

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

LAUTOKA CRIMINAL CASE NO. HAC 149 OF 2013L

**STATE**

**vs**

**VINEND KUMAR**

Counsels : Ms. L. Latu for State  
Mr. M. Fesaitu and Ms. A. Prakash for Accused  
Hearings : 22 to 25 and 28 November, 2016  
Summing Up : 29 November, 2016

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## **SUMMING UP**

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**A. ROLE OF JUDGE AND ASSESSORS**

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of fact.
2. State and Defence Counsels have made submissions to you, about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsels, in this case. Their submissions were designed to assist you, as the judges of fact. However, you are not bound by what they said. It is you who are the representatives of the community at this

trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.

3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

**B. THE BURDEN AND STANDARD OF PROOF**

4. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation on the accused to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he is proved guilty.
5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is not guilty.
6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accused or the victim. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

**C. THE INFORMATION**

7. You have a copy of the information with you, and I will now read the same to you:

*"... [read from the information]..."*

**D. THE MAIN ISSUES**

8. In this case, as assessors and judges of fact, each of you will have to answer the following questions:
  - (i) On Count No. 1, did the accused, on 15 July 2013, at Tavua in the Western Division, attempt to rape Sitamma?



- (ii) On Count No. 2, did the accused, on 15 July 2013, at Tavua in the Western Division, murder Sitamma?

**E. THE OFFENCES AND THEIR ELEMENTS**

- 9. Since Count No. 2 involved the serious charge of "murder", we will discuss the same first, before we discuss Count No. 1, that is, attempted rape. The accused was charged with "murder", contrary to section 237 of the Crimes Decree 2009, in Count No. 2. It was alleged that on 15 July 2013, at Tavua in the Western Division, he murdered Sitamma. For the accused to be found guilty of "murder", the prosecution must prove beyond reasonable doubt, the following elements:
  - (i) that the accused did a willful act; and
  - (ii) that willful act caused the death of the deceased; and
  - (iii) at the time of the willful act, the accused either;
    - (a) intended to cause the death of the deceased; or
    - (b) is reckless as to causing the death of the deceased.
- 10. On the first element of murder, a "willful act" is a voluntary act by the accused. It is a feeling of strong determination to do something that he wanted to do. It is what he wanted to happen in a particular situation. This is the physical element of the offence of murder. For example, A wants to shoot B with a gun. A picks up a gun, and shoots B in the heart, A did a "willful act". Likewise, if A assaults B. When A assaults B, A did a "willful act" to B.
- 11. On the second element of murder, "the willful act must cause the death of the deceased". This simply meant that the accused's willful act, substantially contributed to the death of the deceased. The accused's willful act must be a substantial contributor to the death of the deceased. In other words, the accused's willful act was a substantial cause of the deceased's death. Continuing from the above examples when A shot B in the heart, with a gun, B later died as a result of the injuries to his heart. A's shooting B in the heart (willful act) was a substantial cause of B's death. Likewise, when A assaults B, it caused serious injuries to his body, leading to B's death. A's assaulting B, set in motion a chain of events that led to B's death, and as such, was a substantial cause to B's death.
- 12. The third element of murder concerned it's fault element. There are two fault elements for murder, as described in paragraphs 9(iii) (a) and 9(iii) (b). In this case, the prosecution is

running it's case on the fault element in paragraph 9 (iii) (a), that is, the accused intended to cause the deceased's death. We will therefore concentrate on this fault element, rather than the other. The prosecution must make you sure that when the accused did "the willful act", he "intended to cause the death of the deceased". You cannot cut open the accused's head, to find out what his intentions were, at the time he allegedly assaulted the deceased to death. But you can examine his conduct at the time, that is, what he said and did, and the surrounding circumstances, to infer whether or not he intended to kill the deceased, when he allegedly assaulted her. If you find that he intended to kill the deceased, at the material time, that would be sufficient to support the third element of murder, that is, an intention to kill.

13. If you are sure that all the elements of murder, as expressed above, are satisfied by the prosecution beyond a reasonable doubt, then you must find the accused guilty as charged. If you find that some of the elements of murder, as described above, are not satisfied beyond a reasonable doubt by the prosecution, then you must find the accused not guilty as charged.
14. At this stage, we must consider the lesser offence of "manslaughter". This was because the accused had called in aid the defence of "provocation" and appeared also to argue that the accused at the material time, did not intend to kill, but only to seriously harm the deceased. In law, a person may be found guilty of a lesser offence, although he was not formally charged with the same. Whatever decision you reach on the murder charge, you will have to consider the lesser offence of manslaughter.
15. If you find the accused guilty of murdering the deceased, you will have to look at and consider the lesser offence of manslaughter, because the defence had argued in their closing submission, that the accused is not guilty of murder, but guilty of manslaughter, by reason of provocation. Section 242 (1) and (2) of the Crimes Decree 2009 reads as follows:

*"...when a person who unlawfully kills another under circumstances which, but for the provisions of this section would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation...and before there is time for the passion to cool, he is guilty of manslaughter only. Provocation means any wrongful act or insult of such a nature as to be likely when done to any ordinary person, to deprive him of the power of self-control and to induce him to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered..."*



So, if you find on the evidence that the accused was provoked into killing the deceased, in the sense given above, and you are sure of it, then you will have to find the accused guilty of manslaughter only.

16. If you find the accused not guilty of murder, you will still have to look at and consider the lesser offence of manslaughter, because the defence appeared also to argue that the accused was not guilty of murder, but guilty of manslaughter, on the ground that, at the material time, he did not intend to kill, but only intend to cause serious harm to the deceased. For the accused to be found guilty of "manslaughter", the prosecution must prove beyond reasonable doubt, the following elements:

- (i) that the accused did a willful act; and
- (ii) that willful act caused the death of the deceased; and
- (iii) at the time of the willful act, the accused either;
  - (a) Intends the willful act to cause the deceased serious harm; or
  - (b) Is reckless as to causing serious harm to the deceased.

17. Note that the first two elements of manslaughter are similar to the first two elements of murder. The only difference between the two offences are their fault elements. In murder, the accused must intend to cause the deceased's death, or was reckless in causing the same. In manslaughter, the accused must intend to cause serious harm, not death to the deceased. Continuing from the examples we discussed above, when A shoots B with the gun, he intended to cause B serious harm, not death. Alternatively, A was not reckless as to causing his death, but only serious harm. Likewise, when A allegedly assaulted B on the body, he did not intend to kill him, but only to cause him serious harm. Alternatively, A was not reckless in causing B's death, but only to cause B serious harm. If you find that the evidence satisfy the above elements of manslaughter, and you are sure of the same, then you are entitled to find the accused guilty of the alternative lesser offence of manslaughter.

18. Count No. 1 involved the offence of "attempted rape". The accused was charged with "attempting to rape" Sitamma on 15 July 2013 at Tavua in the Western Division, contrary to section 208 of the Crimes Decree 2009. For the accused to be found guilty, the prosecution must prove beyond reasonable doubt, the following elements:

- (i) the accused attempted;
- (ii) to penetrate the complainant's vagina with his penis;
- (iii) without her consent; and
- (iv) he knew, at the time, that the complainant was not consenting to (i) and (ii) above.

19. In the Oxford Advanced Learner's English Dictionary, Oxford University Press, 2000 edition, the word "attempt" means "to make an effort or try to do something difficult". In the context of "attempted rape", the accused must make an effort or try to insert his penis into the complainant's vagina, without her consent. He must also know at the time that the complainant was not consenting to his attempt to have sex with her. The accused's conduct must be more than merely preparatory to the commission of rape and such an issue is a question of fact for you. So, if you find on the facts that the accused attempted to penetrate the complainant's vagina with his penis without her consent, and he knew, she was not consenting to the above, at the time, and you are sure of it, you must find the accused guilty of attempted rape. If it's otherwise, you must find him not guilty as charged. It is a matter entirely for you.

20. Remember, there are two counts in the information. You must consider each count separately and come to a considered decision on each of them, in the light of the whole evidence presented at the trial.

**F. THE PROSECUTION'S CASE**

21. The prosecution's case were as follows. On 15 July 2013, the accused was 25 years old. He had reached Form 7 level education at the time. He was born at Lautoka Hospital and spent most of his life in Waiyavi, Lautoka. At the time, he was working as a labourer. The deceased was a 53 year old woman, married with two children. She resided with her husband in Malele, Tavua.

22. According to the prosecution, the deceased, prior to her death on 15 July 2013, was suffering from a menstrual problem. The accused was held out by certain members of the community as a herbalist, and a person who could resolve the above menstrual problem, by providing herbal medicine. It was said that he could also pray for them, and help patients recover. Through the recommendation of a friend, the deceased invited the accused to her home to make her some herbal medicine, and also pray for her. The accused complied with the deceased's request.



23. He went to the deceased's home prior to 15 July 2013, prayed for her, conducted some religious ceremony, and made some herbal medicine for the deceased. According to the prosecution, the accused was not a "pundit", not a priest and neither a doctor. Somehow, the accused got hold of the deceased's gold jewellery for some religious ceremonial purpose, but he later stole the same, and sold it. The deceased was not aware of the above.
24. On 15 July 2013, the deceased asked the accused to return her gold jewellery. The accused told her he had sold the same. A heated argument erupted between the two. The two struggled against each other, and the deceased fell on the floor face up. According to the prosecution, when the deceased fell on the floor face up, her skirt came up and she was wearing no under pants. According to the prosecution, the accused got excited and took his pants off, and tried to insert his penis into her vagina, without her consent. He laid on top of her, but the deceased scratched the accused's face and broke his silver chain. The accused's T-shirt was also torn during the struggle. According to the prosecution, the accused stood up, got hold of a small coffee table and smash the same twice on the deceased's face and head. According to the prosecution, the accused then went outside the house, got an iron rod used for pounding grog, and struck the deceased twice on the back of the head. The deceased suffered extensive injuries to the face and head as a result of the above. She later died as a result of the above injuries. The accused fled the crime scene after the attack.
25. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged on both counts. That was the case for the prosecution.

**G. THE ACCUSED'S CASE**

26. On 23 November 2016, the first day of the trial proper, the information was put to the accused in the presence of his counsel. He pleaded not guilty to both counts. In other words, he denied the allegations against him. When a prima facie case was found against him at the end of the prosecution's case, wherein he was called upon to make his defence, he choose to give sworn evidence and called no witness. That was his right.
27. The defence's case was simple. On oath, he denied the allegations against him. He admitted, he was with the deceased at the crime scene, at the material time. He admitted that, he told the deceased at the crime scene that he had sold her gold jewellery. He admitted, a heated argument erupted between the two, as a result of the above. He said, the deceased slapped

his face and grabbed his collar, and in the process broke his silver chain. He said, the deceased went outside the house and got an iron rod, usually used for pounding the grog. He said, while holding the grog pounder, she threatened to kill him. He said, she then hit him with the grog pounder. He said, the grog pounder hit his wrist, and he later grabbed the grog pounder from the deceased. He said, he later hit the deceased with the grog pounder on the back, either on the back of the head or shoulder. He said, he later fled the crime scene.

28. As to his caution interview and charge statements he gave to the police, wherein it was said he made full confessions to the allegations against him, he asks you to disregard the same, because, according to him, the police forced the same out of him by assaulting him while in their custody. He also said, the statements therein were not given voluntarily, and they were not true. Because of the above, the accused asks you, as assessors and judges of fact, to find him not guilty as charged on both counts. That was the case for the defence.

#### H. ANALYSIS OF THE EVIDENCE

##### (a) Introduction:

29. In analysing the evidence, please bear in mind the directions I gave you in paragraphs 4, 5 and 6 hereof on the burden and standard of proof. In the acceptance and/or rejection of the evidence presented at the trial and your role as assessors, please bear in mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analyzing the evidence, we will first discuss the "Agreed Facts" and its significance. Then we will discuss the State's case against the Accused with reference to the three elements of murder as described in paragraphs 9(i), 9(ii) and 9(iii)(a) hereof. Then we will discuss the defence's case, and the need to look at all the evidence.

##### (b) The Agreed Facts:

30. The "Agreed Facts" submitted by the parties, in this proceeding, consisted of two types:
- (i) The "Agreed Facts", dated 14 November 2016, which contained 10 paragraphs of "Agreed Facts";
  - (ii) The "Agreed Bundle of Document", dated 22 November 2016, which contained three witnesses', police statements, the deceased's birth certificate, medical cause of death certificate, sketch plans of the crime scene and photos of the crime scene.
31. These "Agreed Facts" and "Agreed Bundle of Documents" are not disputed by the parties. You must read it carefully and understand the same. Because the parties are not disputing the



same, you may take it that the prosecution had proven those facts beyond a reasonable doubt, and you may treat the same as established facts. It is a matter entirely for you.

**(c) The State's Case Against the Accused:**

32. The State's case against the accused fundamentally rests on his alleged confessions to the police when he was caution interviewed and formally charged by them. We will therefore carefully analyse these evidence and consider the proper way to approach the same later. The accused's police caution interview statements were tendered in evidence as Prosecution Exhibit No. 3 (A) – hand written version and 3 (B) – the typed version. The accused's charged statements were tendered in evidence as Prosecution Exhibit No. 6 (A) – hand written version and 6 (B) – the typed version. Please, read and understand the above exhibits.
33. In addition to the above, the State is submitting the deceased's post-mortem report as Prosecution Exhibit No. 1. The significance of the report lies in the extent of the injuries allegedly suffered by the deceased. You will note from the accused's caution interview and charge statements that, at the material time, when the accused and the deceased allegedly confronted each other prior to the alleged killing, only two persons were present at the crime scene, the accused and the deceased. The accused had spoken about the event through his interview and charge statements, including his sworn evidence in court. The deceased cannot speak about the same because she is dead. However, the deceased speaks to us through her alleged injuries, as contained in her post-mortem report. Because of this, the State is also relying on circumstantial evidence, in support of its case. We will discuss this later.
34. Detective Corporal 2501 Sunil Dutt (PW7) caution interviewed the accused on 18, 19 and 20 July 2013 at Tavua Police Station in the English language. The accused had reached Form 7 level education and understood the English language well. PW7 said, the accused was given his right to counsel and other rights. He was given the standard caution. He was also given the standard rest and meal breaks throughout the 3 day interview. PW7 said 316 questions were asked and the accused gave 316 answers. PW7 said, he asked the questions and the accused answered the questions. PW7 said, he recorded the interview with his own handwriting and he later typed the same. The two versions were consistent with each other. PW7 said, the accused co-operated with the police throughout the interview and he answered the questions voluntarily and out of his own free will. PW7 said, he and the other police officers present in the interview did not assault, threaten or force the accused to give his answers.

35. During the interview, the accused confessed to attempting to rape and murdering the deceased, at the material time. Please, refer to questions and answers 205 to 235, 247 to 249, 255, 256, 262, 263, 272, 285 and 306 of Prosecution Exhibit 3 (A) and 3 (B). PW7 said, the accused, himself and the witnessing officer, Corporal Mahesh Chand (PW8) signed all the pages of the interview notes. After the caution interview, Corporal 2971 Nitesh Kumar (PW11) formally charged the accused at Tavua Police Station in the English language. PW11 said the accused was given his rights. In question and answer 9 of the charge statement, the accused admitted murdering the deceased at the material time. PW11 said the accused gave his statement voluntarily and out of his own free will. They signed all the pages of the charge statement.
36. The accused, on the other hand, asks you to disregard his caution interview and charge statements, because the police repeatedly assaulted him and threatened him during the interview. He said, he never voluntarily gave his caution interview and charge statements and his alleged answers were nothing but a police fabrication. We will consider this further when we discuss the defence's case.
37. Nevertheless, when approaching the above alleged confessions, I must direct you as follows, as a matter of law. A confession, if accepted by the trier of fact – in this case, you as assessors and judges of fact – is strong evidence against its maker. However, in deciding whether or not you can rely on a confession, you will have to decide two questions. First, whether or not the accused did in fact make the statements contained in his police caution interview and charge statements? If your answer is no, then you have to disregard the statements. If your answer is yes, then you have to answer the second question. Are the confessions true? In answering the above questions, the prosecution must make you sure that the confessions were made and they were true. You will have to examine the circumstances surrounding the taking of the statements from the time of his arrest to when he was first produced in court. If you find he gave his statements voluntarily and the police did not assault, threaten or made false promises to him, while in their custody, then you might give more weight and value to those statements. If it's otherwise, you may give it less weight and value. It is a matter entirely for you.



38. If you accept the accused's above confession, then you will have to find the accused guilty as charged. If you don't accept the same, then you will have to find the accused not guilty as charged. It is a matter entirely for you.
39. Finally, the effect of the deceased's post-mortem report, and the power of circumstantial evidence. You have heard the accused's version of events as contained in his police caution interview and charge statements. You have also heard his sworn evidence, which appear to differ slightly from his police caution interview and charge statements. These inconsistencies you will have to determine yourselves after considering his credibility as a witness. However, he did not deny he was engaged in a confrontation with the deceased, prior to him assaulting the deceased, before she died. In the caution interview statement, he admitted he struck the deceased four times on the head with an iron rod (grog pounder) and a small coffee table. In his evidence, he said, he only struck the deceased once on the back with the iron rod. The result of the above alleged assaults were contained in the post mortem report. The mark of violence on the deceased were itemized in her external and internal examination. Please, refer to Prosecution Exhibit No. 1 (the post mortem report).
40. When talking on the deceased's post mortem report, Doctor James Kalounivaki (PW3) said as follows, "...The cause of death as stated by Doctor Gounder, as a result of the injuries noted to the deceased. I agree with the same and I adopt it as mine, after considering the injuries noted in the post mortem report.

**External Exam.** Injury No. 1 is due to something sharp and may have a triangular nature. The object used to cause injury No. 1 is highly likely to be triangular and sharp. Injury No. 2 is caused by friction e.g. person may be held tightly and person came into contact with a rough surface. Injury No. 3 is caused by a blunt force trauma.

**Internal Exam.** Injury (a) to (e) are caused by blunt force trauma e.g. a punch, a kick and possibly the use of a blunt object. An iron rod could cause such injuries. The fractured jaw would need a high energy or violent force to break it. The swollen brain is caused by blunt force trauma – which should be high energy. If someone suffers the above injuries, the person could die within 1 to 3 hours, or immediately, if unattended to.

**Assault is the underlying cause of death.** There are multiple injuries to the head itself. A grog pounder (i.e. iron) would be used more than once since there are multiple

**injuries. There are multiple blunt force trauma and a sharp force trauma in front of her left ear. The object used must be triangular in shape.”**

41. The prosecution, given the above evidence, was relying on circumstantial evidence, to connect the accused to the murder. That simply means that the prosecution is relying upon evidence of various circumstances relating to the crime and the defendant which they say when taken together will lead to the sure conclusion that it was the defendant who committed the crime. It is not necessary for the evidence to provide an answer to all the questions raised in a case. You may think it would be an unusual case indeed in which a jury can say “We now know everything there is to know about this case”. But the evidence must lead you to the sure conclusion that the charge which the defendant faces is proved against him.

Circumstantial evidence can be powerful evidence, but it is important that you examine it with care, and consider whether the evidence upon which the prosecution relies in proof of its case is reliable and whether it does prove guilt. Furthermore, before convicting on circumstantial evidence you should consider whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the prosecution case.

Finally, you should be careful to distinguish between arriving at conclusions based on reliable circumstantial evidence, and mere speculation. Speculating in a case amounts to no more than guessing, or making up theories without good evidence to support them, and neither the prosecution, the defence nor you should do that.

42. Because of the above evidence, the State is inviting you to find the accused guilty as charged. It is a matter entirely for you.

**(d) The Defence’s Case:**

43. In his sworn evidence, the accused denied the allegations against him. He denied attempting to rape the deceased, at the material time. He also denied murdering the deceased, at the material time. He admitted, he was at the crime scene at the material time. He admitted that, a month prior to 15 July 2013, he took the deceased’s gold jewellery. He admitted, he was in the deceased’s room, as shown in the police sketch plans, in the Agreed Bundle of Documents. He admitted, the deceased asked for her gold jewellery. He admitted, he told the deceased that he had sold the same. He admitted, the deceased on hearing the above, got angry and started yelling at him. He admitted, the deceased told him the gold jewellery was given to her by her husband and why he sold the same? The accused said, the deceased slapped him on



the left cheek and scratched the same. He said, the deceased held his collar and broke his silver chain. He said, the deceased went outside the house and got their iron rod grog pounder. He said, the deceased threatened to kill him and struck him with the grog pounder. He said, he blocked the assault with his right wrist and grabbed the grog pounder from her. He said, he then struck the deceased on the back with the grog pounder. He couldn't recall whether or not he hit the deceased's head or back. He said, he only hit her once. He said, he later fled the crime scene. He appeared to be saying that he had no intention of killing the deceased, at the material time, and thus is not guilty of her murder. If you accept his evidence, then you will have to find him not guilty of murder. If otherwise, you will still have to consider the prosecution's case to decide whether or not he was guilty as charged.

44. If you are sure that the accused unlawfully killed the deceased, intending to kill him, the accused is guilty of murder unless you conclude that this was or may have been a case of provocation. Provocation is not a complete defence, leading to a verdict of "not guilty". It is a partial defence, reducing what would otherwise be murder to the lesser offence of manslaughter. Because the prosecution must prove the accused's guilt, it is for the prosecution to make you sure that this was not a case of provocation, and not for the accused to establish that it was - Provocation has a special legal meaning, you must consider it in the following way. Firstly, you must ask yourself whether the accused was provoked in the legal sense at all. A person is provoked if he is caused suddenly and temporarily to lose his self-control by things that have been said or done by the deceased, rather than just by his own bad temper.

45. Here the accused was helping the deceased with her menstrual problems. He was praying for her. He was giving her herbal medicine to solve her menstrual problem. As part of the process, she gave him her gold jewellery which was previously gifted to her by her husband. The deceased had been asking the accused for him to return her gold jewellery. Unbeknown to her, the accused had stolen the same and sold it. On 15 July 2013, when the deceased confronted the accused, he told her he had sold the same. The deceased was angry and yelled and questioned the accused why he did what he did. According to the accused, the deceased got a grog pounder (iron), threatened to kill him with the same and struck him. He blocked the assault with his wrist, grabbed the grog pounder from the deceased and struck her once on the back with the same. If you are sure that the accused was not provoked in the

sense described above, the defence of provocation does not arise, and the accused is guilty of murder.

46. But if you conclude that the accused was or might have been provoked, in the sense which I had explained, you must then go on to weigh up how serious the provocation was for this accused. Is there anything about this accused which may have made what was said or done affect him more than it might have affected other people? Finally, having regard to the actual provocation and to your view of how serious that provocation was for this accused, you must ask yourselves whether a person having the power of self-control to be expected of an ordinary, sober person of the accused's age and sex, would have been provoked to lose his self-control and do as this accused did. If you are sure that such person would not have done so, the prosecution will have disproved provocation, and the accused is guilty of murder. If, however, you conclude that such a person would or might have reacted and done as the accused did, your verdict would be "not guilty of murder but guilty of manslaughter". It is a matter entirely for you.

**(e) Looking at And Considering All the Evidence:**

47. In this case, 12 witnesses gave evidence for the prosecution, that is, Mr. Umesh Prasad (PW1), Munendra Prasad (PW2), Doctor James Kalounivaki (PW3), Gopal (PW4), Inspector T. Ravai (PW5), Mereilisoni Luvu (PW6), D/Corporal 2501 Sunil Dutt (PW7), Corporal 2086 Mahesh Chand (PW8), PC 3923 Deepak Sami (PW9), DC 3600 Arunesh Kumar (PW10), Corporal 2971 Nitesh Kumar (PW11) and D/Sergeant 1373 Saimoni Ratu (PW12). The accused (DW1) was the sole defence witness. Six Exhibits were tendered by the prosecution, that is, the deceased's post mortem report (Prosecution Exhibit No. 1), the "booklet of photos." (Prosecution Exhibit No. 2), the accused's caution interview statements (Prosecution Exhibit No. 3(A) and 3 (B), the iron rod (grog pounder) (Prosecution Exhibit No. 4), the small coffee table (Prosecution Exhibit No. 5) and the accused's charge statements (Prosecution Exhibit No. 6 (A) and 6 (B). Then, there were the two types of "Agreed Facts", as described in paragraph 30 hereof.
48. You must carefully consider all the evidence together. You must analyze and compare them together. You have heard all the witnesses' evidence in the courtroom. You had observed their demeanour in the courtroom. Who do you think was the credible witness? Who do you think was forthright as a witness? Who was evasive as a witness? Who do you think, from



your point of view, was telling the truth? If you accept the prosecution's witnesses' evidence as credible, and you accept their version of events, then you must find the accused guilty as charged. If it's otherwise, then you must find the accused not guilty as charged. It is a matter entirely for you.

I. **SUMMARY**

49. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's guilt, you must find him guilty as charged. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty as charged.

50. Your possible opinions are as follows:

- (i) Murder (Count No. 2) : Guilty or Not Guilty
- (ii) If not guilty of murder,  
Alternative of Manslaughter : Guilty or Not Guilty
- (iii) Attempted Rape (Count No. 1) : Guilty or Not Guilty

51. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.



**Salesi Temo**  
**JUDGE**

Solicitor for State : Office of the Director of Public Prosecution, Lautoka  
Solicitor for Accused : Legal Aid Commission, Lautoka