

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 224 OF 2020S

STATE

VS

ARVIND CHAND RAI

Counsels : Mr. M. Vosawale and Ms. S. Tivao for State
Mr. J. Reddy and Mr. R. Singh for Accused
Hearings : 29, 30 June, 1, 4, 5, 6, 7, 8 and 12 July 2022.
Judgment : 22 July, 2022.

JUDGMENT

1. On 29 June 2022, in the presence of his counsels, the following information was read over and explained to the accused:

“Count 1

Statement of Offence

MURDER: *Contrary to section 237 of the Crimes Act 2009.*

Particulars of Offence

ARVIND CHAND RAI on the 21st day of July 2020, at Lami in the Central Division, murdered FEIYAN CHEN.

Count 2

Statement of Offence

ARSON: *Contrary to section 362 (a) of the Crimes Act 2009.*

Particulars of Offence

ARVIND CHAND RAI on the 21st day of July 2020, at Lami in the Central Division wilfully and unlawfully set fire to the dwelling house of **FEIYAN CHEN** at Lot 3, Fenton Street, Lami.”

2. He said, he understood the charges and pleaded not guilty to the two counts. The two questions which therefore need to be answered in this case, were as follows:
 - (i) On count no. 1, did the accused murder Ms. Feiyan Chen on 21 July 2020, at Lami in the Central Division?
 - (ii) On count no. 2, did the accused wilfully and unlawfully set fire to the dwelling house of Ms. Feiyan Chen, at Lot 3 Fenton Street, Lami in the Central Division?

3. As a matter of law, the burden to prove the accused’s guilt beyond reasonable doubt rest on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. There is no obligation on the accused to prove his innocence. He is presumed innocent until proven guilty beyond reasonable doubt in a court of law.

4. On count no. 1, for the accused to be found guilty of “murder”, the prosecution must prove beyond reasonable doubt, the following elements:
 - (i) that the accused did a wilful act; and
 - (ii) that wilful act caused the death of the deceased; and
 - (iii) at the time of the wilful act, the accused either;
 - (a) intended to cause the death of the deceased; or
 - (b) is reckless as to causing the death of the deceased.

5. On the first element of murder, a “wilful act” is a voluntary act by the accused. It is a feeling of strong determination to do something that he wanted to do. It is what he wanted to happen in a particular situation. This is the physical element of the offence of murder.
6. On the second element of murder, “the wilful act must cause the death of the deceased”. This simply meant that the accused’s wilful act, substantially contributed to the death of the deceased. The accused’s wilful act must be a substantial contributor to the death of the deceased. In other words, the accused’s wilful act was a substantial cause of the deceased’s death.
7. The third element of murder concerned its fault element. There are two fault elements for murder, as described in paragraphs 4 (iii) (a) and 4 (iii) (b). It would appear that the prosecution is running its case on both fault elements. That is permissible. They need only satisfy one fault element, to prove the charge of murder. They are alleging that when the accused assaulted Ms. Fieyan Chen, he intended to cause her death, or in the alternative, was reckless in causing her death.
8. On the first fault element, the prosecution must make the court sure that when the accused did “the wilful act”, he “intended to cause the death of the deceased”. You cannot cut open the accused’s head, to find out what his intentions were, at the time he allegedly assaulted the deceased to death. But the court can examine his conduct at the time, that is, what he said and did, and the surrounding circumstances, to infer whether or not he intended to kill the deceased, when he allegedly assaulted her. If the court finds that he intended to kill the deceased, at the material time, that would be sufficient to support the third element of murder, that is, an intention to kill.

9. As for the second fault element of murder, the prosecution must make the court sure that when the accused did “the wilful act”, he “was reckless as to causing the death of the deceased”. A person is reckless with respect to a result, if he was aware of a substantial risk that the result will occur and having regard to the circumstances known to him, it was unjustifiable to take the risk. The question whether taking a risk was unjustifiable is one of fact for the court. Was the accused aware of a substantial risk that the victim would die if he assaulted her? If he was aware of the substantial risk that the deceased would die if he assaulted her, and he nevertheless took the risk, he was reckless. If otherwise, he was not reckless.
10. If the court was sure that all the elements of murder, as expressed above, are satisfied by the prosecution beyond a reasonable doubt, then the court will find the accused guilty as charged. If the court finds that some elements of murder, as described above, are not satisfied beyond a reasonable doubt by the prosecution, then the court will find the accused not guilty as charged. It is a matter entirely for the court.
11. On Count no. 2, for the accused to be found guilty of “arson”, the prosecution must prove beyond reasonable doubt, the following elements:
 - (i) the accused
 - (ii) wilfully and unlawfully
 - (iii) set fire to
 - (iv) any building (whether completed or not)
12. It must be shown that the accused wilfully set fire to the building. In other words, it must be shown by the prosecution, beyond reasonable doubt that, the accused intended to set fire to the building i.e. he deliberately set fire to the building. His intention could be inferred from his actions, words, conduct and the surrounding

circumstances. In addition to the above, it must be proven by the prosecution, beyond reasonable doubt that, the accused had no legal justification or excuse, to setting fire to the building.

13. After the accused's not guilty plea to the two counts in the information were taken, the prosecution opened their case and called the following 17 witnesses, between 29 June and 12 July 2022:

- (i) PW 1, A/Cpl 5345 Serupepeli Rovia;
- (ii) PW 2, Mr. Sai Kin Yee;
- (iii) PW 3, Ms. Mere Vaganalau;
- (iv) PW 4, Mr. Sitiveni Navana;
- (v) PW 5, Mr. Eremodo White;
- (vi) PW 6, Mr. Harvey Chan;
- (vii) PW 7, Ms. Kolora Veronika;
- (viii) PW 8, Mr. Mohitesh Kumar;
- (ix) PW 9, Mr. Isoa Tavite;
- (x) PW 10, Sgt 3205, Patricia Liga;
- (xi) PW 11, Mr. Petero Nodrakoro;
- (xii) PW 12, Mr. Nitesh Kumar;
- (xiii) PW 13, Ms. Roshika Sharma;
- (xiv) PW 14, Mr. Praneel Kumar;
- (xv) PW 15, Sgt. 3008 Asivorosi Serukalou;
- (xvi) PW 16, Acting Assistant Superintendent of Police Mr. Mosese Nailumu;
- (xvii) PW 17, Sgt 4928 Lasarusa Saucoko.

14. The following exhibits, contained in the "Bundle of Exhibited Documents", were tendered by the prosecution, either by consent of the parties, or by the prosecution's witnesses mentioned:

List of Exhibits

Exhibit Number

Exhibits 1-6 tendered by consent

- | | |
|---|-----------|
| 1. Photographic Booklet dated 22/07/20 | PE 1 |
| 2. Photographic Booklet dated 22/06/22 | PE 2 |
| 3. Rough Sketch of Alleged Murder and Fire scene at Kadavu Kava Shop, Lami Town dated 22/07/20 | PE 3 |
| 4. Fine Sketch of Alleged Murder and Fire scene at Kadavu Kava Shop, Lami Town dated 28/07/20 | PE 4 |
| 5. Rough Sketch of Alleged Suspects House at Lot 199 Omkar, Narere dated 27/7/20 | PE 5 |
| 6. Fine Sketch of Alleged Suspects House at Lot 199 Omkar, Narere dated 28/07/20 | PE 6 |
| 7. Fiji Police Force – Crime Scene Fire Investigation Report
<i>by tended by 3205 Patricia [PW10]</i> | PE 7 |
| 8. Fire Investigation Report for Kadavu Kava Building dated
21/7/20 <i>tended by Petero Nodrakoro [PW11]</i> | PE 8 |
| 9. Footage of Mr. Mobile Rups Nakasi tended by consent | PE 9 |
| 10. Statement of Doctor Praneel <i>tended by Dr. Praneel Kumar [PW14]</i> | PE 10 |
| 11. Post Mortem Report of Feiyan Chen dated 20/06/22
<i>tended by Dr. Praneel Kumar [PW14]</i> | PE 11 |
| 12. Copy of Information to obtain search warrant
<i>dated 27/7/20 tended by Sgt Asivorosi Serukalou [PW15]</i> | PE 12 'a' |
| 13. Copy of Search Warrant dated 27/7/20
<i>tended by Sgt Asivorosi Serukalou [PW15]</i> | PE 12 'b' |
| 14. Copy of Search List of Lot 199 Omkar Road, Narere
dated 27/7/20 tended by Sgt Asivorosi Serukalou [PW15] | PE 13 |

