

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 156 OF 2014

STATE

V

LLOYD RICHARD SENIKAUCAVA

Hearing: 01st – 03rd August, 2016

Summing Up: 08th August, 2016

Counsel: Ms. J. Fatiaki for State

Ms. S. Ratu for Accused

SUMMING UP

1. Madam Assessors and Gentleman Assessor,

It is now my duty to sum up to you. In doing so, I will be directing you on matters of law which you must accept and act upon. You must apply the law as I direct you in this case.

2. As far as the facts are concerned however, what evidence to accept, what witnesses to accept or reject, these are matters for you to decide for yourselves. So if I express any opinion on the facts, or if I appear to do so, you may reject what I say and form your own opinions. In other words, you are the judges of fact.

3. Counsel for the prosecution and counsel for the defence have all made strong submissions to you as to how you should find the facts of this case. That was in accordance with their duties as counsel. However you are not bound by what counsel have said to you about the facts of this case. You are the representatives of the community at this trial, and it is you who must decide which version of the evidence to accept.

4. You will not be asked to give reasons for your opinions, but merely your opinions themselves, and your opinions need not be unanimous although it would be desirable if you could agree on them. Your opinions are not binding on me, but I will give them great weight when I come to deliver my judgment.
5. On the issue of proof, I must direct you as a matter of law that the onus or burden of proof lies on the prosecution to prove the case against the Accused. That burden remains on the prosecution throughout the trial and never shifts. There is no obligation upon the Accused person to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he or she is proved guilty.
6. The standard of proof is one of proof beyond reasonable doubt. This means that before you can find the accused guilty of the offence charged, you must be satisfied so that you are sure of his guilt. If you have a reasonable doubt about his guilt, then it is your duty to express an opinion that he is not guilty. It is only if you are satisfied so that you feel sure of the guilt of the accused that you can express an opinion that he is guilty.
7. Your opinions must be based only on the evidence you have heard in this courtroom and upon nothing else. You must totally disregard what you have read or heard in the media or elsewhere about the case. Your duty is to apply the law to the evidence you have heard. You must also put aside emotions which might affect your objectivity. Concentrate on the law as applied to the evidence. When you see the photographs of the deceased for instance put aside any emotions.
8. The count against the accused is murder. The State alleges that on the 7th day of November 2014 at Sigatoka, the accused murdered Tracey Ann O'Brien Maw.
9. Murder is defined in the Crimes Decree. It is committed when a person causes the death of another person by an unlawful act with malice aforethought. Murder has three essential elements which the prosecution must prove:
 - That the accused caused the death of the deceased;
 - By an unlawful act; and
 - With malice aforethought.
10. In this case all three elements of the offence are disputed by the Defence, so you must consider the evidence in relation to all three elements.
11. In law, when a person does an act which is the substantial or operating cause of the death of the deceased, then he has caused the death of the deceased. This is so even if the person did not desire to cause the death of the deceased but was merely reckless about his conduct.
12. In this case, if you conclude that the accused, assaulted and then used his right feet on her neck to suffocate, then you may be satisfied that he caused her death. If however you have a reasonable doubt about this, then you must find the accused not guilty of the offence of murder.

