

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 93 of 2019

[CRIMINAL JURISDICTION]

STATE

V

CHRISTOPHER NARAYAN

Counsel : Ms. J. Fatiaki for State
Ms. S. Hazelman with Mr. A. Waqanivalagi for the
Accused

Hearing on : 31 March - 02 April 2020

Summing up on : 03 April 2020

SUMMING UP

Madam and gentleman assessors;

1. It is now my duty to sum up the case to you. Please remember that you should accept the directions on law that I will be giving you in this summing up and should apply those directions when you evaluate the evidence in this case in order to determine whether the accused is guilty or not guilty. You should ignore any opinion of mine on the facts of this case unless you agree with that opinion. You are judges of facts.
2. As I have told you in my opening address, your opinion should be based only on the evidence presented inside this court room. If you have heard, read or otherwise

come to know anything about this case outside this court room, you must disregard that information.

3. Evidence you should assess in this case is what the witnesses said from the witness box inside this court room, the admitted facts and the exhibits tendered. A few things you heard inside this court room are not evidence. This summing up is not evidence. Arguments raised by the lawyers for the prosecution and the defence during the proceedings, their questions and comments are not evidence. A suggestion made by a lawyer during the cross examination of a witness is not evidence unless the witness accepted that suggestion. The arguments and comments made by lawyers in their addresses are not evidence. You may take into account those arguments and comments when you evaluate the evidence only if you agree with them.
4. You must not let any external factor influence your judgment. You must not speculate about what evidence there might have been. You must approach the evidence with detachment and objectivity and should not be guided by emotion. You should put aside all feelings of sympathy for or prejudice against, the accused or the deceased. No such emotion should influence your decision.
5. You and you alone must decide what evidence you accept and what evidence you do not accept. You have seen the witnesses give evidence before this court, their behaviour when they testified and how they responded during cross-examination. Applying your day to day life experience and your common sense as representatives of the society, consider the evidence of each witness and decide how much of it you believe. You may believe all, part or none of any witness' evidence.
6. When you assess the testimony of a witness, you should bear in mind that a witness may find this court environment stressful and distracting. Witnesses have the same

weaknesses you and I may have with regard to remembering facts. Sometimes we honestly forget things or make mistakes when recalling past events.

7. In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies in his/her evidence. That is, whether the witness has not maintained the same position and has given different versions with regard to the same issue. You may also find inconsistencies when you compare the evidence given by witnesses on the same issue. This is how you should deal with any inconsistency you may come across. You should first decide whether that inconsistency is significant. That is, whether that inconsistency is fundamental to the issue you are considering. If it is, then you should consider whether there is any acceptable explanation for it. If there is an acceptable explanation for the inconsistency, you may conclude that the underlying reliability of the account is unaffected. In this regard, you may perhaps think it obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you might not expect every detail to be the same from one account to the next.
8. However, if there is no acceptable explanation for the inconsistency which you consider significant, it may lead you to question the reliability of the evidence given by the witness in question. To what extent such inconsistencies in the evidence given by a witness influence your judgment on the reliability of the account given by that witness is for you to decide.
9. Therefore, if there is an inconsistency that is significant, it might lead you to conclude that the witness is generally not to be relied upon; or, that only a part of the witness' evidence is inaccurate; or you may accept the reason the witness provided for the inconsistency and consider him/her to be reliable as a witness.
10. You may also consider the ability and the opportunity a witness had, to see, hear or perceive in any other way what the witness said in evidence. You may ask yourself

whether the evidence of a witness seem reliable when compared with other evidence you accept. These are only examples. It is up to you how you assess the evidence and what weight you give to a witness' testimony.

11. Based on the evidence you decide to accept, you may decide that certain facts are proved. You may also draw inferences based on those facts you consider as directly proved. You should decide what happened in this case, taking into account those proven facts and reasonable inferences. However, you should bear in mind that the inference you draw should be the only reasonable inference to draw from the proved facts. If there is a reasonable inference to draw against the accused as well as one in his favour based on the same set of proved facts, then you should not draw the adverse inference.
12. In this case, there are certain facts which are agreed by the prosecution and the accused. You have been given copies of those admitted facts. You should consider those facts as proven beyond reasonable doubt.
13. As a matter of law you should remember that the burden of proof always lies on the prosecution. An accused is presumed to be innocent until proven guilty. This means that it is the prosecution who should prove that an accused is guilty and the accused is not required to prove that he is innocent. The prosecution should prove the guilt of the accused beyond reasonable doubt in order for you to find him guilty. You must be sure of the accused's guilt.
14. You are not required to decide every point the lawyers in this case have raised. You should only deal with the offences the accused is charged with and matters that will enable you to decide whether or not the charges have been proved.

