

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 137 OF 2014

STATE

VS

AMINIO TURAGAVA

Counsel : Ms. S. Kiran for the State
: Mr. Aman Singh with Mr. M. Anthony for the
Accused
Date of Summing Up : 8th February, 2016
Date of Judgment : 15th February, 2016

JUDGMENT

1. Accused was charged with the following count and tried before three Assessors.

Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Decree 44 of 2009.

Particulars of Offence

AMINIO TURAGAVA aka **ALIFERETI KAMAKOREWA** between the 20th day of October 2014 and 21st day of October 2014 at Lautoka in the Western Division, murdered **VENIANA ALIVINA**..

2. Assessors unanimously found the Accused guilty of Murder as charged.

3. I concur with the Assessor's opinion and give my reasons as follows.
4. Prosecution says that the Accused intended to kill his *de facto* partner, Veniana, when he punched and stamped on her head several times. Prosecution also says, in the alternative, that Accused knew what he was doing would cause death of Veniana but went on to do it regardless. Defence on the other hand says that Accused did not intend to kill Veniana and he was in a state of intoxication at the time of the incident. Defence Counsel also took up the position that Veniana died of head injuries caused by her falling down on the ground and not by Accused's actions.

CREDIBILITY OF THE PROSECUTION CASE

5. Prosecution relied on the evidence of Josateki Seuseu, photographs and the sketch he tendered, evidence of Avinash Aman Kumar, Sanjay Kumar, Fariza Begum, Olivia Nabula, Pathologist James and his report, cautioned interview and the charge statement of the Accused to prove its case.
6. I am satisfied that evidence of the Prosecution is truthful and reliable. There were no material inconsistencies or contradictions that affected the credibility of the Prosecution case.
7. I am also satisfied that each element of the offence of Murder had been proved by the Prosecution beyond reasonable doubt.
8. There is no dispute about the identity of the Accused. Accused was known to the main eye witnesses well prior to the incident. Eye witness Avinash Kumar positively identified the Accused who is also known as Vereti.

UNLAWFUL ACT

9. In the cautioned interview which was tendered as an agreed fact, Accused admitted punching Veniana several times on her head, knocking her down to the ground and stepping on her head three to four times while she was lying on the cement floor. Eye witness Olivia Nabula in her evidence confirmed, though with slight variance,

Accused's statement. She said that punching caused Veniana to fall down on the cement floor and he jumped on the left side of her head twice when she was lying down. There can be no doubt that punching and stamping on the head did constitute unlawful acts on the part of the Accused.

DID ACCUSED'S ACT SUBSTANTIALLY CONTRIBUTE TO VENIANA'S DEATH?

10. There is evidence that Veniana fell on the ground twice. First occasion was when she received the last punch from the Accused in the passage of Meredani's house. Second occasion was when she fell on the edge of the road with the Accused while he was trying to load injured Veniana on his shoulders. Contention of the Defence is that Veniana's death was caused by head injuries she received when she fell on the ground and not by the acts of punching and stomping of the Accused.
11. I find Pathologist's evidence most useful to resolve this issue. Pathologist observed obvious subarachnoid hemorrhage underneath the fine covering of her brain on both sides, extending it down into the small brain. Expressing his medical opinion on the cause of death, the doctor said that the deceased died of extensive subarachnoid hemorrhage due to a blunt force trauma.
12. According to him, subarachnoid hemorrhage is mostly associated with stream of blunt lateral blows to the face or to the neck, eventually causing rotation and avulsion of the mid brain. He further said that blunt force trauma can be caused by anything that has a blunt or rounded surface like a fist or foot. He conceded that stomping on the left side of the face when the right side of the face is on the floor can cause a sudden avulsion of the brain.
13. Pathologist said that if a person dies from a fall, he would expect bruising externally over and under the skin of the scalp and also possible fracturing. He further said, in a fall, he would expect different type of hemorrhage called subdural hemorrhage. He opined that the kind of medical condition he observed in Veniana's brain rarely conformed to injuries normally caused by a fall.

