petero then instructed him to take Masirewa to the Admin Block. They carried Masirewa to the Admin Block.

68. Under cross-examination by Ms. Swastika, Semesa agreed that, during his training, he was taught to do his duties within the bounds of the law and to follow only lawful orders. He could not recall telling (at Q296) the police that: *'Jone Masirewa was bleeding from his face and lips but he tried to punch me and I tried to evade that punch which landed on my shoulder'*. He denied that 2IC Raboiliku had commanded him to kick Masirewa.

Evaluation /Analysis

Undisputed Facts

69. There is no dispute as to the identity of the Accused persons. The Accused persons admit that they were on duty in the Remand Centre on 13 April 2020. PW1 had known both 1st and 2nd Accused from previous remand admittances. PW2 was a workmate of all three

accused. It is admitted that the 1st Accused was the officer-in-charge and the commanding officer as of 13 April 2020. PW1 and the deceased (two inmates) were admitted to the Remand Centre on 11 April 2020. The two inmates were kept in the Segregation Block for them to be quarantined due to COVID 19 outbreak. It was also not disputed that the two inmates were singled out from other inmates and taken out to the ground to be drilled.

Unlawful Conduct

70. The Prosecution rely on two eyewitnesses Nawalu (PW1) and Tubuna (PW2) to prove the unlawful conduct on the part of the 1st and the 2nd Accused. PW2's evidence is also relied upon to prove the unlawful conduct of the 3rd Accused. A careful evaluation of evidence of PW 1 and PW 2 is crucial to determine whether the accused were engaged in unlawful conduct.
71. According to PW1, the 1st Accused commanded the officers to kick PW1 and the deceased. He also saw the 1st Accused beating the deceased on the head using the metal nozzle of the fire hydrant hose about six times over two minutes until the deceased knocked out. The 1st Accused then yelled out at other officers for them to check on the collapsed deceased. PW1 also implicated the 2nd Accused. He said that the 2nd Accused kicked the deceased only once.
72. The credibility of PW1 was not impeached by the Defence. In the written submissions filed on behalf of the 1st Accused, it was submitted that PW1 is not credible because he was a known offender, and that he gave contradictory evidence.
73. Although PW1 had been in remand previously, it was not revealed in evidence that he was a known offender. PW1 said the officers used safety boots to kick. He never said that the boots had hard metal edges as submitted. PW2 confirmed that the boot exhibited in Court was the safety desert boot the officers wore that day. The boot exhibited was nothing but a safety boot with a hard and thick soul. I am not convinced that PW1's evidence is inconsistent. There is nothing for me to discredit it. I accept PW1 told the truth.

74. PW2's evidence was that both 2nd and the 3rd Accused kicked and punched the deceased under the command of the 1st Accused. The 3rd Accused slapped the face and kicked twice on the deceased's chest. PW2 admitted that he was present at the alleged crime scene and that he punched PW1. He is certainly an accomplice as alleged. He was granted immunity to be a witness for the State. Therefore, his evidence must be acted upon cautiously and preferably upon being corroborated by other independent sources because he tends to blame others to minimise his responsibility.
75. Apart from PW2 being an accomplice, his evidence was challenged on the basis that he gave inconsistent evidence. In PW2's interview (held on 14 April 2020), there was no mention that the 1st Accused commanded his subordinates to kick PW1; the only command he gave was to make them roll and crawl (at Q112). In his statement made five years later (28 February 2025), after he was granted immunity by the State, PW2 had told the police that the 1st Accused commanded to 'kick' in addition to roll and crawl. PW2's explanation on the disparity was that he told everything to the police, though the word 'kick' is not reflected in the interview notes. Certainly, there is an inconsistency on the face of the record.
76. However, merely because of this inconsistency, PW2's evidence should not be rejected because it was corroborated by PW1. There is plausible evidence that the 1st Accused was present at the crime scene when the alleged assault took place. Without 1st Accused's knowledge and blessing, it was not possible for his subordinate officers to act in the manner they acted.
77. It was argued that the PW2's evidence that he took a small Bible from the deceased cannot be true because the deceased was stripped searched before being taken to the ground. However, this proposition was not put to PW2 to get his clarification on this. It is possible that the deceased asked for the Bible and sought forgiveness when he realized that he was about to expire. I accept PW2's evidence to be the truth.
78. Although the 1st Accused made an effort to distance himself from the drilling process, his evidence alone is sufficient to find that it was under his command and in his presence that the 2nd and the 3rd Accused drilled the two inmates. The 1st Accused said that he went to check on the two officers who were supervising the exercise. Though he said he was

at the far-right end of the railings, he admitted observing what was going on and overhearing the arguments with the two inmates, who were under instructions to exercise.