15. Please remember that you will not be asked to give reasons for your opinion. In forming your opinion, it is always desirable that you reach a unanimous opinion. But it is not necessary.
16. Let us now look at the Information. The Director of Public Prosecutions has charged the accused for the following offences;

FIRST COUNT

Statement of Offence

Murder: contrary to Section 237 of the Crimes Act, 2009.

Particulars of Offence

CHRISTOPHER NARAYAN on the 4th day of March 2019 at Nakasi in the Central Division murdered **JAZLEEN JASPREET KUMAR**.

SECOND COUNT

Statement of Offence

Common Assault: contrary to Section 274 of the Crimes Act, 2009.

Particulars of Offence

CHRISTOPHER NARAYAN on the 4th day of March 2019 unlawfully assaulted **LOUISA MARIA KUMAR**.

17. Though the accused is charged with two counts, you should remember to consider the evidence against each count separately. In the event you find the accused guilty of one count, you must not simply assume that the accused must be guilty of the other count as well. It is necessary that you consider whether the prosecution has proved each count separately.
18. In order to prove that an accused is guilty of an offence, the prosecution should prove all the elements of that offence beyond reasonable doubt.
19. To prove the offence of murder, the prosecution should prove the following elements beyond reasonable doubt.

- a) the accused;
 - b) engaged in a conduct;
 - c) that conduct caused the death of a person; and
 - d) the accused intended to cause the death of that person,
- or
- the accused was reckless as to causing the death of that person by the conduct.
20. The first element of the offence is concerned with the identity of the person who committed the offence. The prosecution should prove beyond reasonable doubt that it was the accused who committed the offence and no one else.
21. "Engage in a conduct" means –
- (a) do an act; or
 - (b) omit to perform an act.
22. However the conduct should be a product of the will of the accused. In order to prove the second element, the prosecution has to prove beyond reasonable doubt that the act of the accused in question or the omission of the accused to perform the act in question was deliberate and not accidental.
23. Further, you should also remember that the act of the accused need not be the sole or principal cause, but the act should substantially contribute to the death. Therefore, if you are satisfied beyond reasonable doubt that the accused's conduct substantially contributed to the death of the deceased, that is sufficient to satisfy the third element above.
24. With regard to the fourth element which concerns the state of mind of the accused, the prosecution should prove beyond reasonable doubt either, 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 forth element. It is not possible to have direct evidence regarding a person'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 an accused from the facts and circumstances you would consider as proved.

25. In order for you 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.
26. 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 the accused had that intention, you should then consider whether the accused was reckless as to causing the death of the deceased. The accused was reckless with respect of causing the death of the deceased, if;
 - a) The accused was aware of a substantial risk that the death will occur due to his conduct; and
 - b) Having regard to the circumstances known to the accused, it was unjustifiable for him to take the risk.
27. What you have to consider with regard to this particular state of mind is whether the accused did foresee or realise that death of the deceased 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. 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.

Evidence

28. Now let us look at the evidence. Please remember that I will only refer to evidence which I consider important to explain the case and the applicable legal principles to you. If I do not refer to evidence which you consider important, you should still consider that evidence and give it such weight you may think fit.
29. The prosecution led the evidence of four witnesses. At the end of the prosecution case you heard me explain several options to the accused. The accused had those options because he does not have to prove anything. The burden of proving an accused's guilt beyond reasonable doubt remains on the prosecution at all times. The accused chose to give evidence on oath and called one witness.
30. At the outset, given the admitted facts and the evidence led in this case, you may find that there is no dispute over the following facts;
 - a) The deceased was at the flat Lot 17, Koroba Road, Nakasi on 04/03/19.
 - b) That evening the deceased was alive and PW2, the accused and PW1's daughter were at that flat.
 - c) The deceased was taken out of the flat around 3.00am on 05/03/19 and by that time she had passed away.
31. We will first look at the third element of the first count above. It is not disputed that the deceased died on 05/03/19. What caused the death of the deceased or what was the cause of death. The fourth prosecution witness ("PW4") is the doctor who conducted the post mortem examination of the deceased.

