

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 34 of 2020**

**STATE**

vs.

**SULIANA TUISAVAKA KAFOA**

**Counsel:** Mr. M. Vosawale, Ms. S. Nisa & Mr. H. Nofaga for the State  
Ms. L. Filipe & Ms. L. Ratidara for the Accused

**Date of Hearing:** 17<sup>th</sup> – 19<sup>th</sup> October 2022

**Date of Closing Submission:** 20<sup>th</sup> October 2022

**Date of Judgment:** 21<sup>st</sup> October 2022

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**JUDGMENT**

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1. The Director of Public Prosecutions has charged the accused for the following offences as per the Information dated 05<sup>th</sup> March, 2020:

**COUNT ONE**

*Statement of Offence*

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

*Particulars of Offence*

**SULIANA TUISAVAKA KAFOA** on the 19<sup>th</sup> day of December 2019, at Rotuma in the Eastern Division, murdered **LORANCE SHANE VISANTI**.

2. Upon reading the charge the Accused pleaded not guilty and the hearing commenced on the 17<sup>th</sup> of October, 2022 and concluded on the 20<sup>th</sup> of October, 2022. At the close of the prosecution case as it appeared to me that there was a case to answer by the Accused, his options and rights were explained and the Accused was called upon to make his defence. Accused gave evidence but did not call any witnesses. Final submissions of both parties were heard. The Judgment was set for today and now I will embark upon to consider the evidence and pronounce my Judgement.
3. The Accused Suliana is charged with the murder of, Lorance. There is one witness Tomas who was present when the incident took place but has not seen the actual punch but immediately upon hearing a notice looked back and seen the Accused standing and the Deceased fallen on the ground. The defence has admitted *the Accused threw 3 punches at the deceased*. The defence taken up by the Accused is that there was an argument and a threat to punch him whilst in his own home preceded the incident. Hence the defence taken up appears to be the mitigatory defence of '*Killing with provocation*'.
4. That being so, in the first place the prosecution should establish and prove that the Accused did commit the death of the deceased as alleged. Murder should be proved first and it is then that the issue of the mitigatory defence of '*Killing with provocation*' may be considered.

Elements of the offence of murder

5. To prove the offence of murder, the prosecution must prove beyond reasonable doubt that the Accused Suliana engaged in a conduct with the intention of causing the death of the

deceased Lorance, or was reckless as to causing his death and that conduct of the Accused caused the death of Lorance.

6. 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 willful act; and
  - (ii) that willful act caused the death of the deceased; and
  - (iii) at the time of the willful 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.
7. On the first element of murder, a “willful act” is a voluntary act by the accused. This is the physical element of the offence of murder. Then such willful act must cause the death of the deceased. This will mean that the act of the Accused accelerated the death of the deceased and that it is the substantial contributor to the death of the deceased. The third is the fault element of murder namely that the Accused intended to cause the death of the deceased; or that he was reckless as to causing the death of the deceased.
8. This case necessitates an examination of the relevant provisions of the Crimes Act, 2009 in respect of the mitigatory defence of *‘Killing with provocation’*.

*“Killing with provocation*

*242.— (1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as defined in sub-section (2), and before there is time for the passion to cool, he or she is guilty of manslaughter only.*

*(2) The term “provocation” means except as stated in this definition to the contrary any wrongful act or insult of such a nature as to be likely when—*

*(a) done to an ordinary person; or*

*(b) done in the presence of an ordinary person to another person—*

*(i) who is under his or her immediate care; or*

*(ii) who is the husband, wife, parent, brother or sister, or child of the ordinary person— to deprive him or her of the power of self-control and to induce him or her to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered).*

### Burden of proof

9. The Accused is presumed to be innocent until he is proved guilty. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the Accused. There is no obligation or burden on the Accused to prove his innocence. The prosecution must prove the Accused's guilt, beyond reasonable doubt. If there is a reasonable doubt, so that the court was not sure of the Accused's guilt, or if there be any hesitation in my mind on any of the ingredient or on the of evidence led by of the prosecution the Accused must be found not guilty of the charge and accordingly acquitted. The Accused has a right to remain silent and no adverse inference can be drawn if the Accused remains silent.