79. The 2nd Accused also confirmed that the 1st Accused was present at the crime scene when the two inmates were being drilled and that he acted under his command, although he denied having been commanded to kick the deceased. Assuming 1st Accused's denial about him commanding to kick the deceased to be the truth, his presence at the crime scene as the supervisor doing nothing to prevent the crime is sufficient for him to be held liable under Section 45 of the Crime Act which states:

(1) a person who aids, abets, counsels or procures the commission of an offence by another person who is taken to have committed that offence is punishable accordingly.

80. The 1st Accused said he kept on calling the nurse to come and check the temperature of the inmates. He did not explain why he was in a hurry to check the inmate's temperature when they were doing exercises. He did not explain why the two inmates who were under quarantine were subjected to a drill in the sun. He did not explain why he ordered the two inmates to be bathed at the ground itself using the fire hydrant hose. The reasonable inferences that I could draw from those are that the hunt for the nurse began when the 1st Accused realised, with the collapse of the deceased, that things had gone wrong; that the bathing was ordered to wash away the blood and other evidence. The photographs tendered and the police evidence of muddy water and blood-like stains found in the V-drain show that not all evidence was completely washed away. PW3 had seen the deceased bleeding. Although it was not established that the blood-like stains belonged to the deceased, it is reasonable to assume that it was the blood of the deceased.
81. The 1st Accused testified to the sequence of events that led to the alleged incident on 13 April 2020. His evidence reveals how troublesome, from his perspective, the deceased had been ever since his admission to the Remand Centre on 11 April 2020. During this period, he had received at least three complaints from his subordinates about the deceased's behavior, leading him to reprimand the deceased on several occasions. Although he said he was not angry at them, his conduct as it was portrayed in evidence, suggests otherwise.

82. Having received several complaints and himself observed the conduct of these two inmates over two days, on morning the 13th, the 1st Accused, had picked a PVC pipe from the ablution area and put it inside his uniform and went down to the segregation block where he confronted the two inmates about the complaints he had received. When the two inmates denied swearing at the officers, they were taken out of the cell to be strip searched. When he heard 3rd Accused's voice getting angry on the two inmates, he directed the 3rd Accused to bring the two inmates for the unlock procedure, where they were taken to the ground for them to be drilled under the supervision of PW2, 2nd and 3rd Accused.
83. Although the 1st Accused described this procedure (drilling) as a stress-releasing measure, involving only rolling, crawling and jogging, I am convinced that the two inmates were taken to the ground to be harassed under the veil of disciplining them.
84. The 1st Accused denied hitting the deceased with the PVC pipe whose photographs (67 and 68) were exhibited at the trial. However, he admitted tapping the deceased's head with another PVC pipe, which was in his uniform. The PVC pipe exhibited in Court had been uplifted from the alleged crime scene. Whatever the PVC pipe may be, he did not explain why he took a broken PVC pipe before confronting the two inmates. I am not convinced that the tapping was done to get the deceased's attention.
85. The evidence of PW1, PW3, PW4 and that of Dr John (PW6) and her expert opinion on the injuries found on the deceased's head and face were never consistent with what the 1st Accused said in his evidence. PW1 found the deceased's head soft upon palpation. PW3 and PW4 had seen the injuries on the head. This evidence rather confirms the Prosecution's version that the deceased was hit with a metal nozzle of the hydrant hose. PW6 had noted the injuries on the deceased's face, multiple small semicircular contused abrasions of varying dimensions scattered over the left forehead, left cheek and over the head, extending to the right occipital region. PW6 agreed that such injuries could have been caused as a result of the deceased being assaulted with the metal end (as depicted in photo number 20) of a hose.
86. The 2nd Accused denied that he had kicked the deceased or was commanded to do so. His version was that he extended his foot to assist the deceased in rolling and to prevent him

from falling. Dr John (PW6)'s evidence and her opinion on the injuries found on the deceased's chest and abdominal areas are never consistent with what the 2nd Accused said in his evidence. Those injuries rather confirm the Prosecution's version that the deceased was kicked multiple times with safety boots.

87. Having analysed the evidence discussed above I would conclude that the 1st Accused was present at the crime scene and that he commanded the 2nd and the 3rd Accused to kick the deceased. He himself hit multiple times with the nozzle of the fire hydrant hose. The 2nd and the 3rd Accused also kicked the deceased. The Prosecution proved the physical element of the offence beyond a reasonable doubt.