32. PW4 said that she graduated in 2009 from Fiji School of Medicine with bachelor of medicine and bachelor of surgery (MBBS). She obtained a postgraduate diploma in pathology from the College of Medicine at the Fiji National University in 2014. She had served in the Forensic Pathology Unit for 8 years and during that time she had performed around 800 autopsies.
33. According to PW4 the cause of death of the deceased was massive *haemoperitoneum*, which in simple terms is the accumulation of blood in the abdomen. This was mainly due to the bleeding as a result of the injury to the liver. She said that bleeding into the chest cavity due to the injury to the lungs which caused by the fracture of the ribs were contributing conditions. She said that the most of the bleeding was due to the injury to the liver and not seeking medical attention. In her opinion, the time taken for the deceased to succumb to the injuries should have been less than 12 hours.
34. She said that she observed multiple rib fractures. Fractures were seen on the left side and the right side of the rib cage and also on the back. According to her, these fractures could have been caused by blunt force trauma to the sides and to the back. She clarified when questioned by the court that force should have been applied on both sides to cause the injuries on the sides. She explained that blunt force trauma could have been from a motor vehicle accident, a fall or could have been due to assault and that is a punch or a kick to the area. So, according to PW4, if the injuries to the ribs were caused by an assault, there should have been at least one assault each on each side of the body (i.e. on the sides of the chest) and one assault on the back, to cause those injuries. That is, at least three blows on the ribs.
35. She also said that the liver is located on the right side of the body (abdomen) and the injury she noted was on the right lobe of the liver which is the largest part of the

liver. This injury on the liver is significant because according to PW4, the massive collection of the blood in the abdomen which was the cause of death was mainly due to the bleeding caused by the injury to the liver. In her opinion it would have taken about 6 to 12 hours for the amount of blood noted in the abdomen to be collected.

36. PW4 also gave evidence of another pertinent injury she observed on the right lower jaw. There was a fracture in the right lower jaw of the deceased. She said this could also have been caused by a blunt force trauma on that area. She also noted an opening of the soft tissue in the mouth around the jaw area which was surrounded by pus or slough. This was suggestive of an infection. She said during cross-examination that the buildup of the slough and the pus in the mouth could have started within 24 hours after the injury. When questioned by the court she said that given the extent of pus noted in this case, that could not have formed within a period of 6 hours from the time of injury.
37. In her opinion the injury to the lower jaw could be three days or less than three days old. She also said that the deceased could have had problems eating food like chicken and rice. She confirmed that she did not find any food particles that suggested the deceased had eaten chicken and rice. But she had observed that there was a dull white, grainy, viscous fluid which was a thick fluid in the stomach and in her opinion the deceased would have eaten something very soft or fluid. PW4 also agreed that the deceased would have shown signs of immense pain given the extent of the injury on the jaw.
38. PW4 had also noted injuries on the mouth of the deceased in her opinion were recent. But there was no evidence given on how those injuries could have been caused.

39. You should remember a few things when you consider the evidence of PW4. PW4 gave her medical opinion based on what she observed and her experience. You are not bound to accept that evidence. You will need to evaluate that evidence for its strengths and weaknesses, if any, just as you would with the evidence of any other witness. It is a matter for you to give whatever weight you consider appropriate with regard to the observations made and the opinion given by the fourth prosecution witness. Evaluating her evidence will therefore include a consideration of her expertise, her findings and the quality of the analysis which supports her opinion.
40. Therefore if you accept the opinion given by PW4, the deceased had died as a result of injuries on her ribs, mainly on the right side of the rib cage, that was caused by blunt force trauma which could be in the form of an assault. It would have taken about 06 to 12 hours for the amount of blood found in the abdomen to be collected and it would have taken less than 12 hours for the deceased to succumb to the injuries. Accordingly you may conclude that the injury that caused the deceased's death could have been inflicted 6 to 12 hours before her death. What was the time of death?
41. According to the third prosecution witness ("PW3"), the doctor who examined the deceased at the Valelevu Health Centre around 5.00am on 05/03/19 when she examined the deceased, the body had entered rigor mortis, which occurs 2 to 3 hours after the death. Accordingly, if you accept the evidence of PW3 you may conclude that the time of death would have been around 2.00am on 05/03/19.
42. Now the question is who caused the above injuries? According to the prosecution, it was the accused or it was the accused's conduct that caused the injuries, which caused the death of the deceased.

