

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No: HAC 051 of 2012

BETWEEN:

STATE

AND:

TANOA COLAISAILAGI

Counsel: Ms. P. Low for State
Mr. P. Lomaloma for Accused

Date of Hearing: 15 – 18 July 2013
Date of Judgment: 19 July 2013

JUDGMENT

- [1] After a 4 – day trial, the assessors returned with unanimous opinion that the Accused is guilty of manslaughter of Pio Mainanukuloa contrary to section 239 (a) (b) (c) (ii) of the Crimes Decree.
- [2] The charge alleged that the Accused on 1 August 2012 at Labasa engaged in a conduct that caused the death of the deceased and at

the time of such conduct was reckless as to causing serious harm to the deceased.

[3] The essential elements of this charge that the prosecution must prove beyond reasonable doubt are:

1. That the Accused engaged in a conduct.
2. That this conduct caused the death of the deceased.
3. That the Accused was reckless as to a risk that the conduct will cause serious harm to the deceased.

[4] A person is reckless with respect of serious harm if he is aware of a substantial risk that serious harm will occur and having regard to the circumstances known to him, it was unjustifiable to take the risk.

[5] It is an undisputed fact that the Accused assaulted the deceased at the Bounty nightclub on 1 August 2012. The assault caused the deceased to land backwards and hit his head on the concrete surface of the club.

[6] As a result, the deceased sustained head injury and on 10 August 2012, he died of extensive subdural hemorrhage at the Labasa hospital. It is not in dispute that the assault by the Accused was the operating and substantial cause of the deceased's death.

- [7] The issue in this case is whether the Accused acted in self-defence when he punched the deceased once in his face at the Bounty nightclub on 1 August 2012. . At the time, the deceased was 23 years old and the Accused was 27 years old.
- [8] The prosecution led evidence from a number of witnesses who was either in the company of the deceased or the Accused who witnessed the alleged incident at the nightclub. There is undisputed evidence before this Court that the deceased who was bigger in built than the Accused behaved in a rowdy manner towards the Accused and his friends on more than one occasion inside the nightclub. However, there is conflicting evidence regarding the number of occasions the deceased approached the Accused at his table inside the nightclub. The prosecution witnesses have testified of two occasions when they saw "pushing and pulling" occurring between the deceased and the Accused. The Accused in his evidence said the deceased approached him on three occasions when he was at his table and on one occasion inside the toilet where the deceased made threatening remarks to him.
- [9] It has to be borne in mind that the witnesses gave evidence of an incident that occurred in a nightclub atmosphere and while they were drunk. The crucial evidence is the circumstances under which the Accused punched the deceased. According to the prosecution witness Josefa, who is the Accused's nephew and was at their table, he intervened and pulled the deceased away when the deceased came and bumped into the Accused. While Josefa was pushing the

deceased away, he saw a punch came from behind and landed in the face of the deceased, which caused him to fall backwards on the concrete floor.

[10] The Accused in his evidence said that before he threw the punch, the deceased had thrown a punch at him but it missed. The Accused further told the Court that he felt threatened by the deceased because of his built and aggression towards him.

[11] While the prosecution witnesses have said that they saw the deceased behaving in a rowdy manner in the nightclub, none has said that they saw the deceased throwing a punch at the Accused.

[12] When the Accused was interviewed under caution on 13 August 2012, he said at questions and answers 66 to 72:

Q66: While you were in Bounty, did anything happen?

A: Yes.

Q67: What happened?

A: Whilst we were drinking, a youth came and caused trouble. We stopped him a number of times but he did not follow what we were telling him. He goes away after a while he comes back. I then punched him.

Q68: How many times did you punch him?

A: Only once.

Q69: Which hand did you use?

A: Right.

Q70: Which part of that youth did you punch?

A: A little bit below the mouth.

Q71: What happened to him after you have punched him?

A: He fell down.

Q72: How did he fall?

A: Facing upwards.

- [13] The caution interview of the Accused is part of the agreed facts. It is clear that the Accused makes no mention of the deceased's punch in his caution interview. His explanation for punching the deceased was that the deceased was causing trouble. In my mind, it seems the Accused was annoyed with the deceased rather than threatened.
- [14] The caution statement of the Accused support the version of the alleged incident testified by the prosecution witnesses.
- [15] In directing myself in accordance with the law and evidence contained in my summing-up, I feel sure that that Accused did not honestly believe that it was necessary to use force to defend himself. According to the Accused's own evidence, he knew that the deceased was very drunk and with that knowledge he threw a strong

punch. Although the deceased was bigger in built, he was slightly shorter in height when compared to the Accused and the Accused knew that the deceased had been held back by Josefa, his nephew. I feel sure that the Accused was aware that one strong punch in the face of a drunken man of age and built of the deceased in the circumstances of this case would result in a serious harm and that he was unjustified to take the risk.

[16] The prosecution has discharged its burden and has proved all the elements of the charge beyond a reasonable doubt. I accept the guilty opinion of the assessors, and I find the Accused guilty of manslaughter as charged and convict him accordingly.

Daniel Goundar
Judge

At Labasa
Friday 19 July 2013

Solicitors:
Office of the Director of Public Prosecutions, Labasa for State
Office of P.R. Lomaloma Esq., Labasa for Accused

