IN THE FIJI COURT OF APPEAL
Criminal Appeal No. 54 of 1985.

Between: VEREIMI IKANIWAI & ORS Appellants

- and -

R E G I N A M Respondent

A. Qetaki for the Appellants.
D. Fatiaki & B.I. Singh for the Respondent.

DATE OF HEARING : 6th March, 1986.

DELIVERY OF JUDGMENT : 21st March, 1986.

JUDGMENT OF THE COURT

Roper, J.A.

The five Appellants, together with another who has not appealed, were found guilty of the murder of a 42 year old Indian, Munideo, and now appeal against the convictions on grounds common to all.

At about 7.30p.m. on the 26th May 1984 Munideo was attacked by the Appellants. He was punched, kicked and stabbed with a broken bottle, stripped of his clothing, and left unconscious under a railway bridge. He was not found, and then only by chance, until 4a.m. on the 27th May. He was admitted to Lautoka Hospital in an unconscious state and did not regain consciousness at any time before his death on the 21 June, apart from a period on the 11th

June when he opened his eyes and could obey simple commands. Munideo was found to have multiple incised wounds to the head and other parts of his body, and it is common ground that he was in a critical condition. On the 18th June it appeared that although he was still unconscious there was some improvement in his condition, but by the 20th his unconsciousness had deepened and he died on the 21st. According to the Pathologist the cause of death was bilateral lobar pneumonia.

As a consequence of that finding the issue of "causation" became a significant part of the defence case in the Court below and on that issue, and on the facts in the present case, the following provisions of the Penal Code (Cap. 17) are relevant:-

> "199(1). Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder."
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> "206(a) Any person is deemed to have caused the death of another person although his act is not the immediate or the sole cause of death in any of the following cases:-
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> (a) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill."

The defence relied on section 206(a), arguing that the immediate cause of death was pneumonia resulting from treatment which was not employed in good faith, or was employed without common knowledge or skill. A Mr. Sharma, a consultant surgeon, gave evidence for the defence. He had never seen Munideo during his time in hospital but on the basis of the medical evidence called by the prosecution and the relevant hospital records he expressed the opinion that with different treatment and more intensive nursing care pneumonia could have been avoided, although he would not go so far as to say that success would have been guaranteed. In short his evidence was that the treatment afforded "was not in accordance with the usual standard."

In his summing up to the Assessors the Trial Judge said this:-

> " It is common ground that the immediate cause of death was bilateral lobar pneumonia and that one or more of the injuries was at the time of death an operating cause of that fatal pneumonia.
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> There was not a shred of evidence that the medical treatment accorded to Munideo was the immediate cause of death.
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> Put at its most damaging to the prosecution case, the defence medical evidence was to the effect that the medical treatment increased Munideo's chances of contracting the fatal pneumonia and retarded his natural defences.
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> In the circumstances of this case, all you have to be satisfied of in order to be satisfied that one or more of the injuries caused death, is that one or more of the injuries was an operating cause of the fatal

pneumonia when Munideo died, and I do not see how you can have any difficulty in deciding that question in view of the fact that all of the medical evidence is to that effect."

and in his judgment following the Assessors guilty verdict he dealt with the matter in this way:-

" In relation to the matter of causation, I noted that Section 206(a) of the Penal Code says in effect that, if in consequence of bodily injury being inflicted upon him, a person undergoes medical treatment (which was undoubtedly so in Munideo's case) then whoever inflicted the bodily injury is deemed to have caused the victim's death if the medical treatment causes his death.

But the same subsection in effect creates a proviso that if the medical treatment is the immediate cause of the death and if, also, it is not employed in good faith or with common knowledge and skill, the person who inflicted the bodily injury is not deemed to have caused the death. It was common ground that the pneumonia was the immediate cause of death and there was not in my view a shred of evidence that the medical treatment was the immediate cause of death - at its most damaging to the prosecution case, Dr. Sharma's evidence was to the effect that the medical treatment increased Munideo's chances of contracting the fatal pneumonia and retarded his natural defences. So the proviso did not come into effect. Therefore, in my view, (by any stretching of reasoning in favour of the defences) all the assessors had to be satisfied of, in order to be satisfied that one or more of the injuries caused death, was that one or more of the injuries was an operating cause of the fatal pneumonia. I directed the assessors accordingly, and I have directed myself accordingly."

