

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case. No. HAC 24 of 2022**

**BETWEEN** : **THE STATE**

**A N D** : **ALIVERETI LESUKIYASAWA**

**Counsel** : Ms. M. Lomaloma for the State.  
Mr. R. Filipe for the Accused.

**Dates of Hearing** : 09, 10, 11, 12, 16 March, 2026.

**Closing Speeches** : 20 March, 2026

**Date of Judgment** : 23 March, 2026

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**JUDGMENT**

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1. The Director of Public Prosecutions charged the accused by filing the following information dated 12<sup>th</sup> April, 2022:

***Statement of Offence***

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

***Particulars of offence***

ALIVERETI LESUKIYASAWA on the 19<sup>th</sup> day of February, 2022 at Lautoka in the Western Division, murdered JOSEPH WILFRED JOHNSON.

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

### **BURDEN OF PROOF AND STANDARD OF PROOF**

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

### **ELEMENTS OF THE OFFENCE**

4. To prove the above count the prosecution must prove the following elements of the offence of murder beyond reasonable doubt:
  - (a) The accused
  - (b) engaged in a conduct; and
  - (c) the conduct caused the death of the deceased; and
  - (d) the accused intended to cause the death; or
  - (e) was reckless as to causing the death of the deceased by his conduct.  
The accused is reckless with respect to causing the death of the deceased if;
    - (i) he was aware of a substantial risk that death will occur due to his conduct; and
    - (ii) having regard to the circumstances known to him, it was unjustifiable for him to take that risk.
5. What this court will have to consider with regard to this particular state of mind is whether the accused was aware of a substantial risk that death will occur due to his conduct and having regard to the circumstances known to him, it was unjustifiable for him to take that risk.

6. The first element is concerned with the identity of the person who committed the offence. This element is not in dispute.
7. The second element relates to the conduct of the accused. To engage in a conduct is to do an act which is a voluntary act by the accused or is a result of the will of the accused.
8. The third element is the conduct of the accused that caused the death of the deceased. Conduct means an act done by the accused it can be anything such as punching, kicking, stomping, strangling etc. The law requires a link between the conduct of the accused and death of the deceased. This court must be sure that the conduct of the accused caused the death of the deceased.
9. In other words whether the punching and hitting the knee on the head, throwing the deceased in the drain and pulling him out of the drain and again punching on the face and head caused the death of the deceased. It is also kept in mind that the act need not be the sole cause but should substantially contribute to the death of the deceased.
10. With regards to the final two elements of the offence which concerns the state of mind of the accused the prosecution must prove beyond reasonable doubt either that the accused intended to cause the death of the deceased or that the accused was reckless as to causing the death of the deceased by his conduct.
11. The prosecution has to prove only one of the two limbs of this element. In this case the prosecution is alleging that the accused was reckless in causing the death of the deceased.
12. It is for the prosecution to prove beyond reasonable doubt that it was the accused who was engaged in a conduct and that conduct caused the death of the deceased and the accused was reckless in causing the death of the

deceased by his conduct. A person is reckless with respect to causing death if he is aware of a substantial risk that death will occur by his actions and having regard to the circumstances known to him it was unjustifiable to take that risk.

13. What this court should consider with regard to this particular state of mind is whether the accused person did foresee or realise that death was a probable consequence or the likely result of his conduct and yet he decided to go ahead and engage in the conduct regardless of that consequence. In order to constitute the offence of murder by recklessness, actual awareness of the likelihood of death occurring must be proved by the prosecution beyond reasonable doubt.
14. The prosecution says the accused had punched and kneed the deceased several times on his head and after doing this, he had also thrown the deceased in the drain and pulled him out and then again punched the deceased several times on the face and head. The prosecution further says the accused knew that death was a probable consequence of his conduct yet he went ahead with his conduct.

### **INTOXICATION**

15. The accused in his evidence testified that he had consumed a lot of alcohol from morning till the evening (paragraph three admitted facts) and that he was very drunk at the time, and therefore this court should consider the effect of alcohol upon him. The accused during his caution interview told the police about his intoxication as well. Jone Vueti had met the accused in the evening and had described his state of intoxication as very drunk. Sgt. Sera Boteirabuka had also met the accused that evening and she had smelt liquor in his breath as well.

16. Intoxication by alcohol is a relevant matter to be taken into account in determining whether the accused had the knowledge that death was a probable consequence of his conduct and he decided to go ahead with the conduct, regardless of that consequence.
17. An intoxicated person may still be capable of forming the necessary state of mind to commit an offence. The question is, whether the accused decided to go ahead with his conduct, having realised that death was a probable consequence, although he was drunk.
18. It is a matter for the court to decide whether the accused was affected by alcohol at that time and the extent of that intoxication. The evidence of Jone Vueti, Sgt. Boteirabuka, the caution interview, paragraph three of the admitted facts and the evidence of the accused is of assistance to the court in this regard.
19. If the court is satisfied that the prosecution has proved all the above elements of the offence of murder beyond reasonable doubt then it must find the accused guilty of murder.
20. If on the other hand, the court finds that the prosecution has failed to prove any of these elements beyond reasonable doubt then this court must find the accused not guilty of murder.
21. If the court accepts that the accused was not reckless in causing the death of the deceased then this court is to consider the offence of manslaughter which is a lesser charge than murder.
22. Manslaughter is the killing of someone by unlawful conduct, that is to say that the accused engaged in a conduct which caused the death of the deceased but instead of being reckless as to causing death by his conduct

he just has to be reckless as to whether his conduct would cause serious harm to the deceased.

23. If the court considers that the accused was reckless in his conduct in respect of causing serious harm to the deceased then the court must find the accused guilty of manslaughter. Moreover, the evidence of voluntary intoxication cannot be considered in determining the state of mind of an accused person in respect of the offence of manslaughter.
24. Whether the accused was reckless in causing the death of the deceased or was reckless in causing serious harm to the deceased is a matter entirely for the court to decide on the basis of the facts and circumstances of the case.
25. The accused, while denying the allegation, contends that on the evidence before the court he was not reckless in his conduct in causing the death of the deceased as alleged in the information filed.

### **ADMITTED FACTS**

26. In this trial the prosecution and the defence have agreed to certain facts titled as admitted facts. These facts are part of the evidence and I have accepted these admitted facts as accurate, truthful and proven beyond reasonable doubt.
27. I will now remind myself of the prosecution and defence cases. In doing so, it would not be practical of me to go through all the evidence of every witness in detail. I will summarize the important features for consideration and evaluation in coming to my final judgment in this case.