### 10. The following facts are admitted:

- (1) Suliana Tuisavaka Kafoa is the defendant in this matter.*
- (2) Lorance Shane Visanti is the deceased in this matter.*
- (3) Suliana Tuisavaka Kafoa, the deceased and Thomas Tifare are cousins. Thomas Tifare is their nephew.*
- (4) The deceased was married to Sissy Crocker at the material time, they have two sons together.*
- (5) After lunch on 18<sup>th</sup> December 2019, the deceased and Suliana Tuisavaka Kafoa had joined with their relatives for a grog party.*
- (6) On the evening of 18<sup>th</sup> December 2019 after the grog party, the deceased and Suliana Tuisavaka Kafoa with some others had drank 1 and a half carton of Fiji Bitter longneck Beer.*
- (7) In the early morning of 19<sup>th</sup> December 2019, when the beers finished at Junjumi, the deceased, Suliana Tuisavaka Kafoa and Thomas Tifare went over to Ahau to continue drinking liquor there.*
- (8) During the argument and confrontation at Ahau between the defendant and deceased, Thomas Tifare pulled the deceased away to take him home to Motusa.*
- (9) Thomas Tifare and the deceased left Ahau and made their way to Motusa Village.*

- (10) *Suliana Tuisavaka Kafoa threw 3 punches at the deceased.*
- (11) *Suliana Tuisavaka Kafoa was arrested on the 19<sup>th</sup> of December 2019 and caution interviewed in Totuma language by WPCL 4143 Lisa on 20<sup>th</sup> December 2019.*

Issue:

*Whether Suliana Tuisavaka Kafoa at the material time intended or was reckless as to causing the death of the deceased?*

Agreed Documents

1. *Photographs of Crimes Scene taken on 19<sup>th</sup> December 2020 by WDC 4486 Maraia.*
2. *Reconstruction of Scene Photographs taken on 19<sup>th</sup> December 2020 by WDC 4486 Maraia.*
3. *Rough and Fair Sketch Plan of Crime Scene drawn by WDC 4486 Maraia.*

The Prosecution case

11. The prosecution led the evidence of 6 witnesses. They are Thomas Tifare the eye-witness, Leysina Muaror, Sissy Croker the deceased's wife, Doctor Navitalai Seduadua, W/CPL 4143 Lisa who recorded the caution interview and the Pathologist Doctor Avikali Mate. The prosecution marked and produced the following exhibits PE 1 the photograph booklet including photos of the scene and post-mortem examination, PE2 (A) rough sketch plan, PE2 (B) fair sketch plan, PE3 caution interview (Rotuman), PE4 caution interview (English) and PE5 the post-mortem examination report. I will now summarise the evidence of the prosecution.
12. According to **Thomas Tifare** on 18/12/2019 he had been at Jumjumi drinking with 3 of his friends namely Robin, Suli and Lorance. Drinking of grog had concluded they have started on the washout. Then they have all gone to Suli's house to get another bottle of Rum, Suli is the Accused. Suli and Robin's house had been a short distance away, may be 5 to 10 minutes' walk at Ahau. Robin is Suli's cousin. They have been drinking at Ahau and some form of argument has erupted between Suli and Lorance the deceased. Thomas had fallen asleep and was awoken due to this argument. Both Suli and Lorance have been angry and they were on the verge of fighting each other. Thomas had hugged and held Lorance and then both of them had left to go back to Lorance's house which was about 2 to 3 minutes' walk.

13. Thomas had been walking ahead and was immediately followed by Lorance, when Thomas had heard a loud bang. With this noise he had looked back and seen Lorance fallen down on the ground. Lorance was lying on the ground and Suli was just behind Thomas. Suli had threatened to punch Thomas at this moment. All of them were very close to each other. As Suli threatened to punch him Robin had arrived and taken Suli away.
14. This had happened during the early hours and it was dark. However, Thomas had been able to identify and recognize Suli as he spoke to him at that time and Thomas also says that there was some moon light. He found Lorance on the ground and had been breathing heavily. He described the nature of breathing similar to that of a pig after being hit. Thomas had tried to lift Lorance but he was too heavy for him and then it appears he had pulled him to the side of the road. Thomas identified that the incident took place in the middle of gravel road and said that the road and the place is shown in the photographs number 2 and number 3. Thomas had pulled Lorance to the side of the road and he himself fallen asleep. After sometime Leysina and Benjamin came along and then Sissy the wife of the deceased had arrived. Thereafter, a 4 wheel drive car had come by and they have all taken Lorance to the hospital which was about a 3 minute drive from there. At the hospital Lorance had been put on to the bed however his body looked different. The witness identified the accused in court as being Suli.
15. In cross-examination he admitted that he drank however he said that he was not drunk in that sense. He also admitted that some blood came down the nose. He was questioned about the road surface it was not tarsal however admitted that the surface was hard but no stones only gravel. The witness identified photograph 2 and 3 as showing the place of incident Hoi`. He had not known why Suli wanted to punch him and admitted that Lorance was on his back on the road.
16. Witness **Sissy Croker** was called next and she was the wife of the deceased. She had been home on that day with her two children and her husband had been out in front of the house drinking grog with Tomtom (PW1 Thomas), Robin, Suli and two others. She had not participated in that however after dinner she had gone to sleep with her children. Around

