

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 029 OF 2023**

**BETWEEN** : **STATE**

**AND** : **ANISH LAL SHIU JATTAN**

**Counsel** : **Mr S Seruvatu with Ms T Vakaloloma for the State**  
**Mr T Varinava with Mr A Prasad for the Accused**

**Date of Hearing** : **7 & 8 April 2025**

**Date of Judgment** : **6 June 2025**

### **JUDGMENT**

#### **Charge**

- [1] The Accused, Anish Lal Shiu Jattan, is charged with the murder of Ronal Ritnesh Kumar on 11 December 2022 at the Uluitoa settlement in Wainibuku.

#### **Burden and Standard of Proof**

- [2] The Accused pleaded not guilty to the charge. The onus of proving the charge rests on the prosecution. The prosecution must prove every essential element of the charge beyond a reasonable doubt. The Accused is not required to prove anything.

#### **Legal Principles**

- [3] In this trial, I determine the facts of the case. It is my duty to assess the credibility of the witnesses and to decide which parts of their evidence I accept as true and

which I reject. I determine which facts are proved and what inferences may be drawn from the proven facts, and then apply the law to these facts to decide whether the Accused is guilty or not guilty.

- [4] The Accused is judged solely on the basis of the evidence sworn in this court. In considering that evidence, I apply common sense and an understanding of everyday human nature while setting aside any feelings of prejudice or sympathy.

### **Elements of Murder**

- [5] The charge is murder. To prove murder beyond a reasonable doubt, the prosecution must establish, firstly, that on the date and at the place in question the Accused engaged in conduct that caused the death of Ronal Ritnesh Kumar, and secondly, that this conduct was committed recklessly.
- [6] To "engage in conduct" means to perform an act of one's own free will. The prosecution alleges that the Accused, acting of his own free will, assaulted the deceased by punching and kicking him, which resulted in his death.
- [7] The law requires a causal link between the conduct and the death. Typically, the conduct causes a specific injury to the victim, and that same injury causes the victim's death. While it is common for the injury to be the sole cause of death, it is sufficient if the injury is an operating or substantial cause. Death need not 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 conduct, provided that the death is still due to that conduct. Thus, in this case the prosecution must prove that the Accused, by his conduct, inflicted an injury on the deceased and that this injury caused his death.

- [8] Intention and recklessness are two mental elements of murder. It is not necessary to prove both mental elements. Proof of one will suffice. In this case, the prosecution relied upon recklessness as the state of mind of the Accused.
- [9] Recklessness has a specific meaning. An accused is reckless with respect to a result if:
- He is aware of a substantial risk that death will occur; and
  - Bearing in mind the circumstances known to him, it was unjustifiable to take that risk.
- [10] If the Accused was aware of a substantial risk that assaulting the deceased under the circumstances alleged by the prosecution would kill him, and given the circumstances known to him it was unjustifiable to take that risk, then he is guilty of murder. However, if he did not realize that his assault would kill the deceased but did realize that his assault would cause serious harm, then he is guilty of manslaughter, which is a lesser offence than murder. The key difference between these offences is the state of mind at the relevant time: murder requires proof of recklessness with respect to causing death, while manslaughter requires proof of recklessness with respect to causing serious harm.
- [11] On the basis of these legal principles, I consider the evidence in this case and decide whether the charge of murder has been proved by the evidence presented by the prosecution.

### **Prosecution Case**

- [12] The prosecution presented evidence from five witnesses. The location of the alleged incident is not disputed. It took place at the Uluitoa settlement in Wainibuku. The incident was recorded on CCTV by a neighbour of the deceased.

The video footage was retrieved from the CCTV system by PC Luke of the Digital Forensic Unit of the Fiji Police Force and marked as evidence PE 1.

