

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 61 of 2023

STATE

-v-

SAIRUSI MAQOSA	1st Accused
AKUILA MATAQAWA	2nd Accused
EMALI YALATI	3rd Accused

Counsel: **Mr T Tuenuku with Mr N Kumar for the State**
 Ms R Raj with Mr V Savou for the 1st Accused
 Ms M Besetimoala for the 2nd Accused
 Ms S Devi for the 3rd Accused

Date of Trial: **13 October 2025 – 17 October 2025**

Closing speeches: **12 December 2025**

Date of Judgment: **13 February 2026**

JUDGMENT

Introduction

1. By an Information dated 24 October 2023, the accused were jointly charged with the manslaughter of the 1st accused's wife, Mrs Anaseini Verevalu ("the deceased"), contrary to section 239(a), (b) and (c) (ii) of the Crimes Act 2009, the particulars being that, on 24 April 2023, at Malau, Labasa, being reckless as to causing the deceased serious harm, they assaulted the deceased multiple times, causing her death on 23 May 2023.

2. The trial gave rise to the factual and legal complexities that generally arise in joint enterprise cases. Medical evidence featured heavily because the deceased survived in hospital for almost one month after the incident. Causation is a live issue. Indeed, in her closing submissions on behalf of the 1st accused, Ms Raj argued that the deceased's death resulted from medical negligence, and was not caused by any conduct proven against her client.

Prosecution case in outline

3. As opened by Mr Tuenuku, the prosecution case was that each of the accused had assaulted the deceased with the shared intention of causing her serious harm, and each of their assaults had contributed to the deceased's injuries. The assaults took place over a period of hours, culminating on the morning of 24 April 2023 with the 1st accused kicking the deceased in the head and knocking her unconscious. Mr Tuenuku said that it was the cumulative effect of these assaults that led to the deceased's death.

Prosecution evidence

4. The first prosecution witness was Dr Maloni Bulanauca. He is a specialist general surgeon and Head of the Department of Surgery at Labasa Hospital. He led the clinical team who treated the deceased.
5. The deceased was seen at the Emergency Department at 11.50pm on 24 April 2023. She was unconscious. The Emergency Department Triage and Treatment Form records that her husband provided a brief history that she was intoxicated and unresponsive since midday.
6. Upon examination, the deceased was unresponsive and assessed as 4 on the Glasgow Coma Scale. Anything below 10 is injurious to life. In layman's terms, the deceased was in a really bad way. She had suffered a brain injury and her airways were not functioning. She was intubated, without which she would have died. She required urgent attention and was transferred to the ICU at 2am on 25 April 2023. Her pupils were fixed and dilated and she was assessed as having suffered a significant traumatic head injury. Her family were given a "guarded

prognosis”, which essentially means that they were told that she may die. In the early hours of 25 April 2023, the clinicians were fighting to keep her alive.

7. There was no CT scanner at the hospital but, with the help of her family, a CT scan was done at a nearby clinic, which proved to be extremely helpful in planning the necessary emergency brain surgery. The scan showed a subdural hematoma, and it was necessary to operate to relieve the pressure on her brain. The surgical team had a quick discussion with specialist colleagues at CWM. It was decided that the operation should be done in Labasa because of the pressure of time. More than a two-hour delay results in irreversible harm, and in this case the deceased had been unresponsive since midday the previous day. The decision was made to perform emergency surgery in order to give her the best possible chance of recovery. Without surgery, the deceased would have died. Dr Bulanauca calculated that she had a 15% to 30% chance of surviving surgery.
8. A large hematoma was evacuated from the right side of her brain. The deceased survived surgery, but remained in a vegetative state. Dr Bulanauca testified that the deceased had a more than even chance of survival after the successful surgery.
9. Dr Bulanauca produced a medical report dated 26 May 2023 in which he summarised the treatment provided to the deceased and provided his diagnosis of conditions leading to her death. She had suffered a severe traumatic brain injury with right-sided subdural hematoma (bleeding between skull and brain tissue). She also had pneumonia bilaterally, sacral bedsores and clinical systemic infection. In evidence, Dr Bulanauca said that there was the possibility she had a hospital acquired infection. She had deep bed sores, which may cause sepsis. In his opinion, the cause of death was infection, being the infection in her lungs and blood.
10. The deceased’s medical folder was tendered as PE-1.
11. In cross-examination for the 1st accused, Dr Bulanauca agreed that the medical notes record abrasions to the deceased’s face, but not any observable head injury. He explained that with head injuries there is not necessarily any observable wound. The family provided him with the CT scan in video format and he observed

a subdural hematoma on the right side. He described the operation in some detail. There was a 7cm – 9cm incision in the scalp, cutting down to bone, and then a hole was drilled in the skull to evacuate the clot. Because it was a large clot, it was necessary to create a rectangular flap. There were two further operations. On 5 May 2023, a tube was inserted in her windpipe. On 22 May 2023 – the day before she died – there was an operation to clean her deep bed sores. Cultures were taken and analysed to match the most suitable antibiotics. Unfortunately, the prescribed antibiotics did not help much. Her cardiac condition deteriorated on 22 May 2023. CPR was performed on 23 May 2023. Dr Bulanauca opined that a respiratory issue was a significant part of why she died on that day.

12. When he was referred to the Post-Mortem Report, Dr Bulanauca noted that the underlying soft tissues to the surgical incision to the scalp showed necrotic tissues and pus. He said that this was another possibility for a source of infection, but not the main reason for the infection.
13. When Ms Raj asked whether the head injury may have been caused by the deceased falling on a hard surface, Dr Bulanauca replied that this was “*less likely to unlikely*”. He explained that the deceased was a fit young lady, and it requires a reasonably large amount of force to cause a subdural injury. He acknowledged that there are a large number of variable factors which make it difficult to be precise about how a brain injury may have been suffered.
14. On behalf of the 2nd accused, Dr Bulanauca was asked whether there was any indication of strangulation marks in the medical notes. He replied that this was not documented. He also confirmed that, with brain injuries, it is possible that the injury features on the side where the trauma happens or on the opposite side. Infections in those hospitalised for a long period are not very common, but are a common complication. He estimated that 10% to 20% of patients would get infections.
15. In cross-examination for the 3rd accused, Dr Bulanauca agreed that the bruises and abrasions on the deceased’s face were not the cause of death. He said that the trauma in her brain was the cause of her death.
16. When the Court asked Dr Bulanauca about the pathologist’s opinion that the cause of death was intra cranial haemorrhage, and the condition directly leading to death

was basilar skull fracture and cerebral oedema, he said that the CT scans had not shown any ongoing bleeding. They were managing the infection, and the pathologist makes no mention of pneumonia or sepsis in his report. He is absolutely sure from the clinical side that it was a severe traumatic brain injury that brought her into hospital and caused her death.

