

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 322 of 2012

STATE

V

ILIKIMI NAITINI
PAILATO CAVASIGA

Counsel: Mr. T. Qalinauci with Mr. M. Vosawale for the State
Ms. N. Nawasaitoga (L.A.C.) for the first accused
Mr. S. Waqainabete (L.A.C.) for the second accused

Dates of hearing: 3,4,5,6 November 2014
Date of Judgment: 10 November 2014

JUDGMENT

Ilikimi Naitini and **Pailato Cavasiga**, you have been charged with
the following offence:

Statement of Offence

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

Particulars of Offence

Ilikimi Naitini and **Pailato Cavasiga** on the 5th day of August 2012 at Nanuku Settlement, Vatuwaqa in the Central Division murdered Tevita Voivoi.

2. Three assessors have returned after trial with the unanimous opinion that you are both guilty of the offence.
3. In directing myself on my own summing up, I agree with the assessors and this Court finds you both guilty and convicts you accordingly.
4. The first accused had admitted striking the deceased with a heavy wooden post, which the Pathologist says would have caused the cracked skull and haemorrhage of the brain that led to his death. At trial he ran the defence of self defence which the assessors obviously rejected. To use such extensive force against a very drunken man was entirely unnecessary to defend himself. The weight and size of the post, which had been produced in evidence, is such that one strike with it on the head would certainly presume an intention to kill or at least presume a significant risk of death to amount to recklessness. I find that the first accused certainly had the requisite intention to convict him for murder.
5. The case against the second accused was one of an accessory in the joint enterprise. He said in evidence and in his cautioned

interview that he was merely trying to stop the fight but the two eye witnesses said that he had taken an active part in the fight against the deceased. The first accused said in evidence that the second accused was present when the fatal blow was struck. The 1st accused had told him to stand aside. I have no hesitation in finding beyond reasonable doubt that the second accused was an active participant in the joint enterprise and that a fierce attack on a drunken man could lead in all probability to his death.



At Suva
10 November 2014

A handwritten signature in black ink, appearing to read "P.K. Madigan".

P.K. Madigan
Judge