



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

4. You will not be asked to give reasons for your opinions, but merely your opinions themselves and need not be unanimous but it would be desirable if you could agree on them.
5. 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 innocent until he is proved guilty.
6. The standard of proof in a criminal trial is one that 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 about his guilt, then you must express an opinion, that he is not guilty.
7. 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.
8. I will now direct you as to how you should deal with evidence presented by the doctors as expert witnesses. Usually, witnesses are not allowed to express opinions. They are allowed to give evidence on what they have seen, heard or felt by physical senses only. The only exception to this rule is the opinions of experts. Experts are those who are learned in a particular science, subject or a field with experience in the field. They can come as witnesses and make their opinions expressed on a particular fact to aid court to decide the issues/s before court on the basis of their learning, skill and experience. In this case, the two doctors gave evidence as expert witnesses. Doctor's evidence is not accepted blindly. You will have to decide the issue of the case before you by yourself and you can make use of doctor's opinion if their reasons are convincing and acceptable to you; and, if those opinion had been reached by considering all necessary matters that you think fit. In accepting doctor's opinion, you are bound to take into account the rest of the evidence led in the case.

9. In evaluating evidence, you should see whether the story relayed in evidence is probable or improbable; whether witness is consistent in his or her own evidence and with his or her previous statements or with other witnesses who have gave evidence in court. It does not matter whether that evidence was called for the Prosecution or for the Defence. You must apply the same test to evaluate evidence.
10. While cross-examining witnesses of Prosecution, Defence Counsel referred to previous witness statements recorded by police. A previous statement made by a witness is not evidence in itself unless it is adopted and accepted by the witness under oath as being true. You can of course use those statements to test the consistency and credibility of the witness.
11. In testing the consistency of a witness, you should see whether the witness is telling a story on the same lines without variations and contradictions. You must however, be satisfied whether such contradiction is material and significant so as to affect the credibility or whether it is only in relation to some insignificant or peripheral matter. If it is shown to you that a witness has made a different statement or given a different version on some point, you must then consider whether such variation was due to loss of memory, faulty observation or due to some incapacitation of noticing such points, given the mental status of the witness at a particular point of time, or whether such variation has been created by the involvement of some other person, for example by a police officer, in recording the statement.
12. You must remember that merely because there is a difference, a variation, contradiction or an omission in the evidence on a particular point or points that would not make witness a liar. You must consider overall evidence of the witness, the demeanor, the way he/she faced the questions etc. in deciding on a witness's credibility.
13. In this case the Prosecution and the Defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth.
14. Agreed facts of this case are that:
  1. The deceased in this matter is one Manasa Nawakula, 37 years old, Unemployed from Malevu Village in Sigatoka.

2. The accused in this matter is one Ronald Dulare Singh, 20 years old a Plumber at the Warwick Hotel.
3. On the 11<sup>th</sup> of May 2013, the deceased was on board a Warwick Resort staff bus.
4. Vitalina Lewaivu was on her way to Namatakula Village to spend Mother's Day but got off at the Warwick Resort along Queens Road.
5. The deceased was drunk and was carrying a bag of groceries.
6. The deceased was taken to the Sigatoka Hospital on the 11<sup>th</sup> of May, 2013 but was pronounced dead upon arrival.
7. A post-mortem was conducted on the deceased on the 14<sup>th</sup> of May, 2013.
8. The accused was caution interviewed on the 14<sup>th</sup> of May, 2013.
9. The accused was medically examined on the 14<sup>th</sup> of May, 2013 where the following were noted:
  - a. Slight superficial tenderness on palpation of third proximal phalanx-nil bruises,
  - b. Slight superficial tenderness over the right chest wall over 2<sup>nd</sup> to 3<sup>rd</sup> ribs – nil bruises,
  - c. 0.5 x 1 cm swelling on the left posterior neck below scalp – nil bleeding,
  - d. Slight tenderness on the right hand knuckles.
10. The accused was formally charged on the 15<sup>th</sup> of May, 2013.
  
