

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 194 OF 2016S**

**STATE**

**VS**

**JOHN SUBRAMANI GOUNDER**

**Counsels : Mr. Y. Prasad and Mr. T. Tuenuku for State**  
**Mr. T. Sharma and Ms. D. Sharma for Accused**

**Hearings : 22, 23 and 24 January, 2018**

**Summing Up : 26 January, 2018**

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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 29 April, 2016, at Vuci Road Nausori in the Central Division, commit manslaughter against Sairusi Tosonacakacaka Vunakece, when he recklessly drove taxi number LT 4189, and thereby caused the death of Sairusi Tosonacakacaka Vunakece?
- (ii) On count no. 2, did the accused, on 29 April 2016, at Nausori in the Central Division, failed to supply a sufficient sample of breath analysis on the direction of a police officer?
- (iii) On count no. 3, did the accused, on 29 April 2016, at Vuci Road Nausori in the Central Division, failed to stop after an accident and give the necessary information?

**E. THE OFFENCES AND THEIR ELEMENTS**

9. Count no. 1 involved the offence of "manslaughter", contrary to section 239 of the Crimes Act 2009. For the accused to be found guilty, the prosecution must prove beyond reasonable doubt, the following elements:
- (i) the accused engages in conduct; and
  - (ii) the conduct causes the death of another person; and
  - (iii) the accused is reckless as to a risk that the conduct will cause serious harm to the other person.
10. "To engage in conduct" in paragraph 9 (i) above simply meant "a person does an act or perform an act". That "act" must be the product of the will of the person. In other words, the person's act was his wilful act.
11. In paragraph 9(ii) above, the above conduct or wilful act must cause the death of another person. This simply meant that the accused's conduct or wilful act substantially contributed to the death of the deceased. There may be many causes of the deceased's death. However, if the accused's conduct or act, substantially contributed to the deceased's death, that conduct or wilful act would be sufficient to amount to causing the death of the deceased.

12. In paragraph 9 (iii) above, the accused when he engages in conduct or does a willful act, must be reckless as to a risk that his conduct or act, will cause serious harm to the other person. A person is reckless with respect to a result if: (a) he is aware of a substantial risk that the result will occur and (b) having regard to the circumstances known to him, it was unjustifiable to take the risk. The question of whether or not taking a risk was unjustifiable, is a question of fact for you.

13. In count no. 2, the accused was charged with failing to supply sufficient sample of breath analysis when required by a police officer, contrary to section 103 (1)(b) and 103 (1A) of the Land Transport Act 1998. For the accused to be found guilty, the prosecution must prove beyond reasonable doubt, the following elements:

- (1) a police officer
- (ii) requested the accused
- (iii) to undergo a breath test or breath analysis, and
- (iv) the accused fails or refuses to undergo (iii) above by
- (v) failing to provide a specimen of breath sufficient to enable the test or analysis to succeed.

The offence is self-explanatory. If the accused fails to provide a specimen of breath to enable the test to be carried out, when requested by a police officer, he is guilty as charged.

14. On count no. 3, the accused was charged with "failing to stop after an accident and failing to give his particulars", contrary to section 63 (1) and 87 of the Land Transport (Traffic) Regulations 2000. For the accused to be found guilty, the prosecution must prove beyond reasonable doubt, the following elements:

- (i) the accused, being a driver of a motor vehicle involved in a road accident,
- (ii) failed to stop and
- (iii) failed to give his name, address and other necessary information.

The offence is self-explanatory.

#### F. THE PROSECUTION'S CASE

15. The prosecution's case were as follows. The accused was 37 years old on 29 April 2016. He was married with three children. He resided at Vuci South Road, Nausori with his family. He had been

a taxi driver for 12 years. Sairusi Tosonacakacaka Vunakece, the deceased, was 35 years old at the time. He was married.