17. Ms Neomai Bera ("Neomai") testified that the 1st accused is the 2nd accused's brother, and she is their first cousin. The 3rd accused is married to the 2nd accused.
18. She started drinking grog at her cousin Litiana's house in Malau at around 5pm on Sunday 23 April 2023. The session finished at around 1am on Monday morning. The 1st accused had left the session earlier, at around midnight. Her younger brother, Ramasiele, also left to go drinking at the 2nd accused's house. After finishing the grog session with Annie, the 1st accused called them to go and drink rice wine at the 2nd accused's house. Annie is the 1st accused's daughter-in-law. The 1st accused was standing at the front of the 2nd accused's house. She and Annie went to drink a cup of rice wine on the 2nd accused's porch. The 2nd and 3rd accused, the deceased and Ramasiele were also on the porch. After Neomai drank her first glass, the 2nd and 3rd accused started arguing with each other. The deceased was chipping in, telling them not to argue and to just enjoy themselves. From the bench outside, the 1st accused called to the deceased, telling her to move back. The deceased did not want to move and she and the 1st accused started swearing at each other. When she continued to sit between the 2nd and 3rd accused, the 1st accused approached the deceased and pulled her away. The three accused and the deceased started fighting each other. All three accused punched the deceased. The 3rd accused's bra was being pulled by the deceased and, when she went to intervene, Neomai was punched on her forehead by the 1st accused, who told her to move away as he wanted to teach the deceased a lesson. The 1st accused also punched the deceased and told her that she needed to be taught a lesson. The deceased could not stand up as her hair was being pulled. She was punched to the face, neck and head as she sat on the porch by all three accused. She was not fighting back. Ramasiele was just standing on the porch when this was going on. She clearly saw everything on the porch by the light shining from the nearby Fiji Gas.

19. After she was punched by the 1st accused, Neomai left the porch and she saw the 2nd accused use a stick to hit those who wanted to stop the fight. The 1st accused and the 3rd accused were still punching the deceased. This was sometime after 1am. Since she could not do anything, she went home and slept.
20. Neomai awoke at around 9am and went to her mother's house to drink tea. Her mum's house is right opposite the 2nd accused's house, around five steps away. After drinking tea, she sat at her mother's front door. She saw that the three accused, the deceased and Ramasiele were drinking on the 2nd accused's porch. As the deceased was sitting at the front of the porch above the step, she clearly saw the 1st accused kick the deceased, and she fell off the porch. She stood up and went back to the porch. The 1st accused kicked her again, and she fell off the porch. She was lying face up and not moving. They called out and her son, lowane, and Asenaca came and helped her back onto the porch. The 1st accused kicked her a third time. The witness demonstrated how the 1st accused kicked the deceased the third time. It was a backwards kick to her neck, like a horse would kick. She fell off the porch again and was just lying there. She was taken to the 1st accused's mother's kitchen and water was poured on her. The deceased remained unconscious. The 1st accused's mother swore at them. She was angry and did not want the deceased to be taken to the hospital. She was eventually taken to the hospital at around 11pm that night.
21. When I sought to clarify whether the 1st accused had anything on his feet when he kicked his wife, Neomai answered that he was barefoot.
22. In cross-examination for the 1st accused, Neomai said that the deceased was her friend. When it was suggested to her that she was heavily intoxicated when she was at the 2nd accused's porch, she replied that she was not drunk. She knew what she was doing and what she saw with her own eyes. There was enough light coming from Fiji Gas and the 2nd accused's solar light for her to see the faces of the people sitting there. When it was suggested to her that she was lying about the 1st accused punching the deceased, Neomai said that she came to court to say the truth. When it was suggested that, after the 1st accused told the deceased not to interfere, she picked up a plastic bottle and threw it at the 1st accused, hitting

- him on his head as he was sat outside the porch, Neomai agreed. She also agreed that the deceased had picked up a chair and tried to hit the 1st accused with it.
23. When it was put to her that she was lying about seeing the 1st accused kicking the deceased three times, Neomai replied that she came to tell the truth and not to lie. She did not like what had happened to the deceased.
 24. When it was suggested that she had never told the police about the 1st accused punching the deceased after 1am, she said that she had told the police about that.
 25. When it was suggested to her that she did not have a clear view of the 2nd accused's porch from her mother's house, Neomai replied that she is not blind. The 1st accused kicked the deceased after 9am that morning.
 26. In cross-examination on behalf of the 2nd accused, Neomai agreed that the reason the 2nd and 3rd accused fought that night was because the 2nd accused had switched off the radio. She then clarified that they argued because the deceased had come to sit between them. The 3rd accused started the argument. They were drunk and talking nonsense. There was jealousy between them when they were drinking. Neomai agreed that the deceased had thrown a plastic bottle at the 1st accused and dived on him as he sat on a chair outside the porch. They then went to the porch and were fighting there. The 2nd and 3rd accused were not trying to stop the fight. They were all punching the deceased. Neomai agreed that that the 2nd accused had come outside and chased them all away with a stick after the deceased had pulled the 3rd accused's bra.
 27. When it was suggested to her that, after the first time that the 1st accused kicked the deceased in the morning, the 2nd accused pulled the 1st accused away from the deceased, Neomai denied that and said that he was just sitting down where they were drinking.
 28. In cross-examination for the 3rd accused, Neomai agreed that the 1st accused had left the grog session because he heard his wife's voice screaming and shouting at the 2nd accused's house. When the 1st accused called her and Annie to drink at the 2nd accused's house, she saw the deceased and the 3rd accused were dancing to the music. The 2nd and 3rd accused started arguing about the music. The radio

was turned off because they were all too drunk. When the 2nd accused turned off the music, the 3rd accused argued with him and they were swearing at each other. That is when the deceased went to sit between them. The 1st accused told her not to come in between their argument. The deceased started swearing at the 1st accused, saying that he was gay and that he fucked boys. She said that it was a village of lesbians and gays. She threw a plastic bottle at the 1st accused and dived towards him. Neomai agreed that both the 2nd and 3rd accused came from the porch and were trying to separate the deceased and the 1st accused from fighting with each other. That is when they started punching the deceased. The 3rd accused was trying to make the deceased sit down, but she would not sit. The 1st accused's sister told the deceased to obey her husband. Both the deceased and the 3rd accused fell to the floor, and the deceased pulled the 3rd accused's bra. Her t-shirt was torn and her chest was showing. The 2nd and 3rd accused went inside their house and then came back out. The 2nd accused was swinging a stick to chase them all away.