### **PROSECUTION CASE**

### **EVIDENCE**

28. The first witness, Jone Vueti, testified that on 19 February 2022 he met the accused at the roundabout on Evans Street, Lautoka, at about 8.00 p.m.
29. According to the witness, he had known the accused since their primary school days, and both had lived on the same street. When the witness met the accused, he observed that the accused appeared to be “so drunk” and that he could smell liquor on him.
30. The accused asked the witness if he had seen one of his friends with whom he had been drinking. The witness replied that he had not. At this time, both the witness and the accused saw a man approaching them. The accused asked the witness if he knew the man, and the witness said he did not. The witness observed that the man was wearing track pants and a black jacket, which were visible under the street lights. The accused then said he was going to the man, and both went their separate ways. The witness proceeded to his friend’s house. According to the witness, the accused was wearing blue shorts and a green vest.
31. During cross-examination, the witness agreed that the accused was very drunk at the time.
32. The second witness, Ana Ratuwere, testified that on 19 February 2022 she was residing at Evans Street. After 9.00 p.m., while having dinner at home, she heard the noise of a roofing iron falling. According to the witness, the roofing iron had been placed in front of the porch to act as a gate covering the front porch of the house.
33. The witness came to the front and, while standing behind the screen door, she saw two men on the porch of the house. The accused was standing in front of the door, and the deceased, an elderly man, was lying on the porch.

34. The witness stated that she knew the accused as he resided on the same street. According to her, the accused was punching the deceased on his face several times while the deceased lay on the porch. Upon witnessing this, she became very frightened.
35. The accused asked the witness and her husband whether they knew the deceased. They replied "no." At this time, the accused lifted the deceased by holding his t-shirt and threw him into the drain in front of the house.
36. The witness stated that she could not recognize the deceased due to the injuries on his face. The concrete drain was about five meters away from the porch and about three meters deep. She testified that the accused walked towards the drain and threw the deceased in. The deceased did not speak but was breathing heavily.
37. Some boys who were standing on the roadside came and restrained the accused, taking him away. At this time, the deceased remained lying in the drain. Shortly thereafter, the accused freed himself, returned, pulled the deceased out of the drain, and again punched him several times on the face for about 20 minutes. Despite efforts by several boys to restrain him, the accused resisted until eventually they succeeded in taking him back to the roadside.
38. The witness's aunt arrived, sat beside the deceased, wiped blood from his face, and massaged his chest as he struggled to breathe.
39. After a while, the accused returned a second time. He pulled the deceased, who was lying in the driveway, by his legs towards the roadside. At this time, a police vehicle arrived. The police placed the accused in their vehicle, while the deceased was taken to hospital in a taxi. During this process, the witness recognized a tattoo on the deceased's leg, identifying him as a relative of her husband. She explained that she had been unable to recognize him earlier due to the injuries on his face.

40. During cross-examination, the witness stated that she did not know that an elderly woman's house had been broken into a few days prior to the incident. She agreed that flower gardens were located in front and at the back of the drain.
41. Upon further questioning, the witness stated that from where the accused was standing on the porch, the drain was visible. She denied that the accused had not thrown the deceased into the drain, maintaining that he had lifted the deceased and thrown him from about five meters away. She added that the lighting on the porch enabled her to see clearly.
42. When it was suggested to the witness that it was not possible for the accused to have thrown the deceased five meters away, and that the deceased could only have been pushed backward rather than thrown, she disagreed, stating that the accused had lifted the deceased, turned him around, and walked towards the drain, then thrown him in.
43. The witness later clarified that the drain was near where the accused had been standing. She stated that he lifted the deceased from in front of the house door and threw him into the drain. She confirmed that she could see clearly from the screen door.
44. The witness denied that there had been an exchange of punches between the accused and the deceased, stating that the deceased was lying down throughout. She was referred to her police statement dated 19 February 2022, line 5 which was read as:
- "I then told him [my husband] not to go outside as I could see two iTaukei men fighting at the porch."*
45. When questioned about this, the witness maintained that the deceased had been lying down and the accused was only punching him. She explained that when she told the police that two men were fighting, she meant that one was lying down while the other was punching him.

46. The witness denied that the roofing iron had fallen after an exchange of punches. She stated that when the accused pulled the deceased out of the drain, the deceased remained lying down, never stood up, and appeared weak and injured. The accused did not tell her or her husband to call the police.
47. The witness maintained that the accused had lifted the deceased and thrown him into the drain. When it was put to her that the accused did not know there was a drain in the compound, she replied that the drain was beside the roadside. She further observed that the accused was really angry.
48. In re-examination, the witness reiterated that the accused had lifted the deceased and thrown him into the drain because it was close to where he was positioned. She clarified that when she told the police that two iTaukei men were fighting, she meant that the accused was punching the deceased while he was lying down.

#### **PREVIOUS INCONSISTENT STATEMENT**

49. This court directs its mind to the fact that defence counsel, during cross-examination of prosecution witness Ana Ratuwere, questioned her about an inconsistency between her police statement, given when the facts were fresh in her mind, and her evidence in court.
50. This court is entitled to take into consideration the inconsistency between what the witness told the court and her police statement when assessing her credibility. However, the police statement is not evidence of the truth of its contents.
51. It is recognized that the passage of time can affect the accuracy of memory. It cannot be expected that every detail will remain identical across different accounts.

52. Where inconsistencies arise, it is necessary to determine whether they are significant and whether they adversely affect the reliability and credibility of the witness. If significant, the court must consider whether there is an acceptable explanation for them. If such an explanation exists, the underlying reliability of the evidence may remain unaffected. If the inconsistency is fundamental, the court must decide to what extent it influences the reliability of the witness's evidence.
53. The third witness, Sergeant 3000 Sera Boteirabuka, testified that on 19 February 2022 she was based at the Lautoka Police Station. On that day, she was on the afternoon shift and was the authorized driver for her unit, with Corporal Apisai as her crew.
54. While attending to a report, she received a message at around 9.00 p.m. regarding excessive noise and people drinking in a public place at Evans Street. At the roundabout of Evans Street, the witness parked the police vehicle and switched off the engine in order to listen for the noise. Shortly thereafter, she observed a tall iTaukei male of dark complexion standing beside the vehicle door.
55. The witness questioned this person and, upon his reply, she detected the smell of liquor on his breath. When asked if he had been drinking, he answered "yes." He was warned not to drink at the roadside. The witness noted that he was wearing black three-quarter pants. She further observed that he began jumping up and down while looking ahead towards the footpath.
56. The witness then saw an elderly man walking towards them. When she asked the person why he was jumping up and down, he replied, "Oh, my cousin, my cousin."
57. This person left, walking towards the elderly man. The witness stated that the elderly man was wearing track pants and a long-sleeved shirt. Later, she came to know that the iTaukei man she had met beside the police

vehicle was Alifereti, the accused. The witness and Corporal Apisai then left to attend to another report.

58. Later that night, another report was received of a fight at Evans Street. At about 10.00 p.m., the witness and Corporal Apisai arrived at the Evans Street bus stop. They observed a large crowd and a fight in progress. When the witness parked the vehicle, Corporal Apisai left the vehicle. At this time, the witness saw the accused emerge from the crowd, approach the deceased who was lying motionless on a driveway, grab the deceased by the feet, and drag him towards the main road. Corporal Apisai intervened by grabbing the accused's neck to stop him.
59. The accused proved strong, and members of the public assisted Corporal Apisai in handcuffing him. The witness testified that she was able to observe the incident clearly from the driver's seat, as it occurred about two to three meters away. She recognized the injured man by his clothing, who she had seen earlier that night.
60. The accused was placed in the back seat of the police vehicle and taken to the police station, while the injured man was transported to hospital in a taxi. According to the witness, the accused, when dragging the deceased, was rough, violent, and in a rage.
61. During cross-examination, the witness stated that she saw the deceased from the driver's seat of the police vehicle, lying unconscious on the driveway. She explained that she described him as unconscious because he was not moving. The witness further stated that the accused, both outside and inside the police vehicle, was asking why the deceased was not being placed in the police vehicle and claimed that this was unfair. She denied that the accused had informed her in the police vehicle that the deceased was suspected of stealing from an elderly woman.
62. The fourth witness, Paulini Johnson, did not add anything material to the prosecution's case. Her testimony was not relevant, and accordingly her evidence will not be mentioned.

63. The fifth witness, WPC 5716 Unaisi Wati, testified that on 19 February 2022 she was residing at Evans Street with her in-laws and her son. Ana Ratuwere is her mother-in-law. In the evening, while she was sleeping, her mother-in-law came and told her to ring the Police Station because there was a fight in front of their verandah.
64. The witness came to the front of the house and saw two men fighting. She stated that she knew the accused, who lived on the same street. She observed the accused and the deceased standing, with the accused punching the deceased on the head several times.
65. As a result, the deceased fell to the ground, was helpless, and could not defend himself. The deceased was wearing a black t-shirt and black long pants. The fight occurred about five steps away from where the witness was standing, and she testified that she could see clearly due to the verandah light. The witness kept calling the Police Station for assistance. At about 10.00 p.m., the police arrived and took the accused away. She did not see the deceased again.
66. During cross-examination, the witness stated that she saw two men fighting on the porch of the house. She could not recall where her mother-in-law was at the time she herself was standing in front of the door. She also could not recall whether the accused had asked her to call the police.
67. The sixth witness, Superintendent Sakiusa Jitoko, testified that he is currently the Deputy Director of Forensic Science Services of the Fiji Police Force, based at the Forensic Science Services Headquarters in Suva.
68. On 19 February 2022, he was attached to the Crime Scene Investigation Unit in Lautoka. At about 10.44 p.m., he received a call from Acting Inspector Collin Martin reporting a case of death at Evans Street. He was informed that the victim had been assaulted and later taken to hospital, where he passed away.

69. The witness was directed to examine the crime scene. He informed Constable Temesi, and at about 11.25 p.m. the team arrived at the scene. Upon arrival, there were police officers guarding the area. The scene had initially been cordoned with cone reflectors. The witness instructed Constable Temesi to use crime scene tape to cordon the area where the available evidence was located.
70. A scene briefing was conducted. The witness carried out a visual examination of the entire crime scene and instructed Constable Temesi to photograph the scene that night.
71. The witness began labelling points of interest with yellow crime scene markers. Constable Temesi photographed all exhibits placed around the scene. During his examination, the witness also collected blood-like stains for further analysis.
72. At around 12.23 a.m. the following morning, the witness instructed Constable Temesi to prepare a sketch plan of the area. Senior investigators were informed of the findings and exhibits collected. At about 1.30 a.m., the crime scene examination was suspended to be continued in the morning.
73. At about 8.18 a.m., the witness returned to the crime scene with Sergeant Josateki, who took over photography duties from Constable Temesi. During the examination, the witness found a right black flip-flop in the drain beside the driveway to the house. Blood-like stains were uplifted from the flip-flop. Upon closer examination, the witness observed stones lying beside the flip-flop, also bearing blood-like stains. These were photographed by Sergeant Josateki and labelled with yellow crime scene markers. The photographs were later compiled.
74. In cross-examination, the witness agreed that investigators had carried out preliminary inquiries before briefing him. He stated that the crime scene had initially been cordoned with police cones, and upon his arrival,

the area was cordoned with crime scene tape. He denied that the crime scene had been disturbed by the investigating team.

75. The witness further testified that the drain was not situated inside the compound of Lot 19 but was located beneath the driveway, in the area where a flip-flop and blood-stained stones were discovered. He estimated the depth of the drain to be about one meter.
76. The seventh witness, Sergeant 3049 Josateki Seuseu, testified that he is based at the Forensic Service Division of the Fiji Police Force. On 20 February 2022, he was instructed by Superintendent Jitoko to revisit the crime scene at Evans Street, take photographs, and follow any further instructions.
77. The witness arrived at the scene at 8.00 a.m. and took photographs as instructed by Superintendent Jitoko, being photographs numbered 16 to 20. Thereafter, he attended the post-mortem examination of the deceased and took photographs numbered 21 to 27. According to the witness, Constable Temesi compiled all the photographs.
78. The eighth witness, Police Constable 5769 Temesi Tuwai, testified that he is based at the Lautoka Police Station under the Forensic Science and Services Unit. He was tasked with being the photographer and sketch drawer of the crime scene in this case.
79. On 19 February 2022, the witness took photographs of the crime scene and later compiled them in a booklet form. He took photographs numbered 2 to 20, while the remaining photographs were taken by Sergeant Josateki on 20 February 2022. The witness also prepared a sketch plan of the crime scene, consisting of a rough sketch drawn at the scene and a fair sketch prepared later. He compiled all photographs and sketch plans into a booklet. The crime scene examination photographic booklet, including the sketch plans, was marked and tendered as Prosecution Exhibit No. 1.