43. In this regard, the evidence of the first prosecution witness (“PW1”) and the second prosecution witness (“PW2”) is relevant.
44. PW1, Buna Tikoenvuli was a neighbour who lived in the adjoining flat. She said in her evidence that on 04/03/19 around 9.00pm she saw the accused punching PW2 and then punching ‘the little girl’. She said that the deceased first punched the little girl on the chin where that little girl sat down after that punch. The girl then stood up and she saw the accused punch her for the second time on the left side of the ribs. After that punch the girl fell down backwards and became motionless.
45. PW1 agreed during cross-examination that there were two girls in the flat the accused was residing. She did not know their names and her evidence did not clearly reveal that it was the deceased she saw being assaulted by the accused or the other daughter of PW2.
46. The defence challenged PW1’s evidence during cross-examination and suggested that she could not have seen inside of the accused’s flat. According to the defence there were objects obstructing her view given the place where she was standing, she could not have seen the inside of the flat. However, PW1 affirmed that she saw what was happening inside the accused’s flat through the gaps of the wooden fence as seen on PE2B. It is pertinent to note that the place PW1 pointed out as the place she was standing was not in front of the wooden fence, but on the side.
47. PW1 said that she went out of her flat when she heard the accused and PW2 arguing and that she watched what was happening in that flat while she stood leaning onto the tin next to the wooden structure seen on PE2B. She said that PW2 and the accused used to always fight and that PW2 always screamed. She did not say whether she always used to watch whenever PW2 and the accused argued or

whether there was any special reason for her to go out of her house around 9.00pm to watch them fight on 04/03/19. She also said that when she saw the child become motionless, she went to her house and slept. She said that she did not inform the police about the assault she witnessed because her husband had told her not to bring the neighbours' issues to his house or otherwise he would do something to her.

48. PW1 agreed during cross-examination that she and her husband did not get along with the accused and that her husband and the accused had had an argument sometimes in 2018 after the accused yelled when she and the husband were arguing in the early hours of the morning. She also agreed with the suggestions that the police officers had explained to her the cause of death of the deceased and also had described the injuries the deceased had received before her police statement was recorded. However, she denied the suggestion that she gave her statement to that effect, meaning, in accordance with what she was informed by the police regarding the injuries sustained by the deceased.

49. PW2, Louisa Maria Kumar, said in her evidence that on 04/03/19 the accused got angry during an argument over a bracelet she received from a friend whom she met at the driveway around 6.00pm the same day and he punched her first on her hand, then on her jaw and then on her ribs. She did not mention the time this incident happened, but according to her evidence it should be after 6.00pm. After the accused punched her ribs the deceased came towards her crying. The accused then got more angry because the deceased was crying really loud and he punched the deceased on the chin first and then on the ribs. The deceased fell down and stopped crying. She then put the deceased on the settee and told the accused to rub the deceased's back. The deceased was breathing fast and her eyes were closed. But after the accused rubbed the deceased, she started breathing normally. She said the deceased did not respond when she asked her whether she wants water but she gave some anyway.

50. She said that after a while the accused told her to go to the nearby shop to buy coke and cigarettes. At that point she told the accused to call for a transport to take the deceased to the hospital, but the accused told her that the deceased will be okay and didn't call anyone because no one was available. Before she went to the shop, she fed the deceased some chicken and rice. Then gave her ice cream and then some water. The deceased was normal when she was feeding her but did not talk to her. The breathing was normal. When she came back from the shop she noticed that the deceased was 'breathing heavily'. She asked the accused what happened to the deceased and the accused told her that he does not know as he was with the younger daughter in the bedroom. She again asked the accused to massage the deceased's back and the accused did the same. After that she gave some water to the deceased but the deceased kept her eyes closed and did not answer her questions. The deceased was still trying to breath. Later when she came back to the deceased after giving the younger daughter her milk, the deceased looked normal. But still the deceased did not respond.
51. She then went to sleep with the younger daughter in the room while the deceased was in the sitting room. The accused was also in the sitting room preparing to watch a movie when she went to the room and she told the accused to keep an eye on the deceased. She could remember the accused waking her up around 3.00am and telling her that something is wrong with the deceased and that he thinks that the deceased is dead. She did not say anything, looked at the accused in an angry way and fell off to sleep again. The accused woke her up again after 2 minutes and told her again that he thinks that the deceased had passed away. Then she woke up and went to check on the deceased after visiting the washroom. She said that the deceased was facing upwards lying on a pillow initially, but when she went to the sitting room the deceased was facing the settee. The deceased was not responding and her body was cold. She said the deceased was not breathing.

52. She said that she started crying and told the accused to call a transport to take the deceased to the hospital but the accused told her that they can't take her to the hospital and they can't let the police know. She told the accused to call his mother and eventually the accused spoke to the mother. Thereafter the accused's stepfather came with the brother. While they were waiting for the stepfather to arrive, the accused told her to bathe the deceased and to change the clothes and then they bathed the deceased and she changed the clothes. They reached the hospital around 5.00am and a female doctor examined the deceased. Thereafter the deceased's body was sent to the mortuary.
53. PW2 said in her evidence that the deceased's biological father is the accused though the birth certificate of the deceased does not indicate the name of the father. The deceased was born on 09/10/16. She said that she did not provide the name of the accused when she registered the deceased's birth because at that time the accused and her were separated because she found out when the deceased was 5 months old, that the accused was cheating on her. The accused is not the biological father of her younger daughter Zaira whose date of birth is 21/3/18. The two of them started dating again between the months of August and September in 2017. In June 2018 she moved in to the flat at Lot 17, Korobu Road Nakasi to live with the accused again. She only took the younger daughter Zaira with her and the deceased was looked after by her family. She said that in 2017 when the deceased was 7 months old the deceased was kept at a Day Care Centre while she was in Nadi and she asked her father to pick the deceased and look after her. The deceased came back to her in November 2018 after Diwali.
54. PW2 said that the accused was attached to Zaira and he was like a father to her but he was never close to the deceased and no love was shown to her (deceased). She

said that the accused would always scold the deceased and smack her for being naughty.

55. The accused denied assaulting the deceased and PW2 on 04/03/19. In his evidence he said that he had an argument with PW2 on 28/02/19 because she failed to show the deceased to a doctor on the same day regarding the bleeding the deceased had in her mouth. He said that as a result of this argument he left the house and came the following day evening to take some clothes. He took the clothes and went to a friend's house. He came back on 03/03/19 which was a Sunday. He was sick on this day as he had pus coming out of one ear. He had some food and then he slept. He could remember PW2 waking him up to have dinner. The next day 04/03/19, he was still not feeling well. So he had his breakfast and went to sleep. PW2 woke him up to have dinner which was chicken and rice. The food was brought to the bed and because it was hot, he kept the plate on the bed and smoked a cigarette. The deceased was also in the bedroom by this time and he noted that she was quiet and not making too much movements. When he inquired from PW2, first she said nothing was wrong but later PW2 told him that she hit the deceased with a steel rod on the legs three times because the deceased broke a mug inside the toilet pan and also soaked a diaper in a bucket of water inside the room.
56. He said that he told PW2 that it was a stupid idea to hit the deceased with a rod. He then asked the deceased whether she was okay and whether she is in pain. The deceased did not respond. Later the deceased was taken to the sitting room by PW2 and the deceased kissed on his cheek before leaving the room. He said that his friend Avinesh who was sharing the flat with him was also there in the house at that time and he gave half of the cigarette he was smoking after he had his dinner to Avinesh. He went to sleep around 8.30pm. He woke up around 3.00am because Zaira was crying. Thereafter he went out of the house to meet one of his friends near the driveway. When he came back to the house he noticed that the deceased was not

breathing. He woke PW2 up and told her that the deceased is not breathing. PW2 fell off to sleep again. He again woke her up and then PW2 went to the sitting room to check the deceased. Later the deceased was taken to the hospital. The accused said that before that PW2 bathed the deceased and changed her clothes.