29. In re-examination, Neomai clarified that all three accused had started punching the deceased after she had dived on the 1st accused and they all returned to the porch.
30. The next prosecution witness was Mr Ramasiele Naya ("Ramasiele"). The 1st and 2nd accused are his cousins. Neomai is his elder sister. At around 6pm on 23 April 2023, he was drinking grog at his cousin Litiana's place. After a while, they were joined by the 1st accused. They were also joined by Annie and Neomai. At around 2am, he went down to the 2nd and 3rd accused's house and was given two cups of rice wine by the 3rd accused. The deceased and the 3rd accused were fighting and swearing at each other. They were punching each other. They were fighting because the 3rd accused was jealous of the deceased and the 2nd accused talking and laughing together. The 2nd accused stepped in and punched the deceased, then the 1st accused punched her. The 2nd accused got hold of a big long stick and said for no one to come near or they would get hurt. The 2nd accused pulled the deceased off the porch and punched her face and kicked her chest. The 1st accused also kicked the deceased in her face. He dragged her to the drain and stepped on her face ten times. The 1st accused was telling the deceased, "*when you die, then I'll be okay*". Ramasiele and Makelesi Dibau went to try to help the

deceased and were pushed back by the 1st accused. Makelesi was not part of the drinking session and had come to take the deceased home. After the 1st accused walked away, Ramasiele and Makelesi carried the deceased to their house. He heard the 1st accused bring a spear gun to their house. Ramasiele turned off the light and grabbed a coconut husker for self defence. He then fell asleep at around 4.30am.

31. Ramasiele and the deceased awoke at around 8.30am. The 3rd accused came and invited them to go and finish the drinks. They went to her place. He assisted the deceased to walk back to the 2nd and 3rd accused's house and they sat at the porch. He observed that the deceased had injuries to her face and head. After a short while, the 1st accused came and kicked the deceased twice in her face. The first kick knocked her off the porch, and she stood and returned to the porch. The second kick also knocked her off the porch, and she was able to stand and return to the porch. He kicked her a third time to her neck, which knocked her unconscious. When I asked the witness to demonstrate the third kick, he demonstrated a backwards kick, like a horse would kick. He then kicked Ramasiele in his face, knocking him unconscious. He did not wake up until 10am on Tuesday morning. After the 1st accused kicked the deceased three times, and before he was kicked unconscious, Ramasiele heard the 2nd accused telling the 1st accused to leave them alone.
32. In cross-examination on behalf of the 1st accused, Ramasiele confirmed that the deceased was his first cousin, and acknowledged that they shared a close bond. He denied that he was making up stories about the 1st accused assaulting the deceased.
33. In cross-examination on behalf of the 2nd accused, Ramasiele said that the deceased was not that drunk when he arrived at the 2nd accused's house. He disagreed that the deceased had interfered in an argument between the 2nd and 3rd accused. He also denied that the deceased had thrown a plastic bottle at the 1st accused and dived on him. After they woke up, he and the deceased went to the 2nd and 3rd accused's house because the 3rd accused had invited them there.

34. When Ms Devi suggested to Ramasiele that he did not witness a fight since he had already left the porch, he replied that he saw the 3rd accused punch the deceased.
35. The next prosecution witness was Ms Makelesi Dibau (“Makelesi”). She is Ramasiele’s elder sister. The 1st and 2nd accused are her cousins. She went to bed at around 11.30pm on 23 April 2023, and was awoken by the sound of fighting from the 2nd accused’s porch at around half-past midnight. She went to see what was happening and saw the 1st and 2nd accused punching and kicking the deceased as she lay in the small drain in front of the 2nd accused’s house. They were stepping on her face. She pushed them away and she and Ramasiele took the deceased to Asena’s house.
36. In cross-examination, Ms Raj suggested to the witness that she did not see the deceased being assaulted and, together with Ramasiele and Neomai, she was making false allegations. She denied that.
37. The fifth prosecution witness was Ms Asena Caginitoba (“Asena”). She was awoken in the early hours of 24 April 2023 by her sister, Makelesi, calling her to bring the deceased to her house. The deceased had a dislocated jaw and could not speak. The 1st accused came to the front of her house with a spear gun. In the morning, she went to make tea at her mother’s house. She brought tea for the deceased to drink, but she signalled that she could not drink tea. At around 7am, Asena took the deceased to her home and left her in her sitting room. The 1st accused was not there at that time.
38. In cross-examination, Asena denied that she was lying about the 1st accused coming to her house with a spear gun. In the morning, a police vehicle came to take the deceased to hospital, but she did not want to go.
39. In cross-examination for the 2nd accused, Asena confirmed that her elder brother, Meliki, used to be married to the 3rd accused, and she had left him for the 2nd accused. She disagreed that this caused her and her siblings to have a poor relationship with the three accused. Their relationship was fine.

40. The final prosecution witness was Dr Jale Temo. He conducted a post-mortem examination on 23 May 2023 and produced a report. He found no signs of severe pneumonia, but he could not rule out sepsis as a cause of death as no tests were done. She may have had pneumonia, but it was not severe enough to cause death. Dr Temo agreed with Ms Raj that the infection at the deceased's scalp may have caused her brain to swell. Also, the collection of blood would take up space and increase the pressure in her brain. Dr Temo stood by his findings recorded in the Post-Mortem Report, which was tendered as PE-2. In his opinion, the cause of death was intra cranial haemorrhage. The conditions directly leading to death were basilar skull fracture and cerebaral oedema.

The Amended Information

41. Before the close of the prosecution case, I raised with Mr Tuenuku my concerns that the single joint count of manslaughter did not seem to properly reflect the evidence that emerged during the prosecution case. Specifically, the alleged kicking incident after daybreak could not realistically be characterised as a continuation of the earlier alleged joint assault(s) on the deceased during the hours of darkness.
42. After taking some time to consider their position, the prosecution sought leave to amend the Information to plead separate counts against each of the accused. The defence did not oppose the proposed amendment, and I acceded to the application on the basis that the defence were not prejudiced by the amendment, and it was in the interests of justice that the amendment be allowed.
43. By the Amended Information dated 15 October 2025, the 1st accused is charged with manslaughter contrary to section 239(a), (b) and (c) (ii) of the Crimes Act 2009, the particulars being that he engaged in a conduct of assaulting Anaseini Verevalu multiple times on 24 April 2023, at Malau, Labasa, and the said conduct caused her death on 23 May 2023, and by his conduct the 1st accused was reckless as to causing serious harm to Anaseini Verevalu (count 1).
44. The 2nd accused is charged with act with intent to cause grievous harm, contrary to section 255 of the Crimes Act 2009, the particulars being that, on 24 April 2023,

at Malau, Labasa, with intent to cause grievous harm to Anaseini Verevalu, he assaulted her multiple times (count 2).

45. The 3rd accused is charged with assault causing actual bodily harm, contrary to section 275 of the Crimes Act 2009, the particulars being that, on 24 April 2023, at Malau, Labasa, she unlawfully assaulted Anaseini Verevalu thereby causing her actual bodily harm (count 3).
46. The accused were re-arraigned on the Amended Information and each of them pleaded not guilty.
47. There were no defence applications and I found that each of the accused had a case to answer.
48. The 1st accused elected to give evidence in his own defence and to call two witnesses.
49. The 2nd and 3rd accused elected not to give evidence or call witnesses.

Defence evidence

50. The 1st accused testified that he was married to the deceased for 20 years and they had four children together. His relationship with the deceased was “*all good*”.
51. On the afternoon of 23 April 2023, he and his wife and children returned to their home in Malau from Vuo Village. His wife went to drink grog at the 2nd accused’s house, and he went to buy her the chaser. He then went to Litiana’s house to drink grog. At around midnight, he heard laughing and music coming from the 2nd accused’s house. He became concerned about his wife because they had problems in the past when his wife drank liquor. She had injured him a lot when she was drunk. He came down to the 2nd accused’s house and saw that the 3rd accused and the deceased were dancing. His wife saw him, and he could tell from the look on her face that she was angry with him because she knew that he was coming to take her away. He sat on a chair in front of the verandah. He saw his wife pacing up and down on the verandah, and the 3rd accused was trying to calm her down. His wife then sat near to the 2nd and 3rd accused and was interfering in their conversation. He told his wife to back off, and she told him to keep quiet and swore at him and his mother. He was a bit scared.

52. He called her again to back off as she was going to cause a fight between the 2nd and 3rd accused. She then smacked him on his head with a bottle of water. He told her that it was time to go home. His wife dived off the verandah on to him. He was knocked backwards off the chair and they both toppled to the ground. She picked up the chair to hit him, and their son, Viliame, intervened and grabbed the chair. She chased Viliame and ran into the breadfruit tree. She picked up a stone, and his sister, Asenaca, called out to her. Asenaca intervened and all three of them fell down.
53. His wife returned to the verandah and was trembling. She tussled with the 3rd accused and they fell down. His wife was swearing at him because he wanted to take her home. The 3rd accused tried to cover her mouth. The 2nd accused came to separate them and told them not to fight. He told everyone to leave. The accused and his wife went home, and he then walked towards the main road. The deceased chased after him with a coconut scraper. She fell into the drain and Ramasiele came to pick her out of the drain. She continued to swear at him and called him gay. Both Ramasiele and his wife were passing comments. He heard Anasena calling his wife and saw her going home. He went to sleep at his aunt Litia's house.
54. The 1st accused denied that he and the 2nd and 3rd accused had done anything wrong to the deceased. He denied assaulting the deceased in the small drain near the 2nd accused's house. He said that, had he kicked her face and neck at the small drain, as alleged, his wife would have died there and then. He said he loved his wife and asked rhetorically why he would do that to her. He also denied kicking the deceased and Ramasiele at the 2nd accused's verandah in the morning.
55. When asked by Ms Raj why the witnesses would make false allegations against him, the 1st accused replied that, "*It's a long story*". He explained that there was a bad relationship between his family and Ramasiele's and Neomai's family. Their father is his mum's brother, and they would castigate his mum for being a single mother. He said the witnesses must have colluded to give false evidence.
56. When Ms Raj asked about the abrasions on his wife's face, the 1st accused said that, after he woke up on Monday, after 1pm, his son, lowane, had informed him

that he had gone to bring the deceased from the 2nd accused's place earlier, and she had fallen down the verandah steps. That is how he came to know that the deceased had fallen. He went to his mother's house, where the deceased was sleeping. The 1st accused checked the deceased's pulse and her head.

57. Sometime later, he and Iovane carried the deceased back to their home. She was still sleeping. They tried to wake her, but were not able to. As it was getting dark, close to 7pm, he asked his sister, Asenaca, to call an ambulance. The ambulance did not come until around 10.30pm – 11pm. He and Asenaca accompanied the deceased to the hospital.
58. In cross-examination by Mr Tuenuku, the 1st accused said that he went to Vuo with his mother and son 23 April 2023 to visit his grandmother. His wife was supposed to accompany them but had decided to stay back. His wife was in good health that morning. When he returned from Vuo, he dropped his belongings at home and went to drink grog at Litiana's house at around 6.30pm. His wife was drinking grog at the 2nd accused's house.
59. At around midnight, he took the lead to the 2nd accused's house and Ramasiele followed later. The whole reason he went there was because he was worried about what happens when his wife is drunk. When he reached there, his wife and the 3rd accused were dancing happily. He was okay with that. When his wife saw him, she was angry with him because she was drunk. She did not like that he was there and started swearing at him. When asked why he did not simply go home if his presence was antagonising his wife, he replied that he wanted to protect her. He waited there in order to take her home. He did not like it when he saw his wife touching his brother's leg, but he did not get jealous because he understood that she was drunk. The 3rd accused did not punch the deceased. When he told her to move back, the deceased smacked him with a bottle. He was not angry with his wife when she hit him. The 3rd accused told the deceased not to smack him.
60. The accused denied that the 2nd and 3rd accused had already assaulted the deceased before she hit the 1st accused with the bottle. He was angry after his wife jumped on him and they fell down. She tried to smash him with the chair. He denied that he had assaulted his wife. He did not drag her to the drain and stomp

on her. His sister, Asenaca, intervened to stop the deceased attacking him again. She calmed down the deceased and took her home. Later, the deceased chased him, brandishing a coconut scraper. She got to within about 20 metres of him, and then she fell in the drain.

61. The 1st accused denied that he had approached the deceased on the 2nd accused's porch the following day and kicked her twice to the head and once to her neck. He said he was sleeping at Litea's house until 1pm.
62. The 1st accused's son, lowane, gave evidence for his father. He was aged 16 years at trial. He woke up after 10am on the morning of Monday 24 April 2023. After drinking tea, he went to get his mum from the verandah where she was drinking. He went to bring her because she had drunk a lot and was shouting and swearing. She was sat drinking and talking with the 2nd and 3rd accused and Taka. His mum was leaning on his left shoulder when she missed the step and fell. He tried to hold her, but could not as she was heavy. Her head landed on the rocks. He made her sit up, and then Ramasiele came and poured ice water on her. His aunty Asenaca then came and told Ramasiele not to pour ice water on her. Then Asenaca, Taka, Annie and he lifted his mother to his grandmother's house. They bathed and changed his mum and she had tea. This was at 11.55am. He was sure of the time because, when he went to pick his mum, the 12 o'clock bus passed. His father was sleeping at that time. His mum had a small abrasion on her cheek bone. After drinking tea, she slept. At lunch time, aunt Asenaca tried to wake her up, but she was sleeping.
63. In the afternoon, when lowane went to play volleyball, his mother was still sleeping. Around 3pm, his dad came and tried to wake his mum. When they took his mother home later, she was still sleeping. At around midnight, his dad and his aunty took his mum to hospital by ambulance.
64. In cross-examination, lowane confirmed that, when he went to get his mum from the 2nd accused's porch, Ramasiele was there. His mum was talking and swearing. She was drunk and could not walk straight. After she fell, he had to support his mum back to his grandmother's house.

65. The effect of lowane's evidence was that he did not have a conversation with his father when his father woke up on 24 April 2023, and had not informed him about the deceased falling on the porch steps. Also, lowane gave an account about Ramasiele pouring ice water on the accused that was never put to Ramasiele. In fairness to the prosecution, I gave them the option of recalling Ramasiele so that those matters may be put to him. After a short adjournment, Ramasiele was recalled and further cross-examined by Ms Raj.
66. When Ms Raj asked whether lowane had come to take his mum from the porch sometime after 10am on the morning of 24 April 2023, Ramasiele replied that probably he was already unconscious when lowane came. He did not see the deceased fall down the porch steps. He did not pour ice water on the deceased. He could not speak to how the deceased was taken from the verandah because he was already unconscious after being kicked by the 1st accused.
67. Asenaca was the final witness for the defence. She lives in Malau with her husband and children. The 1st and 2nd accused are her brothers. On 23 April 2023, the 2nd and 3rd accused, the deceased and Taka were drinking yaqona at the 2nd accused's verandah. At around 11pm, she was in her kitchen when she heard the 2nd and 3rd accused arguing with each other. The 2nd accused wanted the music turned down, and both the 3rd accused and the deceased did not want it turned down. The 1st accused was sat beside the verandah. She heard him say to the deceased that she should not talk to the 2nd and 3rd accused as the matter was just between them. When the 1st accused told her not to chip in, the deceased threw a water bottle at the 1st accused. The deceased was swearing at the 1st accused's mother. She then jumped on the 1st accused and they fell down. The witness then described how the deceased tried to hit the 1st accused with a chair. When their son, Viliame, intervened, she chased Viliame with the chair and ran into the breadfruit tree.
68. When Asenaca went to her, the deceased tore her t-shirt and threw her to the ground. She told the deceased to go and sleep as she was really drunk, but the deceased went back to the 2nd accused's house. Asenaca returned home and came back outside when she heard the deceased swearing at the 1st accused.

She was cursing the 1st accused's whole family, including homophobic slurs directed at the 1st accused.

69. The deceased called to Asenaca to come and take her home. Asenaca took the deceased home. She did not have any visible injuries. After leaving her at home, she saw the deceased run towards the main road, together with Ramasiele. Just before 6am, she saw a police vehicle. The police officers went to Asena and Makelesi, who told them that they called the police to take the deceased to the hospital as she was injured. The deceased told the police that she did not want to go and was not injured. She saw the deceased talking to the police officers. She was not injured.
70. The deceased walked to Asenaca's house and told her that she was going to sit with the 2nd and 3rd accused at their verandah, and would then come back and have tea with her. The deceased was laughing, singing and shouting at the verandah. Her son, lowane, came at 5 minutes to midday. She was sure of the time because the bus came. She saw lowane pick up his mother and her fall down from the 2nd accused's verandah. As Ramasiele, Taka and lowane were helping the deceased to stand, Asenaca ran towards them to help. Ramasiele poured ice water on the deceased and Asenaca told him not to do that. They took the deceased to Asenaca's mother's kitchen. She noticed an injury near to the deceased's right ear, and her lip was swollen. The deceased said that she wanted to sleep and asked Asenaca to inform the 1st accused that she was sleeping at his mother's house.
71. Later that day, lowane came to her and asked her to call an ambulance as the deceased had not woken up. The ambulance arrived at around 11pm. She went to hospital with the deceased and the 1st accused. She visited the deceased in hospital every day.
72. In cross-examination for the 2nd accused, Asenaca said that she had a clear view of the 2nd accused's verandah. She saw the 3rd accused trying to close the deceased's mouth as she hurled homophobic slurs at the 1st accused. She also saw the 2nd accused chasing everyone away. She did not see the 2nd accused assaulting the deceased that night.

73. In cross-examination for the 3rd accused, Asenaca said that she saw the 3rd accused trying to hold the deceased. She did not see her punch the deceased, but she did see the deceased punch the 3rd accused and bust her t-shirt.
74. In cross-examination by Mr Kumar, Asenaca confirmed that she was in her kitchen when she heard arguing from the 2nd accused's verandah at around 11pm. She gave an account largely consistent with her evidence-in-chief. She saw the deceased fall into the drain near the main road. Ramasiele helped her out of the drain. When it was put to her that there was no bad blood between the families, Asenaca said that there was a bad relationship between her family and Ramasiele's father's family.
75. She was doing her washing the following morning and did not see the deceased fall down. She only saw the deceased sitting down, and lowane trying to help her stand.
76. When Mr Kumar put to her that she was lying about the 1st accused not assaulting the deceased because she was just trying to save her brother, Asenaca denied that.

Closing submissions

77. The parties made helpful written and oral submissions for which the Court is grateful.
78. In his closing speech, Mr Tuenuku made the overarching point that there is no real dispute that all three accused and the deceased were present at the material times, and that each of them was well known to the witnesses called at trial.
79. The prosecution position is that there were three phases to the assaults. The first phase was at the porch after midnight, when all three accused assaulted the deceased. The second phase was shortly after the first stage, and involved both the 1st accused and the 2nd accused stomping on and punching the deceased as she lay in the drain near to the 2nd accused's house, causing her serious injuries. The third phase took place at the 2nd accused's verandah at around breakfast time on 24 April 2023. In this phase, the 1st accused acted alone in kicking the

deceased three times to the head and neck. On the prosecution case, it was in this third phase that the injuries which proved to be fatal were inflicted.

80. Mr Tuenuku quite properly accepted that the evidence as to what happened during the first phase was fairly confused, and the witnesses had given different versions. Nevertheless, he maintained that the evidence supported that the 3rd accused had initiated the first phase because she was jealous of the deceased's dealings with her husband, and that all the accused had assaulted the deceased in phase one. When I queried whether the evidence supported that the 3rd accused had caused actual bodily harm to the deceased, Mr Tuenuku argued that there was some evidence that the deceased had suffered injury during the first phase. His fall-back position was that the alternative verdict of guilty of common assault is available to the Court on count 3.
81. The evidence of Ramasiele and Neomai supports that the deceased was seriously assaulted by the 1st and 2nd accused at the drain. Mr Tuenuku invited the Court to infer from the nature of the assaults (punching and stomping on the deceased's head and neck), that they must have intended to cause the deceased really serious harm.
82. As for the third phase, Ramasiele and Neomai gave credible and reliable evidence about the 1st accused kicking the deceased twice to her head and once to her neck, the third kick knocking her unconscious. Mr Tuenuku submitted that the 1st accused's son, Iowane, either came on to the scene after the deceased was attacked by the 1st accused earlier that morning, or he was in a very difficult predicament, not wishing to incriminate his father in the death of his mother.
83. In relation to the issue of causation, Mr Tuenuku drew my attention to the recent Supreme Court Judgment in *State v Ketenilagi* and argued forcefully that it was the blunt force trauma to the deceased's head, inflicted by the 1st accused, which put her in hospital and resulted in her death. This is not a case of medical negligence. The clinicians provided the best medical care available to them. The medical treatment she received in hospital did not break the chain of causation.

