

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 241 OF 2021

BETWEEN : **STATE**

AND : **SIVANIOLO VUNAKECE**

Counsel : Ms U Tamanikaiyaroi with Mr J Singh for the State
Mr W Navuni for the Accused

Date of Hearing : **20 March 2023 – 23 March 2023**

Date of Judgment : **23 August 2023**

JUDGMENT

[1] **Charge**

The accused is charged with the murder of his partner, Laite Nasoga. The alleged incident occurred on 24 October 2021 at Nanuku settlement in Vatuwaqa where the couple was residing at the time.

[2] **Burden and Standard of Proof**

The accused remained silent at the trial. I draw no adverse inference against him for not giving evidence.

[3] The onus of proving the charge rests on the prosecution. The prosecution must prove the essential ingredients of the charge beyond a reasonable doubt. This

means that before I find the accused guilty, I must be satisfied so that I am sure of his guilt. If I have any reasonable doubt about the guilt of the accused, then I must find him not guilty.

[4] **Legal Principles**

In this trial, I decide the facts of the case. It is for me to decide the credibility of the witnesses and what parts of their evidence I accept as true and what parts I reject. I decide what facts are proved and what inferences I draw from those facts. I then apply the law to the facts and decide whether the accused is guilty or not guilty.

[5] The accused is judged solely upon the evidence sworn to in this court. In considering that evidence I apply common sense and everyday knowledge of human nature and people. I put aside any feelings of prejudice or sympathy which may occur one way or the other. The law is applied in a gender-neutral way, without any value-laden pre-conceptions about the conduct of men and women.

[6] The charge is murder. To prove the charge of murder, the prosecution must prove beyond a reasonable doubt that on the said date and place alleged the accused engaged in a conduct that caused the death of Laite Nasoga and that he either intended to cause her death or was reckless as to causing the death by his conduct.

[7] I elaborate more on these elements.

[8] The first ingredient that must be proved is that the accused engaged in a conduct. To engage in a conduct means to do an act of one's own free will. The prosecution alleges that the accused of his own free will assaulted the deceased by punching and kicking her, resulting in her death.

- [9] The second ingredient that must be proved is that the conduct of the accused caused the death of Laite Nasoga. 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. Death does not have to occur immediately after the alleged conduct. The offender remains liable for that death if it occurs at any time within one year and a day of the alleged conduct provided the death is still caused by the conduct. So in this case the prosecution must prove that the accused by his conduct caused an injury to the deceased and that injury caused her death.
- [10] The third element that must be proved for the crime of murder is that the person who caused the death of another by a conduct did so with a particular intention or state of mind. It is an intention to cause death or recklessness as to causing death.
- [11] A person has intention with respect to a result if he means to bring it or is aware that it will occur in the ordinary course of events. The prosecution alleges that the accused intended to cause the death of the deceased by his conduct. If the accused's intention was to kill the deceased, then he is guilty of murder. But if his intention was not to cause death but to cause serious harm to the deceased, then he is guilty of manslaughter which is lesser offence to murder. The main difference between these two offences is the state of mind of the accused at the relevant time. Murder requires proof of intention to cause death or recklessness as to causing death, while manslaughter requires proof of intention to cause serious harm or recklessness as to causing serious harm.
- [12] There is evidence that the accused had consumed alcohol before the alleged incident.

- [13] If the accused did not intend or may not have intended to cause death due to his drunkenness, then he is not guilty of murder but guilty of manslaughter. This means that the accused did engage in a conduct that caused the death of the deceased but it is not proved that the accused had the necessary intention to cause death. But if despite his drunkenness, the accused intended to cause death then this element of the charge is proved against him.
- [14] If the accused engaged in the conduct of assaulting Laite Nasoga with an intention to cause her death, he is guilty of murder, unless this was or may have been a case of provocation. In this case there is evidence that the accused suspected that the deceased stole his money to drink alcohol with others.
- [15] Provocation is not a complete defence, leading to a verdict of not guilty. It is a partial defence, reducing what would otherwise be murder to the lesser offence of manslaughter. Because the prosecution must prove the accused's guilt, it is for the prosecution to prove that this was not a case of provocation, and not for the accused to establish that it was.
- [16] Provocation has a special legal meaning that must be considered in the following way. The first question is whether the accused was provoked in the legal sense at all. A person is provoked if he is caused suddenly and temporarily to lose his self-control by things that have been said and/or done by the deceased rather than just by his own bad temper. If the accused was not provoked in that sense, the defence of provocation does not arise, and the accused is guilty of murder.
- [17] But if the accused was or might have been provoked, then I must go on to weigh up how serious the provocation was for this accused. Is there anything about this accused which may have made what was [said and/or done] affect him more than it might have affected other people?

[18] Finally, having regard to the actual provocation and to my view of how serious that provocation was for this accused, I must consider whether a person having the powers of self-control to be expected of an ordinary, sober person, of the accused's age and sex, would have been provoked to lose his self-control and do as this accused did. If I feel sure that such a person would not have done so, the prosecution will have disproved provocation, and the accused is guilty of murder. If, however, I conclude that such a person would or might have reacted and done as the accused did, then the accused would be not guilty of murder, but guilty of manslaughter by reason of provocation.

[19] On the basis of these legal principles that I consider the evidence in this case and decide whether the charge of murder has been proved by the evidence led by the prosecution.

[20] **Prosecution Case**

The prosecution led evidence from thirteen witnesses. 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.

[21] The first witness for the prosecution was PC Gabrieli from the Forensic Crime Scene Unit of the Fiji Police Force. He was the official photographer in this case. On 25 October 2021, he photographed and compiled a photographic booklet of the alleged crime scene (PE 1(a)). On 26 October 2021, he photographed and compiled the autopsy examination of the deceased at Suva Morgue (PE 1(c)). On 2 February 2022, he photographed and compiled a photographic booklet of the reconstruction of the alleged crime scene with witnesses who gave evidence for the prosecution at the trial (PE 1(b)). The alleged crime scene is the residence of the accused and the deceased. They lived in a lean to structure made of

corrugated iron and timber with basic amenities. Their home was attached to another building occupied by a relative.

- [22] The second witness was Inspector Rokodulu also from the Forensic Crime Scene Unit of the Fiji Police Force. He led the team during the crime scene examination in this case. He endorsed the sketch plans of the scene drawn by PC Seru and tendered it in evidence as PE 2A & B. Inspector Rokodulu's specific role was to uplift the physical exhibits from the scene. He ensured the exhibits were labelled and photographed and kept in safe custody until presented at the trial. He said that a kitchen knife (PE 4) that was lifted from the scene was sent to the Forensic Lab for testing and was kept there until the trial.
- [23] The third witness was Lenaitasi Kuruvoli (Kuruvoli). Kuruvoli lived in Nanuku settlement and had known the accused for about eight years. He was related to the accused through his wife. The accused moved to live in Nanuku settlement sometime in 2014. The accused's house was attached to Kuruvoli's house. The two flats were separated by a partition made of ply board. The accused's home comprised of one room and a bathroom and a toilet. The accused lived with his partner, Laite.
- [24] There were occasions Kuruvoli saw the accused returning home drunk and staggering. Kuruvoli described the relationship between the accused and Laite as normal.
- [25] On Sunday morning at around 7 am, 24 October 2021, Kuruvoli was at his home preparing for church when Laite asked him to go and get the gas lighter from the accused. Kuruvoli went and looked for the accused. He found the accused drinking at one Pistol's home. He brought the gas lighter and gave it to Laite.

After a while the accused came back to his home and told Laite to change and to accompany him to a drinking party. They left their home at around 10 am.

