

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 139 of 2016

[CRIMINAL JURISDICTION]

STATE

V

AISAKE VANA JUNIOR

Counsel : Ms. J. Fatiaki and Ms. S. Tivao for State
Mr. N. Tuifagalele for accused

Hearing on : 17th to 19th July 2017

Summing up on : 19th July 2017

Judgment on : 20th July 2017

JUDGMENT

1. The accused is charged with the following offence;

Statement of Offence

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

Particulars of Offence

AISAKE VANA JUNIOR on the 5th of April 2016 at Nasinu in the Central Division, unlawfully killed Suliasi Veisere.

2. The assessors have returned with a divided opinion. One assessor found the accused guilty as charged. The majority opinion is that the accused is not guilty of the above offence.

3. I direct myself in accordance with the summing up delivered to the assessors on 19th July 2017 and the evidence adduced during the trial.
4. In this case, there is no dispute that there was a physical altercation between the accused and the deceased and that the deceased died as a result of a stab injury on his back that he received during that altercation. The prosecution alleges that the accused deliberately stabbed the deceased because the accused was angry at the deceased due to the way the deceased reacted over a bowl of dhal.
5. The accused on the other hand says that he punched the deceased because the deceased punched him and he did not realise that he was holding a knife. According to the accused he did not deliberately stab the deceased and it was an accident.
6. The prosecution led the evidence of four witnesses including two police officers. The accused gave evidence.
7. According to the first prosecution witness, the accused got angry because the deceased swore at him and the accused came to the sitting room from the kitchen to confront the deceased. She then witnessed the accused and the deceased punching each other inside the sitting room. Then she went near the toilet to inform her sister-in-law about the fight and to ask her assistance to stop the fight. While she was near the toilet, she heard the deceased telling the accused '*not to get a (sic) hold of the knife*'. This is an admitted fact. Thereafter when she went to the sitting room, she saw the deceased lying on the ground. The accused was not there.
8. I accept the above evidence of the first prosecution witness. Even though it was an admitted fact that the first prosecution witness saw the deceased injured and was lying on top of Aisake Vana Senior when she went to the sitting room, her evidence in court was that Aisake Vana Senior came to the sitting room after she

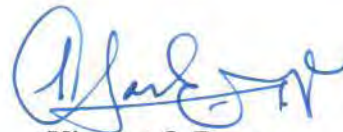
went to the sitting room and called for her sister-in-law. In my view, this inconsistency is not fundamental to the issue that needs to be decided in this case and her credibility is not affected due to the said inconsistency.

9. The second prosecution witness was the first person the accused met after the incident according to his own admission during cross-examination. She testified that the accused told her that he stabbed the deceased. According to this witness, the accused had further told her that he picked up the knife and then stabbed the deceased following an argument. The second prosecution witness was a credible and a reliable witness. I accept her evidence.
10. The facts established through the first prosecution witness leads to the inference that the accused did not have the knife in his hand when the physical altercation started in the sitting room and the accused stabbed the deceased even after the deceased pleaded not to get hold of the knife. This evidence indicates that the conduct of the accused was deliberate and not accidental. The confession made by the accused to the second prosecution witness soon after the incident reinforces the said conclusion. Therefore, I am satisfied beyond reasonable doubt that the accused deliberately stabbed the deceased and it was not an accident. Considering the fact that the accused used a knife to attack the deceased, the circumstances under which the accused attacked the deceased with the knife and the location and the nature of the injury inflicted by the accused, I am convinced beyond reasonable doubt that the accused intended to cause serious harm to the deceased.
11. Given the above, I find that the prosecution has proven beyond reasonable doubt that the accused caused the death of the deceased by deliberately stabbing the deceased with the kitchen knife, and the accused had the intention to cause serious harm to the deceased.

12. The prosecution tendered the cautioned interview of the accused and his charge statement as part of the prosecution case. At one point, the prosecution suggested to the accused during cross-examination that he told the police what actually happened. The accused denied this suggestion. Later it was again suggested to the accused that most of what is recorded in the cautioned interview are fabrications. The accused responded to this suggestion by saying that certain parts he heard when his statement was read out in court are not correct.
13. Essentially, what the accused had stated in his cautioned interview statement is that he struck the deceased with the kitchen knife by accident. In the charge statement the accused had admitted that he got angry and he struck the deceased with the knife he was using in the kitchen.
14. Considering the accused's demeanour and deportment when he gave evidence and all the evidence led in this case, I am inclined to hold the view that the accused did not give a true account of what happened on the day in question though he appeared remorseful for his actions. The defence did not challenge the evidence of the third prosecution witness who was the interviewing officer who said that he recorded all the answers given by the accused. There was no suggestion that the cautioned interview contained answers that were not given by the accused. However, I have noted that there are inconsistencies between the evidence given by the accused and what is recorded in the cautioned interview statement.
15. For the reasons I have given in this judgment, the accused's version that he struck the deceased with the knife by accident is not credible and reliable. Moreover, stabbing the deceased was not a conduct carried out in self-defence. The fact that the accused got angry due to the conduct of the deceased and the fact that he did not expect the deceased to die are not defences for the offence of manslaughter.

16. In the light of the foregoing, I am unable to agree with majority opinion of the assessors that the accused is not guilty. I agree with the opinion of the assessor who found the accused guilty as charged.
17. In the circumstances, I find the accused guilty as charged and convict him accordingly.




Vinsent S. Perera
JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitor for the Accused : Tuifagalele Legal, Barrister and Solicitor Suva.