

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 63 B of 2015

BETWEEN : STATE

AND : SHALENDRA KRISHNA SAMI

Counsel : Mr A. Singh and Ms Lata for the State  
Ms J. Singh and Ms Ali [LAC] for the Accused

Dates of Hearing : 05, 07, 08, 09 March 2019

Closing speeches : 13 March 2019

Date of Summing up : 18 March 2019

SUMMING UP

Ladies and gentleman assessors,

1. I must now sum up the case to you. You must then retire to consider your opinion. I will direct you on the law that applies. You must accept those directions I give you on matters of law. You are to decide the facts of the case, based on the evidence that has been led before this court. You will then apply those directions to the facts and give me your opinions as to whether the accused person is guilty or not guilty.
2. You are bound by the directions I give you as to the law. But you are not obliged to accept any opinion I may express or appear to have expressed while going through

evidence. If you do not agree with that opinion you will ignore it and form your own opinion with that evidence.

3. You must base your opinion only on evidence given by the witnesses, the documents, pictures or other exhibits tendered in court. But a few things that you heard in this court are not evidence. Opening submission, closing submissions, statements, arguments and comments made by the counsel and this summing up are not evidence. But you may consider those as a guidance when you evaluate evidence and the extent to which you do so is entirely a matter for you. If you have acquired any knowledge about the facts of this case outside this court room, you must exclude that information from your consideration. Make sure that external influences play no part in forming your opinion. You will also not let any sympathy or prejudice sway your opinions.
4. I will give you only a summary of evidence. I will not go through every word uttered by the witnesses in this case, and if I leave out something that seems to be important, nothing stops you from taking that into account. Because you decide the facts.
5. After this summing up, you may give your individual opinion as the representatives of the community. You may reject or accept any evidence in forming your opinion. Your opinions need not be unanimous. And you need not give reasons for your opinions.
6. Your opinions will assist me in giving my judgement. I will give the greatest weight to your opinions in my judgement. However, I am not bound to conform to your opinions.

Ladies and gentleman assessors,

7. I will now mention some considerations that may assist you in evaluating evidence. As I said before you may reject the whole evidence of a witness, accept the entirety or even accept only a part of a witness's evidence and may reject the rest. You have to decide whether a witness has spoken the truth or correctly recalled the facts and narrated it.

8. You have seen the demeanour of the witnesses and how they gave evidence in court. You have seen whether they were forthright or evasive in giving evidence. But you may also bear in mind that some witnesses have good memory, some may not remember every detail and it is also likely that some may perceive the same incident differently and narrate differently. You have to use your common sense in assessing the reliability and credibility of witnesses. Remember, that many witnesses are not comfortable in giving evidence in a court room, they may act in anxiety and get distracted in this environment.
9. According to the law the prosecution must prove its case beyond reasonable doubt. For the prosecution to discharge its burden of proving the guilt of the accused, it is required to prove beyond reasonable doubt that he is guilty. The burden of proof remains on the prosecution throughout the trial. For this purpose, the prosecution must prove every element of the offence, which I will discuss later, beyond reasonable doubt.
10. The Accused need not prove his innocence. The fact that the Accused has given evidence does not imply any burden upon him to prove his innocence. It is not his task to prove his innocence. The burden is on the prosecution to prove the guilt of the Accused. That means you must be satisfied that the state has proved every element of the offence beyond reasonable doubt. That doubt should be a reasonable one and if you are left with a reasonable doubt you must find the accused not guilty. If you are not left with any such doubt and if you are sure that the prosecution proved every element of the offence you must find him guilty.
11. The Accused is charged with murder contrary to section 237 of the Crimes Act No 44 of 2009. The particulars of the offence reads; Shalendra Krishna Sami on the 16<sup>th</sup> day of April 2015 at Lautoka in the Western Division murdered Chandra Baskaran.
12. Let me now explain to you the elements of the offence of murder. Section 237 of the Crimes Act No 44 of 2009 reads as follows;

A person commits an indictable offence if-

- a) The person engages in conduct; and
- b) The conduct causes the death of another person; and

- c) The first-mentioned person intends to cause, or is reckless as to causing, the death of the other person by the conduct.

13. Therefore, in order to prove the offence of murder the prosecution must establish beyond reasonable doubt that;

- i) The Accused
- ii) Engaged in a conduct; and
- iii) The said conduct caused the death; and
- iv) The Accused intended to cause the death of the deceased; or the Accused was reckless as to causing the death of the deceased by his conduct.

14. The first element relates to the identity of the person who committed the offence. The identity is not in dispute and the defence agrees that it was the Accused who was involved in this case and no one else. You can consider that the identity of the Accused is proved beyond reasonable doubt.

15. The second element relates to the conduct of the accused. To engage in a conduct is to do an act which is the product of the will of the Accused and it was not accidental. The prosecution has to prove beyond reasonable doubt that the conduct of the Accused was deliberate and not accidental. Conduct can be anything such as stabbing, strangling, poisoning, punching, chopping etc., and if that conduct causes the other person to die, then the third element comes into play.

16. The act of the Accused need not be the sole or principal cause, but the act should substantially contribute to the deceased's death. Therefore, if you are satisfied beyond reasonable doubt that the conduct of the Accused substantially contributed to the death of the deceased, that is sufficient to satisfy the third element that the 'conduct caused the death of the deceased'.

17. With regard to the final element which concerns the state of mind of the Accused, the prosecution should prove beyond reasonable doubt, either, that the Accused intended to cause the death of the deceased or that the Accused was reckless as to causing the death of the deceased. The prosecution should prove only one of the two limbs of this element. It is not possible to have direct evidence regarding an Accused's state of mind

as no witness can look into the Accused's mind and describe what it was at the time of the alleged incident. However, you can deduce the state of mind of the Accused from the facts and circumstances you would consider as proved.

18. In order to conclude that the Accused intended to cause the death of the deceased, you should be sure that he meant to bring about the death or that he was aware that death will occur in the ordinary course of events as a result of his conduct. You should consider all the evidence and draw appropriate inferences to ascertain whether the Accused had the intention to cause the death of the deceased.
19. In the event you find that the Accused did not have the intention to cause the death of the deceased or you are not sure whether he had that intention, you should then consider whether the Accused was reckless as to causing the death of the deceased. An Accused will be reckless with respect to causing the death of the deceased, if;
  - A) He was aware of a substantial risk that death will occur due to his conduct;  
and
  - B) Having regard to the circumstances known to him, it was unjustifiable for him to take that risk.
20. What you have to consider with regard to this particular state of mind is whether the Accused did foresee or realise that death was a probable consequence or the likely result of his conduct; and yet he decided to go ahead and engage in the conduct regardless of that consequence.
21. The Accused must foresee that death was a probable consequence or the likely result of his conduct and after realising that, if he decided to go ahead and engage in that conduct regardless of the likelihood of death resulting, then he was reckless as to causing the death of the deceased. In order to constitute the offence of murder by recklessness, actual awareness of the likelihood of death occurring must be proved beyond reasonable doubt.
22. If you are satisfied that the prosecution has proved the above elements beyond reasonable doubt then you must find the Accused guilty of murder.

23. In the alternative, if you believe that the prosecution could not prove the Accused intended to cause the death or was reckless as to causing the death of the deceased you must consider the lesser offence of manslaughter.
24. In manslaughter only the last two elements are different to murder. Instead of intention to cause death or recklessness as to causing death, in manslaughter the Accused engages in a conduct which causes the death of the deceased and the Accused intends that the conduct will cause serious harm or the Accused is reckless as to a risk that the conduct will cause serious harm to the deceased.
25. If you believe that the Accused intended to cause serious harm to the deceased or the Accused was reckless as to causing serious harm and that conduct caused death of the deceased, then you should find the Accused guilty of manslaughter.