15. You have a copy of the information with you. The Information reads as follows:

### **Charge Statement**

**Count**  
*Statement of Offence*

**MANSLAUGHTER:** Contrary to Section 239 of the Crimes Decree No. 44 of 2009.

*Particulars of Offence*

**RONALD DULARE SINGH** on the 11<sup>th</sup> of May, 2013 at Korolevu, Sigatoka in the Western Division, unlawfully killed **Manasa Nawakula**.

16. Let me now deal in more detail with the charge or information in this case. Ladies and gentleman Assessor, on a charge of Manslaughter the Prosecution must prove or establish in this case four elements or ingredients beyond all reasonable doubt. Those are elements are that:
- i. the Accused;
  - ii. engaged in a conduct;
  - iii. that conduct caused the death of another person;
  - iv. the accused intended that the conduct will cause serious harm to the another person;
- or
- the accused was reckless as to a risk that the conduct will cause serious harm to the another person.
17. Firstly, the Prosecution must establish the identity of the Accused; Secondly, the Prosecution must prove that the Accused engaged in an unlawful conduct i.e. an act committed without any excuse or reason which would render it lawful for example if the act was committed in self-defence; Thirdly, the Prosecution must establish that the conduct of the Accused substantially contributed to the death of the deceased; and Fourthly, that the Accused intended to cause serious harm or he was reckless as to causing serious harm to the deceased.
18. An unlawful act is simply an act not justified in law, for example punching, stabbing, strangling, suffocating are all unlawful acts. This is the physical element of the offence of Manslaughter. In this case, the Prosecution says Manasa's death was caused by an act of the Accused, namely, punching on his chin area.

19. The mental element of the offence is two-fold, intention or recklessness. Proof of either is sufficient to establish the offence of Manslaughter. As to the intention, we do not know what ran in Accused's mind at the time of the offence. Therefore, you have to draw certain inferences from the facts proved by evidence in order to come to a conclusion as to the intent of the Accused.
20. So you must discern perpetrator's intention from the circumstances established by evidence. You should look at Accused's behavior before, at the time of and after the act, the nature, number and duration of the attack. The gravity of injuries inflicted and the place of the body where the injuries were inflicted. You may also consider what the Accused had told before, during or after the alleged incident. All these things may shed light on the intention at the crucial time when the injuries were caused to the victim.
21. In law, 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 is unjustifiable to take the risk.
22. The Defence case is that he Accused punched the deceased in self-defence. Although the Defence ran their case on the basis of self-defence and called the Accused and doctor to support their version, there is no burden on the Accused to prove that he was acting in self-defence. The Prosecution must prove so that you are sure that the Accused was not acting in lawful self-defence.
23. Therefore I direct you as follows:

If you accept the evidence of the Accused, then you have to ask yourselves these questions. Did the Accused honestly believe or may he honestly have believed that he needed to defend himself because he was under attack or imminent danger of attack? The issue is not whether the Accused was in fact under attack or in imminent danger of attack but whether he genuinely believed that he was. But, if you conclude that there was no such attack or danger of attack that is something you are entitled to consider when deciding whether the Accused has told the truth about his belief. If you are sure that the Accused held no such belief self defence does not arise.

24. If the Accused did genuinely believe or may genuinely have believed that he needed to defend himself, you must decide whether the force he used was reasonable or justifiable in the circumstances. Reasonable force means force proportionate to the nature of the threat the Accused honestly believed was posed by the deceased. If the Accused went way beyond what was needed to defend himself from the force offered by the deceased that is good evidence that the Accused acted unreasonably. But, in judging whether the Accused acted unreasonably, you should have regard to the fact that it is difficult for a person to measure precisely what is needed in response and, if the Accused did only what he honestly and instinctively thought was necessary, that is strong evidence that he responded reasonably.
25. In light of this direction, you decide whether Accused had lawfully acted in self defence in the event you decide to act upon his statement.
26. I will now remind you of the Prosecution and Defence cases. In doing this it would not be practical for me to go through the evidence of every witness in detail and repeat every submission made by counsel. I will summarize the salient features. If I do not mention a particular witness, or a particular piece of evidence or a particular submission of counsel that does not mean it is unimportant. You should consider and evaluate all the evidence and all the submissions in coming to your decision in this case.