Causation

88. The medical evidence not only supports the Prosecution's version on the physical element of the offence, but it also establishes the causative link between the Accused's unlawful conduct and the death of the deceased.
89. There is no dispute that the death occurred within a few minutes of the assault. The two eyewitnesses testified to the external injuries they had observed on the deceased's body soon after the alleged incident. PW6 corroborated eyewitness accounts and established the link between the injuries and the death. According to PW6, there were multiple linear contused abrasions of varying dimensions on the chest wall. She opined that these abrasions could have been caused when being hit with something or rubbing up against something or falling, or if something hit him while he was moving. Multiple contusions and abrasions noted over the left flank area of the abdomen could have been caused by knocks with a bigger impact.
90. Upon internal examination, the doctor observed both lungs to be hyperinflated with contusions. The thoracic cage showed evidence of injury to the ribs with fractures of the right, 1st to 7th rib and left, 2nd to 6th rib, anteriorly in the front and the 6th to 10th rib bilaterally, both sides at the back. The rib bones, which are quite durable under stress because of their elasticity, had been ruptured. The fractured first rib, which is well protected, going down to the seventh position, is suggestive of a significant impact to the

chest. The doctor agreed that such ruptures could be a result of being kicked hard multiple times.

91. The doctor's observations on the ruptured ribs, inflated lungs, damaged liver and ruptured spleen manifest how extensive and forceful the blows had been. This type of rib fracture is normally seen in motor vehicle accidents, blunt force trauma due to significant multiple punches to the chest or something heavy falling on him.
92. The external surface of the liver showed two linear lacerations over the right interior surface of the right lobe, probably caused by trauma with an extensive force. The spleen rupture could possibly be due to blunt force trauma, such as hard kicking externally on the left side. Those injuries are directly linked to the severe hemoperitoneum in the abdomen, which ultimately caused the death. The peritoneal cavity of the abdomen was filled with 800ml of blood and blood clots. Such a condition needs immediate medical attention and for him to survive that long would have been a miracle. He died instantly so his injury would have caused him to seek immediate medical attention. The splenic rupture due to severe blunt abdominal trauma had caused this extensive hemorrhage, which sits as one of the antecedent causes of death. The other significant condition that would have contributed to the death was severe blunt chest trauma. All these have significantly contributed to the death.
93. Two hypotheses were advanced by the defence to discredit the Prosecution's theory on causation. Firstly, it was suggested that the deceased was already injured when he was admitted to the Remand Centre. This was based on the colour of the injuries found on the back of the deceased's body as reflected in the photographs tendered. It was suggested that those injuries could not be fresh because they had already turned brownish. However, PW6 was not happy with the clarity of the photographs. Giving cogent reasons, based on medical literature, she dismissed the argument that the colour of an injury on a dead body determines its age. That's a general consensus of doctors when they are treating living individuals as to the natural progression of how the bruise should look. The doctor disagreed with the Medical Review by Sullivan to be correct when it comes to dead bodies.

94. There is no plausible evidence that the deceased was already injured when he was admitted to the Remand Centre. PW1, who accompanied the deceased to the remand, said that the deceased was healthy on admission. PW5 found no evidence that the deceased was assaulted in police custody. Even if the 1stAccused's evidence that the deceased was limping at the admission to be the truth, limping had nothing to do with the fatal injuries. Therefore, there is no basis to the proposition that the deceased's old injuries caused or contributed to the death.
95. Secondly, it was suggested by the defence that the rib ruptures were caused by the application of CPR by unqualified people. It was not in dispute that Petero (PW3) and Sowaqa applied a CPR for 5 to 10 minutes before the nurse arrived and that they were not professionally qualified to do so. PW6 did not rule out the possibility of rib ruptures being caused due to severe compression on the chest if a CPR was applied by unqualified people. However, she dismissed that the rib ruptures in this case were caused as a result of the application of CPR. She gave reasons for her opinion. A CPR is generally conducted on the front part of the body, mostly over the heart, to get the heart pumping. Therefore, a CPR could not break ribs where the pressure is not normally applied. In this case, there are rib fractures on the left, right, and back. Broken ribs at the back is consistent with trauma.
96. There is no evidence that the injuries inflicted to the head by the 1stAccused in any way contributed to the death of the deceased. However, the 2nd and the 3rd Accused were acting under the command of the 1st Accused, who ordered the deceased to be kicked. The 1stAccused was present at the crime scene when the two inmates were being drilled by the 2nd and the 3rd Accused. Therefore, his command and his presence at the crime scene constitute the unlawful conduct on the part of the 1stAccused which significantly contributed to the death of the deceased. I am satisfied beyond a reasonable doubt that the Accused person's joint unlawful conduct caused the death of the deceased.

Fault Element - Were the Accused persons reckless as to the risk of causing death to the deceased?