- [13] According to the video footage, the incident took place on 11 December 2022 at approximately 8:32 pm. PC Luke testified that after retrieving the footage, he enhanced the original using software to adjust brightness and improve visual clarity. He then saved both the original and enhanced versions onto a floppy disk for evidentiary purposes. PC Luke had no reason to suspect that the CCTV had been tampered with before the footage was extracted.
- [14] The footage shows a man coming out of a house and confronting a man who was standing outside. Although the video lacks audio and the individuals are not clearly identifiable by facial recognition, it does show that the man emerging from the house punched the other man in the face several times. After being punched, the man fell to the ground, and the attacker is seen stomping on him.
- [15] At trial, the Accused was identified on the dock by Mohammed Shah who was present at the scene when the alleged attack took place. Shah, the deceased's brother-in-law, testified that the deceased called him to pick him up from River Road and then take him home to Uluitoa Settlement. After picking up the deceased, they drove to his home. The deceased was intoxicated. When they arrived at Uluitoa Settlement, the deceased got out and went inside his house while Shah remained in his vehicle. While Shah was in his vehicle, he overheard the deceased becoming angry with his wife for inviting people over for drinks while he was away. Shah's son-in-law then pulled the deceased out of the house, intending to take him home and return when he had calmed down.
- [16] As the deceased was coming out of his house, he banged the corrugated iron walls with his fist and shouted at those inside to "fuck off" from his house. While

he continued using obscene language against those inside, a man ran out from the house and punched the deceased several times, causing him to fall. Shah observed that the first blow landed on the deceased's right jaw, and the subsequent two blows struck his forehead. Shah viewed these events from the side rear-view mirror of his vehicle while seated in the driver's seat. He immediately engaged the handbrake, unbuckled his seatbelt, and exited the vehicle. Confronting the attacker, Shah asked why he had attacked the deceased, who was intoxicated at the time. The attacker responded, "Take him to the hospital; when he recovers, bring him back, and I will hit him again, motherfucker."

- [17] With assistance from his son-in-law and a neighbour, Shah loaded the deceased into his vehicle to take him to the hospital. While being loaded, the deceased made some grunting noises before losing consciousness. While on his way to the hospital, a police vehicle intercepted them and directed them to proceed to the Nakasi Police Post.
- [18] At the Nakasi Police Post, PC Prasad attended to the deceased, who was in the back seat of the vehicle. He manually checked the deceased's pulse and noted that the deceased had no pulse and was non-responsive. He instructed Shah to immediately take the deceased to the hospital.
- [19] Dr. Malani examined the deceased after he was brought to Nausori Hospital around 9:00 pm on 11 December 2022. During her examination, Dr. Malani observed that the deceased had no external injuries, although he had no pulse. She performed CPR on the deceased before he was pronounced clinically dead.
- [20] On 13 December 2022, Dr. John conducted an autopsy on the deceased to determine the cause of death. During the autopsy, she found bruises on the deceased's forehead, and an internal examination of the skull revealed extensive

brain haemorrhaging—both subdural and subarachnoid. Dr. John concluded that the cause of death was a severe traumatic head injury caused by blunt force trauma, consistent with the assault shown in the video footage (PE 1).

- [21] Under cross-examination, Dr. John acknowledged that intracranial injuries can be caused by sudden jerks and swerving of the head during driving. However, in this case, the injuries were trauma induced and caused by blunt force trauma to the head rather than by any jerking or swerving.
- [22] This summarizes the evidence presented by the prosecution.

### **Defence Case**

- [23] The Accused elected to testify. But he does not carry any burden to prove anything. Even if his account is not believed, that does not mean he is guilty. The burden remains on the prosecution to prove his guilt.
- [24] His account is that on 11 December 2022 he was drinking grog at the deceased's house with several other men when the deceased arrived intoxicated and began swearing at them, saying, "Fuck off from my house, motherfucker." The Accused stated that he became scared, and when he went outside to leave, the deceased swore at him, saying, "Motherfucker, fuck off." The deceased then threw a punch at him, which the Accused managed to evade by ducking. He added that he then threw one punch at the deceased's stomach, causing the deceased to sit down. A neighbour then arrived, and together they loaded the deceased into the vehicle to be taken to Davuilevu. The Accused subsequently called the police and, upon their arrival, reported the incident.
- [25] This summarizes the defence case.

