

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

Date of Judgment : 27 August 2020

JUDGMENT

- [1] The Accused is charged with one count of murder. The charge alleges that the Accused on 28 July 2019 murdered Sanjesh Kumar (the victim). The three assessors gave their separate opinions after I summed up the case to them. The majority opinion is that the Accused is guilty of murder. The minority opinion is not guilty.
- [2] I direct myself in accordance with the law and evidence set out in my summing up. For the Accused to be guilty of murder the prosecution must prove beyond reasonable doubt that the Accused engaged in a conduct that caused the death of the victim and that the Accused intended to cause death or was reckless as to causing the death of the victim by his conduct. The Accused does not have to prove anything.
- [3] It is not in dispute that the victim's body was found with visible facial and head injuries outside a farmhouse at Seniwaloa in the early hours of 28 July 2019. The victim was a taxi driver. The post mortem examination revealed that the victim died of brain injuries as a result of blunt force trauma to his head caused by use of extreme force.

- [4] The prosecution case is depended substantially on the truth of the admissions that the Accused made to police in a conversation he had with DC Manoa at the police station. The admissions were video recorded using a smart phone and the video of the conversation was admitted in evidence as P1.
- [5] The defence case is that the Accused made false admissions because he was assaulted and threatened by the police officers who arrested him. The Accused was arrested from his home at Seniwaloa on the night of 28 July 2018 by a team of police officers. DC Manoa was part of that team. He knew the Accused by his nickname 'Bruce' and they are from the same community in Waiqele. He said that when they arrived at the police station, the Accused voluntarily engaged in a conversation with him, revealing his involvement to the alleged incident. DC Manoa said that the Accused continued with the conversation after he cautioned him.
- [6] The medical evidence supports the evidence of the police officers that they did not assault or threatened the Accused at any stage following his arrest. The Accused was medically examined by an independent doctor at the Labasa Hospital within 15 hours from the time of arrest. Dr Voce's evidence is that the Accused was alert and conscious and that there was no sign of any injury or trauma on the Accused's body. I believe Dr Voce's evidence that she ensured that the Accused was free to speak to her despite a police officer being present in the examination room.
- [7] The admissions contained in the video constitute a full confession. The Accused admitted that he had used an off cut timber to hit the victim on the upper shoulder towards the back of the neck. He admitted stomping and kicking the victim's head, face and neck region with his safety boot while the victim was on the ground. He offered an explanation for his conduct. He said Janeet Lal told him to assault the victim because they did not have money to pay for their taxi fare. In the video he nodded his head when asked whether he intended to kill the victim.
- [8] In his evidence, the Accused diverted from the version that he had told the police. His evidence on oath is that he told a false story to police to stop police brutality. His evidence is that his friends, Janeet Lal and Samu Boa assaulted the victim when they all arrived at the farmhouse. His evidence is that he only punched the victim's

forehead once when Janeet Lal shouted at him to punch the victim. His evidence is that he was shocked and terrified to see what Janeet Lal and Samu Boa did to the victim. He got back on the taxi and drove away leaving the victim, Janeet Lal and Samu Boa at the scene. After leaving the scene he drove the victim's taxi to various locations in Qelewaqa, Seniwaloa and Bocalevu. He also brought groceries using the money he took out from the victim's wallet that was kept in the taxi.

- [9] The version of the events given by the Accused in his evidence does not ring true. In his evidence he implicates his two friends Janeet Lal and Samu Boa who were suspects but not charged with any offence, but in his admissions, which he says is made up story, he exonerated his two friends saying that they got off the taxi a bit far down from the place where the incident occurred. In his evidence, he said that he does not know how the injury to the victim's head was caused, but in his admissions, he said that he struck the victim behind the neck with a timber and the victim fell down with one of his shoes stuck on the wooden verandah of the farmhouse.
- [10] In his evidence, the Accused said that he was terrified and shocked to witness the assault on the victim by Janeet Lal and Samu Boa to justify his reasons for leaving the scene on the victim's taxi without Janeet Lal and Samu Boa. However, his conduct after leaving the scene shows he was not terrified and shocked by what he said was a shocking experience for him. The Accused went on a driving and shopping spree using the victim's taxi and money.
- [11] In his admissions, the Accused said he stomped and kicked the victim's head, face and neck area with his safety boot after he knocked him down with a piece of timber. The Accused may not have told the entire truth to the police, but his admissions are largely consistent with the evidence of the forensic examination of the scene of the crime, the DNA evidence and the medical evidence of the injuries sustained by the victim. I feel sure that the admissions are true and not false.
- [12] I feel sure that the Accused engaged in a conduct by inflicting physical violence on the victim on the early hours of 28 July 2019 at Seniwaloa, Waiqele, Labasa. I feel sure based on the medical evidence that extreme force was used to inflict head and

brain injuries to the victim that caused his death. I feel sure that the Accused intended to cause the death of the victim by his conduct.

[13] The prosecution has proved the guilt of the Accused beyond reasonable doubt. The Accused is convicted of the murder of Sanjesh Kumar as charged.



A handwritten signature in blue ink, appearing to be "DG", written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

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