- 97 The Prosecution is running the Murder charge on the basis that the accused was reckless as to the risk of causing death to the deceased. Therefore, it is apposite to look at the

statutory interpretation of recklessness as stipulated in the Crimes Act. According to Section 21(2)(a), a person is reckless concerning a result if he or she is aware of a substantial risk that the result (in this case death) will occur and having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

98. The risk must be ‘substantial’. Objectively viewed, it is common knowledge that the chest and the abdomen are vulnerable parts of the human body and any sober and reasonable person kicking on those areas with safety boots should be aware of the risk involved in his or her action. A strong and forceful kick would carry a substantial risk of causing death to the victim, which a reasonable and prudent man in the shoes of the Accused would not have taken.
99. However, in this case, there is no evidence that the 1st Accused had ordered to kick the deceased on those vulnerable parts of the body. The 2nd Accused had kicked the deceased only once, and where it landed is not clear. The 3rd Accused had punched once and kicked twice on the chest. According to medical evidence, the injuries to the head or chest area did not contribute to the death. The 2nd and the 3rd Accused had operated independently of each other in carrying out the command of the 1st Accused. There is no direct evidence on how much force each kick carried, other than that given by the doctor, suggesting it was a significant force. Who dealt the fatal kick is not clear. In these circumstances, it is not open and safe for the Court, based on an objective test, to find that the Accused persons were aware of a substantial risk that death would occur when they were engaged in their respective conduct.
100. Section 21(3) of the Crimes Act provides that the question whether taking a risk is unjustifiable is one of fact. The questions of fact are generally decided based on a subjective test⁸. Accordingly, the issue of whether the conduct of the Accused was justified when they took the risk should be decided on the basis of a subjective test⁹. There is no sufficient evidence to find that the Accused, having regard to the circumstances known to them, took an unreasonable risk that the death (result) would occur. In view of the reasons aforesaid, I find that the evidence led in the trial is not sufficient and does not support a conviction for the offence of Murder as charged.

⁸ *McPhee v S Bennett Ltd* (1934) 52 WN NSW18 at [9]

⁹ Dawson 81 Cr App R 150 CA at 153 &154

Liability for minor offence - Manslaughter

101. When an Accused is charged with a serious offence and the court finds that the serious offence has not been proved, Section 160 of the Criminal Procedure Act empowers the trial court to enter a conviction for a proved minor or cognate offence. Section 160 of the Criminal Procedure Act reads as follows:

160(1)... When a person is charged with an offence consisting of several particulars combination of some of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, the person may be convicted of the minor offence although he or she was not charged with it.

(2)... When a person is charged with an offence and facts are proved which reduce it to a minor offence, the person may be convicted of the minor offence although he or she was not charged with it.

102. Section 239 of the Crimes Act provides for the offence of Manslaughter. A person commits an indictable offence if—

(a) the person engages in conduct; and

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

(c) the first-mentioned person—

(i) intends that the conduct will cause serious harm; or

(ii) is reckless as to a risk that the conduct will cause serious harm to the other person

Penalty — Imprisonment for 25 years.

103. Although the evidence is not adequate to find the Accused guilty of Murder as charged, I find that the evidence is overwhelming to find that each accused was reckless in that their conduct would cause serious harm to the deceased. Therefore, each Accused should be guilty of involuntary Manslaughter under Section 239 of the Crimes Act.

104. The 2nd Accused appeared to contend that he should be exonerated because he, as a junior officer who had just joined the correction service, was only following the commands of his senior officer, the 1st Accused. PW2 said that the junior officers had no option but to follow the orders of the seniors, whether they were lawful or unlawful. If the commands were not followed, they could be disciplined. This is not a valid contention in law. The

junior officers are not bound to follow the unlawful orders of the senior officers. While there's a strong emphasis on obedience in the contexts of military or disciplinary forces, there is a clear distinction between lawful and unlawful orders. Service members, including junior officers, have a responsibility to disobey orders that are manifestly unlawful or that would lead to the commission of a crime. PW2 agreed that kicking is not part of the drilling code and is not allowed in Remand Centres.

105. No one other than the properly established courts of law is permitted to punish anyone¹⁰. Even the Courts in the modern civilised world are not empowered to impose cruel, inhumane, degrading or disproportionately severe punishments, not to mention corporal punishments. Every person has the right to freedom from torture of any kind, whether physical, mental or emotional¹¹. I reject the contention of the 2nd Accused.

Following Orders are made:

- (i). Each Accused is acquitted of Murder.
- (ii). The Accused are found guilty of Manslaughter, punishable Section 239 of the Crimes Act.
- (iii). All three Accused are accordingly convicted of Manslaughter.



Aruna Aluthge
Judge

13 August 2025
At Lautoka

Solicitors:

Office of the Director of Public Prosecutions for State
Babu Singh & Associates for 1st Accused
Iqbal Khan & Associates for 2nd Accused
Niudamu Lawyers for 3rd Accused

¹⁰ Section 9(1) (a) of the Constitution

¹¹ Section 11(1) of the Constitution.