

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 362 of 2015

[CRIMINAL JURISDICTION]

STATE

V

1. SEKOPE TODUADUA
2. JAMES NETANI
3. JOSESE RAINIMA TAWAKE
4. NETANI TAKELO
5. SEKOPE SIVODUADUA TODUADUA

Counsel : Ms. J. Fatiaki for the State
Ms. P. Lal for 1st Accused
Ms. C. Choy for 2nd Accused
Mr. P. Tawake for 3rd Accused
Ms. S. Prakash for 4th Accused
Ms. A. Prakash for 5th Accused

Hearing on : 8th – 17th May, 2017

Summing up on : 19th May 2017

Judgment on : 22nd May 2017

JUDGMENT

1. The accused persons are charged with the following offence;

Statement of Offence

MANSLAUGHTER: contrary to section 239 of the Crimes Decree 2009.

Particulars of Offence

SEKOPE TODUADUA, JAMES NETANI, JOSESE RAINIMA TAWAKE, NETANI TAKELO AND SEKOPE SIVODUADUA TODUADUA on the 26th of November 2014 at Nadonumai, Lami in the Central Division unlawfully killed Savenaca Masi.

2. The majority opinion of the assessors is that all accused are not guilty of the above offence. One assessor opined that the 1st, 2nd and the 5th accused persons are guilty as charged.
3. I direct myself in accordance with the summing up delivered to the assessors on 19th May 2017 and the evidence adduced during the trial.
4. The prosecution relied on the principle of joint enterprise. The prosecution alleges that the five accused persons formed a common intention to prosecute an unlawful purpose and the offence of manslaughter was committed in the prosecution of the said unlawful purpose.
5. The prosecution case was that; all five accused chased the deceased; the 2nd, 3rd and the 5th accused persons kicked and punched the deceased when the deceased fell after the 1st accused kicked the deceased's leg in the vicinity of Sikeli's (PW4) house; the 4th accused was encouraging the others to assault the deceased by saying 'dou vakamatea'; PW4 intervened and stopped the fight; then the deceased was taken to the driveway; thereafter the 1st accused punched the deceased as a result of which the deceased fell on the ground and hit his head; the other accused persons were present at the scene while this happened and the 1st accused's punch was a substantial contribution to the death of the deceased.
6. According to the prosecution, the death of the deceased was caused by the conduct of the 1st accused and that conduct is punching the deceased on the face. The 1st, 3rd and 6th witnesses for the prosecution testified that they saw the 1st accused punch the deceased and then the deceased fell backwards. However, the 1st, 2nd and 4th witnesses giving evidence in relation to the previous incident said

that they saw the 1st accused covering and protecting the deceased when others were trying to punch the deceased. According to the evidence, the 1st accused received the punches from the others in his attempt to protect the deceased. This evidence clearly suggests that the intention of the 1st accused at this point in time was to protect the deceased.

7. Then, the question is, what made the 1st accused change his attitude towards the deceased subsequently to punch the deceased either with the intention or being reckless as to the risk that that punch will cause serious harm to the deceased? The conduct of the 1st accused immediately after the deceased fell down indicates that the 1st accused was concerned about the wellbeing of the deceased. That evidence is not consistent with the conduct of a person who had the intention to cause serious harm to the deceased.
8. The position taken by the 1st accused is that he never punched the deceased. According to the 1st accused, the deceased fell down because the deceased could not control his balance as the deceased was heavily drunk. It was pointed out on behalf of the 1st accused that the prosecution witnesses who said they saw the 1st accused punch the deceased are mistaken about what they saw. The 1st accused takes up the position that the prosecution witnesses had perceived the movement of his hand to block an attack from the deceased, as a punch.
9. It is pertinent to note that according to the 1st, 3rd and 6th prosecution witnesses who testified that the 1st accused punched the deceased, had witnessed the event from a lower elevation and from a position behind the 1st accused. They have apparently seen a movement of the 1st accused's hand and the deceased falling at the same time. Therefore, considering the evidence in this case, I cannot rule out the possibility that the aforementioned prosecution witnesses may have mistakenly perceived the movement of the 1st accused's hand to block an attack from the deceased, as a punch. There is a reasonable doubt in this regard.

10. On the other hand, even if the 1st accused did punch the deceased, the available evidence does not suggest that the 1st accused had the intention to cause serious harm to the deceased or the 1st accused was reckless as to the risk that his conduct will cause serious harm to the deceased.
11. Therefore, considering all the evidence in this case, I am not satisfied beyond reasonable doubt that the 1st accused engaged in a conduct with the intention or being reckless as to the risk that the said conduct will cause serious harm to the deceased.
12. In this case, it was suggested on behalf of the 1st accused that the deceased had fallen in the bathroom before the deceased was taken to the hospital. The defence challenged the evidence of the 7th witness for the prosecution who was the only witness to give evidence on the time the deceased was taken to the hospital. She said that the deceased was taken to the hospital around 4.00pm the same day. Considering the inconsistencies noted in her evidence and her own admission that she had forgotten everything because the incident happened 3 years ago, the 7th prosecution witness' evidence appeared unreliable. In my view, the medical evidence adduced in this case did not clearly and properly explain the nature of the injury sustained by the deceased as a result of the fall on the driveway. Therefore, the evidence to support the position that the said injury substantially contributed to the death of the deceased, was also not convincing.
13. In the circumstances, I am of the view that the evidence available in this case is not sufficient to prove beyond reasonable doubt that the 1st accused committed the offence of manslaughter. It follows that the 1st, 2nd, 3rd and 4th accused persons are also not guilty of the offence of manslaughter.
14. For the reasons given above, I agree with the majority opinion of the assessors.

15. I find all five accused persons not guilty of the offence charged. They are acquitted accordingly.



Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.
Solicitors for the Accused : Legal Aid Commission, Suva.