### **Case for the Prosecution**

#### **PW1 Apenisa Rabale**

27. Apenisa is the first witness for Prosecution. In 2013, Apenisa was working as a security guard at the Warwick Hotel. On 11<sup>th</sup> May, 2013, he was on his midnight shift and was based at the security booth at the hotel entrance.
28. He was engaged in his duties with his co- workers, Sefanaia Jaoti and Peni Seru. When he was inside the booth, Ronald approached them at around 8 or 9 p.m. and wanted to go inside the hotel. They stopped him because he was drunk. Ronald was angry and he wanted to fight with them. After that he had gone from there.
29. In that particular year, he had known Ronald for 2 years as he was also working for the same hotel. Ronald came to the entrance again after 11 p.m. on the same night and told the two co-workers that he punched a man from outside. Ronald further said that a lady working for the hotel was sitting and that man was

bothering the lady that's the reason why he punched him. When Roland was telling this he was still drunk.

30. Apenisa said that he did not see Ronald punching this man from where he was sitting in the security booth which is at the hotel entrance. He only knew what Ronald told about the incident that happened. Witness recognised Roland in Court.
31. Under Cross-examination Apensia said that the security booth of Warwick is enclosed and is situated about 10 meters downhill from the Queens Road and therefore he could not see what's going on in the Queens Road from where he was.
32. He gave a statement to police on the 12<sup>th</sup> of May 2013, the very next day as to what had happened. He admitted that in his statement to police he had never told that Ronald had come at 9 p.m., looking very angry and wanting to fight. He had only told police that Ronald came to the security booth at around 10.25 pm.
33. Apenisa said that Ronald did not tell that he was also punched by the man he punched. He admitted that, in his statement to police, he had told that Ronald told that *he only punched once and the man fell since he was drunk*. Witness admitted that Ronald had referred to the lady as 'nene Vitalina'.
34. Under re-examination, the witness said that he could not recall if he had told police about the first meeting with Ronald at around 8 to 9 pm.

**PW2 Sefanaia Jaoji**

35. Sefanaia has been a Security officer at Warwick for the past 5 years. He said that on the 11<sup>th</sup> of May, 2013, when he was doing his night shift at 10.29 pm, he saw Ronald who was working for the same hotel punching a man outside. He knew Ronald for two years.
36. When he went to the changing room to change his cloths, he heard a shouting from outside. It was a lady's voice saying, 'enough, enough, enough'. He then came outside, and was standing on the road to see what happened. He saw a man lying down and he also saw Ronald punching him. He was watching from a distance of about 10 metres. There was nothing between him and Ronald when he saw Ronald in a clear lighting condition of a flood light. He saw the man lying



down upwards on the edge of the flower bed when Ronald punched him. This man was not trying to assault Ronald at that time.

37. He went back to the office to get his torch and called in-house security guard Mosese Nakairukua to accompany him to go where the incident took place. He said that the time gap between lady's shout and the time he saw Ronald standing on top of this person was 3 seconds.
38. Ronald told them that, that man bothered his 'nene'. He saw the injury on the man who was lying down. The injury he saw was a cut on his chin. This man was not breathing or moving. They went back and called the Police. When they came back, Ronald also came with them and told that he punched that man and he only punched once. He also asked, *you would like me to kill him?* in a commanding voice, and in an angry tone.
39. When he was questioned by court, Sefanaia said that he saw only one punch and that punch landed on his chin.
40. Under cross-examination, witness Sefanaia said that he could see everything clearly under bright flood light; still he went to get his torch for his own protection. He admitted that he had not told police that he took the torch for his protection. He also admitted saying to police that when he shone the torch light he saw a cut on this Fijian man's jaw and it was bleeding.