16. According to the prosecution, the police were engaged in traffic duties on 29 April 2016 at about 1 am on Vuci Road, Nausori. They were positioned opposite Bob's store on Vuci Road, and were doing traffic radar operations. There were three police officers involved, and one of them was SC Inoke (PW2). According to PW2, he saw a taxi registration no. LT 4189 speeding to Bob's store. PW2 said, he suspected the driver was speeding. PW2 said, he tried to stop the taxi, but it ignored him, and drove away. PW2 said, they followed the taxi through Vuci South Road in their police vehicle. PW2 said, the taxi turned off its headlight as it drove down Vuci South Road. According to the prosecution, the taxi was speeding.
17. PW2 said, they managed to stop the taxi later. He went to the driver and found him to be smelling heavily of liquor and had blood shot eyes. According to the prosecution, the police seized his taxi and took him to Nausori Police Station for a breath analysis test. On the way to the station, the police found the deceased lying dead in a muddy drain. The police guarded the scene, while PW2 took the accused to Nausori Police Station. At the Station, the police required the accused to undergo a breath analysis test. According to the police, he failed to give a specimen of breath on three attempts.
18. According to the prosecution, the accused allegedly dove his taxi on Vuci South Road recklessly on 29 April 2016 and caused the death of Sairusi Tosonacakacaka Vunakece. The prosecution alleged he failed to stop and give assistance, and failed to comply with the necessary requirements following an accident. The prosecution also alleged he failed to give a specimen of breath sufficient to enable a breath test to be carried out, when requested by a police officer. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged on all counts. That was the case for the prosecution.

**G. THE ACCUSED'S CASE**

19. On 22 January 2018, the first day of the trial, the information was put to the accused, in the presence of his counsel. He pleaded not guilty to all 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.

20. The accused's case was very simple. In his evidence, he admitted he was drinking grog with two friends on 28 April 2016 between 8 pm and 12 am. He admitted, they drank a bottle of stubby beer each after grog. He admitted he drove taxi LT 4189 from his home at Vuci South Road to Bob's Store to get more beer. He admitted, the store was closed and returned home after 1 am on 29 April 2016. He admitted his car head lights went off when it hit the pot holes. He admitted something hit his car windscreen when he was driving home. As he came to his house, his car headlights went on again. He admitted he was confronted by police and later taken to Nausori Police Station for a breathalyser test. He admitted he was later locked in the cell and caution interviewed by police on the afternoon of 29 April 2016.
21. He denied the three allegations against him. Because of the above, he is asking you, as assessors and judges of fact, to find him not guilty as charged. That was the case for the accused.

H. **ANALYSIS OF THE EVIDENCE**

(a) **Introduction:**

22. In analyzing 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 and judges of facts, 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; then the Accused's case, and finally, the need to consider all the evidence.

(b) **The Agreed Facts:**

23. The parties had submitted an "Agreed Facts", dated 12 October 2017. A copy is with you. Please, read is carefully. There are 10 paragraphs of Agreed Facts, and the same are not disputed by the

parties. As such, you may take it that the prosecution had proven those facts beyond a reasonable doubt, and you may treat the same as established facts.

24. The significance of the "Agreed Facts" were as follows; the parties' identities are not disputed (please, refer to paragraphs 1 and 4). The parties' residential addresses are not disputed (please refer to paragraphs 3 and 5). This may explain why the crime scene was at Vuci South Road, Nausori. It would appear that both the accused and the deceased were returning to their homes at the material time. It was not disputed that the accused was driving taxi registration number LT 4189, at the material time (please, refer to paragraph 6). Of utmost significance was paragraph 7 and 8 of the "Agreed Facts". Here, the accused admitted he was caution interviewed by police at Nausori Police Station, on 29 April 2016, the date of the alleged incident. He said, he gave his caution interview statements voluntarily and out of his own free will. Because he gave his statements on the day of the alleged incident, it was arguable that his recollection of events then was perfect compared to when he gave evidence in court, which was 1 year 8 months 26 days after the event. Humans' recollection of events tend to fade through the passage of time. You will note that in some of his sworn evidence, he denied what he said in his caution interview. However, which version of events to accept, is entirely a matter for you.

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

25. While it was not disputed by the parties that the accused was driving taxi registration no. LT 4189 on 29 April 2016 after 1 am, and that he admitted driving between Bob store on Vuci Road and his home on Vuci South Road thereafter, no eye witness saw taxi registration no. LT 4189 bumped Sairusi Tosonacakacaka Vunakece. This was obviously a difficulty for the prosecution. This difficulty raised the obvious question of whether or not the accused caused the death of the deceased, by his alleged reckless driving of LT 4189 on 29 April 2016 after 1 am, along Vuci South Road, Nausori? If no-one saw Taxi LT 4189 bumped the deceased at the material time, how can it be said that the accused caused the deceased's death by his alleged reckless driving on 29 April 2016 after 1 am?
26. To connect the accused to the alleged manslaughter of the deceased (count no. 1), the prosecution relied on what is often called "circumstantial evidence". Sometimes assessors are asked to find

some fact proved by direct evidence. For example, if there is reliable evidence from a witness who actually saw an accused commit a crime; if there is a video recording of the incident which plainly demonstrates his guilt; or if there is reliable evidence of the accused himself having admitted it. These would all be good examples of direct evidence against him. On the other hand, it is often the case that direct evidence of a crime is not available, and the prosecution relies upon circumstantial evidence to prove guilt. That simply means that the prosecution is relying upon evidence of various circumstances relating to the crime and the accused, which they say when taken together, will lead to the sure conclusion that it was the accused 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 the assessors 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 accused faces is proved against him.

27. 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's 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.
28. We will now outline below the evidence of various circumstances relating to the crime and the accused, which the State say when taken together, will lead to the sure conclusion that it was the accused who committed the crime.
29. **The Agreed Facts.** The parties agreed John Subramani Gounder was the accused in this case, and Sairusi Tosonacakacaka Vunakece was the deceased in this case. Both resided at Vuci South Road Nausori at the time. It was agreed that the accused was driving taxi registration no. LT 4189 on 29 April 2016, the date of the incident. It was agreed that the accused was caution interviewed



by police at Nausori Police Station on 29 April 2016, and he gave his caution interview statements voluntarily and out of his own free will. We will next examine what he said in his caution interview.

30. **The Accused's Police Caution Interview Statement:**

**Prosecution Exhibit 1 (B):** The following are quoted from the interview notes:

"...I, A/CPL 3415 Sikeli of Nausori Police Station wish to question you Subramani Goundar on the allegation that on 29 April 2016 at about 0100hrs along Vuci South Road drove a taxi registration number LT 4189 under the influence of liquor and you bumped a pedestrian namely Sairusi Tosonacakacaka Vunakece which cause his death. I warned you that you are not obliged to say anything unless you wish to do so but whatever you say will be put into writing and will be given as evidence.

**Question No. 4:** *Dou you understand the above allegation put to you?*

**Answer:** *Yes...*

**Question No. 11:** *Where were you at the above date, time and place?*

**Answer:** *I was driving a taxi going towards my residence.*

**Question No. 12:** *What was the taxi registration number?*

**Answer:** *LT 4189...*

**Question No. 15:** *Did you consume liquor whilst driving?*

**Answer:** *yes*

**Question No. 16:** *Where did you consume liquor?*

**Answer:** *at home with my two friends.*

**Question No. 17:** *What type of liquor did you consume?*

**Answer:** *Fiji Gold.*

**Question No. 18:** *How many bottle of Fiji Gold did you drink?*

**Answer:** *3 bottles*

**Question No. 19:** *Where did you go after you finish drinking the three bottle of beer?*

**Answer:** *I drove the said taxi with my two friends to buy some more beers*

**Question No. 20:** *Which shop did you buy the beer?*

**Answer:** *At Bob Store, Vuci Road.*

**Question No. 21:** *What happened when you reached Bob Sore?*

**Answer:** *When I reached Bob Sore it was close and I went back home.*

**Question No. 22:** *I put to you that the Highway Police Officers were conducting radar operation along Vuci Road opposite Bob's Store they stop your vehicle but you fail to stop and you drove away towards Vuci South Road. What can you say about that?*

**Answer:** *Yes Police Officers stop me.*

**Question No. 23:** *Did you stop your vehicle when the Police Officer stop you?*  
**Answer:** *No I drove off.*

**Question No. 24:** *Did you know it is an offence to drink and drive?*  
**Answer:** *Yes.*

**Question No. 25:** *Why did you drove the said vehicle under the influence of liquor?*  
**Answer:** *Because I think I can drive safely.*

**Question No. 26:** *How did the accident happened?*  
**Answer:** *I was driving the said taxi on my way back home and I never saw where the pedestrian came. But felt an impact on the right front side. And I thought it was an animal or owl than I stopped in front.*

**Question No. 27:** *And what happened next?*  
**Answer:** *After I stopped in the front, the police came and arrested me...*

**Question No. 29:** *When did you know that you bumped a pedestrian in which you caused him death?*  
**Answer:** *When the two police officer who came back from the scene...*

**Question No. 33:** *I put to you that you take your life at your own risk because you drove under the influence of liquor and you fail to stop?*  
**Answer:** *Yes...*

**Question No. 35:** *According to the post mortem that the injuries by the pedestrian is the impact of the vehicle. What can you say?*  
**Answer:** *Yes it's true.*

**Question No. 36:** *Do you wish to say anything?*  
**Answer:** *Yes. I want to say sorry and wish apologized for what I did and I don't mind to do it..."*

Looking at all the above questions and answers, it would appear that the accused admitted that he drove taxi LT 4189 at the material time and bumped the deceased at Vuci South Road. He admitted he was driving under the influence of liquor, and was escaping from police, who requested him to stop at Bob's store. In the Agreed Facts, he admitted he gave the above statements out of his own free will.

31. **Photograph Booklet: Prosecution Exhibit No. 6.** Detective Sergeant 1928 Sakenasa Loganimoce (PW5) took photos 1 to 18 in the above booklet. PW5 said he took photos 1 to 14 on 29 April 2016 at 2 am. This was so soon after the alleged incident. All the photos showed the area was obviously dark. It was the alleged crime scene. Note photo 2 and 3, the canvas. Photo 4 showed a cap. Photo 5 and 6 showed glasses on the road. Photo 7 showed the water filled drain. Photo 9 to 14 showed the photo of the deceased in the muddy water filled drain. Photo 15 and 16

showed the broken front right indicator light. Photo 17 and 18 showed the photo of LT 4189 at Nausori Police Station on 29 April 2016 at 7 am. The right front windscreen was damaged. Although, the above photos do not speak to you, they showed you the road conditions on 29 April 2016 at 2 am, which was immediately after the alleged incident. The damage to the indicator light and the front windscreen, the position of the canvass, cap and the deceased in the muddy water filled drain in the photos, when considered within the context of the accused's answer to question 26 of his caution interview statements (Prosecution Exhibit 1 (B)), it was obvious that the deceased suffered a horrible death. How you treat the photos as evidence, is entirely a matter for you.

32. **The Evidence of SC 4124 Inoke Tagivakatini (PW2).**

PW2 was an important witness for the prosecution. He was present at the crime scene, when events allegedly unfolded from Bob's store, where he requested the accused to stop his taxi LT 4189, to when he arrested the accused at his driveway along Vuci South Road, following the alleged police chase. PW2 said, he was doing traffic radar operation on 29 April 2016 after 1 am, opposite Bob's store. PW2 said, he was with two other police officers, SC Rupeni and SC Shivneel. PW2 said, he saw taxi LT 4189 sped towards Bob's store and nearly bump into a pine post at Bob's store. PW2 said, he suspected the driver was drunk, and he tried to stop the taxi. PW2 said, the taxi driver ignored him and sped away. PW2 said, they followed the taxi in their police vehicle along Vuci South Road. PW2 said, the taxi was travelling fast.

33. PW2 said, when he observed the taxi at Bob's store, there was no damage to the same. At Bob's store was a 4 feet tube light and flood light which exposed the taxi's condition to him. PW2 said, he knew the accused for 4 years as a taxi driver in Nausori. PW2 said, when they chased the taxi down Vuci South Road, he was the front seat passenger. PW2 said, they later stopped the taxi. PW2 said, he went to the driver. PW2 said, he smelt heavily of liquor and had blood shot eyes. PW2 said, he saw the taxi right front windscreen broken. PW2 said, the right front park light was also broken. PW2 said, he saw pieces of glass in front of the driver's dash board and on his floor mat. PW2 said, he took the accused to Nausors Police Station in his taxi. The other two police officers followed them in their police vehicle.

34. PW2 said, prior to reaching the Station, they stopped at Vuci South Road. PW2 said, they saw the deceased lying in a drain, as recorded by PW5 in photos 7 and 9 to 14 in Prosecution Exhibit No. 6. PW2 said, they reported the matter to Nausori Police Station. PW2 said, he saw broken glasses on the road, a canvass shoe and cap on the road. These were recorded in photo 2, 3, 4, 5 and 6 of Prosecution Exhibit No. 6. PW2 said, he later took the accused to Nausori Police Station, while SC Rupeni guarded the crime scene. At Nausori Police Station, he handed the accused over to PW1 for the dragger machine test. PW2 said, he first observed the accused's taxi LT 4189 at Bob's store after 1 am on 29 April 2016, chase him in a police vehicle, and arrested him 5 minutes later, at his drive way. PW2 said, at Bob's store, his taxi windscreen was not damaged. When he arrested him 5 minutes later at his driveway his windscreen and front right indicator lights were broken. The deceased was found lying in a drain between Bob's store and the accused's driveway along Vuci South Road. What do these evidence suggest for you? How you decide is a matter entirely for you.

35. **Doctor Kalougivaki's (PW4) Evidence and the Deceased's Post-Mortem Report (Prosecution Exhibit No. 5)**

PW4 did the post mortem on Saisrusi Tosonacakacaka Vunakece on 29 April 2016 at 9.30 am. He recorded the details of his post-mortem examination in a post mortem report, which he tendered in evidence as Prosecution Exhibit No. 5. PW4 said, the cause of the deceased's death was asphyxia (i.e. absence of oxygen), inhalation of mud (i.e. breathed in lots of mud that caused blockages in the wind pipe and as a result, he can't breathe), rupture of the liver and spleen (source of large amount of blood in the peritoneal cavity) and multiple traumatic injuries. PW4 said, the above injuries were caused by external blunt force trauma. PW4 said, very severe amount of force was needed to cause the above injuries and that included been involved in a motor vehicle accident that is, being bumped by a motor vehicle. Please, read the deceased's post mortem report carefully. The deceased cannot speak to you because he is dead, but he can speak to you through his injuries. His injuries, as recorded in his post mortem report, tells you how he met his death. It would appear to be another puzzle to put into the jigsaw puzzle of what occurred between Bob's store and the accused's driveway on 29 April 2016 after 1 am, during the car chase between the accused and the police. What you make of the above evidence is entirely a matter for you.

36. **PC 3415 Sikeli Rokovunicagi's (PW1) Evidence.**

PW1 caution interviewed the accused on 29 April 2016. He also conducted the accused's breath analysis test on 29 April 2016 between 3 am and 4 am. PW1 said, he took the accused to the dragger machine test room. PW1 said, he explained to him how the test is conducted. He asked him 3 times to blow into the machine. PW1 said, the accused failed to provide a specimen of breath which is sufficient to enable the breath test to be carried out. PW1 submitted the result of the test as Prosecution Exhibit No. 2.

37. After considering all the above evidence together, what do they tell you? In other words, do the above circumstantial evidence lead you to the sure conclusion that the accused is guilty of count no. 1, 2 and 3? How you answer that question is entirely a matter for you.

**(d) The Accused's Case:**

38. I have summarized the accused's case to you in paragraphs 19, 20 and 21 hereof. Basically, he denied all the allegations against him. He gave evidence to you on 24 January 2018, and I'm sure the details of his evidence is still fresh in your mind, and I will not bore you with the details. Suffice to say that if you accept his sworn denials, then you must find him not guilty as charged on all counts. However, if you reject the same, then you will have to consider the whole of the prosecution's case and decide whether or not they have proven their case beyond a reasonable doubt.

**(e) The Need To Consider All the Evidence:**

39. Six witnesses were called by the prosecution, that is, PC 3415 Sikeli (PW1), SC 4124 Inoke (PW2), PC 4939 Navneel (PW3), Doctor James Kalougivaki (PW4), D/Sgt 1928 Sakenasa (PW5) and Parick Vatuwaqa (PW6). the prosecution submitted seven exhibit, the accused's caution interview notes, prosecution exhibit 1(A) and 1(B); the dragger machine test results, prosecution exhibit no. 2; the accused's charge statements, prosecution exhibit no. 3(A) and 3(B); Doctor James Kalougivaki's CV, prosecution exhibit no. 4; the deceased's post-mortem report, prosecution exhibit no. 5; the booklet of photos, prosecution exhibit no. 6; and the LTA vehicle Test Result Sheet, prosecution exhibit no. 7. The accused gave sworn evidence.

40. You must consider all the above evidence together. You must compare and analyze them. If I didn't mention a piece of evidence you consider important, please take it on board in your deliberation. If you find a witness credible, you are entitled to accept the whole or some of his evidence, in your deliberation. If you find a witness not credible, you are entitled to reject the whole or some of his evidence, in your deliberation. You are the judges of facts.

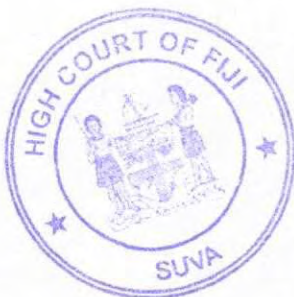
I. **SUMMARY**

41. 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.

42. Your possible opinions are as follows:

- |       |             |   |  |   |                      |
|-------|-------------|---|--|---|----------------------|
| (i)   | Count No. 1 | : | Manslaughter   | : | Guilty or Not Guilty |
| (ii)  | Count No. 2 | : | Failure to supply<br>Sample to Breath<br>Analysis on the<br>Direction of a<br>Police officer | : | Guilty or Not Guilty |
| (iii) | Count No. 3 | : | Failure to comply<br>With requirements<br>Following an accident                              | : | Guilty or Not Guilty |

40. 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 the State : Office of the Director of Public Prosecution, Suva.  
Solicitor for the Accused : T. Sharma Barrister and Solicitor, Suva.