

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

LAUTOKA CRIMINAL CASE NO. HAC 091 OF 2015L

STATE

vs

VENKTESH PERMAL GOUNDAR

Counsels : **Mr. Y. Prasad and Ms. S. Kiran for State**
Mr. M. A. Khan for Accused

Hearings : **19. 20. and 21 March, 2018**

Summing Up : **22 March, 2018**

SUMMING UP

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 ISSUE

8. In this case, as assessors and judges of fact, each of you will have to answer the following question:
 - (i) Did the accused, on 4 April 2015, at Lautoka in the Western Division, murder Sheral Sandhya?

E. THE OFFENCE AND IT'S ELEMENT

9. The accused was charged with "murder", contrary to section 237 of the Crimes Act 2009. It was alleged that on 4 April 2015, a Lautoka in the Western Division, he murdered Sheral Sandhya. 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 wilful act; and
 - (ii) that wilful act caused the death of the deceased; and
 - (iii) at the time of the wilful 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 "wilful 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 "wilful act". Likewise, if A assaults B. When A assaults B, A did a "wilful act" to B.
11. On the second element of murder, "the wilful act must cause the death of the deceased". This simply meant that the accused's wilful act, substantially contributed to the death of the deceased. The accused's wilful act must be a substantial contributor to the death of the deceased. In other words, the accused's wilful 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 (wilful 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). It would appear that the prosecution is running its case on both fault elements. It need only satisfy one fault element, to prove the charge of murder. We will therefore begin by discussing the first fault element, and then move on to the second fault element.

13. On the first fault element, the prosecution must make you sure that when the accused did “the wilful 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.
14. As to the second fault element of murder, the prosecution must make you sure that when the accused did “the wilful act”, he “was reckless as to causing the death of the deceased”. A person is reckless with respect to a result, if he was aware of a substantial risk that the result will occur and having regard to the circumstances known to him, it was unjustifiable to take the risk. The question whether taking a risk was unjustifiable is one of fact for you. Was the accused aware of a substantial risk that the victim would die if he assaulted her? If he was aware of the substantial risk that the deceased would die if he assaulted her, and he nevertheless took the risk, he was reckless. If otherwise, he was not reckless.
15. If you find all the elements of murder, as described above, proved beyond reasonable doubt by the prosecution, then you must find the accused guilty as charged. If you find one of the above elements of murder not proved beyond reasonable doubt, then you must find the accused not guilty as charged.
16. If you find the accused not guilty of murder, you may need to consider the lesser offence of “manslaughter”. A person, as a matter of law, may be convicted of the lesser offence of “manslaughter”, although he was not formally charged with the same. The first and second element of “manslaughter” are similar to that of “murder”, as described in paragraphs 9(i) and 9(ii) hereof. The only difference between the two offences are their fault elements. In “manslaughter”, the prosecution must prove beyond reasonable doubt, the following elements:
 - (i) that the accused did a wilful act; and
 - (ii) that wilful act caused the death of the deceased; and
 - (iii) at the time of the wilful act, the accused either;
 - (a) Intends the wilful act to cause the deceased serious harm; or

(b) Is reckless as to causing serious harm to the deceased.

17. If you find the accused guilty of “manslaughter”, you may convict him accordingly.

F. THE PROSECUTION’S CASE

18. The prosecution’s case were as follows: On 4 April 2015, the accused was 32 years old. He was married to the deceased, Sheral Sandhya. The deceased was 25 years old at the time. The two were married in 2006, and they had three young children aged 8 years, 4 years and 1 ½ years at the time. The couple had been married for 9 years and resided at Raviravi, Ba. The accused worked as a joiner at “Mahogany Industries”, while the deceased worked at “Bargain Box Shop”, Lautoka for the previous two months.
19. According to the prosecution, the accused and his wife were experiencing matrimonial difficulties at the time. The accused alleged that his wife, the deceased, was having an extra marital affair with a police officer. According to the prosecution, their problems had been in existence for 12 months, and since December 2014, the deceased was no longer staying with the accused. The deceased moved to Lautoka. She took out a “Domestic Violence Restraining Order” (DVRO) against the accused. The children were shared between the two, that is, the accused looked after his boys, while the deceased looked after their daughter. At times, the two exchanged custodies of the children.
20. According to the prosecution, the above state of affairs caused the accused great anxieties. He alleged that he had done a lot for his family and his wife had cheated on him, thus breaking up the family. According to the prosecution, the accused then planned to end his wife’s life. He allegedly bought paint thinner and a gas lighter from Lautoka. On 4 April 2015, he met his wife at Bargain Box Shop at Lautoka. He allegedly put thinner on his hand and rubbed the same on his wife’s head, upper body, back, arms and leg. He then allegedly set her alight with a gas lighter. According to prosecution, the wife allegedly suffered 35 percent burn to her body. The wife was later rushed to Lautoka Hospital for medical attention.
21. According to prosecution, the accused’s wife remained at Lautoka Hospital for the next 10 days undergoing medical treatment. She died on 14 April 2015 from her burn injuries. The matter was reported to police. An investigation was carried out. The accused was caution interviewed by police on 10 April 2015. He allegedly admitted setting his wife alight intentionally on 4 April