Ladies and gentleman assessors,

26. At the beginning of the trial each of you were given a copy of the amended admitted facts. Those are the facts that the prosecution and the defence have agreed to accept as evidence proved beyond reasonable doubt. You can rely on these facts as evidence without looking for any proof;
- i) The Accused is Shalendra Krishna Sami also known as Johnny.
  - ii) The deceased is Chandar Baskaran also known as Bobby.
  - iii) The deceased was married to Rajeshni Devi and together they had 2 sons.
  - iv) The Accused and the deceased are siblings and resided at Saweni, Lautoka with their parents Savitri and Dor Sami and the deceased's family.
  - v) On the 16<sup>th</sup> of April 2015 the deceased and the Accused were alone at home whilst Rajeshni Devi and Savitri had gone to town.
  - vi) An argument arose between the deceased and the Accused.
  - vii) Savitri returned home from town and had gone to her neighbour's place to watch TV.
  - viii) The deceased and the Accused continued to fight with each other after the mother went to neighbour's place.

ix) Around 1pm the Accused then went and called Savitri from the neighbour's house after the incident.

27. Now I will refresh your memory and give a brief outline of the evidence adduced in this case. However, you should consider the entirety of the evidence adduced in this case when forming your opinions. The prosecution called eight witnesses to prove the case against the Accused.

28. The first prosecution witness Dr James J.V. Kalougivaki is a forensic pathologist who conduct autopsies in Fiji and in the Pacific region. He is attached to the Fiji Police Force and based in Nasova. He tendered his CV which carries his qualifications and experience in his field of work. Further he said that he has carried out more than 800 autopsies.

29. Dr Kalougivaki confirmed that he conducted the post mortem of the deceased, Chandra Baskaran on 20 April 2015 at Lautoka hospital. He tendered the post mortem examination form as prosecution exhibit 1.

30. The witness explained the findings noted in the report. There was one stab wound in left front of the neck of the deceased. Upon probing the wound, it has followed tracks in two directions. He said that a knife can cause that injury. When he was shown a knife which is an exhibit of this case he said that it is highly possible to cause the stab injury with that knife. One of the tracks had cut the food pipe and it had partially cut the vein which brings blood from the head to the heart. The witness said that it would need significant force to cause an injury of that nature and if that was the only wound it would have still resulted death of the deceased.

31. He said that there was another stab wound at the back of the deceased, towards right upper back. That wound also had two tracks. The witness confirmed that it is highly possible to cause the wound with the knife which was shown to him. One track of that wound had completely cut the artery which carries blood from the heart to the right lung. There had also been penetration of the right aspect of the covering of the heart. He said that the second stab injury was more fatal and if there was only the second injury it would have still caused the death.

32. The witness said that the second wound is possible to have caused if the deceased was stabbed from the back when he was lying down, with his face down. He said it would need significant force to cause that injury.
33. Apart from those two stab wounds there had been superficial bruised lacerations observed on the back of the left hand. He said it could be due to grazing over on blunt surfaces.
34. In cross examination he agreed that it is also possible that the injury on the back of the left hand was sustained as a result of punching someone. When he was asked whether it was possible that the two stab injuries were caused by a spear, he said that "if it had same dimensions with a single sharp end and a blunt end". He said that there would be a low possibility of surviving if he had instant resuscitation in an operation theatre. In cross examination he said that if two people were struggling with a knife and one was trying to save himself, the injuries would be more of slashed or incised wounds rather than straightforward stab wounds.
35. According to his evidence both stab wounds were fatal and death could cause within a short time due to the loosing of a lot of blood. The cause of death is due to excessive blood loss as a result of multiple stab wounds.
36. The second prosecution witness, Savitri is the mother of the deceased and the Accused. According to her the Accused and the deceased were in good terms. She said that she used to be at work most of the times and when she was at home the Accused and the deceased did not fight with each other. On 16 April 2015 around 11.45 am Savitri had left the house to go to her neighbour's place while the deceased and the Accused were at home. Around 12.45 pm the Accused had come and called her. He had informed her that the deceased is lying on the floor with injuries. Savitri said that when she went home she saw the deceased lying on the floor. She had then collapsed and when she regained consciousness the Accused had confessed to her, that he killed the brother. Later she had informed one Anand to call the police.
37. In cross examination Savitri said that the Accused looked normal when he came and called her to go home. When she was asked whether the Accused was sickly she said



that he used to collapse at times at home and they could never find the reason for that. She also admitted that the deceased was bigger in built than the Accused.

38. In re-examination the witness said that the Accused was having that sickness since Form 4 and he did not collapse on the day of the incident.
39. The third prosecution witness, Pushpa Wati gave evidence that she is a neighbour of the Accused and the distance between her house and the Accused's house is similar to the distance between the High Court and the Magistrate's Court. She said that she sometimes hear them fighting and she never went to check. On 16 April 2015 she was watching TV around 12 noon when she heard the noise of the Accused and the deceased fighting. She said she could not make out what they were talking loudly. She had heard a noise like "Ah.. Ah.." and she had thought it was some iTauki boys chasing cows. After that it was silent and around 12.40- 12.45 pm she had seen the Accused walking very fast towards her sister in laws place and coming back home with his mother. After that the witness had started watching TV again and around 2 pm when the police came she went to the Accused's place to check what has happened.
40. In cross examination Pushpa Wati confirmed that the distance between the two houses is similar to the distance from the High Court to the main road near the RB Patel and said that she usually hears the noise when the two brothers fight.
41. The fourth prosecution witness, Rajeshni Devi is the wife of the deceased. According to her the Accused and the deceased were not in good terms. She said that they used to fight verbally and never talked to each other properly. On 16 April 2015 she had taken her two children to school. The Accused and the deceased had been home when she left. She said there was no fight when she left home. Around 10.30 am she had called the deceased and he had said everything is fine and he was repairing a tyre. When she was on her way home around 1.15 pm a neighbor had called her and told her to come home soon. She had reached home around 2 pm and had looked for her husband. Then the mother of the deceased had come and told her that her husband is "no more". She said when she tried to go towards the washtub side she was stopped by the Accused. She had pushed the Accused away and had gone towards the 3<sup>rd</sup> bedroom where she found the deceased lying on the floor in a pool of blood. She had seen a knife in the deceased's hand.

42. The witness was shown the knife which is an exhibit in this case. She recognized the knife and said that it was in her kitchen and it had gone missing for some time. She further said that the knife was used by the Accused for his pastry work. She said that apart from the knife she did not see anything else. After a while the police had come to the scene.
43. In cross examination Rajeshni Devi said that she used to prepare food for the Accused as well, though she doesn't know when he eats. She admitted that the deceased used to tell the Accused to find a job and the deceased was upset as the Accused was not working. The witness said in response to cross examination that the deceased used to take the Accused to hospital when he collapses. She admitted that the deceased used to taunt the Accused at home, but she said he never stopped the Accused from eating food.
44. In re-examination the witness confirmed that the Accused was present after the incident. But she said that he was after a shower wearing a new T shirt and shorts.
45. The fifth prosecution witness, PC 4213 Pita Vatu informed the court that on 16 April 2015 he received a report of a suicide case and attended to the report after 2.30 pm. He had gone to the scene at Saweni beach road and had observed an Indian man lying on the floor with blood around him. The Accused had also been there. The witness identified the Accused as the brother of the deceased. He had been informed that they had a scuffle and he had noticed a small cut on the Accused's fingers. He had also been informed that the Accused's right shoulder was paining. The witness said that there was a knife below the deceased's hand. Further he had observed a 4- 4 1/2 feet long stick near the deceased's feet. The Accused was later arrested by him and handed over to the officer who was on afternoon shift.
46. During cross examination he said that he cannot recall whether the stick was covered with blood.
47. The prosecution witness, WDC 3202 Ilisa Peci gave evidence next. She said that she is attached to the crime scene investigation unit and informed the court of her qualifications and experience in crime scene investigations. She had attended the