13. The second element is there must have been an unlawful act. Again if you are satisfied beyond reasonable doubt that the deceased died not as a result for instance of a natural cause, but as a result of a deliberate and unlawful assault on him by the accused then this element too is satisfied. An unlawful act is simply one which is not justified in law. Dr. James in his evidence said that he could not ascertain the direct cause of death because of the extreme stages of putrefaction. However, he highlighted the presence of that fracture of the right interior of the auxiliary bone consistent with a blunt force trauma. Prosecution says that deceased's death was caused by suffocation. If you accept the evidence of Prosecution, you may accept that Tracey died as a result of an unlawful act of the accused.
14. The third element of the offence of murder is malice aforethought. Malice aforethought is the mental element of the offence of murder which the prosecution must prove beyond reasonable doubt. It is defined by the Crimes Decree and means either an intent to cause, or an intent to cause grievous harm or knowledge that death or grievous harm will be caused and being indifferent about the consequences. In considering whether the deceased was killed by someone with malice aforethought you need to consider carefully the evidence of Dr. James gave evidence as to the nature of the injuries found on the body of Tracey. You can also take into consideration the caution interview of the accused if you accept and believe what the accused had told police is truthful.
15. I now come to the issue of the police interview and charge statement given by the accused at the Sigatoka Police Station. He was given the right to remain silent, and he did not choose that option. In his statements, he has admitted killing the deceased Tracey. Prosecution says that the statement was recorded under lawful and fair manner and the accused gave his confession voluntarily. Defence on the other hand says that the police ill-treated the accused and that his confession was obtained unlawfully under oppressive conditions, using police brutality and therefore accused's statements are false and unreliable.
16. You have before you the caution interview and the charge statement of the accused in which he made those admissions. You heard accused giving evidence in Court. You also heard other evidence including that of two doctors who had examined him immediately after the arrest and after the interview and charging.
17. Mr. Kunaika, the JP had also recorded a statement in which the accused has made some admissions. That statement had been recorded at a Police Station on a request by police officers. The JP Mr. Kunaika said that accused gave his statement on his own free will. Accused on the other hand says that he made those admissions under duress.
18. It is for you to assess what weight should be given to his caution interview, charge statement and the statement given to the JP. You may compare the evidence led in this trial and the caution interview of the accused to see if the accused had made a truthful statement to police. What weight you choose to give the interview made by the accused is a matter entirely for you. If you consider it to be unreliable either because the police assaulted and ill-treated the accused, or because the accused himself told lies to police, then you may think that you cannot put much weight on them at all. If however you

consider them to be reliable records of what the accused said to police, then you may think that they contain important statements of what allegedly occurred that night.

19. The prosecution relies on circumstantial evidence to prove that the accused person was responsible for Tracey's death and that there is no other reasonable explanation for her death other than that the accused killed her.
20. The law on circumstantial evidence is that if, on considering a series of pieces of evidence, you are satisfied beyond reasonable doubt that the only reasonable inference to be drawn is the guilt of the accused, and there is no other reasonable explanation for the circumstances which is consistent with the accused's' innocence, then you may convict the accused of the offence charged.
21. Let me give you an example which a previous judge had used to explain the nature and effect of circumstantial evidence. If you one day find that your wallet is missing and the only person who could have entered your house is your neighbor, and you find your credit cards hidden in his desk in his home, then you are entitled to accept that it was your neighbor who stole your wallet. This is because the circumstances lead you to the only reasonable inference. However, if other people have access to your house and the credit card is not found in his house, then there are other possible explanations which are also consistent with his innocence.

That is the law on circumstantial evidence.

22. I will now deal with the summary of evidence in this case. In doing this I do not propose going through all the evidence. It should still be fresh in your minds. If I refer to only some aspects of a witness's evidence it does not mean that the rest is unimportant. You must weigh up and assess all the evidence in coming to your decision on this case.

Case for the Prosecution

Josaia Ratuva

23. On the 10th November, 2014, witness Ratuva saw a dead body in his farm in the bush around 7 p.m. He caused the matter to be reported to police.

Sargent Rusila Cakacaka

24. Sargent Cakacaka visited the scene in Vunavutu and took photographs, made a sketch of the scene and also discovered exhibits from the scene. She also took photographs of the body when the post mortem was being conducted at the scene on the same day. You will remember, witness recognised the photographs she took and she tendered them in evidence.
25. The photograph depicting the tattoo marks on the right ankle of the deceased which helped to identify the dead body was tendered marked PE2. Photograph depicting the skull with missing teeth was marked as PE3 and the white skirt hidden in the bush as PE4.

Kitione Sekinabou

26. Kitione last saw Tracey at Sigatoka Club on a Saturday. He saw Tracey and Lloyd smoking outside the club. He saw them leaving the club after 11 p.m. Before they left the club, he got an opportunity to speak to Tracey while she was still in the club.
27. Tracey came to the club with Lloyd. Iliesa Hanimo was also with them.

