

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

High Court Criminal Case No. 41 of 2014

STATE

v.

TOMASI TAKAKA

Counsel: Mr. L. Fotofili for the State
Mr. M. Fesaitu (L.A.C.) for the Accused

Dates of Hearing: 6, 7, 8 July 2015.
Date of this Judgment: 8 July 2015.

JUDGMENT

Tomasi Tokaka, you have been charged with the following offence:

Statement of Offence

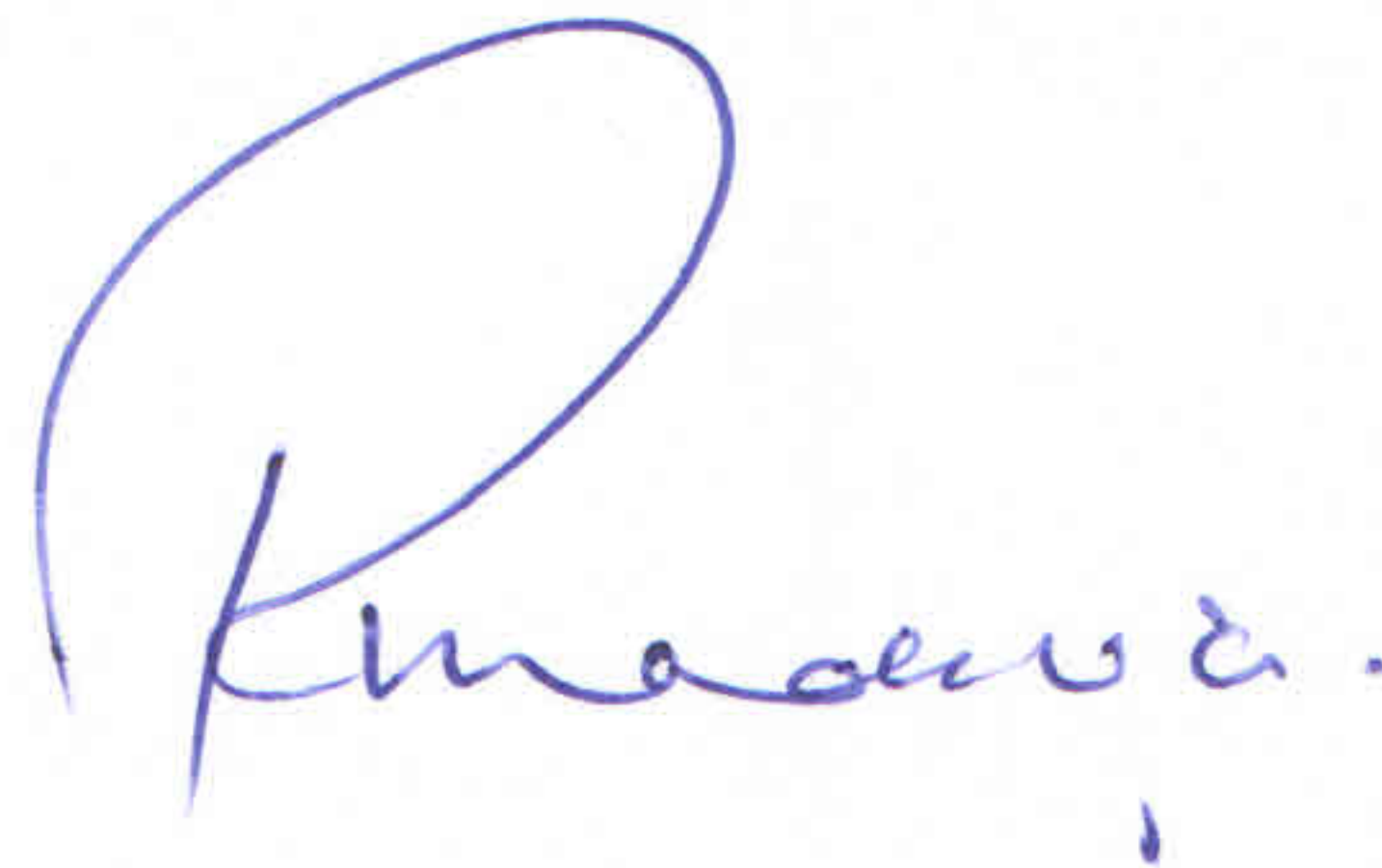
MURDER: Contrary to section 237(a)(b)(c) of the Crimes Decree 2009

Particulars of Offence

TOMASI TAKAKA on the 27th April 2014 at Uma Village, Rabi in the Northern Division, murdered **TARAKAI TEARINITI**.

2. You have been tried in this court with three assessors who have returned with unanimous opinions of not guilty of murder but guilty of the lesser offence of manslaughter.
3. I have reviewed the evidence and directed myself on the law in my Summing Up. The opinions on the culpability of the accused are certainly available on the evidence and I must give them the weight that they deserve. In accordance with my analysis below of the evidence, I agree with the assessors and find the accused guilty of manslaughter and convict him accordingly. That is the judgment of the Court.
4. The deceased died of multiple injuries inflicted by the accused. On his own evidence the accused punched the deceased until he fell on to a concrete floor. He then repeatedly kicked him in the head with such force that he sustained a fracture of the skull and haematoma around various areas of the brain. The cause of death was a haemorrhage of the pons, a critical area at the base of the skull where it joins the spinal cord. Such an injury is fatal and incurable. The pathologist opined that the force used must have been considerable.
5. The accused ran a defence of delayed provocation; he had been teased and mildly physically abused (slaps, kicks) in his youth by the older deceased and he had a simmering resentment against such treatment. When he was placed in a situation of conflict during a night of toddy drinking he claims that his anger was triggered and he set upon the deceased by way of provoked revenge.
6. If the provocation defence is rejected then the issue becomes one of recklessness on the part of the accused. If reckless as to the risk of death, it is murder. If reckless as to the risk of serious harm, then it is manslaughter. It is a fine distinction and a difficult one to assess in this case.
7. The accused gave evidence and he presented himself as a remorseful, contrite young man who had no intention as to the outcome that eventuated.
8. It is not known if the assessors accepted the provocation defence or not and if they considered the attack to be reckless as to causing serious harm only and not death.

9. The court for its own part would reject the provocation defence as being too remote. Then left with the distinction as to recklessness the Court is moved by the accused's testimony to find that he was reckless as to causing serious harm only and not death.
10. It is for this reason that the Court agrees with the assessors' opinions and has convicted the accused of the lesser offence.



P.K. Madigan
Judge.

At Labasa
8 July, 2015