- [26] Kuruvoli said that he was resting after lunch when the accused and Laite came back home. He heard them giggling outside and then go inside their house.
- [27] Kuruvoli then heard the accused swearing at Laite saying 'magijinana' (mother's vagina). He also heard sound of punches 2 or 3 times. He only heard the sound and did not see the punches. He said the sound of the punches was heavy. Kuruvoli had seen the accused use physical violence on Laite in the past and he never intervened to stop the physical violence because he had no business in their personal life.
- [28] After the fight Kuruvoli saw the accused and Laite leave their home together for the second time. He saw them going past his home and they were laughing on their way to the drinking party.
- [29] Kuruvoli then saw the accused and Laite return home after 2 pm. They passed Kuruvoli's home and went straight inside their room. After a while Kuruvoli heard snoring sound coming from the accused's room. The snoring continued for 1-2 hours. Kuruvoli went and checked the accused's room. He saw the accused asleep. Laite was in the room.
- [30] Kuruvoli came back to his home and then heard the accused calling out to Laite and also swearing at her saying that 'the girl has taken the money'. When the accused decided to go and look for Laite, Kuruvoli decided to accompany him out of concern for Laite. They first went to Tala's house and then to Pistol's house, but Laite was not there. They kept searching and went past the canteen when a youth

told them that Laite was drinking at Epeli's house. They went to Epeli's house and found Laite and her friends drinking at a nearby mango tree.

- [31] The accused went and grabbed Laite's hand and pulled her out of the drinking party. On their way to their home, Kuruvoli saw the accused assault Laite several times. The accused slapped Laite on the face using his right hand near the church and she hit her head on the side of the church and fell on the ground. The accused questioned Laite as to what she was doing there but Laite did not say anything. She got up and as they went past the canteen the accused picked up a wooden stick (3 x 2 frame for window) and hit Laite's right shoulder and Laite fell down. When Laite lay on the ground the accused hit her back and her head with the timber. At that point Laite urinated.
- [32] When Kuruvoli said to the accused that she will die, the accused responded saying that it is just their own business. After Laite urinated while on the ground the accused carried her up to make her stand to walk. She stood up but then tripped her legs and the accused pushed her back to push her in the front. As they went passed Pistol's house, Laite fell to the ground and that is when the accused stomped on her head 4-5 times with his right leg. Laite just lay on the ground while the accused stomped on her head. She had a tear on her upper lip. The accused looked angry. He began to get very angry when he learnt that Laite was drinking at the mango tree.
- [33] After stomping Laite's head, the accused made her stand up and then carried her to his home on his back shoulder with her half upper body facing his back and her lower half body facing his front. Kuruvoli saw that Laite was in pain. She was exclaiming out loud. Kuruvoli said the accused did these things to Laite for about 20 minutes.

- [34] The accused took Laite inside his house while Kuruvoli went inside his house. After a while Kuruvoli came out and peeped into the accused's room through the window. He saw the accused was holding a kitchen knife (PE 4) and a washing board and questioning Laite about the missing money while she was lying down on the floor. The accused forced Laite to stand up and pushed her into the bathroom passage and then dragged her by her hand inside the bathroom. After about 15 minutes the police arrived and took both the accused and Laite away. He saw Laite was bleeding, her injuries were visible and her face was swollen by the time the police arrived.
- [35] The fourth witness was Betty Tavu (Tavu). Tavu is 19 years old. She lived with her parents in Nanuku settlement since birth. She knows the accused. She had come to know him socially. On 24 October 2021 (Sunday), Tavu was on her way to a shop when she spotted the accused and Laite near Pistol's house. She saw the accused punch Laite in the face more than once and Laite fell down. She saw Laite bleeding from her mouth and her face was swollen. She saw the accused kick Laite two or three times on the back when she was on the ground. She saw Laite wet her pants. Tavu heard the accused saying to Laite that he was tired of speaking to her because she never listen. The accused was very angry.
- [36] The fifth witness was Salesh Kumar (Kumar). He is 52 years old. He lived in Nanuku settlement for whole of his life. Kumar had known the accused for about 12 years. On 24 October 2021, Kumar was at his home when he saw the accused hit a girl along the footpath next to his house. He did not recognize the girl. Kumar saw the accused punch the girl in the face several times and lift her up when she fell down. The girl was quiet but the accused was very angry.
- [37] The sixth witness was Catherine Ralulu (Ralulu). She is an adult. In October 2021 she lived in Nanuku settlement. On 24 October 2021, after having lunch, she was

watching a movie with her family in their sitting room when she heard a loud sound of banging on their corrugated iron wall. She peeped through the window and saw an injured girl sitting down and crying. The girl's face was swollen and blood was dripping from her face. Ralulu saw a man standing beside the injured girl and telling her to stand up. The man was angry and forcing the girl to stand up. The man pulled the girl by the collar and pushed her in front. Ralulu heard the man say to the girl where the money is and that he always care for her and that is how she repay him, like playing around him. Ralulu saw the man get hold of the girl's forehead and pushed it towards the side of one Daya's house. He pushed her so hard that her face landed on to the side of that house. The girl fell down and then he pulled her up again and pushed her in front. Ralulu heard the man say to the girl that he was going to kill her. The girl looked back and she was trying to ask him for pity and she was also crying at the same time. They then walked away from her house.

[38] The seventh witness was Waisale Sorojamini (Waisale). Waisale has been living in Nanuku settlement for the past ten years. He knew the accused and Laite well. They were his neighbours at Nanuku settlement. As a neighbour he had seen fights and arguments between the accused and Laite. On 24 October 2021, Waisale was at his house when he saw the accused carry Laite to their home on his shoulders. Laite's head was hanging towards the back and Waisale saw blood on the back of the accused's vest. Laite was unconscious.

[39] The eight witness was Losana Koto (Losana) a 16 year old student who was living in Nanuku settlement at the time. She lived next to the accused's house. On 24 October 2021, after lunch. Losana was playing cards with her cousins inside her house, when she heard the accused and Laite screaming and yelling. Losana knew the couple were fighting. She heard the accused asking Laite about the money in an angry tone.

- [40] The ninth witness was Milika Tinanisautu (Milika). Milika is a market vendor. She lives in Nanuku settlement and is related to the accused. He is her uncle. Their houses were made of corrugated iron and divided by a partition made of Masonite board that was not very thick. On 24 October 2021 Milika was at her home when she overheard the accused and Laite were laughing and talking in their house. At about 3 pm Milika overheard the accused calling out to Laite about missing money. Milika got up and walked to the accused's house. She saw Laite in the bathroom. She saw the accused hitting Laite and accusing her of taking his money and spending it on drinks. Laite was lying down in the bathroom and pleading for help. She was saying that she was afraid of a knife but Milika did not see any knife. Milika was shocked. She left the scene to look for her husband. By the time the police arrived Laite was lying at the same spot in the bathroom wearing only bra and tights.
- [41] The tenth witness was Marisilina Romalu (Marisilina). Marisilina is a relative of the accused and lived in Nanuku settlement for about 24 years. She knew Laite as the accused's partner. She had seen the accused assaulting Laite on previous occasions. On one occasion she heard the accused asking Laite to strip but she intervened and stopped him from hitting her. On 24 October 2021, Marisilina was asked to dress up Laite before the police took her. When Marisilina saw Laite, she was lying covered in blood in the bathroom and with visible injuries to her body including stab marks from a knife on her shoulders and thighs.
- [42] The eleventh witness was PC Aminiasi. On 24 October 2021 at about 4.10 pm PC Aminiasi was on patrol with two other police officers when they received a report of a fight at Nanuku settlement. When they arrived at the scene he saw an injured iTaukei woman lying motionless in a bathroom. She was alive and breathing at the time. An iTaukei man was also in the bathroom telling the woman that the police has arrived.

- [43] PC Aminiasi saw a knife in a basin beside the bathroom. He quickly discarded the knife by throwing it to PC Matalomani for his safety before entering the bathroom. PC Aminiasi got some women to dress up the woman who was lying in the bathroom and transported her to the CWM Hospital, Emergency Department, after collecting the Police Medical Examination Form from Nabua Police Station.
- [44] PC Matalomani's evidence is that he arrested the accused while PC Aminiasi attended to the victim. The accused was handed over to Sgt Uate while they took the victim to the hospital.
- [45] PC Benard's evidence is that when the victim was carried to the police vehicle he saw visible injuries on her. She was weak but able to respond.
- [46] Dr Tunisau attended to the deceased at the Emergency Department of CWM Hospital on 24 October 2021. Upon arrival, the deceased was clinically dead, meaning her heart had stopped. The medical staff carried out a full CPR and chest compressions until her heart was beating again when they immediately transferred her to the Surgical Department to takeover due to critical injuries to her vital organs likely to have been caused by blunt force trauma using a great degree of force.
- [47] On 26 October 2021, Dr Praneel Kumar carried out the post-mortem examination of the deceased to determine the cause of her death. Dr Kumar's qualifications and expertise as a forensic pathologist are not in dispute. Dr Kumar recorded his findings in a written report admitted as PE 6.
- [48] The deceased died on 24 October 2021. She sustained multiple injuries to her head, left upper limb, posterior chest and abdomen. The injuries were abrasions,

