

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No HAC 84 of 2009

BETWEEN: STATE

AND:

1. JOJI ROKETE
2. JOSUA WAKA
3. SANJEEV MOHAN
4. JONETANI ROKOUA

Counsels Appearing: Mr J. Sovau for 1st Accused
Mr A Singh for 2nd Accused
Third Accused in person
Ms L. Tabuakuro for 4th Accused

Dates of Trial: 10 – 14 & 12 February 2014

Date of Ruling: 10 February 2014

RULING

[1] The first accused applies that there be no case to answer on the murder count on the basis that there is no evidence of his intention to kill.

[2] The second accused submits that there is no case to answer on robbery with violence because there is no evidence of violence against him and

also that there is no case to answer on the murder count because there is no evidence of foreseeability or probability that a death would occur in that robbery.

- [3] The third accused being unrepresented and with no knowledge of law leaves it to me to act on his behalf.
- [4] The fourth accused makes an application of no case to answer on the robbery and taking vehicle charges because there is no evidence against him that there was a robbery and a taking of a vehicle.
- [5] The State tells me that they are running this case on intention to kill and the doctrine of joint enterprise.
- [6] The evidence of the robbery is from the report from neighbours and family that the house of Vinod Sharma was broken into. Items were stolen and the house was in disarray. The householder's body was found and the cause of death was asphyxia by suffocation.
- [7] First, second and third accused admit their part in the robbery and in taking the car. As a joint enterprise there is ample evidence of the agreement to rob and there is also evidence that violence was used from the state of the house and the "neutralizing" of the householder. At the very least the second accused must bear responsibility for that circumstantial evidence of violence and there is therefore a case to answer for him and for the two others. The evidence against the fourth accused for the robbery is weak but evidence there is from the fact that we know from relatives that there was a robbery. The 4th accused hired a vehicle and went to the scene of the robbery with 3 others telling the driver to stop outside the property in question, borrowed a shifter from the driver telling the driver that they "were going to do some work". The

next day the fourth accused told the driver that the job had been done, someone died (showing violence) and offered a bribe of \$200 to the driver not to tell anyone. He added reasons why the deceased died. Weak though it may be the facts establish circumstantial evidence from which the assessors may conclude complicity in the 3 offences.

- [8] The liability of the 1st, 2nd and 3rd accused for the murder raises questions of law of the utmost complexity which are difficult enough for a judge, let alone a jury / assessors panel, as Mr Singh submits.
- [9] However, the law is that by agreeing to undertake an unlawful enterprise (the robbery) and one of them goes beyond that plea and kills in the process the probability of that event is called into question along with their respective roles in the enterprise. The first accused admits to blocking his mouth until he was motionless, obviously evidence of intention to kill, the second accused admits seeing others “do something” to the man on the bed and “tying ” him and the third accused said he saw the man on the bed tied and then carried on searching. The authorities dictate that in embarking on this enterprise to rob, they run the risk of something be done to “neutralize” or deal with anyone found in the premises and if so they are jointly liable. The evidence raises the issue and it is ultimately a matter for the assessors whether they accept that the tragic event was foreseeable or probable. It is not a question for no case and matters raised are all questions for the assessors to determine at the end of the case.

P.K. Madigan
Judge

At Lautoka
17 February 2014