

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 11 of 2013

STATE

V

- 1. ULAIASI GLEN RADIKE**
- 2. ANARE MARA**
- 3. KELEMEDI SEVURA**

Counsel : Ms. S. Kiran for the State.
: Ms. J. Singh for the First Accused.
: Second Accused Trial in Absentia.
: Ms. V. Narara for the Third Accused.

Dates of Hearing : 30 November, 3, 4, 5 December, 2018
Closing Speeches : 11 December, 2018
Date of Summing Up : 11 December, 2018
Date of Judgment : 12 December, 2018

JUDGMENT

1. The Director of Public Prosecutions charged all the accused persons by filing the following amended information:

COUNT 1

Statement of Offence

MURDER: contrary to section 237 of the Crimes Act No. 44 of 2009.

Particulars of Offence

ULAIASI GLEN RADIKE, ANARE MARA and KELEMEDI SEVURA, on the 29th of November, 2012 at Nadi in the Western Division murdered **JOSEVATA NAISALI.**

2. The three assessors had returned with a mixed opinion by a majority of two is to one that all the accused persons are not guilty of murder but guilty of manslaughter.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The prosecution called 16 witnesses while all the accused persons exercised their right to remain silent and did not call any witness.
5. At about 10.30 pm on 29th November, 2012, the deceased was assaulted by all the accused persons near the fence opposite the Deep Sea Night Club in Nadi Town. The accused persons had punched the deceased then kicked and stepped on his head and face wearing boots after he had fallen on the ground.
6. Mereani Raikadroka saw the deceased being assaulted by some people. She tried to stop them and in the process got punched. The deceased was punched and stepped on. Mereani knew two out of the three who were assaulting the deceased and was able to recognize the first accused Dike and the third accused Kele. The punching and stepping was on the head of the deceased who was lying down bleeding from his head.

7. In respect of the second accused Anare Mara, Emma Batiluva saw the fight at the back of Deep Sea Night Club she saw Tuks the second accused punching the deceased twice on the face.
8. Furthermore, the first and the second accused in their caution interviews and the charge statements admitted assaulting the deceased.
9. On 29 November, 2012 Cpl. Omendra Gupta had arrested the third accused near the crime scene the witness could smell liquor on the accused. Upon questioning the third accused, the witness was told by the third accused that he was accused of stealing a packet of cigarette, the deceased had punched him first and then he had retaliated with punches.
10. Dr. Mate recalled on 3rd December, 2012 she conducted the post mortem on the deceased. According to the doctor, the cause of death was extensive subarachnoid hemorrhage due to blunt force trauma.
11. The doctor said traumatic subarachnoid hemorrhage caused by force or impact applied to any part of the body by a blunt object or surface, falling from considerable heights and assault such as repeated punching, kicking or stepping on the face or head.
12. The injuries to the head of the deceased were extensive suggesting that he was punched, kicked, stomped or stepped on the head or face.
13. All the accused persons have denied committing the offence as alleged. They say they were not reckless with respect to causing the death of the deceased. They were not aware that death would occur by their conduct since they were intoxicated at the time. They did

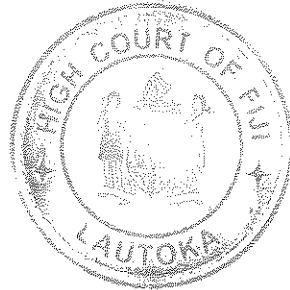
foresee or realise that death was a probable consequence or the likely result of their conduct.

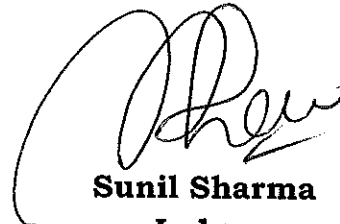
14. I accept the evidence of all the prosecution witnesses as truthful and reliable. The eye witnesses gave a truthful account of what all the accused persons had done to the deceased. They were able to recall the manner in which the accused persons had assaulted the deceased.
15. The prosecution witness Mereani in cross examination was referred to her police statement she had given on 30 November, 2012. She had informed the police that she could not recognise the itaukei boys who were punching the deceased.
16. The witness explained the reason why she gave one version to the police and another version to court about the identity of both the accused persons.
17. This court accepts that Mereani told the truth when she told the court that she was scared of the third accused about what he had said to her before she gave her police statement and that the accused persons might do something to her so she told the police she could not recognise the accused persons. The reliability and the credibility of this witness was not affected by this inconsistency. I have no doubt in my mind that she told the truth in court this witness was also not shaken in cross examination.
18. In any event the accused persons have not disputed that they were at the scene, had assaulted the deceased or their assault had caused the death of the deceased what they have disputed is that they were not reckless in their conduct due to influence of alcohol.

19. I do not accept that all the accused persons were not reckless when they were assaulting the deceased because they were intoxicated. The accused persons knew that death was a probable consequence of their conduct and they decided to go ahead with the conduct, regardless of that consequence.
20. In the record of interview and charge statement of the first and second accused both the accused persons were able to remember details of what had happened and what they had done to the deceased on 29 November, 2012.
21. The arresting officer of the third accused Cpl. Gupta had smelt liquor on the third accused upon questioning this accused was able to recall the details of why he had punched the deceased.
22. I therefore reject the contention that all the accused persons had acted the under the influence of alcohol.
23. The defence has not been able to create any reasonable doubt in the prosecution case.
24. I am satisfied beyond reasonable doubt that on 29th November, 2012 all the accused persons had engaged in the conduct of punching, kicking and stomping the deceased on his face and head wearing their boots causing the death of the deceased.
25. I also accept that all the accused persons were aware of the likelihood of death occurring by their conduct and yet they continued with their conduct regardless. In other words the accused persons were reckless with respect to causing the death of the deceased since they were aware of a substantial risk that death will occur due

to their conduct and having regard to the circumstances known to them it was unjustifiable for them to take that risk.

26. I overturn the majority opinion of the assessors and accept the minority opinion that all the accused persons are guilty of the offence of murder.
27. In view of the above, I find all the accused persons guilty of murder as charged and I convict them accordingly.
28. This is the judgment of the court.




Sunil Sharma
Judge

At Lautoka
12 December, 2018

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the First and Third Accused.