bruises, contusions, laceration and an incised wound on the chest. The laceration and the incised wound were likely to have been caused with a knife (PE 4).

[49] Internal examination revealed the deceased sustained head hematoma, brain injuries and rib fractures. The injuries were serious and were likely to have been caused by blunt force trauma using a high velocity force by repeated stomping kicking and throwing the body to a hard surface. These kind of injuries are usually seen in motor vehicle accidents and the victim usually dies at the spot.

[50] The cause of death was severe traumatic chest injury and bilateral hemothorax which is not compatible with breathing. The chances of the deceased surviving after sustaining these injuries were very low to none.

[51] That is a summary of the evidence.

[52] **Analysis of Evidence**

The accused admitted to certain facts. The admitted facts are considered true. The accused was born on 29 December 1976. He is known by the nickname 'Siva'. He is originally from Sawakasa, Tailevu. He attended Cawaci Secondary School up until Form 4. At the material time he was employed as a Mini bus driver. He was living in a de-facto relationship with the deceased.

[53] The deceased was born on 30 September 2000. She and the accused had been together for 2 years. Together they had a daughter who was born in 2020. The deceased's uncle adopted the child.

[54] The accused and the deceased resided in Nanuku settlement in Vatuwaqa in a house made of corrugated iron and timber. Their house consisted of two flats separated by Masonite boards. The accused and the deceased lived in one flat

while the accused's niece Milika, her husband Lenaitasi Kuruvoli and their young daughter lived in the other flat. Milika is related to the accused through her mother who is the accused's sister. Milika and her family shared a washroom with the accused and the deceased. The sketch and floor plans of the house is not in dispute.

- [55] On 24 October 2021 at around 10 am, the accused had walked to his home and invited the deceased to join him and others at a drinking party where alcohol was being consumed. The deceased agreed and she along with the accused and a person by the name Tala returned together to the drinking party.
- [56] After sometime, the accused and the deceased returned to their flat where the accused fell off to sleep. When the accused awoke, the deceased was nowhere to be found. The accused along with Lenaitasi Kuruvoli went to search of the deceased and was told that she was last seen drinking at Epeli's house.
- [57] The accused slapped the deceased's mouth with his hand. He kicked the deceased on the ribs with his feet and punched her chest with his fists.
- [58] Later that afternoon around 4 pm, two police officers arrived at the accused's home and found him seated outside the passage of the washroom area. The accused spoke to the deceased who was inside the washroom, telling her in the Itaukei language that 'the officers had arrived'. A police officer told the accused that they wanted to talk to him, but he told them that first he wanted to dress up his wife. He then went inside to look for her clothes. The officer then entered the passage and looked into the washroom area where he saw the deceased lying down on the floor wearing only her undergarments (panty and bra). The accused then exited the main door to their flat and locked it using a padlock.

[59] Milika and her neighbour Marasilini had arrived at the scene and the officers had requested the two of them to dress the deceased. When the women entered the washroom, they found the deceased lying in a pool of blood and was wearing only her undergarments and had noticeable injuries on her body.

[60] The accused was then cautioned and given his rights. He was arrested and escorted to a police vehicle that was parked waiting for them at the Rifle Range roundabout.

[61] **Did the accused engage in a conduct?**

The physical element of the charge is not in dispute. The accused admits to assaulting the deceased by kicking her on her ribs and punching her chest with his fists. Witnesses have given an account of multiple blows being inflicted on the deceased until she became immobile and almost unconscious. The accused then carried the deceased to his home on his shoulders. The accused inflicted further assault on the deceased inside his home. I feel sure that the accused engaged in a conduct of inflicting multiple physical assault on the deceased of his own free will on 24 October 2021.

