

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 141 of 2016

BETWEEN : STATE

AND : GEORGE WILLIAM SENITETEVA

Counsel : Ms Uce and Ms Naibe for the State
Mr Tunidau and Mr Duanasali for the Accused

Dates of Hearing : 04,05 and 06 June 2019

Closing Speeches : 06 June 2019

Date of Summing up: 07 June 2019

Date of Judgement : 14 June 2019

JUDGMENT

1. The Accused is charged with one count of manslaughter contrary to section 239 of the Crimes Act 2009. The particulars of the offence are as follows;

“George William Seniteteva on the 19th day of June 2016, at Nadi in the Western Division, being reckless as to the risk that his conduct would cause serious harm, killed Vetaia Nabau.”

2. The Information was filed on 28 February 2017 and the Accused pleaded not guilty. The Prosecution called five witnesses at the trial. After the Prosecution case was closed the Accused gave evidence and no other witnesses were called by the Defence.
3. On 07 June 2019 the assessors returned with a unanimous opinion after the summing up and they found the Accused not guilty to the charge.
4. Having directed myself in accordance with the summing up, I will now give reasons for my judgment.
5. As per section 239 of the Crimes Act the prosecution has to prove the following elements beyond reasonable doubt;
 - a) the Accused
 - b) engaged in conduct; and
 - c) the conduct caused the death of the deceased; and
 - d) the Accused was reckless as to a risk that the conduct will cause serious harm to the deceased.
6. The Prosecution witness Petaia Bogi said that at about 2.30 am on 19 June 2016 he went with his brother and two other friends to White House Nightclub in Nadi. He said that he met the deceased, Vetaia Nabua at the entry to the nightclub and spoke with him. The witness said that the deceased looked okay.
7. The witness had later seen the deceased being pulled by two bouncers. He said while one bouncer was pulling, the other one was pushing the deceased. The witness said that he saw one bouncer punched the deceased. According to the witness, the deceased had been punched two times on the head and once on the chest. According to the witness the two bouncers have then taken the deceased out of the nightclub. Petaia Bogi further gave evidence that he left the nightclub when it was closed, and he saw the deceased lying down at the car

park. He said that he tried to wake him up and when the deceased did not respond he left the place.

8. The witness said that there were only small lights of assorted colours at the nightclub. He said the lights were dim. When the witness was asked whether anything was blocking his view the witness said that his friends were standing in between.
9. During the cross examination the witness said because of the dim light conditions he would be able to recognize only a known person. He admitted that the bouncer was a total stranger to him and he would not be able to recognize a total stranger. The witness also said that he cannot recall whether the deceased was in the company of others when he was pulled and punched. In contrary to what he said before, the witness again said that he cannot recall whether the deceased fell after he was punched or whether he was taken out by the bouncers.
10. The witness, Petaia Bogi said that he identified the Accused at an ID parade held on 07 July 2016. Initially he said that he could remember the face of the Accused. However, during the cross examination, the witness said that he recognized the Accused only by his built and by the shirt. He confirmed that he never saw the face of the Accused.
11. It should be noted that the witness, Bogi gave evidence in a very unreliable manner. He gave different answers at different times. I am not inclined to accept his evidence on the issue of identification of the Accused due to the vague and inconsistent manner in which he gave evidence about recognizing the Accused.
12. The Prosecution witness, Taniela Damaso said that on 19 June 2016 he came back from work and was listening to radio. He said at around 11 pm he left home to go to White House Night Club in Nadi. He said that at the nightclub

one of his friend's named Jo, joined him. He said later another four friends of Jo also joined them. The witness said that three of the boys went to the dancing floor and Jo went to the washroom. According to the witness one of the boys was standing beside him.

13. The witness said that a security came and stood beside that boy and they were talking to each other. He said then they started pulling each other. He said the security was pulling the person who was with him and that person was pulling the witness's shirt. The witness said then the security punched that person and he fell down. The witness also said that the security punched three times on that person's face. According to the witness the security who punched the person had then left. The witness said that three other security officers had taken that person out of the nightclub. He said that after the other boys came back they finished their drinks and dispersed from there. He did not say whether they went and checked on the person who was punched or whether he saw that person afterwards.

14. The witness also said that the security who punched the person was fair in complexion, broad and well built. He said that he saw the face of the security who threw punches for about five minutes. The witness said that he identified the security who punched the man beside him, at the ID parade.

15. During the cross examination the witness said that the place they were standing was really dark. He said that it would be difficult in his condition as a drunken man to see what is going on around him because it was dark. He admitted that his eyes were blurry, he was sleepy, and he was staggering. However, he again said that he did not drink much as he had to walk back home.

16. The witness did not give evidence on the identity of the person who was punched. The witness said that he did not ask the name of the person who was drinking next to him. Taniela Damaso had not seen that person after he was

taken outside. He did not even say whether his other friends looked for that person once they came back from the dancing floor.

17. It appears that the witness had gone to the nightclub on 19 June 2019 and the incident that he gave evidence about had taken place on early hours on 20 June 2019. Further the Prosecution did not clearly adduce evidence to establish that it was the same person who was later found dead as the witness did not know the identity of the person who was punched.

18. Petaia Bogi and Taniela Damaso were the two main witnesses that the Prosecution has kept much reliance on. However, I have observed material contradictions in their evidence apart from the unreliable evidence of Petaia Bogi regarding the identification of the Accused. Petaia Bogi said that two bouncers pulled the deceased and one of them punched the deceased. However, Taniela Damaso said that there was only one security. Petaia said that the two bouncers took the deceased outside while Damaso said that the security who punched the person left the scene and three other security officers took the person out of the nightclub.

19. The prosecution witness Mosese Varisikete gave evidence that he went to White House Nightclub at about 2 am on 19 June 2016. He said that he saw the deceased drinking at the nightclub. He said he did not see anything else and when the night club was closed around 6 am he saw the deceased lying down beside the stairs.

20. Further the Prosecution failed to adduce evidence that the deceased received a high velocity blunt trauma to correspond with the medical evidence. Dr Pranil Kumar gave evidence that even a single punch would have resulted the injuries that were received by the deceased, if it was a high velocity impact. None of the witnesses describe the nature of the punches or the fall. Therefore, I am not satisfied that the Prosecution presented sufficient evidence to prove that the punches substantially contributed to the death of the deceased.

21. All in all, the evidence presented by the Prosecution was not clear, consistent and corroborative. The assessors were given directions on how to assess credibility and evaluate probability of events. They were directed on how to treat inconsistencies in evidence. It appears that the assessors have declined to believe the evidence presented by the Prosecution.

22. It is my considered opinion that the Prosecution has failed to prove the offence of manslaughter beyond reasonable doubt. I am satisfied that the assessors' opinions are not perverse. I do not find any cogent reason to disagree with the opinion of the assessors and I concur with their unanimous opinion.

23. In the circumstances I find the Accused not guilty to the offence of manslaughter and accordingly, the Accused is acquitted.



Rangajeewa Wimalasena
Acting Judge

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Mr Tunidau and Mr Duanasali