15. *The following items are tended by Sgt Asivorosi Serukalou [PW15]*
- a. Alcatel Black Mobile Phone PE 14 'a'
 - b. Leagoo Brown Mobile Phone PE 14 'b'
 - c. A71 Samsung Mobile Phone with brown cover PE 14 'c'
 - d. Fijian Currency in cash \$5 x 13 and \$10 x 15 PE 14 'd'
 - e. Receipt of Vodafone Fiji Ltd Rups complex PE 14 'e'
 - f. Black Ear piece in A71 samsung Box PE 14 'f'
 - g. Mr. Rai's driving license PE 14 'g'
 - h. Orange Notebook PE 14 'h'
 - i. Apple Ipad PE 14 'i'
16. Copy of Search List dated 28/7/20 of Omkar Road Narere PE 15
17. *The following items are tended by consent*
- a. 51 x \$10 FJD notes PE 16 'a'
 - b. 1 x black purse with 2 x vehicle keys PE 16 'b'
 - c. 1 x blue file containing documentation PE 16 'c'
 - d. Invoice from Jitend Reddy Lawyers PE 16 'd'
 - e. Brown Bag containing receipts PE 16 'e'
 - f. 1 x pink and red invoice book PE 16 'f'
 - g. Clear plastic containing four shells PE 16 'g'
 - h. 1 Black Safe PE 16 'h'
 - i. Cotton Bud Zip Plastic bag containing various overseas money PE 16 'k'
18. Copy of Search List of Westpac Bank Level 4, dated 24/7/20
tended by consent PE 17
19. Copy of Westpac Personal New Account Opening
tended by consent PE 18
20. Copy of Arvind Chand Rai Account Transaction List
dated 01/01/20 *tended by consent* PE 19

15. At the end of the prosecution's case, the defence made a submission that the accused had no case to answer. Their grounds were as follows: On count no. 1, no prosecution witness saw the accused murder the deceased at the material time. This was so despite PW4 allegedly seeing the accused strangling the deceased, at the material time. They said, death by strangulation was not the cause of death. On count no. 2, no state witness saw the accused set fire to the deceased's building, at the material time. They said, the only evidence the State called to prove their case was placing the accused at the crime scene, at the material time, after which the deceased's dwelling house was seen catching fire, and the deceased's body found in the house thereafter.
16. The prosecution submitted there was a case to answer. They submitted that, when looking at their case in its totality, there was strong circumstantial evidence that the accused allegedly murdered the deceased and set fire to her house, at the material time. The court carefully considered the parties' submissions and carefully considered the whole evidence put before it. The court ruled that there was a prima facie case against the accused on both counts. The standard options available to the accused was put to him. He chose not to make an opening. He chose to exercise his constitutional right to remain silent. He chose not to call any witness. Nothing negative whatsoever should be imputed to the accused for choosing to remain silent. That was his constitutional right. The burden was always on the prosecution to prove his guilt beyond a reasonable doubt, throughout the trial. So the answers to the two questions posed in paragraph 2 hereof, will be decided on a careful analysis of the prosecution's case.
17. It was true in this case that no state witness actually saw the accused perform an act that caused the deceased's death, at the material time. It was also true that no state witness actually saw the accused setting fire to the deceased's dwelling house, at the material time. In their closing submission, the prosecution

appeared to be relying on what is often called “circumstantial evidence”, to prove its case against the accused beyond a reasonable doubt. Both parties, in their closing submissions, had referred the court to the various types of evidence received in this case, which they say advanced their version of events. Sometimes a trial judge is asked to find some facts proved by direct evidence. For example, if there is reliable evidence from a witness who actually saw an accused commit a crime; if there is a video recording of the incident which plainly demonstrates his guilt; or if there is reliable evidence of the accused himself having admitted it; these would all be good examples of direct evidence against him.

18. On the other hand, it is often the case that direct evidence of a crime is not available, and the prosecution relies upon circumstantial evidence to prove guilt. That simply means that the prosecution is relying upon evidence of various circumstances relating to the crime and the accused which they say when taken together, will lead to the sure conclusion that it was the accused who committed the crime. It is not necessary for the evidence to provide an answer to all the questions raised in a case. The court may think it would be an unusual case indeed in which the court can say “we now know everything there is to know about this case.” But the evidence must lead the court to the sure conclusion that the charge which the accused faces is proved against him.
19. Circumstantial evidence can be powerful evidence but it is important that the court examined it with care, and consider whether the evidence upon which the prosecution relies in proof of its case is reliable and whether it does prove guilt. Furthermore, before convicting on circumstantial evidence, the court should consider whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the prosecution’s case. Finally, the court should be careful to distinguish between arriving at conclusions based on reliable circumstantial evidence, and mere speculation. Speculating in

a case amounts to no more than guessing, or making up theories without good evidence to support them and neither the prosecution, the defence nor the court should do that.

20. The court will now examine “the evidence of various circumstances relating to the crime and the accused which the prosecution say when taken together, will lead to the sure conclusion that it was the accused who committed the crime.”
21. The first question that needed to be asked was how Mr. Arvind Chand Rai (accused) came to know Mr. Sai Kin Yee (PW2) and his wife, Ms. Feiyan Chen (the deceased). PW2 said, he had known the accused since 2015. He said, he used to ask him for cost of food, fuel etc. and he used to give him \$20 to \$30 per day for the above. PW2 said, in 2015, the accused asked him to do some maintenance work at his factory in Lami. PW2 said, the accused held himself out to be a carpenter. PW2 said, he gave him some work, for example, fixing the roof, some plumbing jobs and minor electrical work. PW2 said, in 2019, he gave the accused a job to repair his factory roof. He started work and PW2 said, he gave the accused \$2,000 to buy building material. PW2 said, he didn't complete the work at his factory and didn't return with the building materials. PW2 said, he vanished with his \$2,000.
22. PW2 said, in July 2020, the accused messaged him asking for work. PW2 said, the accused told him he had no job. PW2 said, he felt sorry for the accused. PW2 said, the accused offered to do a job for him to repay the \$2,000 he took from him in 2019. PW2 said, he wanted to recover the \$2,000 he took in 2019. PW2 said, the accused was thus given the job to repair their leaking roof at the top flat at 3 Fenton Street, Lami. PW2 said, the accused was working at their above house from 17, 18, 19, 20 and 21 July 2020. PW2 said, he told his wife (the deceased) not to give the accused any money to buy building materials, because in 2019, he never returned with any building material when given

\$2,000. PW2 said, he and his wife resided at the top flat in 3 Fenton Street, Lami. The bottom flat was their shop, Kadavu Kava Shop. PW2 said, he and his wife ran Sai Yee Foods Industries Ltd. PW2 said, they buy root crops etc. from local farmers, process the same and export them overseas. PW2 said, they also buy sea food, process the same and export them overseas. PW2 said, their business was successful.

23. PW2 said, they often withdraw more than \$100,000 per week from their bank to finance their business operations. The money was often broken down into bundles of \$5, \$10, \$20, \$50 and \$100 bills to pay for wages, business expenses and business operations. PW2 said, the above cash was kept in their top flat in one of the rooms. PW2 said, on or about 17 or 18 July 2020, his wife withdrew \$100,000 cash from their Westpac Bank Account. PW2 said, between 17 and 21 July 2020, the accused was visiting their top flat residence to repair the roof. PW2 said, he was in Australia at the time, visiting his young children, while his wife (the deceased) was staying alone at home, and managing the business.
24. We will now retrace what the witnesses said occurred on 21 July 2020, the day of the alleged murder and arson. Ms. Mere Vaganalau (PW3) was doing her afternoon shift at Kadavu Kava shop. She starts at 3 pm and finishes at 10.30 pm. She packs the stalls on the shelf, counts the stocks, counts the sales and cleans the shop. PW3 said, she mans the shop downstairs and PW2 and his wife reside upstairs. PW3 said, there is only one entrance to the shop and the flat upstairs, and that's through the door shown in Photo 2 and 3 of Prosecution Exhibit No. 1. PW3 said, she arrived at the shop on 21 July 2020 at 2.30pm. She started at 3 pm. PW3 said, the accused came to her three times that afternoon to ask for Ms, Chen (the deceased). The first time was between 4 pm to 5 pm, then at about 6 pm and then at around 7 pm. PW3 said, she talked to him. She said, he was a few footsteps away. She said, she observed him for a

few seconds. She said, there was sunlight and lights around at the time. She said she saw the accused clearly and there was no impediment when she saw him. PW3 identified the accused in the dock as the person she saw that day.

25. PW3 said, at about 9 pm, she said the deceased and the accused came to the shop. PW3 said, the deceased and the accused went past her, to the back door, that is, the door in Photo 20, 21, 22 and 23 of Prosecution Exhibit No. 1. She said, she observed the two for 1 minute. The shop lights and lights from around, lighted the place up. The two were an armslength from her. The back door was the only entrance to the top flat. She said her view of them was not obstructed. PW3 said, she saw the deceased and the accused walked up the stairs shown in Photo 24. PW3 said, that was the last time she saw Ms. Chen alive. PW3 said, after 3 to 4 minutes, she heard someone screaming and calling for help. The person was calling her Chinese name "Mia!" PW3 said, the deceased used to call her "Mia". PW3 said, she went to the back door. The scream suddenly stopped. PW3 said, she returned to the shop counter to count her sale. At about 9.06 pm, PW3 said, she saw the accused walked out the back door, towards her to the front of the shop and went out the front door. PW3 said, from the two's arrival to the accused's departure, it took roughly about 10 minutes. PW3 said, the private drivers outside began calling her to tell her that smoke was coming out of the window of the top flat. Later, she went out the shop and she verified the same. PW3 said, she later called Ms. Chen through the phone, but it was diverted. PW3 said, she later called the drivers. They later broke down the back door and two policemen went up to the top flat. PW3 said she later went home after been permitted by the Factory Manager. PW3 identified the accused in the dock as the person she saw on 21 July 2020.

26. Mr. Sitiveni Navana (PW4) was outside the Kadavu Kava Shop on 21 July 2020 after 7.30 pm. PW4 said, after 8.30 pm, he saw Ms. Chen (deceased) arrived at

the Kadavu Kava Shop. PW4 said, he saw an Indian man approached the deceased. PW4 said, he saw them talking. PW4 said, the Indian man had an angry face and was talking angrily at the Chinese lady. PW4 said, the Chinese lady was also speaking angrily at him. PW4 said, he saw the two walked into the Kadavu Kava Shop. PW4 said, he was standing on the flower bed brick wall (1 foot 9 inches), as shown in Photo 17 at Prosecution Exhibit No. 1. PW4 said, he was 5 feet 9 inches tall. PW4 said, after 5 minutes when the Chinese lady and the Indian man went into Kadavu Kava Shop, he heard the sound of someone gasping for air from the top flat. PW4 said, the sound went on for 30 to 40 seconds. PW4 said, he looked into the window shown in Photo 2, on the right. PW4 said, he saw the Indian man standing behind the Chinese lady, facing her back, with an arm wrapped around her neck. PW4 said, the man was strangling her and pulling her into the room, away from the window. PW4 said, it was getting close to 9 pm. There were bright lights in the room. PW4 said, he observed them for about 2 to 3 minutes. There was no impediment in his observation. PW4 said, he later saw the Indian man come out of the shop and went towards his car. PW4 said, he remembered the accused's face, given what he did that day. PW4 identified the accused in the dock.

27. While PW4 was giving evidence, the accused and his lawyer agreed, as a matter of fact, that the accused on 21 July 2020, went into Kadavu Kava Shop, with Ms. Feiyan Chen (the deceased) and that they went to the upstairs flat, and later the accused came downstairs, and went out of the shop. As to the time of going in and out of the shop, the parties agreed that such was to be settled by trial.
28. The next most important witness to consider was Mr. Isoa Tavite (PW9). He is a firefighter by profession and is based at Suva Fire Station. PW9 said, on 21 July 2020, at about 9 pm, a fire call from Lami was received at the Suva Fire Station. PW9 said, 5 of them went in a fire truck to Kadavu Kava shop. When they

arrived, smoke was coming from the top flat. They couldn't enter from the front, and then went to the back and entered the top flat. They had their firefighting gear. PW9 said, the top flat was engulfed in thick smoke. They retrieved a body in the room and took it outside. PW9 said, they saw it was a Chinese lady and he applied CPR to her, to no avail. PW9 said, he could not detect any pulse on her. PW9 said, they later took her to CWM Hospital. Mr. Petero Nodrakoro (PW11) was another firefighter who gave evidence in this case. He was the Fire Investigation Officer. He investigated the fire at Kadavu Kava shop and filed his Fire Report as Prosecution Exhibit No. 8. PW11 said, the fire occurred in an area where the fire should not have started. PW11 said, someone started the fire. He said, the fire was started among packets of cigarettes in a carton.

29. We next consider Doctor Praneel Kumar's (PW14) evidence. PW14 did the post mortem of Ms. Feiyan Chen on 23 July 2020 at CWM Hospital. He had done more than 1,000 post mortem examinations. He recorded his findings in a post mortem report, which he tendered in evidence as Prosecution Exhibit No. 11. In murder cases, although the dead cannot tell you how they met their death – they will tell you how they met their deaths through their injuries, as discovered in a post mortem. PW14 said, Ms. Feiyan Chen died as a result of the swelling of her brain and the bleeding of the same. PW14 said, blunt force trauma caused the swelling of the brain. High blood pressure could also cause swelling of the brain. PW14 said, the deceased had a lot of external injuries to the head and neck area. PW14 referred to Photos 91 to 104 of Prosecution Exhibit No. 1, to show the signs of external injuries. PW14 said, the above was suggestive of blunt force trauma to the head. There was also internal bleeding of the brain, said PW14. Blunt force trauma caused the internal bleeding of the brain. PW14 said, the assault to the head and neck area appears to be the blunt force trauma that caused the swelling of the brain and internal bleeding of the brain. PW14 said, the blunt force trauma must be substantial.

30. We now examine the behaviour of the accused after 21 July 2020. On 24 July 2020, 3 days after the alleged murder of Ms. Feiyan Chen and the alleged arson at her house, the accused was spotted purchasing a Samsung A71 mobile phone, worth \$1,299 at the Vodafone shop at the “Rups Complex” at Nakasi. According to Ms. Roshika Sharma (PW13), she served a customer on 24 July 2020 at about 4.25 pm. PW13 said, the customer wanted to purchase a Samsung A71 mobile phone, worth \$1,299.00. PW13 said, the customer also purchased a sim card. PW13 said, the customer identified himself as Mr. Arvind Chand Rai via his voter registration card. PW13 showed us a video recording of the purchase via their CCTV footage, which was tendered in evidence as Prosecution Exhibit No. 9. The customer was observed hiding his face from the CCTV camera when he was doing the purchase. PW13 said, the customer paid via 2 bundles of new \$5 notes, packed into \$500 per bundle. PW13 said, the balance of \$300, was paid in fresh \$5 notes. PW13 said, this was the first time a customer had paid in fresh \$5 bank notes. PW13 said, such bundles were often used by businesses, in providing changes in their sales. Note that PW2 said, his wife Ms. Feiyan Chen withdrew \$100,000 from their Westpac Bank account on or about 17 or 18 July 2020, and the same were broken down into \$5, \$10, \$20, \$50 and \$100 bills, to assist in their business transactions. Note that PW2 said, the above money were kept in one of the rooms in their top flat at 3 Fenton Street, Lami, and that the accused had access to the top flat between 17 to 21 July 2020, to repair their leaking roof. The question that may arise were as follows. How come Mr. Rai had access to the above \$5 bills in such huge quantities? Did he take it from the deceased’s top flat? If so, when?
31. On 27 July 2020, the police via a search warrant searched the accused’s house at Lot 199 Omkar Road, Narere. The police found stacks of \$5 and \$10 bills in his house, including foreign currencies. Sergeant 3008 Asivorosi Serukalou (PW15) said, he led a police team to search Mr. Rai’s house on 27 July 2020.

This was 6 days after the alleged murder of Ms. Feiyan Chen and the alleged arson against her residence at 3 Fenton Street, Lami. PW15 said, his police team seized ten items from Mr. Rai's house, and the same were itemized in the Search List he prepared on 27 July 2020. The Search List was tendered in evidence as Prosecution Exhibit No. 13. Of particular importance were item 4 [13 x \$5 notes], item 5 [15 x \$10 notes] and item 6 [Receipt of Vodafone Fiji Limited – Rups Complex – Samsung A71]. The question that arose were: How come Mr. Rai had possession of these \$5 and \$10 notes, which according to PW2 (the deceased's husband) were missing from their top flat at 3 Fenton Street, after 21 July 2020 (the date of the alleged murder and arson), when Mr. Rai had access to their flat between 17 to 21 July 2020, when he was repairing their leaking roof? Furthermore, item 6 [Receipt of Vodafone Fiji Limited – Rups Complex – Samsung A71] appear to confirm that it was Mr. Rai, who was seen in the CCTV footage [Prosecution Exhibit No. 9], purchasing the Samsung A71 phone from Ms. Roskiha Sharma (PW13) on 24 July 2020, with multiple new \$5 notes. The question arose again; How come Mr. Rai had so many \$5 notes in his possession, when PW2 (the deceased's husband) said, that \$100,000 in small bank notes of \$5, \$10, \$20, \$50 and \$100 bills were missing from their top flat at 3 Fenton Street, Lami, the crime scene?

32. On 8 July 2022, towards the end of the trial, the parties agreed to tender into evidence by consent, a Search List dated 28 July 2020, as Prosecution Exhibit No. 15. The Search List recorded 9 items seized from Mr. Rai's residence at Lot 199 Omkar Rd, Narere on 28 July 2020. Of particular importance was item no. 1 which listed 51 x \$10 bank notes found in Mr. Rai's house. Also of importance was item no. 9, which listed a variety of foreign currencies found in Mr. Rai's house. The following questions does arise. How come 51 x \$10 notes and the foreign currencies were found in Mr. Rai's house, when PW2 (the deceased's husband) said \$100,000 in small \$5, \$10, \$20, \$50 and \$100 bills, were missing

from their top flat at 3 Fenton Street, Lami (the crime scene), when Mr. Rai had access to the same between 17 and 21 July 2020, when he was repairing their leaking roof?

33. What do the above circumstantial evidence tell you? In my view, the following were reasonable inferences of fact that could be inferred from the above circumstantial evidence. Mr. Arvind Chand Rai befriended Mr. Sai Kin Yee (PW2), the deceased's husband in 2015. At first, Mr. Rai often asked PW2 for financial assistance to buy food, fuel etc. PW2 felt sorry for him and offered him casual jobs doing maintenance work at his factory and home in Lami. In 2019, PW2 offered Mr. Rai some work at his factory in Lami. PW2 gave him \$2,000 to buy building materials. Mr. Rai vanished with the \$2,000, without completing the work. In 2020, Mr. Rai messaged PW2 for some work to repay the above \$2,000. PW2 offered Mr. Rai to fix a leaking roof at their top flat residence at 3 Fenton Street. PW2 said, Mr. Rai had access to their flat (the crime scene) between 17 to 21 July 2020, to repair the leaking roof. Mr. Rai, having known PW2 and his wife, the deceased, since 2015, knew the two were successful business people with money in their possession. While repairing the leaking roof from 17 to 21 July 2020, this gave Mr. Rai the opportunity to survey the scene, and discover that Ms. Feiyan Chen (the deceased) had a lot of money in her flat. Mr. Rai knew Mr. Sai Kin Yee (PW2) was in Australia, at the time visiting their children. Mr. Rai knew Ms. Feiyan Chen was alone at home and vulnerable.
34. PW2 had advised his wife (the deceased) not to pay Mr. Rai any money, as the job on the leaking roof in their flat was to recover the \$2,000 Mr. Rai took in 2019, without completing his maintenance job at the factory. It was possible that the verbal argument Mr. Sitiveni Navana (PW4) saw between Ms. Feiyan Chen and Mr. Rai, before they went up to the top flat on 21 July 2020, between 8.45 pm and 9 pm, could involve Mr. Rai demanding money from Ms. Chen, for work allegedly

done on the leaking roof. PW4 saw Mr. Rai forcefully holding Ms. Chen's neck with his arm, while standing on the flower bed brick wall opposite Kadavu Kava Shop. PW4 heard someone gasping for breath before that. Ms. Mere Vaganalau (PW3) heard someone calling out her Chinese name "Mia". PW3 said, the person was calling out for help. It was the court's view that Mr. Rai was assaulting Ms. Chen at the time. The post-mortem report showed that Ms. Chen died as a result of severe blunt force trauma to the head and neck. It was the court's view that Mr. Rai was seriously assaulting Ms. Chen at the time. PW4 heard someone gasping for breath and PW3 heard someone calling for help mentioning her Chinese name "Mia". It was the court's view that Mr. Rai assaulted Ms. Chen multiple times on the face and neck. Knowing that Ms. Chen was seriously injured, Mr. Rai tried to cover up his illegal acts by setting alight Ms. Chen's flat. Mr. Rai then stole Ms. Chen's money, which were found on him, when police raided his residence on 27 July 2020.

35. From the above circumstantial evidence, including the above reasonable inferences of fact therefrom, I make the following my findings of facts:
- (i) On the charge of murder (count no. 1), I find that Mr. Arvind Chand Rai, on 21 July 2020, assaulted Ms. Feiyan Chen repeatedly on the face and neck by punching and hitting her with a blunt object, which caused her serious brain injuries that led to her death. At the time, Mr. Rai intended to cause Ms. Chen's death and in the alternative, he was reckless in causing her death.
 - (ii) On the charge of arson (count no. 2), I find that Mr. Arvind Chand Rai set fire to Ms. Chen's top flat at 3 Fenton Street, Lami wilfully and unlawfully on 21 July 2020.

36. Given the above, I find Mr. Arvind Chand Rai guilty as charged on count no. 1 and 2, and I formally convict him as charged on both counts. I order so accordingly.



Salesi Temo
JUDGE

Solicitor for State
Solicitor for Accused

: **Office of the Director of Public Prosecution, Suva**
: **Mr. J. Reddy, Barrister & Solicitor, Suva.**