[62] **Cause of Death**

The cause of the deceased's death is not in dispute. Counsel for the accused in his cross-examination made suggestions that the police were late in transporting the deceased to the hospital. According to the police officers they immediately removed the accused from the scene before transporting the deceased to the CWM Emergency Department after collecting the police medical form from Nabua Police Station. I find the police officers who attended the scene and took the deceased to the hospital acted in good faith in discharging their duty of care to an injured victim of assault.

[63] When the deceased arrived at the hospital, she was clinically dead, but the medical staff acted in good faith and carried out the necessary procedures to revive her. She died on the same day. She had sustained multiple external and internal head and chest injuries. She had fractured ribs. The fatal injuries were the chest injuries. The accused admits to kicking the deceased on her chest with his feet. His admission is supported by witnesses' accounts of the accused inflicting multiple punches and kicks on the deceased on 24 October 2021. I feel sure that it was the accused's conduct that caused the deceased's death.

[64] **Did the accused intend to cause the deceased's death?**

The accused's intention at the time when he engaged in a conduct that caused the deceased's death is a matter of inference from all the evidence.

[65] The medical evidence is that the deceased sustained head hematoma, brain injuries and rib fractures consistent with blunt force trauma using considerable force. The accused stopped witnesses from intervening when he was inflicting violence on the deceased and he said that he would kill her. The duration, the nature and the gravity of the assault with utterance to kill leads me to conclude that the accused intended to cause death or was aware of a substantial risk that death would occur.

[66] There is evidence that the accused consumed alcohol before the incident. But there is also evidence of him having a rest and sleep before the incident took place. When the accused woke up from his sleep he went searching for the deceased. His speech and his actions before, during and after he assaulted the deceased does not show he did not intend or may not have intended to cause death despite his drunkenness. Despite his drunkenness, I feel sure that the accused intended to cause death of the deceased.

[67] **Was the accused provoked?**

The accused is an Itaukei man in his late forties. He is educated up to Form 4. He worked as a Mini bus driver. He was living in an informal settlement with basic amenities at the time. On the day of the incident he was in a jovial mood. He invited the deceased to join him for drinks. After the drinking session he returned home with the deceased and went off to sleep. When he woke up from his sleep in the afternoon, he saw the deceased was not in the house. He suspected she took his money. He went and searched for the deceased in the settlement. He spoke to a few people on his way to find if they had seen the deceased. When he found the deceased he saw her drinking alcohol with others. After retracting the deceased from her drinking group the accused inflicted multiple serious assault on her until she became unconscious. She did not defend herself. She did not say anything when she was being assaulted.

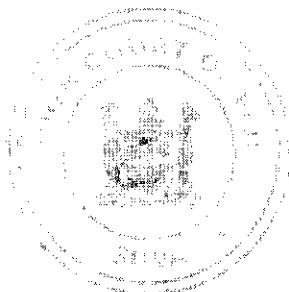
[68] The accused may have suddenly and temporarily lost his self-control when he saw her drinking with others and suspecting she had taken his money to drink, but there is nothing about this accused which may have made what was done by the deceased affect him more than it might have affected other people. Witnesses who have given evidence of the relationship between the accused and the deceased have said that it is the accused who had used violence on the deceased in the past. The age gap between the couple was vast. She was in her early twenties and timid in stature. He was in his forties and built in stature. He was the dominant and controlling partner in that relationship.

[69] I feel sure from the evidence of the actions of the deceased and the nature, the duration and the gravity of the assault inflicted by the accused that a person having the powers of self-control to be expected of an ordinary, sober person, of the accused's age and sex, would not have been provoked to lose his self-control and inflict the injuries as the accused did. The accused assaulted the deceased to

punish her for taking his money and drinking with others. Except for her undergarments her clothes had been removed when the police officers found her in the washroom covered in a pool of blood and with visible injuries to her body. The prosecution has disproved provocation beyond a reasonable doubt and I feel sure that the accused is guilty of murder.

[70] **Verdict**

The verdict of the Court is that the accused is convicted of murder as charged.



A handwritten signature in black ink, appearing to read 'Daniel Goundar', written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

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