57. According to the accused, PW2 did not want to take the deceased back after her father picked the deceased from the Day Care Centre on her request and PW2's family finally managed to give the deceased back to PW2 when they were able to locate her due to a Facebook post she published to sell one of accused's phones. The accused points out that he cared for the deceased but PW2 did not.
58. The second witness for the defence was Avinesh Kumar. He said that he came to the flat at Lot 17, Koroba Road, Nakasi on 04/03/19 around 7.30pm and he was there till 10.00am. He said that nothing happened at the flat that night.
59. As I pointed out, given the admitted facts and the evidence led in this case, there were three individuals with the deceased on 04/03/19 in the evening. One person was the Zaira. Could she have caused the injuries on the deceased? It is not highly unlikely. That leaves PW2 and the accused as the two individuals who were capable of causing the injuries in question on the deceased.
60. The prosecution says that it was the accused's conduct that caused the death of the deceased and that is, by punching the deceased on the left rib and on the chin. The accused denies this allegation and says that nothing happened that night after he woke up around 8.00pm.
61. Given the evidence led in this case you have to decide whether you are satisfied beyond reasonable doubt that the accused engaged in a conduct on 04/03/19 which

caused the death of the deceased. If you are not satisfied beyond reasonable doubt, you have to find the accused not guilty of the first count.

62. If you are satisfied beyond reasonable doubt that the accused engaged in a conduct on 04/03/19 which caused the death of the deceased then you have to consider whether the accused either intended to cause the death of the deceased or was reckless as to causing the death of the deceased. If you are satisfied that this element is also proved beyond reasonable doubt then you should find the accused guilty of the first count.
63. In the event you are satisfied beyond reasonable doubt that the accused did engage in a conduct and that conduct caused the death of the deceased, but you are not satisfied beyond reasonable doubt that the accused either intended to cause the death of the deceased or was reckless as to causing the death of the deceased; you should then consider whether the accused is guilty of the lesser offence of manslaughter.
64. The offence of manslaughter has the same first three elements of murder. But it is an offence having a lesser culpability than murder. The distinction between the two offences is found in the fourth element which concerns the state of mind of the accused. When it comes to the offence of manslaughter, what is required to be proved is that the accused intended or was reckless as to the risk, that the conduct will cause serious harm.
65. With regard to the second count, you have to consider whether the prosecution has proved beyond reasonable doubt that the accused unlawfully assaulted PW2.
66. Unlawfully means without a lawful excuse and assault is the use of unlawful force.

67. The defence points out that there are inconsistencies in the evidence presented by the prosecution. I have explained to you how to deal with inconsistencies. Please follow those directions when you deal with any inconsistency you may come across when you assess the evidence led in this case.
68. I must again remind you that even though an accused person gives evidence, he does not assume any burden of proving his case. The burden of proving the case against an accused beyond reasonable doubt remains on the prosecution throughout. An accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.
69. Generally, an accused would give an innocent explanation and one of the three situations given below would then arise in respect of each count;
- (i) You may believe his explanation and, if you believe him, then your opinion must be that the accused is 'not guilty'.
 - (ii) Without necessarily believing him you may think, 'well what he says might be true'. If that is so, it means that there is reasonable doubt in your mind and therefore, again your opinion must be 'not guilty'.
 - (iii) The third possibility is that you reject his evidence. But if you disbelieve him, or his witness that itself does not make him guilty. The situation would then be the same as if he had not given any evidence at all. You should still consider whether the prosecution has proved all the elements beyond reasonable doubt.

If you are sure that the prosecution has proved all the elements, then your proper opinion would be that the accused is 'guilty' of the offence.

70. Any re-directions?

71. Madam and Gentlemen Assessors, that is my summing up. Now you may retire and deliberate together and may form your individual opinion on the charges against the accused. When you have reached your separate opinion you will come back to court and you will be asked to state your separate opinion.

72. Your opinion should be as follows;


First count (murder) – guilty or not guilty

If not guilty

Manslaughter – guilty or not guilty

Second count (common assault) – guilty or not guilty




Vincent S. Perera
JUDGE

Solicitors;

**Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused**