

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 095 OF 2010S

**THE STATE**

**v.**

- 1. SALESİ BALEKİVUYA**
- 2. SAIMONI TUKANA**

<b>Counsels</b>	:	Ms. N. Wickramasekera and Ms. M. Tikoisuva for the State Mr. T. Muloilagi for Accused No. 1 Ms. B. Malimali for Accused No. 2
<b>Hearings</b>	:	4 <sup>th</sup> to 26 <sup>th</sup> and 29 <sup>th</sup> July, 2011
<b>Summing Up</b>	:	1 <sup>st</sup> August, 2011
<b>Judgment</b>	:	5 <sup>th</sup> August, 2011

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**J U D G M E N T**

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1. Following a trial lasting approximately 18 days, the three assessors have returned with some unanimous verdicts and some mixed verdicts on the four counts before the court. Accused No. 2 had already pleaded guilty to the fourth count of "theft", contrary to section 291(1) of the Crimes Decree 2009, before the trial.
2. I will start with the most serious charge of murder. On the charge of murdering Krishneel Singh, on 4<sup>th</sup> May 2010, at Shalimar Street, Samabula, contrary to section 237 of the Crimes Decree 2009, Assessor No. 1 and No. 3 found Salesi Balekivuya

guilty as charged, and Saimoni Tukana, not guilty as charged, but guilty of the lesser offence of manslaughter. Assessor No. 2 found Salesi not guilty of murder, but guilty of the lesser offence of manslaughter, and Saimoni guilty of murder. The majority of the assessors therefore found Salesi guilty of murdering Krishneel Singh on 4<sup>th</sup> May 2010, at Shalimar Street, Samabula. The majority also found Saimoni Tukana not guilty of murdering Krishneel Singh, at the time, but guilty of the manslaughter of Krishneel.

3. On the “damaging property” charge (count No. 1), the assessors unanimously found Salesi guilty as charged. On the “attempted robbery” on Rajinesh Chand (count No. 2), the assessors unanimously found Salesi not guilty as charged, but unanimously found Saimoni guilty as charged. On the “attempted robbery” against Ashwin Chand (count No. 3), the assessors unanimously found Salesi guilty as charged, while the majority (Assessor No. 1 and 3) found Saimoni not guilty as charged. Assessor No. 2 found accused No. 2 guilty as charged on count No. 3.
4. I have reviewed the evidence called in the trial, and I have directed myself in accordance with the summing up I gave the assessors on Monday, 1<sup>st</sup> August 2011. I find the verdict of the assessors were not perverse. It was open to them to reach such conclusion on the evidence. I accept the verdict of the assessors.
5. On count No. 1, “damaging property”, I find Salesi Balekivuya guilty as charged, and I convict him accordingly.
6. On count No. 2, the “attempted robbery of Rajinesh Chand”, I find Salesi Balekivuya not guilty as charged, and I acquit him accordingly. As for Saimoni Tukana, on count No. 2, I find him guilty as charged, and I convict him accordingly.
7. On count No. 3, the “attempted robbery of Ashwin Chand”, I find Salesi Balekivuya guilty as charged, and I convict him accordingly. As for Saimoni Tukana, on count No. 3, I find him not guilty as charged, and I acquit him accordingly.

8. On the fifth count of murder, I find Salesi Balekivuya guilty of murdering Krishneel Singh on 4<sup>th</sup> May 2010, at Shalimar Street, Samabula, and I convict him as charged. As for Saimoni Tukana, on the fifth count of murder, I find him not guilty as charged, and acquit him on that charge, but I find him guilty of the manslaughter of Krishneel Singh, on 4<sup>th</sup> May 2010, at Shalimar Street, Samabula, and I convict him accordingly on the lesser offence of manslaughter.



A handwritten signature in blue ink, appearing to be 'Salesi Temo'.

**Salesi Temo**  
**JUDGE**

**Solicitors for the State** : **Office of Director of Public Prosecution, Suva.**  
**Solicitors for Accused No. 1** : **Mr. T. Muloilagi, Barrister & Solicitor, Suva**  
**Solicitors for Accused No. 2** : **Pacific Chambers, Barristers & Solicitors**