80. During cross-examination, the witness stated that the crime scene was not disturbed but was guarded.
81. The ninth witness, Dr. Sainiana Ratuki, testified that she graduated with an MBBS Degree from the Fiji School of Medicine in 2014. Thereafter she completed her internship at the CWM Hospital. From 2016 to 2019, she worked as a General Practitioner in the Rewa Subdivision, and subsequently with the Republic of Fiji Military Forces until April 2021. In June 2021, she joined Forensic Pathology as a Senior Officer, and since 2023 she has served as a Principal Forensic Officer. She conducts approximately 250 autopsies annually.
82. The witness confirmed that she conducted the post-mortem examination of the deceased on 21 February 2022 at the Lautoka Hospital. The report was marked and tendered as Prosecution Exhibit No. 2.
83. The witness recorded the following findings in her post-mortem examination report:

### **External Examination**

- **Head**

1. A laceration measuring 40 mm x 10 mm x 5 mm on the right eye socket;
2. Left black eye;
3. Multiple irregular bruises of varying dimensions over the face and chin.

- **Anterior Trunk** The anterior trunk, being the area from the hips to the shoulders, showed irregularly shaped bruises over the right hip.

- **Right Lower Limb** The right leg had scratches and bruises measuring 20 mm x 10 mm in front of the knee.

## **Internal Examination**

- **Scalp** Multiple subscapular hematomas (blood clots or collections of blood) were observed at the back and base of the hairline.
- **Face** a) The left black eye showed bruising over the skin. After peeling the skin, bruising of the eye muscles was noted; b) Both eyes had muscle bruises; c) Bruises were present over the mouth and nose.
- **Dura** The thick outer membrane around the brain was intact. However, there was evidence of a subdural haemorrhage. The witness explained that between the brain and the skull there are three layers where bleeding can occur, and in this case the bleeding was in the middle layer (subdural).
- **Leptomeninges** This layer, closest to the brain, showed evidence of a subarachnoid haemorrhage over the right temporal area extending to the floor of the brain. The right temporal area is located behind the ear and extends to the base of the brain.
- **Heart** The heart was enlarged due to the age of the victim and narrowing of the coronary arteries caused by fat deposits. The blood vessels were hardened from damage.

84. In the opinion of the witness, the injuries directly leading to death were severe intracranial haemorrhage. She explained that the two areas of bleeding in the brain were the primary cause of death, resulting from severe traumatic head injuries. According to her, it was very likely that the victim had been punched multiple times in the face and had fallen, striking the back of his head.

85. The witness further stated that although the victim had an enlarged heart, there was no evidence of a recent, acute, or sudden heart attack. While the victim had underlying medical conditions, the primary cause of death was different. She also noted that there was no swelling or bruising of the victim's knuckles to suggest that he had defended himself.

86. The witness explained that defensive wounds are typically seen on the back surfaces of the palms and forearms. In this case, none were present, indicating that the victim had not defended or protected himself. She recognized and confirmed all the photographs taken during the post-mortem examination.
87. During cross-examination, the witness stated that the blood clot seen over the brain was still in liquid form, indicating that the injuries were fresh. She explained that such clots can remain in liquid form for between 30 minutes and 36 hours, after which their appearance changes. She further stated that with such head injuries, the victim could become unconscious or suffer seizures, but remaining awake and alert was very unlikely. She added that the bleeding in the brain indicated that the force applied had been considerable.

#### **DIRECTION ON EXPERT EVIDENCE**

88. This court has heard the evidence of Dr. Ratuki who had been called as an expert on behalf of the prosecution. Expert evidence is permitted in a criminal trial to provide the court with information and opinion which is within the witness expertise. It is by no means unusual for evidence of this nature to be called the post mortem examination report of the deceased is before this court and what the doctor said in her evidence as a whole is to assist this court.
89. An expert witness is entitled to express an opinion in respect of his or her findings. When coming to my conclusion about this aspect of the case I have borne in mind that if, having given the matter careful consideration, I do not accept the evidence of the expert I do not have to act upon it. Indeed, this court does not have to accept even the unchallenged evidence of the doctor.
90. I have also kept in mind that this evidence of the doctor relates only to part of the case, and that whilst it may be of assistance to me in reaching

my decision, I must reach my decision having considered the whole of the evidence.

91. The final witness, Sergeant 4933 Martin Koli, testified that he was instructed by ASP Maciu Fava to conduct a video-recorded interview of the accused.
92. The witness interviewed the accused on Sunday, 20 February 2022, at the Lautoka Police Station in the video-recording interview room. Constable Poasa was also present during the interview. The interview was conducted in English, the language preferred by the accused, and was recorded using two cameras.
93. Before the interview commenced, the accused was explained the process and the operation of the recording equipment, including how CDs were loaded and recorded. The accused understood and agreed to be video recorded.
94. Once a CD was prepared, the accused, Constable Poasa, and the witness signed it. According to the witness, the caution interview was transcribed into hard copies. Two CDs were later played in court.
95. When the CDs were played in court, typographical errors in the hard copies relating to the date of the interview, the name of the interviewing officer, and the witnessing officer were corrected.
96. The witness confirmed the contents of the two CDs played in court. He stated that he asked the questions and the accused provided answers, with breaks given for the accused to rest.
97. The two CDs dated 20 and 21 February 2022 were marked and tendered as Prosecution Exhibits Nos. 3A and 3B. Six sets of the transcribed caution interview dated 20 and 21 February 2022 were marked and tendered as Prosecution Exhibit No. 4. The witness recognized the accused in court.
98. There was no cross-examination by defence counsel.

## **CAUTION INTERVIEW**

99. The answers given in the caution interview are for this court to consider as evidence. However, before any admissions are accepted, the court must be satisfied that the answers were given by the accused and that they represent the truth. It is entirely a matter for this court to accept or reject the answers given in the caution interview.
100. If the court is not satisfied that the accused made the admissions, then they will be disregarded. If the court is satisfied that the admissions were made, it must then consider whether they are truthful. The weight to be given to those admissions is a matter entirely for this court.
101. The defence did not cross-examine the witness but expressed objections to the fact that some witnesses were not called by the prosecution, although their assertions were put to the accused. The defence submitted that such assertions should be disregarded. The issue before the court is whether the answers were given by the accused and whether those admissions are truthful.
102. Once the accused admitted the propositions put to him, attributed to other individuals in his caution interview, there was no need for the prosecution to call those witnesses.
103. This was the prosecution's case.