Adi Laite Marama

28. Marama was employed at Deep Sea Night Club, Sigatoka as a Bar Attender. On the 6th of November 2014, she was doing the afternoon shift. Tracey was drinking with boys on top floor of the club. Before Tracey went up to join the boys she gave her the purse. Tracey was drunk but not really drunk at that time. Around 11 p.m., she saw Lloyd touching Tracey from her hand to her breast. When Tracey came down to collect the purse, Marama told Tracey not to go out as she was so drunk and invited her to sleep in one of the rooms. Tracey accepted the invitation. However, Lloyd came down and asked Tracey if they could go to the night club which is opposite the road.
29. Witness told Lloyd to leave Tracey behind as she was really drunk. However, Tracey eventually decided to go with Lloyd. Witness didn't want to return the bag to Tracey. Lloyd kept on telling Tracey to get the bag before leaving. Witness recognised the black leather purse when it was shown to her. The Purse was tendered as PE. 5

Luke Sauvoli

30. Witness Luke was employed as a security at River View Deep Sea Night Club. On the 6th November 2014, he was doing the night shift from 5 p.m. to 1 a.m. Whilst doing the night shift, an European lady went to the top floor and started drinking in the room. After a few minutes an iTaukei man came looking for the European lady. Witness informed him that he can't go upstairs. However, when the European lady informed that iTaukei man came with her, witness took him upstairs.
31. Around 1.00 a.m. witness saw the European lady again with the iTaukei man at the Service Station. When inquired, iTaukei man informed the witness that they were waiting for the transport.

Ilaisa Hanimo

32. On the 6th of November, 2014, Hanimo was drinking at the Deep Sea Club with Lloyd. Tracey joined them and continued drinking together. After a while, while they were still drinking, Lloyd and Tracey went outside. When the witness was on his way home Lloyd and Tracey called him from the River View Night Club. He went there and drank with them, when the drink finished they came downstairs and went looking for transport. He saw Tracey and Lloyd boarding a white car at the Total Service Station. The car went towards Nadi.

33. Under Cross examination, witness said that Tracey came and explained what her boyfriend 'Hara' had done to her and showed the marks on her body. She was explaining and crying at the same time.

Rakesh Prasad

34. In the early hours of 7th of November, 2014, Rakesh was hiring a taxi. When he was waiting at the opposite side of Pacific Browsers, a short Fijian boy and an European lady, clad in a white skirt, came asking for a taxi. They were drunk. European lady asked him to drop them at Vunavutu and boarded the car. Whilst they were being transported from Sigatoka to Vunavutu, they were arguing about something and fighting. As soon as he was about to reach Vunavutu short cut road they told him to stop the car.
35. The lady told the boy 'you staying in this road; I am staying further ahead'. The boy forced her to get out of the car. Boy was wearing her bag around his neck. He was pulling her hand. Then she had to get off.
36. Witness recognized the bag boy was wearing around his neck. After dropping them, he went back to town.

Sireli Kunasiga

37. In the early hours of 7th of November, 2014, Sireli was driving a Caldina in Sigatoka. On his way back from Suva, around 1.00 a.m., he saw Lloyd and Tracey at the Total Service Station after the Deep Sea Nightclub had been closed.
38. Lloyd was hugging Tracey and Tracey was trying to push him away as they were drunk. When he went to drop a passenger at the liquor shop in Kulukulu, he saw a taxi dropping Lloyd and Tracey at the cross-cut to the village. He knew Lloyd and Tracey. Lloyd's mother is from his village.
39. Sireli went to pick his cousin at Vilisite and dropped him at Malevu. Bill Hicks also accompanied him in the vehicle. The rest got off at Vunavutu junction. After dropping the cousin at Malevu Village, witness and Bill came back at the cross-cut to Vunavutu and Nasama Villages where Vuidogo and Lorima Bola also boarded in his car around 5.00 am. While the two were being boarded into the car, Lloyd also came and boarded the car. Witness inquired from Lloyd about whereabouts of the lady who was standing together with him in front of Total Service Station. Lloyd did not respond to that question.
40. When Lloyd boarded the vehicle, witness noticed an injury on his hand (he demonstrated the right knuckle area) wrapped with a cloth.

Ilikena Vuidogo

41. On the 7th of November, 2014 witness Ilikena was drinking with Lorima around 2.00 a.m. at the cross-cut road to Nasama Village. Whilst drinking at the cross-cut, Sireli came in a car with Bill Hicks. Witness and Lorima boarded the car. When the vehicle was about to move, Lloyd also came running and boarded the car. They came straight to Yadua and continued drinking there. Whilst drinking, Lloyd was crying. Witness noticed a blooded injury on Lloyd's hand. (He demonstrated to us the knuckle area).