3am her sister Leysina has called and informed that Lorance was not good and that something was wrong and to come down to Hoi`. It was about 2 minutes' walk away to Hoi` and she had set off immediately. When she reached she found Lorance on his back on the road and then she had turned him sideways with the help of others and with the help of the phone light she had checked him out. She had seen some bruises and contusions and when she held the light to the eyes there had been no response. She had called Andrew a neighbour who had a truck to help them out. Andrew had come immediately and all of them had taken the deceased to the hospital. After the initial checking and attempt to resuscitate the doctor had pronounced him dead. She said that Lorance was infact dead when he was brought. She identified the accused as Suli and that it was her sister's husband.

17. In cross-examination a contradiction was elicited. The witness said that the deceased was on his back when she arrived however in a statement she had said that he was on his side. Thereafter, on further questioning she said that after the incident she met the Accused just before he was taken away to the main island. She had gone there with her two sons and met the Accused with his wife and child in a room. She had wanted her children to know exactly what happened from Suli. She did say that the Accused narrated what happened on that day. The Accused had admitted coming down and attacking the deceased. This witness was not very willing to come out with the details of the conversation. She said that it was very emotional that they hugged each other and it was all because of liquor. However, the Accused had told her that he came down and that he had attacked. He had also mentioned something about him picking up a stone. However, she clearly said that the Accused did admit assaulting her husband and he was remorseful.
18. According to **Leysina Mauror** on the 19<sup>th</sup> morning around 3am the accused's wife had called and requested her to go to Hoi` and take Lorance to his house in Jumjumi. She had with her partner Benjamin walked to Hoi` which was 10 minutes away and seen Lorance and Tomtom lying on the road. There attempts to wake them up have not been successful. They have called their cousin Robin who had come and managed to wake up Tomtom. As Lorance was not responding she has called Sissy and Sissy had come there. Thereafter all of them together got the help of Andrew and taken Lorance to the hospital. She claims to have

not known what happened to Lorange that night.

### Medical Evidence

19. The prosecution led in evidence **Doctor Navitalai Seduadua** the doctor who immediately attended to the deceased at the hospital. On the 19/12/2019 around 3am he had been called to the hospital and has checked on the deceased. He had observed certain contusions and lacerations on the face right side upper chest and the limbs. After checking Lorange as he was non-responsive he had tried to resuscitate him unsuccessfully for about 20 minutes and then pronounced him dead. He confirms that Lorange was dead on admission to hospital.
  
20. The Pathologist **Doctor Avikali Mate** has conducted post mortem examination on the body of Lorange on 20/12/2019 at the Rotuma Hospital. It was marked and produced as exhibit PE5. The photographs taken at the post mortem examination were all admitted by the defence. Her evidence as regards the injuries the procedure followed were all laid in detail including her qualifications and experience considering her qualifications and the period of service I am satisfied that she qualifies to be considered an expert witness.
  
21. She had observed two injuries on the head and the face. Both these are contusions; one on the top of the head somewhat close to the rear to the middle line of the head. This had been caused by a blunt trauma which she explained may be by a blow. As to the second contusion on the left side of the face the doctor was of the view that this two could be most likely due to several punches. As to internal injuries the doctor had observed sub-dural hemorrhage meaning leading between the two layers above the brain. Further. There had been extensive hemorrhage within the brain cavity especially on the left lobe of the brain. According to the doctor hemorrhage result due to the rupture of internal blood vessels and in this instance it is due to the blunt trauma to the left side of the head.
  
22. In the course of the evidence doctor did say that trauma to the head may result due to a fall. However, she explained that if a person is intoxicated his reflexes are slow and if he falls his protective action will be slow. This may lead to injuries in the head area. However, the doctor expressed the opinion that in the present case of the victim the internal hemorrhage was so extensive spreading in the inner membrane around the brain, in the sub-arachnoid



area, in the sub-dural and also towards the brain stem connecting to the spine. The doctor explained that this type of extensive internal hemorrhage would not be caused by a fall from a standing position. The reason is that the intensity would not cause such severe internal hemorrhage and also the contusion on the top of the head would not be caused by a fall to the ground from a standing position. The doctor was of a view that the injuries to the head were very likely due to blows or very hard punches to the said area.

23. According to her though there was several bruises on the rest of the body namely lower limbs, arms and on the right upper chest those injuries were superficial and had not in any way contributed to the cause of death.
24. Respiratory Cardiovascular System and other organs of the body all were unremarkable meaning they were normal. According to her examination the cause of death is Intracranial hemorrhage (Intraparenchymal hemorrhage) meaning extensive internal bleeding of the brain. She also expressed the opinion that this was due to severe blunt traumatic head injury meaning the injury observed on the left side of the head and the corresponding internal injuries.

#### The Caution Interview

25. PW4 **W/CPL 4143 Lisa** was called and she had caution interviewed the accused and the defence in this case did not challenge the caution interview. She had explained his rights offered his right to see a doctor and have counsel. The accused had obtained assistance of Legal Aid Counsel who was present with the witnessing officer PC 4425 Chanel Munivai. The interview had been conducted in the Rotuman Language and then translated to English by this witness herself. The original was marked as exhibit PE3 and the translation as PE4. According to this all rights and warnings have been afforded to the accused and he has read and signed. This witness was not cross examined.
26. There is no evidence of whatever nature of any oppression on the accused. Accused gave evidence at the main trial and he did not in any way challenged the voluntariness when questioned on the caution interview. Accordingly, on an evaluation of the evidence of this witness and the caution interview documents I am satisfied beyond reasonable doubt that the

accused had made this caution interview and answered all questions voluntarily without any form of threat, promise or inducement.

27. The Accused has admitted punching the deceased that night at Hoi` (the details will be discussed and considered later).

28. Upon the conclusion of the prosecution case as there was sufficient evidence the defence was called for and the rights were explained to the accused. The accused opted to give evidence but did not call any other witnesses.

#### Caution Interview

29. The entirety of the caution interview was read in evidence according to which the accused admits at questions 22 that he punched Lorance face and that he was on the middle of the road (Q24). That he punched him thrice (Q26). He says that he was arguing with Lorance (Q30). He had punched him twice and Lorance fell down and that he punched him thrice and there were very heavy punches (Q38, 39, 40). He admits that the third punch was thrown when Lorance was on the ground (Q49). He also admits that the said punch landed on his head when he was lying on the ground. He admits that Tomtom was present (Q 45 and 46). The accused says he had no intention to punch him for him to die (Q48).

#### The Defence Evidence

30. The Accused **Suliana Tuisavaka Kafoa** in his evidence admitted that he along with Lorance, Tomtom and a few others were drinking grog at Jumjumi near the house of Lorance. After the grog was over they all have washed down with Fiji Beer and then they have proceeded to the Accused's house at Ahau where they had Rum. By this time it has been night and the Accused admits that Lorance and he got into an argument. Lorance had threatened the Accused to kick him in his mouth. Lorance had been unhappy about an incident that has taken place on the 17<sup>th</sup> where Lorance was prevented from punching another. Due to this there had been an exchange of words and the deceased has threatened to punch the accused. Tomtom and Robin who were there have separated them and the deceased had left with Tomtom to go back to his house at Jumjumi.