84. In their comprehensive written submissions, running to no fewer than 20 pages, Ms Raj and Mr Savou argued that the prosecution has failed to prove that the 1st accused is guilty of manslaughter.
85. On their analysis, there were two phases to the alleged assaults – what happened on and around the 2nd accused’s porch during the hours of darkness, and what happened on the 2nd accused’s porch after daybreak on the morning of 24 April 2023.
86. In relation to the first phase, they highlight that Neomai (PW2) agreed that the deceased had thrown a plastic bottle at their client and dived on him whilst he was sitting on a chair in front of the verandah. PW2 also accepted that the deceased had tried to hit the 1st accused with a chair, and that their son, Viliame, had tried to grab the chair from her.
87. The medical evidence does not support that the 1st accused stomped on the accused’s head 10 times as she lay in the drain. It is suggested that the evidence of PW2 and PW3 (Ramasiela) was exaggerated. The fact that the deceased told the police officers early that morning that she did not wish to go to hospital is inconsistent with her having been seriously assaulted during the hours of darkness.
88. A similar point is made in relation to the second phase. Had she been kicked to the neck and head as alleged, there would have been bruises and cuts on her face, but none were noted in the medical notes. The Court was invited to reject the evidence of PW2 and PW3 in its entirety. Rather, I was invited to accept the 1st accused’s denial that he ever returned to the verandah that morning, and lowane’s account as to how his mother had fallen down from the porch steps and hit her head. Even though she did not fall from a great height, she was heavily drunk and had hit her head on rocky ground. It was the accidental fall that resulted in fatal injuries.
89. On the issue of causation, it was argued that, had the deceased received proper treatment, the blood on her brain, found by the pathologist during his post-mortem examination, would have been removed earlier. Also, the surgical wound would have been cleaned properly and her infection would have been avoided.

90. For the 2nd accused, Ms Besetimoala quite properly focused her submissions on the allegation that her client was involved in punching and stomping on the deceased as she lay in a drain near to his house. She pointed out that the only witness to give evidence incriminating the 2nd accused was PW4 (Makelese). Ramasiele's account was that it was only the 1st accused who stomped on the deceased in the drain.
91. Also, the medical evidence did not support that the deceased's head was repeatedly stomped on. Makelesi's evidence about the deceased having run towards the main road suggests that she had not suffered any serious injury as a result of having earlier been repeatedly assaulted in the drain. Ms Besetimoala makes the point that the deceased would have agreed to the police taking her to hospital had she been seriously assaulted.
92. The evidence is supportive of her client having tried to defuse the heated situation that night.
93. In a nutshell, there is insufficient evidence that the 2nd accused assaulted the deceased, and he must be acquitted of count 2.
94. The gist of Ms Devi's submissions on behalf of the 3rd accused is that there is ample evidence that the deceased was behaving aggressively that night. Her client was trying to restrain and calm the deceased. She was punched and had her t-shirt ripped by the deceased in the process.
95. Ms Devi's main position is that the evidence does not support that her client acted unlawfully. Put another way, the 3rd accused did not assault the deceased. Her secondary argument is that there is no evidence that the 3rd accused caused any actual bodily harm to the deceased.

Directions/Warnings

96. The prosecution must prove that the accused are each guilty as charged. The accused do not have to prove anything to me. The defence does not have to prove that the accused are innocent. The prosecution will only succeed in proving that the accused are guilty if I have been made sure of their guilt. I must consider the evidence in relation to each of them separately. If, after considering all of the

evidence, I am not sure that each of the accused are guilty, my verdict must be not guilty.

97. Since the 1st accused gave evidence in his own defence, I remind myself that if his denials are, or may be, true, I must find him not guilty. Even if I reject his evidence, I must not find him guilty unless the prosecution has made me sure of his guilt.

Analysis and determination

98. Although there is clearly some degree of overlap, it is convenient to adopt the prosecution three-phase framework.
99. The evidence as to what happened during the first and second phases is particularly involved and inconsistent. Events that night were fast-moving and fairly chaotic.
100. The weight of evidence supports that there was what would appear to have been an enjoyable, if somewhat raucous, party at the 2nd and 3rd accused's house, which went on into the early hours of 24 April 2023. The mood soured after the 1st accused joined the party, albeit he did not go on to the verandah.
101. The 1st accused says that he went to the party out of concern for his wife and to protect her. It would appear that his presence was not welcomed by the deceased. It may be that she perceived that her husband was being unnecessarily controlling, or at least a killjoy. Be that as it may, I am satisfied that the deceased reacted aggressively when the 1st accused advised her to stay out of an argument between the 2nd and 3rd accused. There is ample evidence that the deceased struck the 1st accused's head with a plastic bottle before diving on him from the verandah and trying to hit him with a chair.
102. This provides the relevant context for the first and second phases and the corresponding count 3 and count 2.

First Phase – Count 3

103. Neomai (PW2) testified that all three accused started fighting with the deceased. They were all punching the deceased. Neomai said that the fight started after the

deceased had dived on the 1st accused. The 2nd and 3rd accused were trying to separate the deceased and 1st accused from fighting with each other. The 3rd accused was trying to make the deceased sit down, but she would not sit. They fell to the floor and the deceased pulled the 3rd accused's bra and ripped her t-shirt. The 2nd accused then chased the partygoers away with a big stick.

104. Ramasiele (PW3) saw things somewhat differently. He said that the deceased and the 3rd accused were punching each other. The 1st and 2nd accused stepped in and punched the deceased. He denied that the deceased had thrown a plastic bottle at the 1st accused and dived on him.
105. The 1st accused testified that his wife smacked him on his head with a bottle of water, dived on him, and picked up a chair to hit him. When she swore at him, the 3rd accused tried to cover her mouth, and the 2nd accused told them not to fight.
106. Asenaca (DW3) also said that the deceased threw a water bottle at the 1st accused, jumped on him, and tried to hit him with a chair. The deceased then returned to the verandah and was cursing the 1st accused's whole family, including homophobic slurs directed at the 1st accused.
107. I am sure that the deceased hit the 1st accused with a water bottle, dived on him from the verandah and tried to hit him with a chair. It may be that she had been provoked by someone or something to act in that way. I am not able to reach a concluded view on that, nor is it necessary for me to do so. I am also sure that there followed an altercation between the deceased and each of the accused.
108. However, the evidence about what happened during the course of that initial altercation is insufficiently clear and reliable for me to be sure that any of the accused acted unlawfully during phase one.
109. Since the charge against the 3rd accused relates only to what she is alleged to have done during phase one, I find her not guilty of count 3 and acquit her accordingly.

Phase Two – Count 2

110. Ramasiele testified that the 2nd accused dragged the deceased from the verandah, punched her face and kicked her chest. The 1st accused dragged her

to the drain and stepped on her face ten times whilst exclaiming “*when you die, then I’ll be okay*”. He and Makelese carried the deceased to their house

111. Neomai’s evidence did not touch upon the allegation that the 1st and 2nd accused had assaulted the deceased in the small drain near to the 2nd accused’s house. She had gone home after the 2nd accused waived a big stick to chase everyone away.
112. Makelese (PW4) testified that she was awoken by the sounds of fighting at around half past midnight. She went to see what was happening and saw the 1st and 2nd accused punching and kicking the deceased as she lay in the small drain in front of the 2nd accused’s house. They were stepping on her face. Makelese intervened and helped Ramasiele to take the deceased home.
113. Asena (PW5) testified that Makelese had called her to help take the deceased home.
114. Asenaca (DW3) said that she took the deceased home from the verandah. She was not visibly injured. She later saw the deceased run towards the main road with Ramasiele.
115. There is a contradiction between Ramasiele and Makelese as to what happened at the small drain. Makelese said that both the 1st and 2nd accused were stepping on her face as she lay in the drain, whereas Ramasiele said that it was the 1st accused who dragged her to the drain and stepped on her face ten times.
116. In light of this contradiction, I am not sure that the 2nd accused assaulted the deceased in the manner described by Makelese. Evidence from more than one witness supports that the 2nd accused chased people away in an apparent attempt to defuse the situation.
117. I note also that the medical evidence does not appear to support that the deceased’s face and neck had been repeatedly stomped on. When she was admitted to hospital, the examination revealed relatively minor injuries to her face. To my mind, this is inconsistent with anyone having repeatedly stomped on her face with intent to cause her really serious harm.

118. It follows that I cannot be sure that the 2nd accused assaulted the deceased with intent to cause her grievous bodily harm. I find him not guilty of count 2 and acquit him accordingly.

Phase Three – Count 1

119. Neomai testified that, at around 9am on 24 April 2023, she saw the three accused, the deceased and Ramasiele on the 2nd accused's verandah. As the deceased was sitting at the front of the verandah, she clearly saw the 1st accused kick the deceased and her fall off the verandah. She stood and went back to the verandah. The 1st accused kicked her again and she fell off the verandah again. She was not moving. Her son, lowane, and Asenaca came to help her back onto the verandah. The 1st accused kicked her a third time. Neomai demonstrated that third kick as a backwards kick, like a horse kicks. She fell off the porch again and was just lying there unconscious. lowane and Asenaca carried her to the 1st accused's mother's house. Water was poured on her in the kitchen, but she did not wake up.
120. Ramasiele testified that he and the deceased awoke at around 8.30am. The 3rd accused invited them and they went to her verandah. After a short while, the 1st accused came to the verandah and kicked the deceased twice to her face, knocking her off the verandah. On both occasions, she was able to stand and return to the verandah. The 1st accused kicked her a third time to her neck. This knocked her unconscious. The 1st accused then kicked Ramasiele in the head, rendering him unconscious.
121. The 1st accused testified that he did not go to the 2nd accused's verandah on the morning of 24 April 2023. He slept until 1pm. When he awoke, lowane told him that the deceased had fallen and hit her head.
122. lowane woke up after 10am on 24 April 2023. He heard his mum shouting and swearing and went to get her from the verandah. As he assisted her off the verandah, she missed the step and fell. Her head landed on rocks. She was not knocked unconscious. This was around 11.55am. He was sure of the time because the 12 o'clock bus went past.

123. Asenaca testified that she heard the deceased laughing, singing and shouting from the verandah. lowane came to get her and she fell from the verandah. This was around 5 minutes to midday. She was sure of the time because the bus came. She helped take the deceased to her mother's kitchen. The deceased was not unconscious, and said that she wanted to sleep.
124. There are a number of inconsistencies in and between the various accounts of what happened on the verandah on that fateful morning.
125. Neomai said that lowane came to help his mother after she was knocked from the verandah for a second time. Ramasiele did not mention about lowane coming to the verandah. Indeed, when he was recalled for further cross-examination, he speculated that lowane may have come after he had been knocked unconscious by the 1st accused. Neomai did not say anything about the 1st accused kicking Ramasiele and knocking him unconscious.
126. Asenaca's account does not touch on the 1st accused having been on the verandah that morning. It is to be noted, however, that both Asenaca's and lowane's evidence relates to late morning, whereas Ramasiele's and Neomai's evidence concerns earlier events, at around 9am.
127. Whilst Asenaca's and lowane's evidence does not directly contradict Ramasiele's and Neomai's evidence, it is nevertheless inconsistent with their evidence that the deceased and Ramasiele were knocked unconscious by the 1st accused at around 9am.
128. Plainly, both versions cannot be true. The issue for the Court is where does the truth lie?
129. I start with the inconsistency between Ramasiele and Neomai. Whilst it is a significant inconsistency, it does not, to my mind, go to heart of their evidence about seeing the 1st accused kick the deceased three times and knock her unconscious. I am sure that lowane and Asenaca went to the verandah at some point to assist the deceased that morning. It could be that Neomai is mistaken about them coming after the second kick rather than after the third kick. If Neomai is correct in her recollection that lowane and Asenaca assisted the deceased back

on to the verandah after the second kick, that would suggest that the 1st accused kicked the deceased for the third time in their presence.