2015, and wanted to end their lives. He appeared in the Lautoka Magistrate Court on 20 May 2015 charged with his wife's murder.

22. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged. That was the case for the prosecution.

G. THE ACCUSED'S CASE

23. On 19 March 2018, 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 the charge. In other words, he denied the murder allegation 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 open his case but choose to remain silent and called no witness. That was his right.
24. You will notice that defence counsel made a long opening address to you. Those opening address were designed to assist you understand the defence's case, from their perspective. They were designed to assist you in your deliberation. However, defence counsel's opening address is not evidence, and you cannot treat the same as such.
25. The accused choose to remain silent and called no witness. That was his constitutional right. As I have told you in paragraph 4 hereof, the burden to prove the accused's guilt beyond reasonable doubt stays with the prosecution throughout the trial and it never shifts to the accused, at any stage of the trial. There is no obligation for the accused to prove his innocence, or prove anything at all. He is presumed innocent until proven guilty beyond reasonable doubt. He can sit there, fold his arms, as he had done here and demand that the prosecution prove his guilt beyond reasonable doubt. Thus, nothing negative whatsoever can be imputed to the accused, for choosing to exercise his right to remain silent.
26. However, all is not lost for you. He was caution interviewed by police on 10 April 2015 at the Lautoka Police Station. In his caution interview statements, which were tendered as Prosecution Exhibit 2(A), Hindustani version and 2(B), the English version, he revealed his position on the case. He allegedly admitted setting his wife on fire at Lautoka on 4 April 2015. However, the defence, in their submissions to you, asked you to disregard his caution interview statements, because they say the same were not given voluntarily by the accused. We will discuss this matter later when we analyse the evidence.

27. In any event, because he pleaded not guilty to the charge, the defence is asking you, as assessors and judges of fact, to find him not guilty as charged. That was the case for the defence.

H. **ANALYSIS OF THE EVIDENCE**

(a) Introduction:

28. 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 and judges of fact, please bear in mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analysing the evidence, we will first discuss the State's case against the accused. Then we will discuss the accused's case. Then we will consider the need to look at all the evidence.

(b) The State's Case Against the Accused:

29. In discussing the State's case against the accused, we will do so by relating it to the three elements of murder discussed in paragraph 9(i), 9(ii) and 9(iii) hereof, that the prosecution had to prove beyond reasonable doubt, in order to find the accused guilty as charged. We will discuss the three elements; first by discussing the first element; then the second element and lastly the third element. We will be examining the evidence the prosecution had presented, to satisfy those three elements, beyond a reasonable doubt. We will now start with the first element.

(i) First Element of the Offence of Murder; That the accused did a wilful act (Paragraph 9(i) hereof):

30. In proving the first element of murder against the accused, the State relied on two types of evidence. First, the state relied on eye witnesses' identification evidence. Secondly, the State relied on the accused's alleged confession to the police when he was caution interviewed on 10 April 2015 at Lautoka Police Station. We will now discuss the State's eye witnesses' identification evidence.
31. The State called Ms. Sheetal Devi (PW1) as its first eye identification witness. PW1 said that, on the day of the incident, that is, 4 April 2015, she was working at "Bargain Box Shop" in Lautoka as a sales assistant. PW1 said, she saw a woman and man came into the shop. PW1

said, she heard the man asked the woman "*why can't you come and stay at my plac?*". PW1 said, she also heard him ask the woman "*Are you having an affair with another man?*" PW1 said, the two were moving around the shop together and appear to be shopping. PW1 said, she saw the man take out a bottle wrapped with "Fiji Times" paper from under his T-shirt. PW1 said, she saw him open the bottle, pour something from it onto his hand, and with the same hand touched the woman's back, then the back of her head, the side of her arms. PW1 said, she saw the man repeated the above actions. PW1 said, she saw the man take out a lighter and lighted the woman with the same. PW1 said, she saw the woman's back, back of her head, her hand and face on fire. PW1 said, she ran to the washtub, brought some water and poured it on the woman. PW1 said, the woman was on fire for about 15 minutes. PW1 said, she later brought the woman to the front of the shop.

32. PW1 said, she saw the woman's skin had peeled off as a result of the burns. PW1 said she saw her hair all burnt out except for a little bit in the front. She said, the lady's face and hands were burnt and the skin had peeled off and she could see the red marks. PW1 said, she and others later called for a taxi, and the woman was conveyed to Lautoka Hospital for medical attention. PW1 said, four police officers arrived and took the man away. PW1 said she saw the couple for a total of 1 hour, that is, from the time they arrived to when they left. PW1 said, when she first saw the couple, they were one or two footsteps away. When he opened the bottle and put something on his hand, he was three foot steps away. When he lighted the woman with the lighter, PW1 said they were eight foot steps away. PW1 said, the area was well lighted by numerous shop lights. PW1 said, her observation of the couple was not impeded in any way. PW1 said, she saw everything. PW1 said, this was the first time she saw the man, and she couldn't forget the man's face given what she witnessed that day. PW1 identified the accused in court as the man she saw on 4 April 2015.

33. The State next called Ms. Sanjeshni Devi (PW2) as their next eye identification witness. PW2 said that on 4 April 2015 after 1 pm, she was working as a sales assistant at "Bargain Box Shop" at Lautoka. PW2 said, she saw a lady in the shop shopping. PW2 said, she saw a person came to the shop with a bottle in his hand. PW2 said, she saw the man pour something into his hand from the bottle. PW2 said, she saw the man touched the lady's face and body with the same hand. PW2 said, she saw the man lighted the lady and she saw her burning. PW2 said, the lady and man were 2 footsteps away from her. PW2 said, she saw the lady

alight from the chest to the head and her hair was burning. PW2 said, the fire was big. PW2 said, she later reported the incident to her boss.

34. When considering PW1 and PW2's identification evidence, I must direct you as follows. First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identification of the accused which the defence may alleged to be mistaken, I must warn you of the special need for caution before convicting in reliance on the correctness of the identifications, because an honest and convincing witness or witnesses, may be mistaken. Second, you must examine closely the circumstances in which the identification by each witness was made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way? Has the witness ever seen the accused before? If so, how often? Are there any special reasons for remembering the accused's face? Thirdly, are there any specific weaknesses in PW1 and PW2's identification evidence? The answers to the above questions will determine the quality of the identification evidence. If the quality is good, you may rely on them. If it's otherwise, you should reject them. It is a matter entirely for you.
35. The second type of evidence the State relied upon to prove the first element of murder, as described in paragraph 9(i) hereof, was the accused's alleged confession to police when he was caution interviewed by Mr. Vedh Prakash (PW5), at Lautoka Police Station, on 10 April 2015. On 10 April 2015, PW5 was a detective constable at Lautoka Police Station. He is now retired. PW5 said, he worked for the police for 15 years. PW5 said, he caution interviewed the accused at Lautoka Police Station on 10 April 2015 in the Hindustani language. PW5 said, the accused preferred this language. PW5 said, he gave the accused his right to counsel and his other legal rights. PW5 said, he was given the standard caution and rest breaks. PW5 said, he asked him a total of 57 questions and he gave 57 answers. PW5 said, the accused signed on the first three pages of the interview notes and he counter-signed the same. PW5 said, he forgot to take the accused's signature on page 4 and 5 of interview notes, although he signed on page 5. PW5 said, the accused gave his statements voluntarily and out of his own free will. PW5 said, he never assaulted, threatened or pressured the accused, while he was in his custody. PW5 said, the accused made no complaints whatsoever to him. PW5 tendered the interview notes into evidence as Prosecution Exhibit 2(A), the Hindustani version, and 2(B), the English version. In questions and answers 34, 35, 38, 42 and 44 of Prosecution Exhibit 2(B), the accused admitted throwing a thinner on her wife at the material time and setting her alight.

36. When approaching the above alleged confession, 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 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.

37. If you accept PW1 and PW2's eye identification evidence, and the accused's above alleged confession, then you will have to find that the prosecution had proven the first element of murder, as discussed in paragraphs 9(i) and 10 hereof, beyond a reasonable doubt. This will entitle you to move on, to examine whether or not the prosecution had proven the second element of murder, as discussed in paragraphs 9(ii) and 11 hereof, beyond a reasonable doubt. In the event that you find the prosecution had not proven the first element of murder beyond a reasonable doubt, then you will have to find the accused not guilty as charged. It is a matter entirely for you.

(ii) **Second Element of the Offence of Murder: That wilful act caused the death of the deceased (Paragraph 9(ii) hereof):**

38. It was the prosecution's theory that the accused allegedly setting his wife alight at Lautoka on 4 April 2015, led to 35 percent burn injuries to her body that ultimately caused her death 10 days later on 14 April 2015 at Lautoka Hospital. When discussing the second element of murder, please take on board my directions in paragraph 9(ii) and 11 hereof. The accused's wilful act must cause the deceased's death. It must substantially cause or contributed to the deceased's death. There may be a multitude of the cause of death, but the accused's wilful act must be the substantial cause. It was the prosecution's case that the accused, by setting his wife alight

and burning 35 percent of her body on 4 April 2015, substantially caused her death on 10 April 2015. In proving this contention, the prosecution called Doctor Avikali Mate (PW3). PW3 is a doctor by profession. She is part of the Forensic Pathology Unit of the Forensic Science Unit of the Fiji Police Force. She had previously done 700 post mortem examination.

39. I wish to record her evidence from the record for your information:

"...I recall conducting a post-mortem on Sheral Sandhya on 16 April 2015. I was to ascertain the cause of her death. The particulars of the deceased was relayed to us by the police investigation officer. She was indo Fijian female and she sustained burns and was attended to at Lautoka Hospital and she later passed away. She was attended to in the Burns Unit at Lautoka Hospital. I can recall the deceased's name. After doing the post-mortem, a death certificate was issued to her family. After this, we recorded the details of the post-mortem into our post mortem book. We then handed out the book to the typist to type the post mortem findings into a report, which is release to the police investigation officer. The report is the post mortem report. In this case, I prepared a post mortem report. I checked the report. I signed the report. If the report is shown to me, I will recognize it [Post – mortem Report shown to PW3]. This is the post mortem report of the deceased, that is, Sheral Sandhya. I prepared the report. It has my signature. The post mortem examination was done on 16 April 2015 at 10.50 am. [PW3 takes us through the report]

Septicaemia is the medical term for an infection in the blood and this infection, when in the blood, can spread throughout the body. The infection comes from the infected burns the deceased sustained. The infected burns the deceased sustained caused the septicaemia. The burns causes damages to the skin and once the skin is damaged, there is an opening, that allows bacteria to enter the body, these bacterial causes infections and it may enter the blood stream and spread to the other parts of the body causing septicaemia. Septicaemia is an infection that has spread into the blood. In normal situation, the blood is clean, but once an infections spreads into the blood, it is called septicaemia. In a normal situation, the blood is clean that is free from any diseases or bugs.

Refers to External Body Surface of the report. The substantial cause of death is the infection in the blood, due to the burns sustained by the deceased as shown in the above sub-heading. The 35 percent burn on the deceased's body is shown in the above heading. An infected blood could spread around the body and the immune

system cannot fight it and the organs in the body will start not to function properly and will shut down. This will lead to death. There was excessive fluid in the lungs. It can result from the septicaemia. Spleen, kidney and liver were affected by septicaemia.

Prosecution Exhibit 1. Post mortem Report tendered as Prosecution Exhibit 1.

Cross Examination:

The cause of the deceased's death was septicaemia, that is, infection in the blood. There has to be blood and infection. Infection is caused by micro-organism. My report does not show the analysis of the blood. We do not take blood samples from the deceased. No blood test were taken during the post-mortem. This was two days after the deceased died.

Our examination findings on the organs showed us an infection in the blood. The changes we saw in the organs showed us the change in the organs that are seen in cases of septicaemia. The brain was swollen. It could be caused by septicaemia. A windpipe is part of the respiratory organ system. The swelling is caused by the inhaling of hot air, rather than septicaemia. The lungs had excessive fluid. This could be caused by septicaemia. Spleen the internal surface of the spleen was soft as opposed to be firm. This condition could be caused by septicaemia. The liver was enlarged and the internal surface was discoloured and pale, as opposed to having a deep red colour and not enlarged. The kidneys were swollen and pale and the internal surfaces were swollen, as opposed to not been swollen and its internal surfaces are not swollen. In the nature of my job, we look at the dead body to tell us a story.

The heart was normal. I should have included the malfunctioning of the above-mentioned organs as a result of septicaemia in para (a) of the cause of death in page 2 of the report. There were multiple organ dysfunction as a result of septicaemia. Septicaemia can also be termed blood poisoning.

Some organs are not affected. I stick with my post-mortem finding. I did not carry out any further test on the body. My conclusions were obtained after examining the body. My examination were visual. I did not do further testing. We could do further testing. I have examined more than 700 dead bodies. The cause of death is the combination of the dysfunction of the organs brought about by septicaemia. In 100

cases, 40 cases are taken for further testing. This case falls into the 60 cases that does not require further testing.

The deceased blood was infected in the 10 days between 4 to 14 April 2015. I did not do any blood test. There might be some blood in the body on 16 April 2015 and it could also have clotted.

Re-Examination:

I did not fail in my duty..."

40. It will be noted that PW3 was thoroughly cross-examined by Defence Counsel. That was their role to test the veracity of PW3. PW3's conduct of the post mortem was also severely challenged by the defence in cross-examination, in their opening address, and in their closing submission. The defence suggested to PW3 that she didn't do her job properly, that a blood test ought to be carried out and that the affected organs need to be further analysed. Defence also appear to criticize the prosecutor's handling of the case. However, I must direct you that, these submissions are not evidence. Doctor Avikali Mate's evidence on the cause of the deceased's death was not challenged by any other expert during the trial. She was the only qualified person, produced at the trial, who could speak on the cause of the deceased's death. If you accept her evidence, the prosecution would then had proven the second element of murder beyond reasonable doubt. This will entitle the prosecution to considered the third element of murder, as expressed in paragraphs 9(iii), 12, 13, 14 and 15 hereof. If you reject her evidence, you will have to find the accused not guilty as charged. It is a matter entirely for you.

(iii) **The Third Element of Murder: At the time of the Wilful Act, the accused either intended to cause the deceased's death, or was reckless as to causing the same (Paragraph 9(iii)(a) or (b)):**

41. When discussing the third element of murder, please take on board the directions I gave you in paragraphs 12, 13, 14 and 15 hereof. The prosecution contended that when the accused allegedly set his wife alight on 4 April 2015, he intended to cause her death, or was reckless in causing the same. On this issue, the State relied on the accused's alleged confession in his caution interviewed statements, which were tendered as Prosecution Exhibit No. 2(A) and 2(B). In questions and answers 21 to 26, the accused admitted his family's life was in turmoil. From

questions and answers 29 to 33, the accused admitted he met his wife on the date of the incident. In question and answer 34, the accused admitted he “wanted to burn her”, thus he intended to burn her. From questions and answers 35 to 45, the accused admitted he planned to kill his wife a week before the incident. These admissions appear to show he intended to cause the death of his wife. The questions and answers above relate to Prosecution Exhibit 2(B), the English version. The accused’s above alleged admissions also showed he was reckless in causing the death of his wife when he set her alight on 4 April 2015. When considering the above alleged confessions, please take on board the direction I gave in paragraph 36 hereof. If you accept the above alleged confession from the accused, then the prosecution had proven beyond reasonable doubt the third element of murder. If otherwise, then you will find the accused not guilty as charged.

42. If you find that the prosecution had proven beyond reasonable doubt all the three elements of murder as discussed above, then you must find the accused guilty as charged. If you find the prosecution had not proven one or all the elements of murder discussed above, then you must find the accused not guilty as charged. If you reach this position, then consider the alternative charge of “manslaughter”, as discussed in paragraphs 16 and 17 hereof. In any event, whatever decision you make, is entirely a matter for you.

(c) **The Accused’s Case:**

43. I have summarized the accused’s case to you in paragraphs 23, 24, 25, 26 and 27 hereof. I repeat the direction I made therein.

(d) **The Need to Consider All the Evidence:**

44. The prosecution called five witnesses:
- (i) Ms. Sheetal Devi (PW1);
 - (ii) Ms. Sanjeshni Devi (PW2);
 - (iii) Doctor Avikali Mate (PW3);
 - (iv) Ms. Miliana Werebauinona (PW4); and
 - (v) Mr. Vedh Prakash (PW5)
45. The prosecution submitted two exhibits:
- (i) Sheral Sandhya’s Post Mortem Report (Prosecution Exhibit No. 1);

- (ii) Accused's Police Caution Interview Statements, Prosecution Exhibit No. 2(A), Hindi version, and 2(B), English version

46. The accused choose to remain silent and called no witness.
47. Altogether, you have five witnesses, on whose evidence, you will have to make a decision. You must consider all the evidence together. You must compare and analyse them. If I haven't mention a fact you consider important, please take it on board in your deliberation. You are the judges of fact

I. SUMMARY

48. 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.
49. Your possible opinions are as follows:
- (i) Murder : Accused : Guilty or Not Guilty
50. 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.



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JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Lautoka
Solicitor for Accused : Mr. M. A. Khan, Barristers and Solicitor, Suva.