## **DEFENCE CASE**

104. At the close of the prosecution's case, the accused was explained his options. He could have remained silent, but he chose to give sworn evidence and be subjected to cross-examination. This court must therefore consider his evidence and give such weight as is appropriate.
105. The accused testified that on 19 February 2022 he was residing at Evans Street with his father and sister. On that day, he began drinking pure

alcohol with some of his workmates from 10.00 a.m. to 1.00 p.m. Thereafter, one of his neighbours came to his home, and together they went shopping before drinking again, this time consuming Goldstone at the seawall from 3.00 p.m. until around 8.00 p.m.

106. After being dropped home, the accused wanted to continue drinking. He asked his wife for money to buy more alcohol. While walking to the shop, he met Jone Vueti. He asked Jone if he knew the man walking behind him. Jone replied that he did not. After Jone left, the accused saw the deceased turn in a suspicious manner and approach the house of an elderly woman he calls aunty, who lived on the same street. This was the house that had been broken into earlier that week.
107. The accused followed the deceased and saw him standing in front of the window of the house. After a while, the deceased approached the accused and stopped. The accused questioned him if he knew the place, to which the deceased responded “no.” When asked if he had taken a phone from the property, the deceased allegedly punched the accused in the face and ran towards the junction. The accused fell down but gave chase. While running, the deceased fell, allowing the accused to catch up with him.
108. The deceased then ran towards Ana Ratuwere’s house and struck the roofing iron, which fell. At Ana’s house, the accused again questioned the deceased about where he came from and told him that peeping into compounds and stealing property brought a bad name to the youths in the area.
109. The accused further stated that, since he was drunk and angry, he began punching the deceased. He could not recall the number of punches he threw. He denied throwing the deceased into the drain, stating that his intention was only for the deceased to be arrested by the police.
110. The accused testified that both he and the deceased began pulling each other, and the deceased pushed him. He told the deceased to leave and asked Unaisi to call the police. According to him, the deceased was heavier

than him. The pulling and pushing led them towards the driveway, where the accused fell into the drain. He stated that he pulled the deceased out of the drain and told him not to run away but to wait for the police. The deceased was sitting on the driveway. The accused claimed he did not realize the seriousness of the deceased's injuries because he was drunk. He could not recall punching the deceased several times after pulling him out of the drain.

111. Thereafter, the police arrived and took him into the police vehicle. Inside the vehicle, the accused said that the deceased should also be brought in, because he had seen the deceased peeping and attempting to steal from one of the houses. When asked about the charge against him, the accused said, *"I didn't mean for it to happen."*
112. During cross-examination, the accused stated that he could not recall speaking to Sergeant Sera at the roundabout of Evans Street because he was drunk. However, he recalled meeting Jone Vueti, whom he personally knew.
113. The accused agreed that he did not raise his suspicions about the man following Jone. He stated that he saw the deceased inside the old lady's compound and that when the deceased came to the road, he was wearing a hat. The accused denied that he had mistaken the deceased for another person wearing a hat inside the compound.
114. The accused maintained that, despite the pathologist's opinion that there were no swollen knuckles on the deceased, the deceased had punched him, causing him to fall. He was certain that he had seen the deceased at the old lady's compound that night.
115. When it was suggested that he had punched the deceased, causing him to run to Ana's house, the accused disagreed. However, in Ana's porch the accused agreed he had started punching the deceased but not many punches because most of the time he was talking to the deceased. The

accused denied he was punching the deceased on the face and head. At that time, the deceased was first standing and then lying on the ground.

116. The accused testified that, since he knew Unaisi was a police officer, he told her to call the police because the deceased had tried to steal from another property. When questioned why he did not ask Unaisi to help restrain the deceased, he replied that his mind was not in the right state because he was drunk.
117. The accused could not recall punching the deceased while he was lying on the ground in Ana's porch. He denied throwing the deceased into the drain, pulling him out, and punching him repeatedly.
118. The accused was referred to page 17 of his caution interview, where he had agreed that he pulled the deceased out of the drain, placed him on the porch, and continued punching him. He stated that he was still drunk at that time and that his mind was not in the right state. Upon further questioning, he said that when the police informed him that the victim had died, his mind was not in the right state.
119. The accused could not recall breaking away from the restraint of some boys who had tried to take him away from the deceased at the driveway. He denied knowing the risks associated with inflicting assault on the deceased. When asked whether he knew the risks of repeatedly punching someone on the head, the accused said, "*I didn't know that he was going to die.*" He reiterated that he was very drunk when the incident occurred. The accused denied the allegation against him.
120. This was the defence case.

### **ANALYSIS**

121. The prosecution alleges that between 9.00 and 10.00 p.m. on 19 February 2022, the accused confronted the deceased at Evans Street, Lautoka.

Without any reason, he began punching the deceased, who ran towards a house at Lot 19 seeking refuge. In the porch of the house, the accused continued punching the deceased several times on his face and head. The deceased was helpless and lying down. Thereafter, the accused lifted the deceased and threw him about 5 meters into the concrete drain.

122. Some people who were standing on the roadside came and restrained the accused, taking him to the roadside. Shortly thereafter, the accused freed himself, returned, pulled the deceased out of the drain, and again punched him several times on the face for about 20 minutes. By this time, more people arrived and tried to stop the accused, but they could not. Eventually, after much effort, they succeeded in taking the accused away to the roadside.
123. After a while, the accused returned a second time to the deceased, who was lying on the driveway, and pulled both his legs towards the roadside. Sergeant Sera Boteirabuka described the accused's aggression as rough, violent and in a rage, noting that it took considerable effort by the arresting police officer and others to handcuff him. The deceased died from severe head injuries on his way to the hospital.
124. The prosecution also states that in his caution interview the accused voluntarily told the police that, in addition to punching and throwing the deceased into the drain, he had also struck the deceased's face with his knee. Furthermore, the prosecution submits that the post-mortem report of the deceased is self-explanatory, and the evidence of the pathologist demonstrates a brutal and deadly assault.
125. The prosecution relies on the testimony of Ana Ratuwere, who saw the accused repeatedly assaulting the deceased and throwing him into the drain. She testified that the deceased was lying on the ground and not defending himself. PC Wati also saw the accused punching the deceased several times on the head while he was lying on the porch. Sergeant

Boteirabuka saw the deceased motionless in the driveway when the accused was pulling his legs towards the roadside.

126. The pathologist, Dr. Ratuki, stated that there were no defensive wounds on the deceased, which further shows that he was unable to protect himself.
127. Finally, the prosecution submits that there was no justification for the accused's conduct. His aggression and repeated assaults resulted in severe head injuries leading to the deceased's death. The prosecution argues that the accused foresaw or realized that death was a probable consequence of repeatedly punching the deceased's head, hitting him with his knee, and throwing him into a concrete drain, yet he proceeded regardless. The accused was aware of a substantial risk that death would occur, and in the circumstances known to him, it was unjustifiable to take that risk.
128. On the other hand, the defence submits that the court should consider that it was the deceased who was the initial aggressor. He punched the accused first. The accused had only questioned the deceased about his presence in the compound of the elderly woman, whom the accused called aunty. The house of this lady had been broken into a few days earlier.
129. The defence argues that the accused had no enmity with the deceased and therefore there was no reason for the accused to kill the deceased. The accused was heavily intoxicated and he reacted to the situation created by the deceased. He was so intoxicated that he did not foresee or realize that death was a probable consequence of his actions.
130. The defence further submits that the accused's circumstances ought to be taken into account. He was concerned about the break-in at the house of the elderly woman, to whom he was emotionally attached. At the time, he was 29 years old and a concerned member of the community. It is submitted that the first punch by the deceased angered the accused to the extent that he lost his self-control, which triggered the series of events.

The accused's intoxication aggravated the situation and led to his conduct. The accused never wanted the deceased to die and was not reckless. He was not aware of any substantial risk that death would occur, and in the circumstances known to him, it was not unjustifiable to take the risk.

131. The defence asks the court to consider the accused's remorse, expressed both in his caution interview and in court, where he stated that he never wanted the deceased to die. The defence submits that the accused acted in response to the unfolding situation. The crucial aspect, according to the defence, is that the accused would not have reacted but for the deceased's conduct.
132. The defence also relies on the evidence of WPC Unaisi Wati, who saw the accused and the deceased fighting while standing in the porch. This, they argue, suggests that the deceased was also fighting with the accused. The defence submits that the accused should be found not guilty of murder but guilty of manslaughter

### **DETERMINATION**

133. The court reminds itself that the burden of proving the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused. Even if the court rejects the version advanced by the defence, the prosecution must still prove this case beyond reasonable doubt.
134. There is no dispute that the accused assaulted the deceased on the night of 19 February 2022, which eventually led to the death of the deceased. This fact has been admitted by the accused, and the court accepts it as the truth.

### **CAUTION INTERVIEW DIRECTION**

135. The caution interview of the accused, which contains both inculpatory (admissions) and exculpatory (self-serving) remarks, commonly known as

a “mixed statement,” requires the court to consider the entire statement as evidence and to weigh each aspect appropriately.

136. The court must weigh the evidence of the caution interview in light of all other evidence presented, recognizing that the accused’s immediate explanations are a crucial part of the case. This principle has been established in *R v Duncan* (1981) 73 Cr App R 359 and refined in *R v Sharp* (1988) 1 WLR 7. The principles are as follows:

a) *Admissibility of Exculpatory Parts*: Contrary to the general rule against hearsay, the exculpatory portions are admissible and should be considered for their truth.

b) *Weighing of Evidence*: While the whole statement is evidence, the judge may point out that the incriminating parts are likely to be true (as a person is unlikely to make false admissions against interest), whereas the excuses may not carry the same weight.

c) *No Obligation to Accept All Parts Equally*: The court is not required to give the same weight to incriminating and exculpatory parts; it may accept some, all, or none of the statement.

d) *Fairness in Presentation*: The prosecution has a duty to tender the entire mixed interview, not just the incriminating parts, unless there is a strong reason not to.

137. The post-mortem report of the deceased shows serious injuries suffered, which resulted in the death of the deceased. The issue in this case is whether the accused acted recklessly in assaulting the deceased, thereby causing his death.

138. The court finds the evidence of WPC Unaisi Wati, Sgt. Boteirabuka, and Dr. Ratuki, to be believable. WPC Wati and Sgt. Boteirabuka clearly narrated what they had seen that night. I have no doubt that they told the

truth in court about what they observed. I have also accepted the opinion of Dr. Ratuki as both credible and reliable.

139. In considering the evidence of Ana Ratuwere, the court observed that she had provided several inconsistent accounts concerning the manner in which the deceased was allegedly thrown into the drain by the accused. The court is unable to accept the proposition that the accused could have thrown the deceased from a distance of five meters with precision into the drain beneath the driveway, as such this scenario is inherently implausible.
140. The court finds the only plausible explanation to be that the accused lifted the deceased and proceeded towards the driveway, at which point the deceased fell into the drain. In this regard, I accept the evidence of the accused that the deceased fell into the drain as the more probable scenario. Furthermore, Ana also testified that when the accused pulled the deceased out of the drain he punched the deceased for about 20 minutes on the head, is not believable as well. At page 17 of the caution interview the police officer told the accused that Ana Ratuwere had seen the accused and the deceased fighting on the porch which the accused agreed. The accused also agreed that he was punching the deceased. The accused was asked:

*“She then saw you pull him out of the drain again and pull him onto the porch where you continued to punch him.” Answer: “Yes, and it is true”.*

141. This admission lends weight to the conclusion that, notwithstanding the improbability of a prolonged assault of 20 minutes, the accused did engage in repeated acts of violence against the deceased after removing him from the drain. The court must therefore assess the credibility of Ana’s evidence in light of the accused’s partial admissions, distinguishing between exaggeration and corroborated fact.

142. It is a known practice that, during a caution interview, the police officer presents to the accused the assertions contained in a witness statement. In this case, Ana Ratuwere's assertion was put to the accused in accordance with her police statement. Notably, the question asked of the accused does not mention anything about him punching the deceased on the head for about 20 minutes. The court is unable to accept that the accused engaged in such prolonged conduct. Had Ana's police statement contained this specific allegation, it is reasonable to expect that the interviewing officer would have put it directly to the accused. The absence of such a question strongly suggests that Ana's claim of a 20 minutes assault on the deceased head was either not part of her original statement or is an exaggeration introduced subsequently. Accordingly, the court finds this aspect of her testimony that is punching the deceased's head for 20 minutes to be also unreliable and accords it little weight in the overall assessment of the evidence.
143. The court further rejects Ana's assertion that the drain was three meters deep. Greater weight is placed on the evidence of Police Superintendent Jitoko, who conducted the crime scene examination and confirmed that the drain's depth was not more than one meter. His testimony, being based on direct measurement and official investigation, is regarded as reliable and is accordingly accepted. Defence counsel highlighted an inconsistency between Ana's testimony and her police statement recorded shortly after the incident. The court accepts Ana's explanation that she informed the police officer that two iTaukei men were fighting on the porch, with the deceased lying on the ground and the accused punching him on the face. This explanation is consistent with the evidence of WPC Wati which is accepted by the court.
144. The sequence of events that led to the actual assault by the accused on the deceased cannot be considered in isolation.

## **LAW ON RECKLESSNESS**

145. The definition of “recklessness” is provided for in section 21(2) (a) of the Crimes Act 2009 as follows:

*“21 [1] A person is reckless with respect to a circumstance if – (a) He or she is aware of a substantial risk that the circumstance exists or will exist; and*

*(b) Having regard to the circumstances known to him or her, it is unjustifiable to take the risk.*

*(2) A person is reckless as to a result if – (a) he or she is aware of a substantial risk that the result will occur; and*

*(b) having regard to the circumstances known to him or her, it is unjustifiable to take that risk.*

*(3) The question whether taking a risk is unjustifiable is one of fact.*

*(4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy the fault element.”*

146. The law requires the court to not only assess the accused’s subjective awareness of all the circumstances at the time of offending, but also requires consideration of whether a reasonable person would in those circumstances have regarded taking the risk as unjustifiable. The phrase probable consequence should be interpreted to mean “a substantial or real risk” or something that “could well happen.”

147. This interpretation has been adopted by the Court of Appeal in *Ulaiasi Glen Radike and others vs. The State*, criminal appeal no. AAU 005 of 2019 and AAU 039 of 2020 (28 November, 2025) at paragraphs 60 to 63 the court observed the following:

*60. The issue devolves to whether the consequences of the alleged conduct (namely, the result) must be “possible” or “probable” to fit within the definition of being reckless. There is an added complication. Determination*

*of a person's recklessness necessarily involves assessment of a person's subjective awareness of all the circumstances at the time of offending, but also requires consideration of whether a reasonable person would in those circumstances have regarded taking the risk as unjustifiable.*

61. *The authority of Whangarei District Council v Daisley* [[2024] NZCA 161 usefully summarises the law as to recklessness in New Zealand as follows:

*"[115] It is necessary to define recklessness. In New Zealand law the term ordinarily means that the defendant took a risk in circumstances in which they knew there was a real possibility of harm and it was unreasonable, in the circumstances known to the defendant, to take that risk."* (our underlining)

62. This aspect was recently considered by the New Zealand Supreme Court in *Burke v The King* [2024] NZSC 37 where the majority considered that "probable consequence", which is the statutory test laid down in section 66(2) of the Crimes Act 1961, should be interpreted as "a substantial or real risk" or something that "could well happen". The entire Court agreed there was merit in jury directions emphasizing that the term "probable" should be regarded in contrast to merely "possible".

[63] We consider this view to be the correct position for Fiji. To interpret the phrase in question otherwise would lead to situations where all the possible results of certain actions would have to be considered when determining recklessness. A safer measure of criminal culpability surely follows when only the probable consequences of certain acts are taken into account.

## **INTOXICATION**

148. The offence of murder under the Crimes Act is a specific intent offence, which means intoxication is a relevant consideration. Section 32(1) of the Crimes Act states:

*(1) If any part of a defence is based on actual knowledge or belief, evidence of intoxication may be considered in determining whether that knowledge or belief existed.*

149. The prosecution witnesses Jone Vueti and Sgt. Boteirabuka stated that the accused smelt of liquor, in the words of Jone “so drunk.” The accused confirmed his intoxication as well.
150. Intoxication by alcohol is a relevant matter in determining whether the accused had knowledge that death was a probable consequence of his conduct.
151. However, an intoxicated person may still be capable of forming the necessary state of mind to commit an offence. The question is whether the accused decided to go ahead with his conduct, having realized that death was a probable consequence, although drunk.
152. Taking into consideration the above, and in particular the observations of Sgt. Boteirabuka that the accused was jumping up and down (exhibiting erratic behaviour) after seeing the deceased, together with the testimony of Jone Vueti that the accused was very drunk that evening, the court is left with no doubt that the accused was indeed intoxicated that night. The extent of his intoxication, in my judgment, was such that he lacked knowledge that death was a probable consequence of his conduct.
153. This court accepts that the accused was 29 years of age at the time, emotionally attached to the elderly woman whom he called aunty, and whose house had been broken into a few days earlier. His caution interview shows that he was overwhelmed by emotion and was deprived of rational judgment as a result of intoxication. At page 23 of the accused’s caution interview the following are noteworthy:

*“...the reason being I also was aggressive was that I hate what he came and did to embold me the time he was peeping to her house as I have said*

*earlier that elderly woman is [she's] got nothing but [her] only son is sick, [her] son doesn't go and work, [her] son is not employed stays home and then everything this old lady will say is she always tell us Fijian boys to look after her, we go and do things to her place cleaning up her compound and when she told me that her home was robbed her phone was stolen I felt bad. And when I came to see that old man in the compound peeping into her window that's why that's where I was angry, I was drunk I yelled at him..."*

154. The accused admitted he was so intoxicated that he could not recall the number of times he punched the deceased. In light of this admission, the court considers it unsafe to conclude that he deliberately targeted the deceased's head to injure him. It is recognized that the head and face are especially vulnerable areas of the body, the evidence indicates that the accused's actions were driven by his intoxication, and anger that came about from his suspicion that the deceased was about to steal from the elderly woman's house. He was significantly impaired in his judgment that he was unaware that death could result from his conduct. This finding is relevant to the assessment of *mens rea*, as it demonstrates that while the accused engaged in violent behavior, his capacity to foresee the fatal consequences was diminished.
155. The court acknowledges that a reasonable sober person, placed in the circumstances of the accused, would have regarded the taking of such a risk as unjustifiable. However, it is legally accepted that voluntary intoxication is relevant in assessing whether the accused possessed the requisite fault element for the offence of murder. When the evidence is considered in its entirety, it demonstrates that the accused's intoxication rendered him more willing to engage in risky conduct than he would have been had he been sober.
156. The court finds that, given the accused's state of intoxication, it cannot be excluded that the accused's cognitive functioning was impaired to

such a degree that he failed to recognize a risk of death which, in ordinary circumstances, he would have appreciated. In this regard, this court accepts the observations of the Supreme Court in *Livai Kaiviti Ratabua vs. The State*, criminal petition no. CAV 0025 of 2022 (27 June, 2024) at paragraphs 67 and 68 as follows:

*[67] It is possible that the alcohol he had merely made him more willing to engage in risky conduct than he would be if sober. A merely disinhibitory effect of this nature would be immaterial to his guilt. This is because the general approach of the law, as exemplified by s 29 – 32 of the Crimes Act, is that self-induced intoxication does not excuse criminal conduct. So, if the fault element of an offence is an intention to bring about a particular result, a drunken intention suffices. Likewise, if the fault element is knowledge – as in this case, knowledge of a substantial risk of death – a drunken awareness of a substantial risk suffices.*

*[68] On the evidence, I think it was open to the Judge and assessors to conclude that the petitioner had recognised that his assault on the deceased carried a substantial risk of death. However, such inference should only have been drawn when all relevant circumstances were allowed for. In this context it seems to me to have been at least arguable that it was reasonably possible that the alcohol the petitioner had consumed may have affected his cognitive functioning to the point that he did not recognise a risk of death that he would, in normal circumstances, have appreciated. As to the plausibility of this hypothesis, three other factors are material. The first is that the petitioner was only 18 at the time (and young people tend to act impulsively). The second is that he was very angry. The third is that the key events, from when the attack started to when it finished, must have taken only a minute or so, or perhaps less.*

157. By aligning with the Supreme Court's reasoning, this court acknowledges that voluntary intoxication may diminish an accused's ability to appreciate

risks that a reasonable sober person would have recognized. This principle is directly applicable to the present case, where the evidence demonstrates that the accused's intoxication materially affected his judgment and capacity to foresee the fatal consequences of his conduct.

158. Moreover, this court has not accepted the accused's evidence in its entirety. His assertion that the deceased punched him first is rejected, as it is inconsistent with his caution interview. Similarly, his claim that the deceased was sitting down at the driveway is also not credible. The court accepts the testimony of Sgt. Boteirabuka and Ana, both of whom stated that the deceased was lying on the driveway. This proposition is corroborated by the evidence of Dr. Ratuki, who opined that, in light of the injuries sustained by the deceased it was highly unlikely that he could have been in a seated position. The court accordingly accepts that the deceased was lying on the driveway at the relevant time.

159. Furthermore, in respect of his intoxication the accused in his evidence said that he had consumed pure alcohol followed by drinking of Goldstone whereas in his caution interview the accused said that he drank Rum at the Tilak school ground from midday till three or four in the afternoon with three others. However, at paragraph three of the admitted facts it is stated as:

*THAT on or around the morning of Saturday 19<sup>th</sup> day of February, 2022, the accused was drinking with his friend till the evening."*

160. The above admitted fact is taken into account as proven beyond reasonable doubt. In respect of the accused's intoxication prosecution witnesses Jone Vueti and Sgt. Boteirabuka supported the evidence of the accused that he was very drunk in the evening of the incident. The accused also stated this in his caution interview.

161. Moreover, it cannot be ignored that the caution interview of the accused does not reflect his own recollection of events, but rather the assertions of other people regarding how they perceived the events had unfolded. The fact that the accused agreed and affirmed those observations as true is not, in itself, a testament to his awareness of what he had done while intoxicated.
162. Based on the above, the court is able to give weight to the exculpatory statements of the accused in the caution interview, namely that he was intoxicated and that he did not wish to kill the deceased, insofar as his awareness of a substantial risk that death would occur, having regard to the circumstances known to him. This was also supported by the accused in his evidence.
163. Considering the evidence adduced by the prosecution and the defence this court is not satisfied beyond reasonable doubt that the accused was reckless in causing the death of the deceased by his conduct. Due to the accused's intoxication he was not aware of a substantial risk that death will occur by his actions and having regard to the circumstances known to him it was not unjustifiable to take the risk. 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 test from the point of view of the accused.
164. The circumstances of the accused were such that the accused did not foresee or realise that death was a probable consequence or the likely result of his conduct when he continued to engage in the conduct regardless of that consequence. The prosecution has not been able to prove beyond reasonable doubt that the accused was actually aware of the likelihood of death occurring.

## **LESSER OFFENCE**

165. I have also directed my mind to the lesser offence of manslaughter. The law provides that when a person is charged with an offence and the court is of the view that he is not guilty of that offence but guilty of a lesser offence, the court may convict him of the lesser offence.
166. Manslaughter is the killing of someone by unlawful conduct. Instead of being reckless as to causing death, the accused need only be reckless as to whether his conduct would cause serious harm.
167. Section 30(1) of the Crimes Act provides:
- “(1) Evidence of self-induced intoxication cannot be considered in determining whether a fault element of basic intent existed.”*
168. Therefore, voluntary intoxication cannot be considered in determining the state of mind of an accused in respect of manslaughter.
169. On the basis of the evidence presented, this court is satisfied beyond reasonable doubt that the accused engaged in conduct which caused the death of the deceased by being reckless as to whether his conduct would cause serious harm.
170. In the circumstances, this court is satisfied beyond reasonable doubt that there is evidence to sustain the lesser offence of manslaughter.
171. In view of the above, the accused is found not guilty of the offence of murder but guilty of the lesser offence of manslaughter.

## **LAW ON PROVOCATION**

172. The court has already determined that the offence be reduced from murder to manslaughter. Therefore, it is unnecessary to consider the issue of provocation advanced by the defence counsel in his submissions.

Moreover, on the evidence adduced, this partial defence is not available to the accused.

### **CONCLUSION**

173. Upon considering the evidence adduced by the prosecution and the defence this court is not satisfied beyond reasonable doubt that the accused on 19 February 2022 had murdered JOSEPH WILFRED JOHNSON. The accused is acquitted of this offence, however, he is found guilty of the lesser offence of manslaughter and he is convicted accordingly.

174. This is the judgment of the court.



A handwritten signature in black ink, appearing to read "Sunil Sharma".

**Sunil Sharma**  
**Judge**

**At Lautoka**

23 March, 2026

### **Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**