130. I have no reason to doubt Neomai's and Ramasiele's credibility. I consider the suggested motive to lie – bad blood between the families – to be both contrived and unrealistic. Whilst, as in many families, there may have been lingering resentments, the fact that the deceased spent the day drinking with the 2nd and 3rd accused, and the 1st accused and Ramasiele drank grog together that evening, hardly smacks of deep-seated enmity between the families. Asena rejected the suggestion that she and her siblings had a poor relationship with the accused. It is not without significance that Ramasiele gave evidence favourable to the 2nd accused when he said that the 2nd accused told the 1st accused to leave them alone as he was assaulting them on the verandah that morning.
131. In my view, the inconsistencies between Neomai's and Ramasiele's evidence about the sequence of events on the verandah tells against any suggestion of collusion.
132. There are, of course, issues concerning Ramasiele's reliability. He said that the deceased did not hit the 1st accused with a plastic bottle and dive on him, whereas I am sure that she did. This may be explained by him not having observed the whole incident. I have already made the point about the incident being fast-moving and fairly chaotic. It may be that Ramasiele only came onto the scene after the deceased had dived on to the 1st accused.
133. The third phase was, on the accounts of Neomai and Ramasiele, very far from being chaotic. Indeed, the actions of the 1st accused might be considered somewhat cold and methodical.
134. Crucially, Ramasiele's evidence is supported by Neomai's evidence about what she saw. There is no chance that they could both be mistaken about seeing the 1st accused kick the deceased three times on the 2nd accused's verandah that morning. I am particularly struck by the small detail of the third kick. Both Neomai and Ramasiele described and demonstrated a backwards kick. This is not a detail that they would have colluded about and, to my mind, lends considerable weight to their evidence.

135. The defence version is that the deceased was still laughing, singing and shouting on the verandah shortly before midday. lowane went to fetch her, and she was injured when she accidentally fell on rocky ground.
136. The deceased was not knocked unconscious and was taken to the 1st accused's mother's house, where she had tea before sleeping.
137. When she had not awoken after several hours, she was taken to the hospital.
138. I consider the defence version to be unrealistic and contrived. I have no hesitation in rejecting the defence case that the deceased suffered a severe brain injury by accidentally falling down the verandah steps. Dr Bulanauca did not consider that to be a likely cause of such a severe brain injury.
139. Asenaca's evidence that she noticed an injury near to the deceased's right ear is not supported by the medical evidence.
140. The only witness to the deceased having fallen down the steps is lowane. I consider him to be a vulnerable witness in that he was only 14 years old at the traumatic time of his mother's death. He struck me as a decent and honest young man, but I am sure that his account of having attended to his mother as she was being loud just before midday is untrue. I find that he was called to the verandah earlier that morning, when his mother was lay unconscious, and that he helped take her back to his grandmother's house together with Asenaca.
141. I accept Neomai's evidence that she saw lowane and Asenaca at the verandah after the deceased had been assaulted by the 1st accused, at around 9am.
142. To my mind, the consistency between lowane and Asenaca on the significant detail of the midday bus smacks of collusion. The contrived narrative required that the incident happened later in the morning.
143. The obvious author of this false narrative is the 1st accused. No doubt, he has authority and influence over his son. I find that his sister also has an interest in supporting that false narrative.

144. I accept that the 1st accused told the truth about his wife assaulting him and abusing him at the drinks party. That would have been humiliating for him and, to my mind, provided a strong motive for retribution.
145. The 1st accused's evidence about events on the morning of 24 April 2023 struck me as being too clever by half. Conveniently, he slept until 1pm. He introduced the narrative of his wife's accidental fall through the device of testifying about what he had been told by lowane after he awoke. The problem with that is that lowane did not say that he told his father about his mother's accidental fall. lowane had gone off to play volleyball after lunch, and it was only at around 3pm that his father had come to try to wake up his mother.
146. I consider the delay in seeking medical treatment for the deceased to be significant. It was for the 1st accused to make that decision as her next of kin. I accept Neomai's evidence that the 1st accused's mother was against the deceased being taken to hospital but, to my mind, the 1st accused's delay in seeking treatment supports that he had a guilty mind about how his wife came to be in the parlous condition she was in. I reject the suggestion that he was simply allowing her to sleep off a heavy drinking session. It must have been obvious to him that his wife was in need of medical attention much earlier than when he finally made the decision to call an ambulance.
147. I accept as truthful and reliable the evidence of Neomai and Ramasiele that the 1st accused kicked the deceased to the head three times at around 9am on 24 April 2023, knocking her unconscious.
148. I am sure that the 1st accused was aware of the substantial risk of causing serious harm to his wife when he kicked her in the head. Kicking a person in the head, even if barefoot, gives rise to an obvious risk of causing really serious harm to that person. Plainly, it was unjustifiable for him to take that risk.
149. As I am sure that the 1st accused kicked his wife in her head being, at least, reckless as to causing her serious harm, the only remaining issue is whether his conduct caused his wife's death.

Causation

150. One strand of his defence is that there is a reasonable doubt about whether the 1st accused's actions caused or substantially contributed to his wife's death.
151. In the recent Judgment in *State v Ketenilagi* [2025] FJSC 12; CAV0015.2024 (29 April 2025) the Supreme Court stated that:

“19. The courts tend to identify two questions when addressing causation:

(a) Is there factual causation? So, if the death would not have occurred without the accused's conduct, there is causation in fact. While this assessment will often be straightforward, sometimes identifying the operative cause or causes of death as a matter of fact will be more difficult.

(b) Assuming factual causation, is there legal causation? That is, should the accused be held legally responsible? The answer to this may flow inevitably from the finding that there is factual causation depending on the type of factual causation involved; but it can involve policy choices, some of which are reflected in the statutory provisions dealing with causation, as I now illustrate.”

152. Section 246(1) of the Crimes Act provides that conduct causes death or harm if it substantially contributes to the death or harm. Consequently, there can be several causes of death where, for example, there is a series of events leading to a person's death.
153. Section 246(2) (a) casts some light on the policy behind the law on causation. Where a person (A) assaults someone (B) and B requires medical treatment and dies as a result of it, A will be deemed to have caused B's death, provided that the medical treatment was undertaken in good faith and with common knowledge and skill. Put another way, good faith, competent medical treatment causing death will not be treated as having interrupted the chain of causation. It will not be treated as a material intervening act.

154. As set out above, there is a difference of opinion between Dr Bulanauca and Dr Temo as to the cause(s) of death.
155. Be that as it may, applying section 246 Crimes Act 2009 and the settled approach to causation, I am sure that the 1st accused's conduct in kicking his wife in the head on the morning of 24 April 2023 caused her death on 23 May 2023.
156. The 1st accused's conduct caused his wife to be hospitalised. She would have died imminently were it not for the emergency treatment she received in the early hours of 25 April 2023.
157. There is an inherent risk of acquiring infections in hospital no matter how good the medical treatment provided. I am satisfied that it was the infections that developed during her period of hospitalisation that led to respiratory distress and, ultimately, the deceased's untimely demise.
158. I am sure that the medical treatment the deceased received at Labasa Hospital was undertaken in good faith and with common knowledge and skill. The medical treatment she received did not cause her death. Any shortcomings in that treatment there may have been plainly did not interrupt the chain of causation.
159. It follows that, for the reasons given, I find the 1st accused guilty as charged, and I convict him accordingly.
160. 30 days to appeal to the Court of Appeal.



Hon. Mr Justice Burney

At Labasa

13 February 2026

Solicitors

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