### **Did the Accused Act in Self-Defence?**

- [26] In his testimony, the Accused suggested that he punched the deceased in the stomach once in self-defence. If the Accused was or may have been acting in lawful self-defence, then he cannot be held criminally responsible for the death of the deceased. Because the prosecution must prove the Accused's guilt, it is incumbent upon them to prove that the Accused was not acting in lawful self-defence. It is not for the Accused to prove that he was. The matter of self-defence must be considered in light of the situation that the Accused honestly believed he faced.
- [27] After considering all the evidence, I am convinced that the Accused did not honestly believe it was necessary to use force to defend himself. The Accused was aware that the deceased was intoxicated upon his return home. The deceased was audibly upset with his partner and the other men present at his house, who were drinking grog. Shah's son-in-law had brought the deceased outside in an effort to calm him down. Apart from using obscene language, the deceased did not physically threaten anyone in the house with violence. He was merely hurling abuse at those inside.
- [28] According to Shah's testimony, the Accused came rushing out of the deceased's home and threw multiple punches at him while swearing. Shah did not observe the deceased throwing any punches at the Accused, as the latter claimed. The video footage (PE 1) supports Shah's account of the assault rather than the Accused's version. Furthermore, the Accused's assertion that he only punched the deceased's stomach is not supported by the medical evidence. The deceased died from head injuries in line with Shah's evidence, not from abdominal injuries. There is no credible evidence supporting the narrative that the Accused acted in self-defence in this case.



### **Did the Accused Engage in Conduct?**

- [29] I found Shah to be a credible witness. Although he identified the Accused for the first time on the dock, his identification was both accurate and reliable. In his testimony, the Accused admitted his involvement in the altercation with the deceased on the night of 11 December 2022, though he denied causing the fatal injuries. I accept Shah's account of the assault as true. I am convinced that on 11 December 2022, the Accused, acting of his own free will, punched the deceased at least three times on the head with his fist, and when the deceased fell, the Accused either kicked or stomped him.

### **Cause of Death**

- [30] I accept Dr. John's testimony that the deceased died from brain injuries consistent with blunt force trauma to the head and not from any other cause. The Accused assaulted the deceased at approximately 8:30pm. Immediately after the assault, the deceased began to lose consciousness, and after roughly 30 minutes, around 9:00 pm, he was clinically dead. I am convinced that it was the Accused's conduct that caused the deceased's death.

### **Was the Accused Reckless in Causing the Deceased's Death?**

- [31] The medical evidence indicates that the deceased had external bruises on his forehead and died from brain haemorrhaging consistent with blunt force trauma. The eyewitness's account states that the Accused rushed toward the deceased and struck him on the head three times with his fist. Subsequently, the deceased fell to the ground, and the Accused either stomped on or kicked him. Immediately after the assault, the Accused stated that the deceased should be taken to the hospital and, once he recovered, be brought back so that the Accused could hit him again.



[32] The assault lasted less than 30 seconds and occurred spontaneously when the Accused took exception to the deceased's swearing and command for him to leave the house. I am convinced that the Accused realized that assaulting the deceased, who was heavily intoxicated and staggering, would cause serious harm. However, I am not sure whether he appreciated the significant risk of causing death.

[33] For these reasons, I find the Accused not guilty of Murder but guilty of the lesser offence of Manslaughter. Given this verdict, it is not necessary to consider whether the Accused acted under provocation, as provocation is not a defence in an offence of Manslaughter.

#### **Verdict**

[34] The verdict of the Court is that the Accused is not guilty of murder but is guilty of manslaughter. Accordingly, he is convicted of the manslaughter of Ronal Ritnesh Kumar on 11 December 2022 at the Uluitoa settlement in Wainibuku, contrary to Section 239 of the Crimes Act.



**Hon. Mr Justice Daniel Goundar**

#### **Solicitors:**

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused