

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 156 OF 2014

STATE

V

LLOYD RICHARD SENIKAUCAVA

Date of Summing Up: 08th August, 2016

Date of Judgment: 10th August, 2016

Counsel: Ms. J. Fatiaki for State

Ms. S. Ratu for Accused

JUDGMENT

1. Accused LLOYD RICHARD SENIKAUCAVA was charged with MURDER Contrary to Section 237 of the Crimes Decree 44 of 2009.
2. Assessors unanimously found the Accused guilty of Murder as charged.
3. Having concurred with the opinion of the assessors, I proceed to give my reasons as follows.
4. Prosecution says that accused punched the deceased TRACEY ANN O'BRIEN MAW on her face and then suffocated her with the intention to cause the death and

the act of the accused did in fact cause the death. Accused denies the allegation and says that his admissions were obtained illegally and therefore unreliable.

5. Prosecution called 19 witnesses and relies on the confession made by the accused to police, admissions made to Mr. Kunaika, JP, and on circumstantial evidence. I am satisfied that the evidence adduced by the prosecution is plausible and logical.
6. Prosecution established the identity of the deceased and proved that the dead body found in Vunavutu area on the 10th November, 2014 was that of Tracey O'Brien. Tracey O'Brien had gone missing since 7th November, 2014. Witness Josaia Cokaibusa, Tracey's partner recognised all the exhibits discovered from the crime scene. At the post mortem examination, when he was shown a photograph of the dead body he had identified Tracey's distinguishable tattoo 'HARA 4 TREK'. Dr. James confirmed Josaia's evidence.
7. I now turn to circumstantial evidence. There is no dispute that:
 - accused was drinking alcohol with the deceased till 1 a.m. on the 7th November 2014 at Deep Sea Club and River View Night Club in Sigatoka,
 - accused got into a taxi with the deceased near the Total Service Station around 1.30 a.m.,
 - deceased and accused got off from the taxi at the short cut to Vunavutu and Nasama Villages.
8. Witness Rakesh, the taxi driver, is an independent witness. Rakesh told that the European woman and the short iTaukei boy he picked from Sigatoka Town had an argument in the taxi and he forced her to get out of the taxi at Vunavutu cross cut. When he gave evidence accused was not present in Court. However, Rakesh recognised Tracey's hand bag that the iTaukei boy was wearing around his neck at that time.

9. While witness Sireli was driving his car to drop a passenger at the liquor shop in Kulukulu, he saw a taxi dropping Lloyd and Tracey at the cross-cut to the Vunavutu village. After dropping his cousin at Malevu Village, Sireli and Bill came back at the cross-cut to Vunavutu Village. Ilikena and Lorima Bola boarded in his car around 5.00 a.m. While the two were being boarded into the car, Lloyd also came alone and boarded the car. When Sireli inquired about the notable absentee, Tracey, he didn't get a response from the accused. Sireli noticed Lloyd had an injury on his right knuckles. Witness Ilikena also confirmed that accused had a blooded injury on his knuckles.

10. There was a minor inconsistency between the evidence of Sireli and Ilikena about the nature of the wound. However, it does not affect the credibility of the prosecution version. Both Sireli and Ilikena were closely associated with the accused and they had no apparent reason to lie before this Court.

11. Prosecution proved the following:
 - I. Tracey goes missing since 7th November, 2014.
 - II. Before she goes missing, 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 at the short cut.
 - IV. Some time later, 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 the police discovery of Tracey's dead body. Accused is arrested from a far-away place on 14th November, 2014.

- VII. Doctor who examines the accused on the 14th of November, 2014 finds a scar of healed injury on accused's right knuckle. Accused relating the history tells the doctor that he assaulted a woman two weeks ago.
- VIII. Upon being pointed out by the accused, the police recover the hand bag of Tracey and her skirt from the bush where the body is found.
- IX. Accused makes a confession to police and admits the killing to a JP on the 17th November, 2014.
12. Having considered aforementioned factual scenario and circumstances, I am satisfied beyond reasonable doubt that the only reasonable inference to be drawn is the guilt of the accused. There is no other reasonable explanation for the circumstances which is consistent with the accused's' innocence.
13. Answering question No. 155 of the Caution Interview, accused had told Police:
- "I thought of what Joe had told me for me to kill her then I can get back into a business again and shareholder with him. That motivates me to press her throat very hard using my both thumb until there was no other movements. But she was still breathing. Then I used my outer side of my right feet on her neck to suffocate her. After a while I removed my feet at that time, she was not moving and not breathing. I tried to carry her again but I could smell her shit. I then took her skirt and wiped her shit off and carried her to another place where I dumped her about 15 meters away."*
14. I am satisfied that the accused was activated by the murderous intention when he committed this act.
15. Defence version is not consistent and implausible. Evidence of the accused is inconsistent with his previous statement and his *voir dire* grounds.
16. Accused's evidence that he dropped Tracey near the Josaia's house that morning is not credible and believable. His version is not supported by his close associate Sireli who said that he did not get a response from the accused when he inquired about Tracey that morning.

17. If accused was really innocent he could have surrendered to some other police station if he could not cross the village due to death threats by the villagers. He had even crossed the Sigatoka River to go into hiding in a far away place. Accused's conduct is consistent with his guilt.
18. Evidence adduced by Defence failed to create any doubt in the prosecution case.
19. In light of accused's evidence of police brutality, I reviewed my own finding on *voir dire*. If accused was brutally assaulted by police after his arrest, Doctor Zibran could have found some injuries on his body. Doctor Pillay who examined the accused after the caution interview and charging had not observed any injury on his body.
20. I am satisfied that the confession given to police and the admissions made to Mr. Kunaika JP are truthful statements of the accused.
21. I accept the version of the Prosecution, and reject that of the Defence. Prosecution proved the case beyond reasonable doubt.
22. I agree with the unanimous opinion of the assessors and find the accused guilty of Murder.
23. That is the judgment of this Court.




Aruna Aluthge
Judge

At Lautoka

10th August, 2016

**Solicitors: Office of the Director of Public Prosecution for State
Legal Aid Commission for Accused**