crime scene at Saweni beach road on 16 April 2015 before 3 pm. She said that she was informed by the brother of the deceased that the deceased committed suicide by stabbing himself. She said that she realized it was not a scene of suicide upon observation of the stab injuries. A knife was observed under the deceased's left hand and a stick below the deceased's legs. She had also noticed a broken tube light in the adjoining room. She has uplifted the knife after taking photographs. She recognized the knife which was shown to her and tendered it as prosecution exhibit 2. She identified the stick which was at the crime scene and tendered it as prosecution exhibit 3. Further she tendered a sketch plan of the house as prosecution exhibit 4. She explained 11 pictures that she took at the crime scene. She tendered the booklet with those photographs as prosecution exhibit 5.

48. In cross examination she explained that the deceased was not holding the knife and the knife was just under the deceased's folded hand. She said that the shattered tube light was in the Accused's room and the stick had a sharp end.

49. During the re-examination the witness pointed out to one end of the stick which is smaller in circumference and said that is what she meant by a sharp end.

50. The eighth prosecution witness, D/Sgt 3049 Josateki Seuseu said that he took photographs of the scene reconstruction with the Accused on 18 April 2015. He explained the photograph numbers 12 - 26 which were taken at the crime scene. He also said that he took pictures during the post mortem which was conducted on 20 April 2015. He described the photographs number 27 - 39.

51. In cross examination he said he cannot compare the built of the Accused and the deceased. He admitted that the deceased had an injury between his knuckles and the wrist according to photograph number 39.

52. The investigating officer was the last witness for the prosecution. D/Sgt 1898 Arvind Singh testified that he was on duty on 17 April 2015 at the CID branch at Lautoka Police Station. He received instructions to interview the Accused and the interview was commenced at 2.55 pm on 17 April 2015.

53. According to his evidence the Accused had looked fit and fine. The Accused had a bandage wrapped on his right index finger and the little finger. He had been informed that the Accused received an injury during the fight with the deceased. The Accused had been given right to counsel, right to contact a family member, friend or a lawyer from the Legal Aid Commission, but the Accused had not want to exercise his rights. The Accused had not complained about any police officer or of any assault, threat or abuse. The Accused had been given sufficient breaks, meals and refreshments during the interview. The Accused has signed his caution interview. On 18 April 2015 the Accused had been taken for a scene reconstruction. No officer had threatened, assaulted or abused the Accused. The Accused had not complained about any such thing. He had not complained of anything at the conclusion of the interview as well.
54. The record of interview and the typed copy of the interview were tendered in evidence and were marked as prosecution exhibit 6 and 7, respectively.
55. During the cross examination the witness said that he cannot confirm whether the Accused had injuries on his body. Further it was suggested to the witness that the Accused did not give the answers to questions 33, 36 and 70. The witness said that he recorded whatever the Accused told him and the Accused did not correct anything at the end of the interview. The witness said that there was a witnessing officer and other officers were also present. However, he admitted that no witnessing officer has signed the caution interview as it is not necessary to sign. The witness denied that he made up the answers.
56. That was the case for the prosecution.
57. After the closure of the prosecution case the Accused was explained his rights. You must bear in mind that although those options were given, still the burden is on the prosecution to prove the guilt of the Accused and he need not prove his innocence. The Accused opted to give evidence and it was informed that no other witnesses will be called for the defence.
58. The Accused said that there was a fight between him and his deceased brother in 2015. According to the Accused the deceased had hit him on his fingers on the right hand with a spear. He said that he tried to save himself with his hand. He said then he went

and called his mother and nothing else happened. However, he again said that his deceased brother was lying down on the floor and he did not know why. He said the brother died at the hospital. The Accused said when he was trying to save himself the spear hit the neck of his brother.

59. In cross examination the Accused said that he acted in self defence. However, he denied that he killed his brother. The Accused admitted that the knife marked as prosecution exhibit 2 was near the deceased. He denied that it's his knife. He said that the injury was caused by the spear and not by the knife. The Accused said that the deceased was holding the spear and trying to hurt him when the deceased hit himself on the neck with the spear. The Accused said he does not know how the second injury on the back happened.

Ladies and gentleman assessors,

60. The prosecution mainly relies on the caution interview of the Accused. The stand of the prosecution is that the Accused voluntarily made the admissions in the caution interview and they are true. During the cross examination of the interviewing officer it was suggested that the answers to the questions 33, 36 and 70 were not given by the Accused. In other words, the position of the defence is that those answers were fabricated.

61. In order to determine whether you can safely rely upon the admissions made by the accused person in the caution interview, you must decide two issues.

62. Firstly, did the Accused in fact make the admissions? Having considered the evidence presented during the course of the hearing, if you are not satisfied or not sure of that the Accused has actually made the confessions in his caution interview, you must ignore the admission made in the caution interview.

63. Secondly, if you are satisfied, that the Accused has made the admission in his caution interview, then it is for you to decide whether the contents of the caution interview are truthful, and what weight you should give them as evidence.

64. Therefore, the question of whether the said admissions in the entire statement or part of it are true and what weight you can put on the admissions made in the said statement is a matter for you to decide.
65. The Accused said in his evidence that he acted in self defence. If you believe that he acted in self defence it is a complete defence for the Accused and you must find him not guilty then. The Accused does not have to prove that he acted in self defence. It is the Prosecution that must prove that the Accused was not acting in self defence.
66. You must consider the matter of self defence in the light of the situation which the Accused honestly believed, he faced. Firstly, you must consider whether the Accused honestly believed that it was necessary to use force to defend himself at all. If you are sure that he did not honestly believe that it was necessary to use force to defend himself, he cannot have been acting in self defence and you need not consider that defence any further.
67. But what if you think that the Accused did honestly believe or may honestly have believed that it was necessary to use force to defend himself, you must then decide whether the type and amount of force the Accused used was reasonable.
68. Obviously, a person who is under attack may react on the spur of the moment, and he cannot be expected to work out exactly how much force he needs to use to defend himself. On the other hand, if he goes over the top and uses force out of all proportion to the anticipated attack on him, or more force than is really necessary to defend himself, the force used would not be reasonable. So you must take into account both the nature of the attack on the Accused and what he then did.
69. If you are sure that the force the Accused used was unreasonable, then the Accused cannot have been acting in self defence. If you think that the force the Accused used was or may have been reasonable, you must find him not guilty to murder.

Ladies and gentleman assessors,

70. I have now given you the directions of law and summarized the evidence adduced in this case. The prosecution informed the court that they are relying on the element of recklessness in causing murder. However, it is a matter for you to decide whether the prosecution adduced evidence in respect of the ingredients of the offence of murder that I have discussed before. You have to consider whether the prosecution proved the ingredients which constitutes the offence of murder beyond reasonable doubt.

71. As it was mentioned before the Accused does not have to prove his innocence.

72. The offence against the Accused in this case is murder. However, you may also consider the offence of manslaughter if you believe that he did not intend to cause or was not reckless as to causing death of the deceased.

73. Your possible opinions are;

- 1) The Accused is Guilty or not guilty of murder.
- 2) If you find the Accused not guilty of murder, then alternatively you are to consider whether the Accused is guilty or not guilty of manslaughter.
- 3) If you find the Accused guilty of murder then you are not to consider the offence of manslaughter.

74. You may now retire and consider your opinions. Before you do so, may I ask the counsel of both parties whether you wish to request any redirections?

75. When you are ready with your opinions, the Court will reconvene for you to inform your opinions to court.



**Rangajeeva Wimalasena**  
**Acting Judge**