

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

CRIMINAL CASE NO.: HAC 42 OF 2019

BETWEEN : STATE

AND : VILIAME RATUBUKETE

Counsel : Ms D Rao for the State
Ms S Devi and Ms M Tuiloma for the Accused

Dates of Hearing : 13 – 14, 17 – 20 and 24 - 25 August 2020

Date of Summing Up: 27 August 2020

SUMMING UP

- [1] Gentlemen Assessors, it is now my duty to sum up this case to you. You will then be required to deliberate together and each of you must give a separate opinion whether the Accused is Guilty or Not Guilty of the charge. I will then pronounce the judgment of the Court and your opinions will carry great weight with me in deciding that judgment.
- [2] In coming to your opinions you must apply the law as I explain it to you. It is my duty to direct you on the law. Those directions on the law must be followed by you.
- [3] However, you decide the facts of the case. As I speak to you, you may feel that I have formed some view on a particular question of fact. If you disagree, then please feel completely free to disregard my version. All matters of fact are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject. You decide what facts are proved and what inferences you properly draw from those facts. You then apply the law as I explain it to you and decide whether your opinion is guilty or not guilty.

- [4] You must come to that decision solely upon the evidence you have heard from the witnesses, which includes the exhibits that have been produced. If you have previously heard anything about this case or the people involved, through the media or some other source – you must ignore that completely. If you have read, heard or come across any media publication about the proceedings during the trial or for that matter any rulings that I have made, you must ignore them completely.
- [5] The law requires that the Accused is to be judged solely upon the evidence sworn to in this Court. In considering that evidence you are expected to apply your common sense and everyday knowledge of human nature and people. You must please put aside any feelings of prejudice or sympathy which may occur to you one way or the other and arrive at your opinions calmly and dispassionately.
- [6] The charge of murder is brought by the Office of the Director of Public Prosecutions. The onus of proving the charge rests on the prosecution from beginning to end. The law is that the prosecution must prove the essential ingredients of the charge beyond reasonable doubt before there can be a finding of guilty. This means that before you express an opinion that the Accused is guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt about the guilt of the Accused, then you must express an opinion of not guilty. It is only when you are satisfied so that you are sure of guilt, that you may express an opinion of guilty.
- [7] The Accused has chosen to give evidence. The Accused was not obliged to give evidence. He does not have to prove his innocence. He does not have to prove anything. However, he has chosen to give evidence. You must take what he has said into account when considering the issues of fact which you have to determine. It is for you to decide whether you believe the evidence of the Accused or whether it may be true. If the account given by the Accused is or may be true, then the Accused must be acquitted of the charge. But even if you entirely reject the account given by the Accused, that would not relieve the prosecution of its burden of making you sure by evidence of the Accused's guilt in respect of the charge which you have to consider.
- [8] The Information contains two counts. In the first count the Accused is charged with murder. In the second count the Accused is charged with theft. The Accused has

pleaded guilty to the charge of theft in your presence. You do not have to decide the charge of theft. You must not reason that the Accused is guilty of murder because he has pleaded guilty to theft. Each charge must be considered separately. Your opinions on the charge of murder will depend on the view you take on the evidence led at the trial.

[9] During the trial you heard that apart from the Accused there were two other suspects in this case but they were not charged with any offence. You must not speculate the reasons why the other suspects were not charged. The discretion to charge or not to charge someone with an offence lies with the Director of Public Prosecutions. In this case, the Director of Public Prosecutions has charged the Accused. You must focus your deliberations solely on the Accused and the evidence led in the trial against or for the Accused without speculating the reasons why other suspects have not been charged.

[10] The charge before you is that the Accused on the 28th July 2019 at Labasa murdered Sanjesh Kumar. To prove murder, the prosecution must prove the following three ingredients beyond reasonable doubt:

1. That the Accused, Viliame Ratubukete engaged in a conduct.
2. That this conduct caused the death of the deceased, Sanjesh Kumar.
3. That the Accused intended to cause death or was reckless as to causing the death by this conduct.

[11] In this case all three elements are in dispute. I will now explain these three elements to you.

[12] The first issue is whether the Accused engaged in a conduct. To engage in a conduct means to do an act voluntarily, that is, of one's own free will. The prosecution alleges that the Accused engaged in the conduct of inflicting physical violence on the deceased by striking his head with a piece of timber (P4) and stomping his head, face and neck region with his safety boot. If that is what occurred in this case, then the physical element has been proven. It is for you to decide whether the Accused of his

own free will engaged in the acts of inflicting physical violence as alleged by the prosecution.

- [13] The second issue is whether the alleged conduct of the Accused caused the death of Sanjesh Kumar. The law requires a link between the conduct and the death. Usually the conduct causes some specific injury to the victim and that particular injury causes the victim's death. Usually the conduct causes an injury which is the sole cause of death. But it is sufficient if it is an operating or substantial cause of death. The prosecution alleges that Sanjesh Kumar died of bleeding in his brain as a result of the head injuries sustained by the blow to his head. If you feel sure that the victim died of the injury to his brain as a result of the physical violence inflicted to his head on 28 July 2019 then this element is proven. That is a matter for you to decide.
- [14] The third issue is whether the Accused intended to cause death or was reckless as to causing the death of Sanjesh Kumar by his conduct. In this case the prosecution relies upon both the intention and recklessness as the fault elements of murder. The prosecution is not required to prove both fault elements. The prosecution is required to prove either one of the fault elements, that is, intention or recklessness.
- [15] A person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events. So whether the Accused intended to cause death of the victim you must feel sure that the Accused meant to bring it about or was aware that death will occur in the ordinary course of events. You decide intent by considering what the Accused did or did not do and the effect of his actions or inaction and by what he said or did not say. You should look at his actions before, at the time of and after the alleged conduct. All these things may shed light on his intention at the critical time.
- [16] If you feel unsure whether the Accused intended to cause death of the victim then go on to consider whether the Accused was reckless. A person is reckless with respect to a result if he is aware of a substantial risk that the result will occur and having regard to the circumstances known to him it is unjustifiable to take the risk. You must be sure that when the Accused engaged in the alleged conduct, he was aware of a substantial risk that Sanjesh Kumar will die and having regard to the circumstances

known to the Accused he was unjustified to take the risk. The question whether taking a risk is unjustifiable is one of fact for you to consider.

- [17] That completes my explanation to you on the crime of murder.
- [18] The evidence relied upon by the prosecution in this case is direct and circumstantial evidence.
- [19] The direct evidence is the admissions of the Accused made to police following his arrest on the evening of 28 July 2019. The admissions are in a video exhibited and marked P1. The transcripts of the contents of the video are marked P1(a). The English translation of the transcripts are marked P1(b). The prosecution relies upon the admissions of the Accused to prove the charge against him. The Accused says that his admissions are false. He says he gave a false story to police to stop them from assaulting and threatening him while he was in police custody.
- [20] In deciding whether you can safely rely upon the admissions, you must decide two issues. Firstly, you must consider whether the Accused in fact made the admissions contained in the video (P1)? The Accused does not dispute that he made the admissions. If you are sure he made the admissions or gave the answers contained in the video, then you must consider whether the admissions or the answers were true? In addressing whether the admissions or answers were true decide whether they were, or may have been, made or given as a result of something said or done to the Accused which was likely to render them unreliable. If you conclude that the admissions or the answers were or may have been obtained by police as a result of assault or threats of assault or breach of his constitutional rights (such as the right to remain silent or the right to counsel) then you must disregard the admissions and the answers. If, however, you are sure that the Accused made the admissions and that they were not obtained by using force or threats or breach of constitutional rights, you must nonetheless decide whether you are sure that the admissions are true. If, for whatever reason, you are not sure that the admissions are true, you must disregard them. If on the other hand, you are sure that they are true, you may rely on them.

- [21] If you reject the admissions as untrue, then you should consider the circumstantial evidence. Circumstantial evidence is when you are asked to piece the story together from witnesses who did not actually see a crime committed, but give evidence of other circumstances and events that may bring you to a sufficiently certain conclusion regarding the commission of the alleged crime.
- [22] A common example of circumstantial evidence is DNA evidence. Suppose a person's DNA is found on an object at the scene of a crime. It could be inferred that the person whose DNA is found at the scene of a crime had been present at that place. The inference could be drawn even though there is no direct evidence that the person was seen there.
- [23] On some occasions evidence like DNA may be the only circumstance relied upon by the prosecution as proof of guilt. However, it is not unusual to find in a criminal case that evidence is given of a number of facts and circumstances. One witness proves one thing and another proves another thing. None of those things alone may be sufficient to establish guilt but, taken together, one circumstance building upon the other, they may lead to the conclusion that the Accused is guilty of the crime.
- [24] That is, what the prosecution is asking you to do in this case. The prosecution has directed your attention to the evidence of the victim's DNA on the Accused's safety boot, the DNA of the Accused's on the victim's right finger nails and on the steering wheel of the vehicle and his subsequent conduct after leaving the scene of the incident. The prosecution submits that the only logical inference to be drawn from these facts is the guilt of the Accused.
- [25] The defence submits that there are other logical explanations for the DNA evidence found on the Accused or the victim because the Accused does not dispute being present at the scene of the crime or coming in contact with the victim when he hit him once on the forehead and leaving the scene of the crime in the victim's vehicle. The defence says there is no link between the Accused and the alleged murder weapon (P4) as his DNA was not found on the timber that the prosecution says was used to cause the fatal injury to the deceased. The defence says no inference of guilt can be drawn from the circumstantial evidence.

- [26] You must first consider all the evidence and decide what facts have been proved. From those facts you are entitled to draw proper inferences. An inference is a logical deduction from facts that have been proved. It must not be mere speculation or guesswork. It is not sufficient that the proved circumstances are merely consistent with the Accused having committed the crime. To find him guilty you must be satisfied so as to feel sure that an inference of guilt is the only rational conclusion to be drawn from the combined effect of all the facts proved. It must be an inference that satisfies you beyond reasonable doubt that the Accused committed the crime. If the inference to be drawn from the circumstantial evidence falls short of that standard then your opinion must be not guilty.
- [27] On the basis of these legal principles that I have explained to you, you must consider the evidence in this case and decide whether the charge of murder has been proved by the evidence led by the prosecution. There are some comments that I must make on a few items of evidence.
- [28] You have been provided with a copy of the agreed facts and documents. You must treat the admitted facts as accurate and true when you consider the charge. It is not in dispute that in a formal caution interview on 29 July 2019 by Cpl Tudru the Accused elected to remain silent and not to make any statement. That was perfectly his right and you must not draw any adverse inference against the Accused from that refusal.
- [29] I will now remind you of the prosecution and defence cases. In doing this it would be tedious and impractical for me to go through the evidence of every witness in detail and repeat every submission made by counsel. I will summarize the salient features. If I do not mention a particular witness, or a particular piece of evidence or a particular submission of counsel that does not mean it is unimportant. You should consider and evaluate all the evidence and all the submissions in coming to your decision in this case.
- [30] It is not in dispute that the Accused is a 26 year old farmer of Seniwaloa, Waiqele, Labasa. The deceased, Sanjesh Kumar was 33 years of age and was a taxi driver. He drove a taxi registration number LT5997.

- [31] It is not in dispute that on the afternoon of 27 July 2019 the Accused accompanied his two friends, Janeet Lal (aka Sonu) and Samu Boa (aka Samu) to a kava shop at Naseakula. They drank kava and played billiard until they came to a nightclub in town where they drank alcohol. From the nightclub they went to a place called Bouma near the hospital and joined another group and drank homebrew. They returned to town in the early hours of the morning at around 4am. A girl by the name Tavaita Suvirara who was with the other group at Bouma accompanied the three men to town. They walked all the way to the Y-Corner junction and boarded the victim's taxi. The victim was directed to a farmhouse at Nakama belonging to Baram Deo.
- [32] The point of contention is when the four passengers arrived at Nakama. The prosecution case is that the true version of the events that followed is contained in the statements made by the Accused to the police in a video (P1).
- [33] It is not in dispute that the Accused was arrested from his home at Seniwaloa on the night of 28 July 2019 between 9pm-10pm and brought to Labasa Police Station. The arrest team comprised of Cpl Tudru, Inspector Drauna, DC Manoa and PC Simeli. The arrest was carried out by Cpl Tudru and assisted by Inspector Drauna. Both of these witnesses have told us that the Accused was accorded his rights including the right to remain silent and also informed of the reasons for his arrest. DC Manoa placed the handcuffed on the Accused and PC Simeli drove the police vehicle that transported the Accused from the point of arrest to the police station. Under cross examination these police officers denied assaulting or threatening the Accused either at the point of arrest or during their journey inside the vehicle.
- [34] DC Manoa told the court that while he was escorting the Accused at the police station, the Accused voluntarily engaged in a conversation with him and started offering information about the alleged incident. DC Manoa knew the Accused by his nickname Bruce and both are from the same community in Waiqele. They spoke in iTaukei language. On instructions from his senior, DC Manoa decided to video record the conversation. The Accused was escorted to the crime office. The conversation was video recorded by Sergeant Lal using his smart phone. Woman Sergeant Salote was present during the conversation to transcribe the conversation in writing. According to

DC Manoa he advised the Accused of his right to remain silent along the following line:

...everything you will say to us eh, and everyone you will say to us we will give it as evidence to court, e?

[35] When the Accused responded by nodding his head, DC Manoa said:

You will have to tell us what happened, we will not force you to say anything, and everything you say will be written and can be given as evidence. Do you understand?

[36] The Accused responded by nodding his head. DC Manoa said that the Accused continued with the conversation despite the warning that he will not be forced to say anything and that everything he say will be written and can be given as evidence.

[37] In the video conversation the Accused told the police that when they arrived at Nakama, other passengers got off the vehicle a bit far down from the place where the incident occurred while he continued to the farmhouse. He said when they arrived at the farmhouse, they got off the vehicle and when the taxi driver flashed the light from his phone on his face he punched the driver on the jaw and he fell down. He said that when the driver fell down he kicked his rib cage multiple times and hit his back with a timber and then stomped his head with his safety boot.

[38] When DC Manoa asked the Accused whether he wanted to enter the farmhouse, the Accused nodded and said:

“I took the lead and he (referring to the driver) followed. When he turned to face and go towards the vehicle I than punched him. Then fell...on the steps.”

[39] When DC Manoa asked – After that? The Accused answered:

“He then sat up, I repeatedly kicked him, stomped his head, hit his back with the timber, when he laid on the grass I got in the taxi then I drove away the taxi”.

[40] The Accused said that the victim was still alive when he left the scene. He said he used an off cut timber to hit the victim on the upper shoulder towards the back of the neck. When asked whether he wanted to kill the victim, he nodded his head. When asked who took off the victim’s shoe, the Accused answered:

“No, when I punched him on top of the house, it got stuck on the timber then he fell down there.

[41] Thereafter, the Accused spoke about what he did after he left the scene in the victim’s taxi. He said he discarded the victim’s wallet after using the money in the wallet and that he discarded the taxi meter at a place where he poured everything. He said that he had used the money to buy grog and groceries. He said only Sonu knew the victim will be punched.

[42] After the video recording of the conversation, the Accused was locked up in the cell. The following morning the Accused complained to Cpl Tudru of body pains when Cpl Tudru met him to conduct a formal caution interview. By that time, the Accused had met a lawyer from legal aid who brought to the attention of the police that the Accused had complained about police assault during the time he was commuted from his home to the police station following his arrest.

[43] Cpl Tudru’s evidence is that he escorted the Accused to Labasa Hospital for an examination after recording the complaint made to him by the Accused in the medical form. Dr Vocea carried out the medical examination of the Accused on 29 July 2019 at around 12.30pm. She noted that the Accused informed her that he woke up with chest pain. The doctor also noted that the Accused was fully conscious and alert. The doctor cannot recall whether Cpl Tudru was present inside the examination room when the Accused relayed the history to her but she said she had the police officer present during the examination because she is a female and the Accused was a male suspect. The doctor said that upon physical examination of the Accused she did not

find any sign of injuries or history of trauma. She said that if the Accused was assaulted the injuries would have been visible as the examination took place within 24 hours from the time of arrest.

[44] The next witness was Sgt. Gasio. Sgt Gasio is a crime scene examiner based at the Fiji Police Force. He attended the scene where the body of the deceased was found near a farmhouse at Seniwaloa in the morning of 28 July 2019 and gave evidence of his observations of the scene using the photographs (P3) taken of the scene. Apart from the crime scene photographs he also tendered the photographs of the scene where the victim's taxi was found abandoned at Bocalevu (P3) and during the forensic examination of the vehicle at the police station (P3) and the photographs taken during the post mortem examination (P5).

[45] The prosecution relies upon the photographs to show that the Accused's admissions are consistent with how the body of the victim was found outside the farmhouse with visible facial and head injuries and with one of his shoes out and lying on the wooden veranda of the house. The photographs taken during the post mortem are relied upon by the prosecution to show the nature and gravity of the external and internal injuries sustained by the victim. Some of the photos taken at the scene and during the post mortem examination are fairly graphic. You must look at them dispassionately and objectively. They were taken after procedures necessary for the forensic examination and post mortem, were performed. They are intended only to show you the injuries.

[46] The next witness was the pathologist, Dr James Kalougivaki. The post mortem report of the deceased is an agreed document (P9). The findings of the pathologist are contained in the report and are not in dispute. The victim had sustained extensive facial injuries including a crooked nose and contusive injuries on his left upper arm, right forearm and right shoulder. There was also a contusive laceration on scalp completely exposing the skull. The fatal injuries were the head injuries. The victim died of bleeding in his brain. Dr James said that the injuries were caused by blunt force trauma to the face and the head such as stomping, kicking with a safety boot such as P7 or using a timber such as P4. He said that severe amount of force is required to cause the external injuries found on the victim and that extreme amount of force is required to cause the internal injuries found on the victim.

[47] The final witness for the prosecution was Ms Naomi Tuitoga, a senior Forensic Scientific Officer with the Fiji Police Force. She carried out the DNA tests in this case. The findings of the DNA tests are contained in a report compiled by Ms Tuitoga. The DNA report is an agreed document and is marked P10 and is at Tab 5 of the Admitted Facts. The findings contained in the report are not in dispute. Some relevant findings are:

DNA obtained from the timber (P4) matched with the DNA profile of the victim, Sanjesh Kumar.

Swabs taken from the back seat, passenger seat and the steering wheel of the vehicle LT5997 matched with the DNA profiles of Sanjesh Kumar, the Accused, Samu Boa and Janeet Lal.

DNA found on the right fingernail clipping of Sanjesh Kumar matched with the DNA profiles of Sanjesh Kumar, the Accused, Samu Boa and Janeet Lal.

DNA found on the safety boots (P7) of the Accused matched with the DNA profiles of Sanjesh Kumar, the Accused, Samu Boa and Janeet Lal.

[48] Ms Tuitoga said that DNA can be transferred to an object like the timber, safety boot or the steering wheel though direct physical contact with those objects or through a person who had physical contact with other people and when he physically contacts an object the DNA of the people he had been in contact with is transferred to those objects. She said that it is possible that the DNA of the victim found on the timber P4 may have been from splatters of his blood.

[49] That is a summary of the evidence of the prosecution witnesses.

[50] I will now summarize the evidence of the Accused. The Accused in his evidence told the court that on the afternoon of 27 July 2019 he accompanied his friends Janeet Lal

and Samu Boa from Seniwaloa to a shop in Naseakula to drink kava and play billiard. After consuming kava, they came down to Phoenix Nightclub in town and drank alcohol till the midnight. From the nightclub they went to Bouma and joined another group there and drank homebrew till around 4 am the next morning.

[51] From Bouma they walked down to the Y-Corner junction where Janeet Lal flagged down the victim's taxi. They boarded the taxi and Janeet Lal directed the victim to take them to Naduna and then to Sarava. The Accused said that Janeet Lal sat on the front passenger seat while he sat at the back seat with Samu Boa and the girl who accompanied them from Bouma. They took the Naduna route.

[52] When they were about to reach Sarava they stopped at one shop for the Accused to relieve himself. When the Accused got off the girl who had accompanied them also got off and walked away. When the Accused got back into the vehicle, Janeet Lal directed the victim to drive them to the farmhouse where the alleged incident occurred.

[53] When they arrived at the farmhouse the victim drove to the front of the house and stopped. The Accused said that when the vehicle came to a stop, Janeet Lal removed and threw the taxi meter from his side of the window to the other side of the vehicle. The Accused said that at that point the victim got out of his vehicle to pick up the taxi meter. The Accused said that Janeet Lal jumped on the driver's side and got out of the vehicle. The Accused said that Janeet Lal went and punched the back of the victim's head at the spot where the taxi meter was thrown. The Accused said that Samu Boa jumped out of the vehicle and joined Janeet Lal in assaulting the victim. The Accused said that Samu Boa punched the victim's left side of the face while Janeet Lal held the victim's collar. The victim fell down and Janeet Lal and Samu Boa continued punching him. The Accused said he saw Samu Boa kick the left ribs of the victim when he was sort of like crawling.

[54] The Accused said that when he saw the assaults, he got out of the taxi and went in front of the vehicle. He said that when he came to the front of the vehicle the victim crawled towards him and at the same time Janeet Lal shouted out to him to punch the victim. The Accused said that at first he refused to punch the victim because he did

not know why his friends were assaulting him but when Janeet Lal shouted again to punch the victim, the Accused said that he punched the victim once on his forehead using his right hand.

[55] The Accused said that after he threw the punch at the victim, the victim sat back and Janeet Lal and Samu Boa continued assaulting him on the face and nose and kicked his chest and ribs. The Accused said Janeet Lal was wearing a black flip-flop while Samu Boa was wearing a canvass. The Accused said that he was wearing safety boots. The Accused said that he was standing and watching the assault. The Accused said that when he saw the victim was bleeding he was terrified and shocked. He got back into the taxi and sat there. When Samu Boa questioned him what he was doing the Accused drove away the taxi leaving the victim, Janeet Lal and Samu Boa behind. The Accused said that when he left the scene the victim was alive.

[56] From Sarava the Accused drove the vehicle to Qalewaqa and then to Wailevu to buy groceries. He took the victim's phone and wallet containing money that was left inside the taxi. After buying groceries he went to his residence at Seniwaloa to drop the groceries at around 12 noon. After dropping the groceries at his home he changed his clothes and shoes and drove the taxi back to Qalewaqa and spent some time with his parents and siblings. From Qalewaqa he drove the taxi to Bocalevu where the vehicle went off the road and into a drain. He abandoned the vehicle at Bocalevu and went to Tabucola. From Tabucola he went to Vakasigani where he had a nap at a bus shelter. After the nap he went back to his home at Seniwaloa, ate some food and went to sleep.

[57] The Accused said that he woke up when he was kicked on the rib side by a police officer. He said that the police officers did not tell him the reasons for his arrest or his right to remain silent. He said that the police officers handcuffed him and pushed him inside the police vehicle. He said that the police officers physically assaulted him and also threatened to assault him with a branch of a tree if he did not admit to the allegation that he had killed the victim. The Accused said that he made up a story admitting to the allegation to stop the police from assaulting or threatening him inside the vehicle.

- [58] The Accused said that when the police recorded his admissions at the police station on the night of his arrest, he was not properly advised of his right to remain silent or the consequences of not remaining silent. He said that he feared of being assaulted again by police if he did not admit the allegation. He said that he made false admissions to police out of fear of being assaulted or threatened by them.
- [59] The Accused said that the next morning when he was visited by a legal aid lawyer he complained to him of being threatened and assaulted by police. He said that he did not complain to police about the assaults or threats because he was worried that they might not take him to the hospital. He said that during his medical examination he only complained of chest and ribs pain to the doctor.
- [60] Finally, the Accused offered an explanation for not reporting the assaults on the victim by Janeet Lal and Samu Boa. He said that he did not report the assaults on the victim by Janeet Lal and Samu Boa because he thought that they might implicate him to the offence.
- [61] That is a summary of the evidence of the Accused.
- [62] Gentlemen assessors, you have been presented with two different versions of facts. The prosecution version of the alleged incident is that the Accused acted alone by assaulting the victim on the head with a timber and when the victim fell to the ground as a result of that assault, the Accused stomped and kicked the victim's head, face and neck with his safety boot. The prosecution says that the victim died of brain injuries caused by the assault on his head by the Accused. The prosecution says the Accused intended to kill the victim by his conduct. The prosecution says that the admissions of the Accused made to police are true. The prosecution says the forensic examination of the scene of the crime as shown in the photographs and the evidence of the injuries sustained by the victim as revealed in his post mortem report support the admissions of the Accused.
- [63] The defence version is that the admissions made by the Accused to police are not true, and therefore, you should not rely upon the admissions to convict the Accused for the murder of Sanjesh Kumar. The defence says that the Accused made up false

admissions because he feared police brutality. The defence says that the forensic evidence supports the Accused's evidence that Janeet Lal and Samu Boa assaulted the victim. The defence says that the Accused does not know how and who caused the fatal head injury to the victim. The defence says that the prosecution has not proved guilt of the Accused beyond reasonable doubt and therefore the Accused should be acquitted of the charge.

[64] You will have to evaluate all the evidence when you consider the charge against the Accused has been proved. As I said earlier, it is your job to assess the credibility of the witnesses. You decide who is truthful and to be believed.

[65] If you accept the admissions made by the Accused to police are true, then you may rely upon them. After evaluating all the evidence, if you feel sure that the Accused assaulted Sanjesh Kumar with a piece of timber and stomped and kicked his head with his safety boot using severe or extreme force, causing Sanjesh Kumar's death and at that time he intended to cause the death or he was aware of a substantial risk that the death of Sanjesh Kumar will occur by his conduct and having regard to the circumstances known to him he was unjustified to take the risk, then the proper opinion would be guilty of murder. But if you feel unsure of any of the three elements of murder as I explained to you or if you have a reasonable doubt about the guilt of the Accused, then you must find him not guilty of murder. Your possible opinions are guilty or not guilty.

[66] Gentlemen assessors, that concludes my summing up of the law and the evidence in this particular trial.

[67] We have now reached the stage where you must retire to your room to deliberate together and form your individual opinions on the charge against the Accused. You may have with you any of the exhibits that you would like to consider.

[68] When you have reached your separate decisions you will all come back into Court and you will each be asked to state your separate opinion.

[69] Would you please now retire to consider your opinions? When you have made your decisions would you please advise the court clerk and the Court will reconvene to receive your opinions?

[70] Thank you.



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Hon. Mr Justice Daniel Goundar

Solicitors:

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