PC Mesulame Soga

42. When PC Soga was based at Sigatoka Police Station, he received instructions from OCPD, Sigatoka to find a suspect, namely, Lloyd Richard Senikaucaava. After receiving instructions, they went to Yalavou with a police team in a Police vehicle. They went straight away right up the hill where they receive information about Lloyd.
43. After walking for one hour they reached one house in the bush. An iTaukei man living there gave information about Lloyd. They followed up this information and reached a house around 6.30 – 7.00 in the morning. Cpl. Samoca went at the front door. An iTaukei man informed that Lloyd was sleeping inside the house. On Cpl. Samoca's instructions, witness went inside the house and arrested Lloyd. Lloyd was explained why he was arrested. He was then taken to Sigatoka Police Station. Lloyd was not assault at any time.

Josaia Cokaibusa

44. Deceased, Tracey Ann O'Brian had been Cokaibusa's partner for 5 years. Thursday the 06th of November 2014, he attended a funeral and then went to Suva. Before going to Suva around 10 a.m., he made a sandwich for Tracey. Tracey headed to town around 10.30 a.m. That was the last time he saw Tracey who was wearing a pink top and a white skirt. A black hand bag and a black purse were in her possession when she left the house. When shown by the Prosecuting Counsel, Cokaibusa recognized the pink top, white skirt, hand bag and the purse which were later tendered as prosecution exhibits.
45. After Tracey had left, Cokaibusa was going with his mother to get her a dress from town. On his way, he saw Tracey sitting in a club. He then went to Suva to meet his wife and spent the night there. He returned the following day and reached Sigatoka around 4.30 pm. Upon arrival, his mother informed him that Tracey had not returned home and had gone missing. He came to town and searched for Tracey in night clubs. When he came back to the village he met Lloyd again. He said that Tracey went to her brother in Nadi. He rang his cousin in Nadi to check on all the hotels they used to stay in. His mother kept trying on Tracey's phone. It was switched off.
46. On the 11th of November 2014, he went to identify the body at Drakoro in Vunavutu. Identification was made through photographs doctors had shown to him. He identified the tattoos 'Hara 4 Track'. Photographs that helped him to identify the body were recognized by the witness and tendered in evidence as exhibits.

47. Under cross examination, Cokaibusa conceded that the identification of the body was never through a body but through a photograph. He denied that he had a fight with the deceased on that same day. He said that he called Tracey while he was in Suva. He conceded that it was his mother who first contacted the Tracey's family after she had gone missing.

Doctor Mohammed Zibran

48. On the 14th of November, 2014, Dr. Zibran conducted a medical examination at the Sigatoka Hospital on Lloyd Richard Senikaucava. Examination was done with patient's consent when he was produced by police at 14.25 hrs. Doctor tendered his report in evidence.
49. Patient Lloyd relayed the history. Describing the history, doctor had noted at D10 '*Patient assaulted one lady two weeks ago presented with complaints of pain in his right knuckles*'.
50. There was a 1cm by ½ cm scar on the right knuckle of the ring finger. There was a swelling of middle finger and right finger knuckle. The examination findings were concurrent with the examination findings so that the history was consistent with information provided. X-ray obtained was normal. Apart from the complaint in respect of the pain in the knuckles, there was no other complaint from the patient.

Doctor James Kalounivalu

51. Doctor James conducted the post-mortem of the deceased on the 11th of November, 2014 in the Kulukulu outskirts in Sigatoka. He tendered the post-mortem report as an Exhibit. He also tendered the report of the Forensic Dentist who had co-examined the remains of the deceased.
52. Personal profile and biological profile put forward by the *de-facto* husband during the post-mortem were compared or reconciled with the examination findings. His findings confirmed the identity of the deceased. Primary identifier was the teeth with a filling. Clothing, hair colour and tattoos were the secondary identifiers and, with all that the post-mortem and anti-mortem information, identification of the deceased was confirmed.
53. On the right upper facial bone (right interior auxiliary bone), a fracture was noted and teeth of the front upper jaw were missing. Missing teeth and the fracture were consistent with a possibility of considerable blunt force trauma. Doctor could not ascertain the direct cause of death because of the extreme stages of putrefaction. However, he highlighted the presence of that fracture of the right interior of the auxiliary bone. He recognized the photograph of the scalp which was marked as PE 3.

Cpl. Miliano

54. Cpl. Miliano was the Witnessing Officer for the interview of Lloyd Richard Senikaucaava. He did not take part in the investigation. He witnessed the interview to ensure that the accused gives his statement on his own free will.
55. Woman Detective Constable Mereseini conducted the interview. She is no longer available in Fiji to give evidence as she, having resigned from the Fiji Police Force, is overseas.
56. Interviewing Officer DWC Mereseini and Lloyd were present throughout the interview. Interview was conducted in English. Record of interview was signed by him, the accused and the interviewing officer. He tendered the Interview record marked as PE.9 and read it in evidence.
57. Accused was afforded his constitutional rights. He was given sufficient breaks. During caution interview was being done, neither he nor any officer assaulted or threatened the accused. At the end of the interview, accused was allowed to read the interview record. Lloyd answered the questions asked by the interviewing officer Mereseini. Lloyd did not complain of anything.
58. Under cross Examination, witness admitted PC Ilesia Ratuva having visited the Crimes Office during the interview. He denied, however, that he had seen PC Ratuva punching the accused on his ribs and spitting on his face and threatening to agree to all questions put to him in the caution interview.
59. He denied that his evidence about breaks given to the accused to rest and to see his brother had been fabricated. There was no entry in the Station Diary to that effect because some of the breaks were given to rest inside the crime office itself. Witness denied that ASP Qica slapped the accused on his face.
60. Witness participated in the reconstruction of the crime scene that was done on the 16th of November at Nasama. During the reconstruction, accused was never assaulted or threatened.

Officer Sailosi

61. On the 16th November, 2014, Sailosi was directed to be in the reconstruction team to conduct a search at the scene where the body was found. Lloyd pointed out the place where he threw the bag. Whereupon, he found a small bag in the bush closer to the place where the body was found. It was a black bag. Bag was later handed over to the investigation officer Baseisei.

PC Ashwin Chand

62. PC Chand charged Lloyd Richard Senikaucava at the Crime Office of the Sigatoka Police Station. Sgt. Rauto witnessed. Accused did not complain of anything. Accused was given his rights. Accused was not assaulted, forced or threatened. Witness read the charge statement he recorded on the 16th November, 2014.
63. Under cross examination, witness denied that a large number of officers were present in the charging room while charging was being conducted and their presence caused accused to make a confession.

Mr Sitiveni Kunaika

64. Kunaika is a Justice of the Peace and a Para Legal Officer. He was called by police to record a statement from Lloyd. No one else was present at the Crime Office when they had the discussion.
65. Kunaika was supposed to interview the accused and police wanted him to ask accused whether the information in his statement was really given to the Police and he gave it on his own free will or was there any force or inducement held out to him to give his Statement.
66. Accused said that he really gave his Statement voluntarily to the Police without any force being held out. Accused had admitted the offence that he committed. Witness explained to us in detail what the accused related to him during the interview.
67. Under Cross examination witness admitted that his niece is legally married to deceased's boyfriend.

Doctor Neelam Pillay

68. Doctor Pillay on 17th November, 2014, examined Lloyd at the Sigatoka Hospital at 11.48 p.m. and made a report which she tendered as Exhibit 11.
69. According to the history related by the patient, he had been allegedly assaulted on his chest and stomach with punches during his arrest.
70. Patient was well oriented to time, place and person and in nil obvious distress. History given was not supported by his medical findings. There was no injury sustained. He did not complain of any pain.
71. Under cross examination, doctor ruled out the possibility of not having noticeable assault marks because injuries had healed. If he received multiple punches on his chest and abdomen, they should have left a mark in 4 days' time.

DC Misidomo Baseisei

72. DC Baseisei was the Investigating Officer. He conducted the investigation which led to the recovery of the deceased's body. When the accused was brought to the Sigatoka Police Station on the 14th November, 2014, entries were made in the Station Diary and photographs were taken of accused's hands which had scars. After that he was taken for a medical examination at the Sigatoka Hospital.
73. The caution interview took place in the Crime Office which is a 3 meters away from the main Station. He was taken for re-construction of the crime scene. Accused pointed out the place where the assault took place and showed him the deceased's blouse and the place where he threw the deceased's black bag. Constable Sailosi discovered the bag and handed it over to him. It also had a small wallet. Deceased's ID card and other cards contained inside it. The black bag; wallet and the blouse discovered upon being pointed out by the accused were recognised by the witness in Court when tendered them in evidence. He also tendered in evidence 11 photographs taken during the re-construction of the crime scene.
74. Accused was cautioned by the Interviewing Officer before reconstruction. When the accused was taken back to the Sigatoka Police Station, he was visited by his younger brother and a JP before he was taken to hospital on the 17th of November 2014.

That is the case for Prosecution.

75. At the end of the prosecution case you heard me give several options to the accused. He could have remained silent; he could have made unsworn statements or given sworn evidence. He was given these options because he does not have to prove his innocence and prove anything at all. Burden remains on the prosecution at all times to prove the guilt of the accused.
76. Accused chose to give sworn evidence and to subject himself to cross-examination. You must give his evidence careful consideration. You did not see the accused in Court at initial stages of the trial. You must not hold his absence against him and should not draw any negative inference against him.

Case for the Defence

Accused, Lloyd Richard Senikaucaava

77. The accused gave evidence mostly consistent with the version in his caution interview, but denied the admission to killing Tracey.
78. Accused said that on the 6th of November, 2014, around 8 p.m. he was drinking at the Sigatoka Deep Sea Nightclub with Tracey. While she was drinking, she was complaining about her relationship with her boyfriend Josaia who is his uncle and how Josaia was

scamming her money. She was showing the marks and the bruises on her body caused by uncle's assaults.

79. He and Tracey left the Club around 1.00 a.m. and were waiting near the Total Service Station, across Deep Sea Night Club, where they caught a taxi to go to his uncle's house at Vunavutu Village. They stopped the taxi at the Vunavutu short cut road to the village and took a walk to the Friendly Store to buy some more beers.
80. On their way back from the Friendly Store, they met Sireli, a taxi driver, who asked his whereabouts. He told Sireli that he was just dropping the deceased at his uncle's place.
81. He dropped Tracey at the gate of his uncle's house. As he was going back to the village, he saw Tracey walking towards uncle's house and heard a conversation between her and some people who were sitting in the veranda that night around 2.30 a.m.
82. He met some of his relatives Lorima Bola, Ilikena Vudogo and Bill Hicks who were drinking beside the village. Sireli again came and parked his vehicle beside where they were and asked them to leave that place and find a better place. They all got into his vehicle and, while they were travelling away from that drinking spot, Sireli asked him about the deceased. He told Sireli that he already dropped Tracey at his uncle's place. They continued drinking near the Fijian Resort for some time. They again headed back to Vunavutu village and drank till around 6.30 in the morning.
83. He bed rested for 2 days and, on Monday, he went to his grandfather's plantation. He heard of Tracey's passing away on Monday after he got back from the farm. He and other villagers went to see the dead body.
84. He fled the village to Natukalevu because the villagers tried to kill him accusing him of killing Tracey. He was arrested on Thursday the 14th of November, 2014 at 6.00 a.m. by Mesulame Soga and Constable Uraia from Natukalevu Settlement in Navosa whilst sleeping inside the house. They kicked him while he was still sleeping on the bed and then PC Uraia punched him.
85. Accused named the police officers who assaulted him from the time of arrest through the arrival at the Sigatoka Police Station. Police officers badly assaulted and threatened him with death insisting him to admit the killing of Tracey. He was badly injured. He didn't admit it. They kept on punching, slapping throwing into the water and throwing hot pepper.
86. They reached Sigatoka Police Station at 12.30 pm. Police brutality continued at the police station. He finally admitted and made a confession to police under duress.

That is the case for defence.

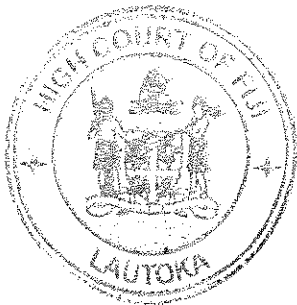
Analysis

87. Prosecution says that they have proved beyond reasonable doubt that the accused engaged in a conduct and that conduct led to the death and that he engaged in that conduct with an intention to cause the death of Tracey and it did in fact cause her death. Accused denies that he killed Tracey. He says that he dropped Tracey at his uncle Josai's place and returned. He also says that admissions were obtained illegally and therefore unreliable.
88. Prosecution relies on the confession made by the accused to the police, admission made to Mr. Kunaika, JP and circumstantial evidence.
89. First of all you must be satisfied that the dead body found in Vunavutu area on 10th November, 2014 was that of Tracey Ann O 'Brain Maw.
90. Josai Cokaibusa, Tracey's partner told us that Tracey was wearing a white skirt; she had a pink top and she also had with her a black handbag and in that hand bag she had her purse. All the exhibits found on and near the dead body were shown to the witness. He recognised all the exhibits. He was also shown a photograph of the dead body. He had identified Tracey's tattoo at the post mortem. Dr. James confirmed Josai's evidence.
91. There is no dispute that accused was drinking alcohol with the deceased till 1.am., on the 7th November, 2014 at Deep Sea Club and River View Night Club in Sigatoka; that he got into a taxi near the Total Service Station around 1.30 a.m.; that deceased and accused got off at the short cut to Vunavutu and Nasama Villages. We heard from a number of witnesses who talked about events transpired between the late hours of the 6th and the early hours of the 7th. Accused himself admitted in his evidence all those facts relating to his journey up to the short cut.
92. Now I turn to circumstantial evidence adduced by the Prosecution. Taxi driver Rakesh told us that he took a European woman and an iTaukei boy to Vunavutu; they got off at the short cut, there was an argument transpired in the taxi; he forced her to get out of the taxi; and the iTaukei boy was wearing a hand bag around his neck. Rakesh recognised the hand bag in Court.
93. Sireli told us that he saw Lloyd and Tracey getting out of the taxi at the Vunavutu short cut. When he was coming back with Bill Hicks, Lloyd appeared alone at that very same junction. He inquired about Tracey. But he didn't get a response from accused. Sireli noticed Lloyd had some injuries on his right knuckles. Witness Ilikena also saw an injury on accused's knuckles with blood.
94. Prosecution placed before us the following pieces of evidence and asks us to come to the conclusion that it was the accused that killed Tracey and nobody else.

- I. Tracey goes missing since 7th November, 2014.
 - II. Accused and Tracey get drunk in two clubs and get into a taxi at the Sigatoka Total Service Station around 1.30.a.m. on the 7th November, 2014.
 - III. An argument ensued between Tracey and accused in the taxi and accused pulls Tracey at the short cut to Vunavutu village. Both of them get off from the taxi at the short cut.
 - IV. In a short while, accused appears alone at the very same short cut with a fresh injury on his right knuckle.
 - V. The decomposed body of Tracey is found closer to the Vunavutu short cut on the 10th November, 2014. Doctor, at the post mortem, finds a fracture on the facial auxiliary bone and two missing teeth consistent with a blunt force trauma.
 - VI. Accused flees the village when he becomes aware of Tracey's death. He is arrested from a far-away place on 14th November, 2014.
 - VII. Dr. Zibran examines the accused on the 14th of November, 2014 and finds a scar of a healed injury on accused's right knuckle. Accused relating the history tells doctor that he assaulted a woman two weeks ago.
 - VIII. Upon being pointed out by the accused, the police recover a back bag and a white skirt near a place where the body is found. Deceased's partner recognises the recoveries as those belonged to his partner Tracey.
 - IX. Accused makes a confession to police and admits the killing to a JP on the 17th November, 2014.
95. Having considered these circumstances, you must be satisfied beyond reasonable doubt that the only reasonable inference to be drawn is the guilt of the accused, and there is no other reasonable explanation for the circumstances which is consistent with the accused's' innocence.
 96. Prosecution says that Defence version is not consistent and implausible. It also says that the evidence of the defence is inconsistent with his previous statements and *voir dire* grounds.
 97. You consider whether the version of the Defence is consistent and believable. You watched accused giving evidence in court. You can apply the same tests and common sense you applied to evaluate evidence of the Prosecution to evaluate the evidence of the Defence.

98. It is up to you to decide whether you could accept the version of the Defence and it is sufficient to establish a reasonable doubt in the Prosecution case.
99. If you accept the version of the Defence you must find the accused not guilty. Even if you reject the version of the Defence and do not believe a single word accused told in Court, still the Prosecution should prove its case beyond reasonable doubt. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the Prosecution throughout the trial, and never shifts to the accused, at any stage of the trial.
100. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty.
101. If you accept the Prosecutions' version of events, and you are satisfied that the Prosecution has proved the case beyond reasonable doubt, so that you are sure of accused's guilt you must find him guilty of the charge.
102. You may now retire to deliberate on the case, and once you have reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.

Any re-directions?




Aruna Aluthge
Judge

AT LAUTOKA
8th August, 2016

Solicitors for State:
Solicitors for Accused:

Office of the Director of Public Prosecution
Office of the Legal Aid Commission