31. The Accused has then gone into the house with others removed his round neck and shorts and was only in his underwear. At this moment the accused had wanted to go to the accused's house and discuss this matter as he was unhappy that he was threatened and abused in this manner in his own house that night. The accused says that he left in his underwear went along the short cut and walked off to Jumjumi to the accused's house. He says he wanted to talk to Sissy and the accused. However, since the lights were off he had a returned when he returned at Hoi` he had seen and heard Lorance and Tomtom walking towards him. This stretch of road he says was somewhat dark and there were trees on the sides. He had stepped onto a side and then watched Lorance and Tomtom walk by. After they went about 15 meters he had called Lorance and asked about the threat to punch him. Lorance had come towards the accused and thrown one punch at him. It missed the accused and the accused in return dealt two punches upon which Lorance had fallen onto the ground and the accused admits that he punched him for the third time when he was on the ground. Just as then Robin had come and taken him home.
32. He admits that he did not go to the hospital but when he was informed that Lorance was in the hospital he got his wife to inform the police. The accused says that he did not think or anticipate that this would happen to Lorance. In short the accused's position is that though he punched he did not want to kill him and that his punching was after Lorance attempted to punch him in the first instance.
33. The accused in cross examination admitted that in his caution interview he had not mentioned anything about Lorance trying to punch him that night. When asked how Robin came there at that time his explanation was that when he left the house his father-in-law saw him and he informed Robin. It was suggested to him that he continued to be angry and that he set-off with the intention of punching Lorance. It was also suggested that he selected a dark place along the road to confront Lorance. It was suggested that he went through the short cut to do something to Lorance. The Accused denied the suggestions. He admitted that this stretch of the road is dark.

#### Evaluation of the Accused's Evidence

34. The defence only called the Accused to give evidence. As narrated above the Accused basically admits the series of events that took place on the 18<sup>th</sup> and 19<sup>th</sup> December, 2019. He has made a caution interview and does not challenge that. As I have already considered above I am convinced and satisfied that the said caution interview has been made voluntarily without any form of oppression. The caution interview has been recorded on 20/12/2019. Immediately after the incident I observe the following inconsistencies between the Accused's evidence and his caution interview.
35. In his evidence the reason made out for leaving the house at 3am after Lorance left is that he wanted to go to Lorance's house at Jumjumi to talk out with Sissy and Lorance the misunderstanding and the argument he had. The accused had taken a short cut. According to the evidence, from the house at Ahau the short cut brings him to the road that leads to Jumjumi somewhere close to Hoi` which is between Ahau and Jumjumi. He claims to have taken the short cut and gone to Lorance's house. As the house was in the darkness with all the lights switched off, he claims to have returned. That is when he had met the deceased according to him. However, in his caution interview there is no mention of him taking the short cut or going to Jumjumi at 3am. Accused admits that it takes 15 minutes to reach Jumjumi the return journey up to Hoi` also takes around 10 minutes. The Accused admits that since he left the house along the short cut it took approximately 25 minutes to reach Hoi`. On top of this he had left his house 10 minutes after the deceased and Tomtom left. Therefore, he claims to have met Lorance 35 minutes after Lorance left the house at Ahau. In the normal course of event Lorance could not have been at Hoi` after 35 minutes he should have reached his house which was just 15 minutes away from Ahau. Therefore, the Accused narration of the events, specially going to Jumjumi and returning is not consistent and probable with the timeframe and the point at which he claims to have met the deceased.
36. Why should the Accused make up such a story? The reason as it transpired from his evidence is that he needs a plausible reason to leave the house. He gives this as the reason to leave his house that 3am. Then he also says that wanted to go and talk to the wife of the deceased. However, his narration of events, distances he travelled and the time lines do not synchronize and cannot be. Further, the Accused was seen by witness Tomtom in an

underwear. Accused too admits that he left the house in his underwear only. If he wanted to discuss something with the deceased's wife and the deceased it is rather unusual for him to go in an underwear at that time of the night.

37. The learned defence counsel submitted that he may have left in this way because he was so intoxicated. Let me consider this aspect. No doubt both the deceased and the Accused have been drinking grog as well as several cartons of long neck beer. They were drunk alright but was the Accused intoxicated to that extent so that he was not able to control himself and his thoughts? At 3am he is able to walk across in the thick darkness then he admits that when he reached Hoi` he saw and heard Lorance and Tomtom walking towards him. At this moment he silently observes them walk and pass by. If he was drunk and intoxicated in the extreme one would expect him to immediately challenge or call out Lorance as soon as he saw him. He does not do so but in a calculated manner he remains on the side of the road unnoticed and he observes Lorance walking by. This clearly establishes that he was quite in control of himself.
38. Then according to the Accused the deceased first punched him but it does not strike. This is not mentioned in his caution interview. That being so, the Accused throws two punches which appear to strike and drop the deceased onto the ground. Then a third punch is thrown and all punches are directed to the head and the face of the deceased. According to the medical evidence the blows had been of high velocity. Accused in his caution interview admits that the blows were heavy. In the normal course of events if a person was drunk and so intoxicated he would not have been able to avoid the first punch thrown at him and could not have thrown punches so effectively and on target at the deceased especially in the darkness. Hence it is extremely probable that the accused though has consumed alcohol was quite in control of himself physically and mentally.
39. The Accused admits that immediately after he threw the third punch on the deceased he felt Robin holding him from behind. That means when this was happening at that moment Robin had been there. According to the Accused Robin was at home when he left the house.

If so how did Robin, suddenly arrived at Hoi` just at that moment? The only inference is that Robin had come with him when the Accused left home, and that the Accused has directly come directly from his house at Ahau to Hoi`. His story of going to Jumjumi thus becomes extremely improbable.

40. According to the above analysis it is obvious that the Accused is trying to create a possible explanation and an innocent reason for coming out of the house which is extremely improbable and is so in probable that it is in all probabilities false. Secondly, though he tries to take up the position that he was drunk and intoxicated in the extreme in fact he had been quite in control of himself. The Accused admits punching the deceased and he has admitted this in his evidence as well as the caution interview and is an admitted fact. However, for the above reasons I hold that his evidence is untruthful and false to that extent and reject the same.

#### Evaluation of the Prosecution Evidence

41. The main prosecution witness is Thomas (Tomtom). He had made a statement to the police very promptly and there were no serious contradictions or omissions in his evidence. He is not direct family but a close associate of both the deceased as well as the Accused and family. I found him to be a somewhat of a disinterested witness who very impartially and truthfully narrated what he remembers. The defence also did not challenge his credibility in that sense.
42. This witness himself was drunk. He did not try to exaggerate or tell what he could not remember. He had not seen the punching directly. He had only heard a loud the noise and when he looked back the deceased was on the ground and the Accused was just there. The Accused had threatened to punch him also. This witness did not try to exaggerate and say that he saw the punching. This clearly shows that he is a truthful witness.
43. As for the wife of the deceased and the sister Leysina I found that they were somewhat inhibited to give evidence against the Accused. Both of them did come out with bear minimum truthfully. However, they were not very willing and ready to give evidence

against the Accused may be due to familial connections. However, both these witnesses were not untruthful.

44. Accordingly, the evidence of the prosecution to my mind is reliable credible and truthful. There are no contradictions inter se and no improbabilities. Hus I accept the prosecution evidence.

Has the prosecution proved the charge?

45. The fact that the Accused punched the deceased on his face and head is not in dispute and it is common ground. The issue for determination is whether the Accused was intoxicated and if this incident was in the spur of the moment without pre-meditation and was the accused acting on provocation. The position taken up by the Accused is that he was so drunk and he did not intend to cause the death. As for the afore analysis, the Accused had been in control of his mind and body and knew what exactly he was doing and not intoxicated to that extent. The story of him going to Jumjumi in view of the above analysis is certainly false. It is just a false excuse put forward to explain his coming out at that hour and to make out that it was a chance meeting.
46. Thomas clearly says that he did not see the Accused coming. In all probabilities the Accused may have come out of the side of the road which was dark. The Accused admits that he was walking on the side of the road along at that stretch and that the sides were overgrown with trees and it was dark (photographs 2 and 3 confirm this). If the Accused had walked from the opposite direction along the road, Tomtom necessarily and certainly would have seen him at least when they pass each other. Tomtom has not seen the Accused. The only inference is that the Accused did not walk from the opposite direction as he claims.
47. The only inference is that the Accused had been waiting on the side of the road. He was only in his underwear which would have made it easier for him to remain unnoticed in the dark. Tomtom clearly says that it was a sudden attack. There was no conversation or argument between the Accused and the deceased at that moment. The defence did not challenge this either. Therefore, this evidence clearly proves that the Accused had shortly after the

deceased had left his house set off from his house, come along a short cut and waited for Lorance to arrive. After waiting so he had executed a series of violent and concerted blows directed to the head of the deceased.

48. According to the pathologist these are extremely strong blows and fatal in nature. The deceased had died within a short time directly due to hemorrhage caused by this blows. The pathologist clearly excludes that these injuries to be from a fall from a standing position. The pathologist's evidence along with the evidence of Thomas and the caution interview proves beyond reasonable doubt that the death of the deceased was caused directly due to the blows inflicted by the Accused.
49. After the incident Robin had taken the Accused back to his house. Accused has himself gone back very promptly and has not come down to check what has happened to Lorance. He admits that his wife conveyed a message to Leysina to check on the deceased. Without doubt when all gathered at Hoi` the Accused necessarily would have been informed that something serious had happened to the deceased. The Accused did not visit the hospital either. The place of incident and the hospital were not too far from the Accused's house. This subsequent conduct clearly proves that the acts of the Accused confirms that this was a deliberate act committed with great anger and with a malicious intentions. If not one would expect him to naturally come down to the road or to the hospital as done by others.
50. Accordingly I hold that the prosecution has proved beyond reasonable doubt that the Accused himself did inflict the injuries to the head that caused the death of Lorance, and it was committed with the intention to cause his death.

#### Defence of Provocation

51. Though the Accused has not directly taken up the defence of provocation it is the duty of this court to consider if the Accused is entitled to the benefit of this defence. I have disbelieved the Accused's evidence that he went to Jumjumi that night. That being so according to the evidence the Accused and the deceased had got into an argument and were on the verge of punching each other. Tomtom and Robin have separated the two and then Lorance had left with Tomtom. Accused had been taken in to the house by Robin and



family.

52. It is in evidence that the deceased threatened to kick the mouth of the Accused. The deceased appear to have persisted with these threats after they all came to the Accused's house at Ahau. The Accused in his evidence did say that he was extremely disturbed and upset and also angry with the Accused for threatening him in this manner. The Accused appear to have gone to another side of the house when the deceased had come there and continued to threaten. The deceased had come there and also urinated. At this point they have almost started to punch each other when they were separated. In the Fijian culture the man of the house appears to be the king in the house. In this scenario when you are insulted and threatened in the presence of your own family it is an extremely serious form of insult. Therefore, it is quite reasonable for the Accused to have lost his self-control and got into a rage.
53. On the evaluation of the totality of the evidence it is evident that after the deceased left with Tomtom the Accused had in his underwear left the house within 10 minutes. He had taken a short cut and confronted the deceased at Hoi`. The Accused had clearly been in a state of great agitation and simmering in anger. It is in this state of rage he had punched the deceased. The Accused may have had a few minutes after the deceased left until he met him again. This is certainly less than 10 minutes. The Accused was after consuming alcohol he may not have been intoxicated to that extent but the alcohol in his system may have aggravated his anger. Therefore, notwithstanding a lapse of few minutes. The evidence show that the Accused continued to simmer under anger caused by the insult perpetrated by the deceased. It is more probable then not that the Accused actuated by this rage was deprived of his self-control when he dealt the blows on the deceased. In the circumstances the evidence thus establish that the Accused may have acted in the heat of passion when he inflicted the fatal blows on the deceased.

### Conclusion

54. In the light of the above analysis I hold that the prosecution has proved beyond reasonable

doubt that the Accused himself had inflicted the injuries to the head that caused the death of Lorange almost instantly. When considering the place (the head near the left temple) and the nature of the injuries inflicted only inference is that it has certainly been committed with the intention of causing his death and thus the prosecution has proved beyond reasonable doubt that the Accused did commit the murder of Lorange as charged.

55. However as it transpired in evidence, this killing had been actuated by the provocation caused by the deceased and the Accused did act in this manner due to the loss of his self-control in the heat of passion. Accordingly, the Accused is entitle to the benefit of the migratory defence of killing with provocation as defined in Section 242 of the Crimes Act. Accordingly, I hereby find the Accused guilty of Manslaughter punishable under Section 240 of the Crimes Act, and accordingly convict him of the offence of Manslaughter.
56. As such the Accused is acquitted of the charge of Murder but is convicted of Manslaughter.



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K.M.G.H.Kulatunga  
JUDGE

**At Suva**

21<sup>st</sup> October 2022

**Solicitors**

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