14. Pathologist had not been informed of the two falls beforehand when the history was related to him by Police. He, however, ruled out possibility of coming to a different conclusion even if he had been briefed about the two falls although such information could have been helpful. I find Pathologist's opinion for which he gave reasons is logical and reasonable. His evidence corroborated other evidence led in the trial, especially that of eye witness Olivia Nabula's.
15. I am satisfied that unlawful actions of the Accused caused if not substantially contributed to Veniana's death.

INTENTION TO KILL

16. Accused's murderous intention could easily be inferred from the circumstances established by evidence. I first considered the cautioned interview and the charge statement of the Accused to determine his intention at the relevant time.

Motive of the Accused

17. Accused had a clear motive from which Court can draw the inference that he had murderous intent. In the charge statement which was tendered as an agreed fact, Accused says:

"I was in de facto relationship with Veniana for the last 18 months and it was in September this year she reported against me for assaulting and we have a case pending in court also DVRO case. On this day I had gone to see Veniana to tell her to reconcile with me but she didn't want to. I was trying my best to convince her to reconcile with me as the case was on Tuesday 21/10/14 but she did not. I got annoyed on her and started to punch her. I punch her all over the head. I was drunk that time when I dragged Veniana into the passage between the house and kitchen of my sister Meredani. I punched her again and Veniana fell down and I kicked her over her head several times and that is the time she stopped breathing. I knew that she was dead so I dragged her away

from there and took her to an open grass and left her there and went to sleep at the house of one Samisoni”.

18. In the cautioned interview, Accused expressed similar sentiments. According to evidence of eye witnesses, Accused, by his words and conduct, had manifested his idea to force Vaniana to withdraw the Court case that was to be called on the following day. In the light of the words he had spoken at the time of the incident (which I quote below), Court can't see any reconciliation effort on his part. He had a strong motive to get rid of the Court case pending against him by hook or by crook and to get rid of her if she did not agree.

Words spoken by the Accused

19. Court can draw certain inferences as to the Accused's intention by examining the words are had spoken at the material time.
20. Avinash asked Vereti what happened and asked him why he was hitting his wife. He said that he had a pending Court case and wanted to settle it; but his wife did not want to settle it. *'It is better for me to kill her and go to jail'* he said. Vereti was talking in Hindi on that occasion. Avinash told Vereti not to kill her as his understanding of the words Vereti spoke was that Vereti was going to kill her.
21. Avinash heard Accused expressing similar sentiments on two occasions. First occasion was when he went to see the cry of a woman. Sanjay Kumar was also present at that time. The second occasion was when Accused took a small knife from Avinash's kitchen. Avinash heard Vereti saying *"I want to settle. She is not settling. I will kill her and go to jail."* Fariza Begam who witnessed the incident said that she did not understand what they were talking in Fijian.
22. Defence Counsel argues that there is a material contradiction *inter se* between evidence of Avinash and Fariza. I can't agree. On the first occasion Accused was talking in Hindi. Fariza was not present at that time. Second occasion was when the Accused went to Avinash's kitchen to get the knife. At that time Fariza was present and Vereti was talking in Fijian. Avinash proved to Court that he is capable of talking

in English, Fijian and Hindi. It is possible for Vereti to speak in two different languages on two different occasions.

23. Defence Counsel disputed the English translation of the actual words spoken by the Accused in Hindi. He suggested that the actual translation should have been “It is better for me to hit her and go to jail”. Avinash later conceded that the words he overheard gave double meaning and that they can mean either ‘hit’ or ‘kill’. Eye witness Sanjay Kumar confirmed that the actual words Accused uttered on the first occasion were ‘to kill her’. Sanjay Kumar said:

“Vereti was telling her ‘I will kill you if you don’t resolve this issue’”.

Accused’s behaviour before, at the time and soon after the incident.

Before the incident

24. Before punching incident, Accused went to Avinash’s kitchen and took a small knife. When the knife was in his possession, Avinash heard Vereti saying, “I want to settle. She is not settling. I will kill her and go to jail”. Avinash snatched the knife and locked it in the kitchen, preventing him from taking it again.

At the time of the incident

25. At the time of the incident, Accused manifested his intention to kill Veniana by his actions. Accused punched Veniana on her head and knocked her to the ground. Veniana’s right side of the head landed on the floor. Not content with punching and knocking her down to ground, Vereti went on and stamped on her head twice while she was lying on the cement floor. According to his own statement he kicked on her head three to four times. Oliva got hold of him when Vereti was about to jump again on his head. Only inference that this Court can draw from his conduct is that he intended to kill Veniana.

After the incident

26. After the main incident Veniana was in a critical condition. Oliva asked Vereti if he can take Veniana to hospital if not call the ambulance. He informed her *'don't worry I will not call the ambulance I will carry her by myself to the van'*. Taking her to the van he referred to at that time was nearly impossible given the distance where the van was. Vereti told police that he did not take injured Veniana to his nearby sister's place. Instead, he had dumped Veniana near a banana tree and went to sleep at Samisoni's house. His behaviour (omission to save her life) that was followed by his main action clearly manifested his intention to let her die.

Injuries caused to the victim

27. Court can take into consideration the number and nature of injuries and the place of the body where the injuries were inflicted to determine the intention of the Accused. According to Oliva Nabula's eye witness account, photographs tendered and the Pathologist's evidence, Veniana had critical facial and head injuries to which she succumbed.
28. Accused's action was not an isolated one. His violent behaviour persisted over a considerable period of time. Having taken into consideration all the evidence led in the trial, I am satisfied that the Prosecution has proved Accused's murderous intention at the relevant time.

KNOWLEDGE

29. Evidence is sufficient to find the Accused guilty of Murder on his recklessness as to causing her death in case Prosecution failed to prove his murderous intention. Accused is a well built man. Photographs of Veniana's dead body show that she is a small made woman compared to Accused. He jumped or stamped on her head at least twice when she was lying on cement floor. Accused should have known that jumping on the head of a woman like her would cause her death. Omission on his part to save

her life when she was in a critical condition further strengthened evidence of his state of mind as to guilty knowledge.

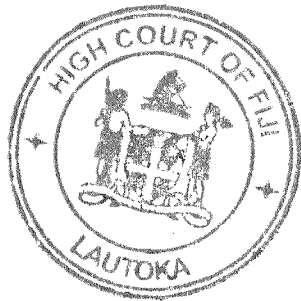
30. If the Accused stopped at punching, I believe, he could have tried his luck and expected the Assessors to come up with a guilty verdict only for Manslaughter. Not content with punching and knocking her down, Accused went ahead and jumped on her head. There he crossed the threshold.


VOLENTARY INTOXICATION

31. Defence advanced the defence of voluntary intoxication. In Fiji, it is not a defence in itself. The Accused's state of drunkenness at the time of the violence is just one of the factors which the Court must consider to discern his intention or the knowledge.
32. There is evidence that Accused was drunk at the time of the incident. Eye witnesses confirmed that he was smelling alcohol. He told Police at the interview that he was drinking two cartons of beer with three friends around 8 p.m. While his friends were still drinking, Accused had left them to meet Veniana and he had met her around 9.30 p. m.. His drinking session was not that 'strong' or long.
33. Defence Counsel argued that Accused was so drunk that he was not aware what he was talking and doing. I am unable to agree. Accused was not as drunk as his Counsel says he was, sufficiently drunk to be unaware of what he had done and with what intent. Accused recollected and narrated to Police the sequence of events, even finer points, that took place that night when he was interviewed at 4.20 p.m. on 21st October, 2014. He did not say '*I can't remember anything that happened as I was so drunk*'. That clearly shows that he was well aware what he was doing and of the consequences of his actions despite his state of intoxication.
34. I am satisfied that the Accused had the murderous intention at the time he attacked Veniana and also he had knowledge of his actions as to causing her death despite his state of intoxication.
35. I concur with the unanimous opinion of the Assessors.

36. I find the Accused guilty of Murder and convict the Accused accordingly.

37. That is the judgment of the Court.




Aruna Aluthge
Judge

At Lautoka
15th February, 2016

Solicitors: Office of the Director of Public Prosecution for State
Aman Ravindra Singh Lawyer for Accused