The amended grounds of appeal arise from that treatment of the matter by the Trial Judge and they read:-

"1. THAT the learned trial judge erred in law and in fact in concluding that there was not a shred of evidence that medical treatment was the immediate cause of death.

2. FURTHER that the learned trial judge erred in law and in fact in NOT considering whether the medical treatment was employed in good faith or with common knowledge and skill."

It is clear that the Trial Judge really took the section 206(a) defence away from the Assessors. While we cannot accept the Trial Judge's reasons for so doing we are of the opinion that it was a defence which was never open on the facts of the case and was properly taken from the Assessors consideration. Its pursuit resulted in days of irrelevant medical evidence which only served to prolong the trial far beyond anything approaching reasonable limits.

There is no occasion to resort to the deeming provisions of section 206(a) if, in terms of section 199(1), an act can be said to be a substanial cause of the death. There have been a number of comparatively recent cases on this question of causation, and the first is R. v. Jordan (1956) 40 Cr. App. R. 152. There the victim died of bronchopneumonia following a penetrating abdominal wound. At the time of death the stab wound was practically healed and the medical evidence was that the death had not been caused by the wound but by the introduction of a drug after the deceased had shown himself to be intolerant to it, and by other abnormal medical treatment

which in the circumstances was quite wrong. Hallett J. who delivered the judgment of the Court of Criminal Appeal, described the case as exceedingly unusual and difficult. The conviction was quashed on the basis that death resulted from abnormal treatment that was probably wrong, at a time when the original wound had practically healed.

The decision in Jordan has been criticised in a number of later cases. In R. v. Smith [1959] 2 All E.R. 193 Lord Parker C.J. expressed the opinion that Jordan should be regarded as an exceptional case decided on its own special facts and not as an authority relaxing the common law approach to causation, an opinion shared by Lawton L.J. in R. v. Blaue [1975] 3 All E.R. 446, and by Lord Lane C.J. in R. v. Malcherek [1981] 2 All E.R. 422. In R. v. Smith the Appellant stabbed a fellow soldier with a bayonet, one of the wounds piercing the victims lung. While being carried to the medical centre he was dropped twice, and on arrival at the centre was given treatment which was subsequently shown to have been incorrect. Counsel argued that if there was any other cause, whether resulting from negligence or not, operating, if something happened which impeded the chance of recovery, then the death did not result from the wound. The Court in R. v. Smith was quite unable to accept that contention, and at page 198 Lord Parker C.J. said:

> " It seems to the court that, if at the time of death the original wound is still an operating cause and a substantial cause, then the death can properly be said to be the result of the wound, albeit that some other

> cause of death is also operating. Only if it can be said that the original wounding is merely the setting in which another cause operates can it be said that the death does not result from the wound. Putting it in another way, only if the second cause is so overwhelming as to make the original wound merely part of the history can it be said that the death does not flow from the wound."

That passage was adopted in R. v. Blaue and R. v. Malcherek.

The following passage from R. v. Blaue at page 450, which was adopted in the Malcherek case, is to the point in the instant case:-

> " The issue of the cause of death in a trial for either murder or manslaughter is one of fact for the jury to decide. But if, as in this case, there is no conflict of evidence and all the jury has to do is apply the law to the admitted facts, the judge is entitled to tell the jury what the result of that application will be. In this case the judge would have been entitled to have told the jury that the appellant's stab wound was an operative cause of death. The appeal fails."

In the present case the undisputed facts were that the deceased was admitted to hospital with grievous injuries, which had brought him to a state of unconsciousness from which he never recovered. Mr. Sharma accepted that a state of unconsciousness increased the chances of dying of pneumonia. The important thing, he said, was to get the patient back to consciousness. The doctors at the hospital failed to accomplish that, and, as we recall the evidence. Dr. Sharma really expressed no opinion

as to how it might have been accomplished, the main thrust of his evidence relating to the avoidance of the onset of pneumonia. This was clearly a case where in Lord Parkers words the original wounds were "an operating and a substantial cause" of death. To conclude otherwise would make this an even more exceptional case than R. v. Jordan

Applying the law to the admitted facts the only conclusion open was that the injuries sustained by the deceased "caused" his death in terms of section 199(1). It follows that the deeming provisions of section 206(a) had no application and a direction to the Assessors on the refinements of causation was not called for.

The appeal is therefore dismissed.

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Judge of Appeal

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Judge of Appeal

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