**PW3 Mosese Nakairukua**

41. On 11<sup>th</sup> of May, 2013, Mosese was working as a security personnel at Warwick. After 10.00 pm on that night he heard a shouting from outside. Other security officers told him that there's a fighting going on, on the road side. Then he went with Sefanaia Jioji to the roadside.
42. They saw a man lying down at the edge of the roadside, opposite the Warwick signboard. This man was not moving. Ronald came and told him to leave that man there. Ronald said he punched this man because he bothered Vitalina. Ronald was angry and he was also drunk. He told Ronald to leave this man alone because he was injured. He then came back to the office to call the police.
43. Under cross-examination, the witness said that Sefanaia was outside, in the changing room, when he heard somebody shouting. Sefanaia went there first and, came back and then he went with him. They took a torch because they were doing

a night shift. He said that the light was bright but, as security officers doing night shifts; they have to have a torch. He heard there was a quarrel and shouting. The hotel entrance part is well lit. He took a torch to see who all were present there because there is a part of the road without clear and enough light. But the place where the man was lying down was clearly visible.

44. Mosese said that he could not recall saying to police that he took the torch to check whether it's really a fight or not. He admitted saying to police that when he shone the torch light in the opposite direction, he saw a person lying on the side of the road and he was bleeding on his chin. He then said he could not recall if he saw the injury.
45. He said that this man was lying down on the flower bed next to road side.

**PW4 Batinisavu Uluiyata**

46. On 11<sup>th</sup> May, 2013, Uluiyata was working as a security guard at Warwick with Sefanaia Jaoji, Apenisa, Mosese. While working for night shift on that day, he saw a man lying down on the road side beside the Warwick signboard.
47. He switched on the torch to check on his face. He also checked on this man's pulse and realized that he is dead. This man was lying on the flower bed made of stones.
48. When they were at the entrance, Ronald came and told them that he punched Manasa. Ronald was angry and challenging them to fight with him.
49. Under Cross-examination, the witness said that Sefanaia and Mosese went first to the road side and when they came back, he went together with them.
50. They took a torch because it was dark outside. He could only hear exchanging of words of a men's voice.
51. The flower bed had two steps. The man was lying down on the step in such a way that his neck was on the upper step and his buttocks was on the lower step. They brought him to the security booth and made him lie at the main gate and waited for the taxi. They brought him there to see him properly because the place where he was lying was not that bright, it was only the light from the signboard. When he was referred to his statement to police where he had said that 'he was still conscious', he said this man was motionless and when he checked his pulse he realized that he was dead.

52. Witness said that on our way to check on that man, he saw Vitalina sitting on the opposite side of the road. Ronald did not tell that Manasa was bothering Vitalina or that he was punched by Manasa. He only said that he punched the man. Ronald was challenging them.

**PW 5 Dr. Avikali Mate**

53. Dr Mate obtained the Bachelor of Surgery, Bachelor of Medicine Degree from the Fiji School of Medicine in 2009 and a Post-Graduate Diploma in Pathology from the College of Medicine of the Fiji National University in 2014. As a Pathologist, she had conducted more than 700 post mortem examinations. She had been in the Forensic Pathology Unit for 6 years and had attained training in the specialty of pathology.
54. Doctor conducted the post-mortem examination at the Lautoka Hospital Mortuary on the 14<sup>th</sup> of May, 2013 on the deceased Manasa Nawakula. She tendered the post mortem report marked as PE.1.
55. On the external examination she found marks of violence. She observed a laceration which is a deep cut or tear in the skin over the submental area which is the area below the chin measuring about 35 mm x 5 mm and around the edges of these injuries were bruising was noted. The bruising or leaking of blood vessels just underneath the skin around the edges of the lacerations is possible with impact force. It's also a good indicator that when this injury was sustained, the deceased was still alive to give a reaction of bruising around the wound.
56. When she lifted the skin of the neck, the second injury was noted on the left side of the neck which is a contusion or an internal bruise measuring about 80 mm x 45 mm extending over the muscle on the right side of the neck. Lacerations of this nature can usually occur when a person comes into contact with a blunt force trauma, which can be caused from anything that isn't sharp in nature or if he falls upon anything. She agreed that a punch by a fist on the chin is a form of a blunt force trauma.
57. The degree of force used to cause a laceration of this type depends on number of factors, including the area that's affected; the built of the individual; and the surface that comes into contact. The chin or submental area is easily prone to laceration with any force that comes into contact with it because of the chin bone

that sits there without much underlying structures and muscles. It doesn't need much force to cause any damages to those areas in comparison to other areas of the body like the abdomen. The doctor opined that this laceration could have been caused by a blunt trauma; by a fist, depending on the size of the fist or by a fall onto a surface of an object or a structure.

58. The Pathologist said that she did not notice any injuries on the hands or knuckles of the deceased.
59. In the internal examination, the doctor found an extensive generalized subarachnoid haemorrhage or bleeding in the brain. She said that one of the layers that protects the brain is the subarachnoid layer and the bleeding was noted between the subarachnoid layer and the inner most layer of the covering of the brain and this was seen on both sides of the brain. The brain is made up of three main structures or areas; the biggest portion is the top of the brain or cerebellum and two other smaller parts which sits at the bottom of the brain are known as the cerebrum and the brain stem. The bleeding was also seen in the two smaller areas that sits on the inferior or the bottom part of the brain. This kind of subarachnoid haemorrhage can be caused due to non-traumatic causes like problems with the vessels of the brain or bleeding disorders or clotting problems, or traumatic causes resulting from a blunt trauma to the head which could be falls, motor vehicle accidents. Doctor attributed the haemorrhage found in deceased's brain to a traumatic cause or blunt trauma because the blood vessels didn't show any non-traumatic changes.
60. Doctor further found a correlation between the subarachnoid haemorrhage and the external injuries seen on the chin or submental area. She said that if there's any force or impact in an upward manner causing the head to hyper extend or to move too much beyond the normal extension process or extend backwards, it can cause the brain to move and cause the blood vessel to get damage or ruptured causing haemorrhage in the area that sits below the biggest part of the brain. Explaining the reason for the presence of blood in the biggest part of the brain, the doctor said that the blood can leak into other areas of the brain as well and not just localized to the area of impact even though the impact was not felt or seen in that area alone. The doctor ruled out the possibility of such brain injuries having been caused by the person himself just by tilting his head.
61. The next examination was in the thoracic cavity. A pertinent change was noted in the trachea or the largest wind pipe. There were some brown coloured semi digested food or partially digested food in the trachea and in the bronchi. She

described this finding as abnormal in the living. After people die it is possible to have food particles or some of the contents of the stomach in the air way because dead people are unable control reflexes.

62. The doctor then described the examination of the lungs. She found excessive amount of fluid in the lungs which is common in people having problems in their lungs or have air way problems. The doctor did not find any structural problems in the lungs of the deceased and therefore attributed this phenomenon either to the bleeding in the brain or to the normal accumulation process after the death.
63. As regards the cause of death of the deceased, the doctor opined that the death was caused by the extensive subarachnoid haemorrhage in the brain caused by a blunt force trauma. She said that the chances of survival decrease with continuous bleeding in the brain without medical treatment, especially in this case where the bleeding was seen in the lower parts of the brain or brain stem that controls the breathing and the heart rate. She also said that the excessive bleeding in the brain can cause compression leading to unconsciousness, comma, and eventual death.
64. Under cross-examination, the doctor said that the presence of partially digested food in the air way or the wind pipe called the trachea can be due either to a spillover from the stomach and the food pipe which is common in most post-mortem cases or, if the person is alive, they can be inhaled which is termed as aspiration.
65. For all cases where a post-mortem is required, the death certificate is issued after conducting the post-mortem examination. Doctor admitted that, in this case, she filled the Medical Cause of Death Certificate and in that she had noted 'aspiration of gastric contents' as another significant condition contributing to the death of the deceased.
66. The pathologist agreed that aspiration can lead to choking or difficulty in breathing because the air ways are blocked. However she said that it will only happen if the blockade happens or spreads into the branches or into smaller ones, resulting in complete occlusion of the air way to term that as choking where no air can enter because of that. In this case, food particles did not actually go into the lungs, it just extended into the bronchi.
67. To determine if the aspiration in this case was post-mortem or ante-mortem, the pathologist said that she had to examine the extension of these food particles. In respect of aspiration she did further test to sort out whether the food came to the

wind pipe when the deceased was still alive or was it spilled over after the deceased passed away.

68. If the person is alive and still unconscious, depending on the occlusion of the air ways, death would occur if there is complete occlusion because he is not in a position to react to the aspiration.
69. She admitted that her finding on aspiration of gastric contents is missing in the Post-mortem Report. Explaining the reason, the Pathologist said that her expert opinion changed after further examination of tissues. She admitted that she did not take any steps to correct the Medical Cause of Death Certificate because the final report on cause of death is the Post-mortem Report.
70. She confirmed that it was the blood from the lower part of the brain that had spread to the other parts of brain.
71. The Pathologist agreed that if the deceased had punched another person, depending on the force and the surface that the hand comes in contact with, it is possible that he may not receive any injuries on his knuckle.
72. That Ladies and Gentleman was the end of the prosecution case.
73. You heard me explain to the Accused what his rights were in defence and how he could remain silent and say that the State had not proved the case against him to the requisite standard or he could give evidence in which case he would be cross-examined. As you know the Accused elected to give sworn evidence and called a witness on his behalf.
74. Now I must tell you that the fact that an accused gives evidence in his own defence does not relieve the State of the burden to prove their case to you beyond reasonable doubt. Even if you don't believe a word an Accused person says about his right to self defence, you must still be sure that he is guilty of the crime that he is charged with.

#### **Case for the Defence**

##### **DW1 Ronald Dulare Singh (Accused)**

75. Defence called the Accused as their first witness. The Accused said that by 2013, he was working at Warwick Hotel as a plumber for 2 years.

76. On the 11th May, 2013, he knocked off from work at 4.30 pm. and went to Tai's (grandfather's) place at Naqwali with Butch to drink. He drank beer and ½ a glass of rum. At around 9.00 pm he walked down to the bus stop at Warwick and was awaiting the staff bus to go home.
77. Opposite the entrance of Warwick across the Queens road are the Warwick sign board, trees and bushes. There were only two small lights shooting the sign board. Those lights were not bright enough to light up that area. When he was sitting at the bus stand, he heard his 'nene', Vitalina calling. He recognized her voice. Vitalina was also working for Warwick. He calls her 'nene' because he respects her. The sound was coming from the opposite side of the road, towards the sign board. He went towards her. He saw a guy pulling her towards the dark, towards the back of the sign board. He ran across the road to help her 'nene'. He went across the road towards the sign board and started pulling her 'nene' to release her from that guy. He managed to free his 'nene' from that man. After she was released, she walked towards the light, to the bus stop. When he turned his back towards that guy, he started punching him hard, using his hand. This man punched him four times and three punches landed on his chest and the other one on back of the neck. He was worried and afraid because he was holding his shirt with one hand and using the other to punch him. He just threw a punch but he didn't know where he was punching because it was dark, but he felt that the punch landed on his chin. Then he saw him falling down in a sitting position. When he was walking towards the road he saw two security men of Warwick approaching. He told them *'I helped my 'nene', the man was pulling her and I just threw one punch and he fell on the floor'*. He also told that the security guards what that man did to him. The security guards told him to leave. Then he took a taxi and went straight home. On the following day, he was informed by the hotel that he took someone's life. He got a shock and told his father to take him to the Sigatoka Police station. On 12<sup>th</sup> May, 2013, he surrendered to police and admitted punching that man only once. He also told police that he was also punched by that man.
78. Accused said that he got injuries from the punches he received on his chest and neck. When he went to the police station on 12th of May, he told the police officers about the injuries he had received. However, he was not taken for a medical examination. He was taken to the Sigatoka Hospital on the 14th May only when his lawyer intervened. He informed the doctor as to how he received injuries. The Accused said that the reason he threw the punch was to protect himself.

79. Under cross-examination, Accused said that when he returned back to the Warwick bus stop his 'nene' was on the other side of the road. He recognized her voice and he saw his 'nene' from the bus stop when she was standing beside the sign board. Then he said he could not see her from the bus stop because the other side was very dark and he just followed her voice. He admitted that at the bus stop where he was standing, there was plenty light. He said that he did not see her 'nane' being dragged to the bushes but only heard her call for help. Then he said that when he reached there he saw his nene was being pulled by her hand.
80. Accused agrees that the injuries that the deceased had were caused by him. He said that he knew Mosese and he is the only security guard whom he met on that day. Other securities who approached him did not give evidence in Court. Apenisa, Sefanaia, and Batinisavu never met him on that day. He told only Mosese that he had punched the deceased only once. He then said that those three who were standing there while he was talking to Mosese came to give evidence in this Court. He denied that he had challenged them to a fight. The prosecution witnesses did not have any animosity towards him. He denied that he tried to enter the hotel before the incident. He denied that he was aggressive or angry on that day and told them to leave the deceased where he was. He admitted that the deceased had never challenged him to a fight. He said that he specifically informed Mosese that he was trying to defend himself. He denied punching the deceased on his chin while he was lying on the flower bed. He said that he complained to the police that he was not taken to the hospital to see a doctor. He admitted that if he punched someone in the face specifically in the chin area, that person can have serious injuries.

**PW2 Dr Mohammed Amos Zebran**

81. Dr. Zebran said that he examined the Accused, Ronald Dulare Singh on 14<sup>th</sup> May, 2013 at Sigatoka Hospital. The history was provided by the Accused. The patient had minor injuries. He had slight superficial tenderness on palpitation of 3<sup>rd</sup> right finger and his knuckle was swollen. He had a slight superficial tenderness over his right chest wall. There were no bruises or no internal injuries. Patient also had 0.5 cm x 1 cm swelling on the left posterior neck below the skull, but there was no bleeding. He opined that the patient had had a blunt trauma perhaps caused by a fist. Injuries did not appear to be fresh. Injuries were consistent with the history.

**Analysis**

82. Prosecution says that the Accused Ronald Dulare Singh punched the deceased Manasa on his chin area causing a blunt force trauma and the medical condition



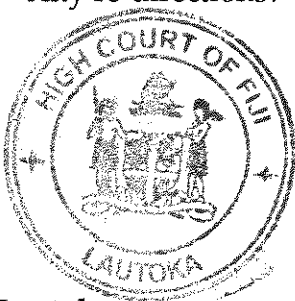
developed in deceased's brain as a result of Accused's conduct ultimately led or substantially contributed to Manasa's death. They also say that at the time of his act, Accused intended to cause serious harm to the deceased or he was reckless as to causing serious harm to the deceased.

83. There is no dispute as to the first two elements. Accused admits that he is the Accused in this case and that he punched the deceased and his punch landed on deceased's chin. He also admits that the external injuries noted in deceased's chin were caused by his punch.
84. To establish the third element which is causation, the Prosecution relies on medical evidence of the Pathologist, Dr. Mate, and the post mortem report prepared by her. In her opinion, the death of the deceased was caused by the extensive subarachnoid haemorrhage in the brain as a result of a blunt force trauma. She found a correlation between the external injury seen in the submental area below the chin and the internal haemorrhage in the bottom part of the brain or brain stem. She agreed that a punch by a fist of a man is a blunt force and such a force on the submental area of the deceased could damage the blood vessels in the brain stem.
85. Contention of the Defence is that the death was caused due to aspiration of partly digested food or gastric contents into the lungs or aspiratory system of the deceased. They challenge the credibility of the opinion of the pathologist as to the cause of death as it is stated in the post mortem report. They rely on the Medical Cause of Death Certificate prepared by the Pathologist where she has stated 'aspiration of gastric contents' as another significant condition contributing to death.
86. You heard what the Pathologist had to tell about the cause of death of the deceased in relation to her Post Mortem Report and her finding as it stated in the Medical Cause of Death Certificate. If you are satisfied that the death of the deceased was caused by haemorrhage in the brain as a result of a blunt force trauma in the chin area, you may conclude that the conduct of the Accused substantially contributed to the death of the deceased. I must emphasis the words 'substantially contributed' because it may not be the only reason for death.
87. As to the fourth element, you have to be satisfied that the Accused intended to cause serious harm or he was reckless as to causing serious harm to the deceased. Accused said that he did not intend to cause serious harm to the deceased. You have to come to an independent decision as to his intention and be satisfied that

his claim is consistent with his conduct, after taking into consideration all the circumstances as I have already mentioned.


88. If you are not satisfied that Accused did intend to cause serious harm, then you must see if he was reckless as to causing serious harm when he punched the deceased.
89. The Accused admits that he threw a punch in the dark and he felt his punch being landed on deceased's chin. He also admits that if he punches someone in the face specifically in the chin area, the recipient of the punch can have serious injuries. Sefanaia said that he saw the Accused punching the Accused and the punch landed on deceased's chin. The pathologist said that submental area is a vulnerable part compared to other areas of the body. Dr. Zebran had observed an injury in Accused's right knuckle.
90. If you are satisfied that the Accused knowingly punched the deceased on his chin area, you decide, having taken into consideration all this evidence, if the Accused was reckless as to causing serious harm to the deceased. If you are satisfied that the Accused was reckless as to causing serious harm to the deceased then you may find the fourth element of Manslaughter has been satisfied.
91. Defence raised the defence of self-defence. They say that the Accused acted reasonably when he threw a punch on the Accused in self-defence. Defence relies on the evidence of the Accused and Dr. Zebran to show that Accused was lawfully exercising his right to self-defence. The Accused said that he threw only one punch in the dark in self-defence. They called Dr. Zebran to show that Accused had also received injuries. You decide whether the witnesses called for Defence are reliable and what weight to be attached to their evidence. If you are satisfied that the Accused had punched the deceased in lawful self-defence, then you must not find the Accused guilty of Manslaughter.
92. Therefore, before you can find the Accused guilty of Manslaughter, you have to be satisfied beyond reasonable doubt that the Prosecution has disproved the evidence of self-defence. If you believe the version of the Defence, then apply the directions I have given to the facts of this case to determine whether the Accused was lawfully exercising the right of self-defence. Please bear in mind, the Defence has no burden to prove that the Accused was acting in self-defence. Prosecution has to prove beyond reasonable doubt that the Accused was not acting in self defence.

93. Prosecution adduced evidence to show that the Accused did not act in self-defence. In this regard they rely on Sefanaia's evidence that he had heard a lady's voice saying, enough, enough, enough, and his evidence that the deceased was already lying down upwards on the edge of the flower bed when the Accused was punching him. Prosecution also says that the Accused was drunk and was in an aggressive mood before and after the alleged incident. They also rely on the words that are alleged to have been uttered by the Accused "*you would like me to kill him?*" soon after the incident to show that he was not acting in self-defence. They also say that the Accused had only told the security guards that he punched the deceased once to save her 'nene' and he had not told that he had punched in self-defence. Prosecution also says that Sefanaia had not seen the Accused was also being punched by the deceased.
94. Defence argues that Sefanaia is not a reliable witness because the lighting condition at the scene was not bright enough to see what was going on. Sefanaia said that he was watching from a distance of about 10 metres and there was nothing between him and Ronald when he saw the incident in a clear lighting condition of a flood light. You heard what other Prosecution witnesses and the Accused said about the lighting condition. You decide if the evidence presented by Sefanaia is reliable.
95. If you accept the Prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure that Accused did not act in self-defence, you must find him guilty for the charge. 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.
96. You may now retire to deliberate on the case, and once you have reached your decisions, you may inform our clerks, so that we could reconvene.
97. Any re-directions?



At Lautoka

24<sup>th</sup> April, 2018



Aruna Aluthge  
JUDGE

**Solicitor: Office of the Director of Public Prosecution for State  
Samusamuvodre Sharma Law for the Accused**