

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 318 OF 2016S

STATE

vs

SANAILA NOKE

Counsels : Mr. T. Tuenuku for State
Mr. A. Qetaki and Mr. A. Chand for Accused

Hearing : 12, 13, 16 and 17 April, 2018

Summing Up : 18 April, 2018

Judgment : 18 April, 2018

JUDGMENT

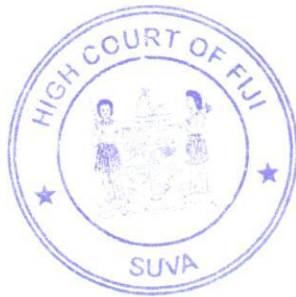
1. The assessors had returned with a mixed opinion, that is, the majority (Assessor No. 1 & 3) finding the accused not guilty as charged, while the minority (Assessor No. 2) finding the accused guilty as charged.
2. Obviously, the majority of the assessors had not accepted the prosecution's version of events, while the minority had accepted their version.
3. I have reviewed the evidence called in the trial, and I have directed myself in accordance with the summing up I gave the assessors today.

4. The assessors' opinion was not perverse. It was open to them to reach such differing positions on the evidence.
5. Assessors are there to assist the trial judge come to a decision on whether or not the accused was guilty as charged. They represent the public's view and their opinions need to be respected and taken seriously.
6. The State's case against the accused depended fundamentally on Jone Leweni's (PW2) identification evidence. I take on board the R v Turnbull guidelines on identification evidence. In my view, the defect in PW2's identification evidence was that no police identification parade was carried out by police, to test the veracity of PW2's identification evidence, so soon after the incident. It was highly prejudicial to the accused for PW2 to identify the accused in the dock in court 1 year 9 months approximately after the alleged incident. In my view, PW2's identification evidence against the accused in court, was of a lower quality, given what I said above. As a result, I reject PW2's identification evidence of the accused in the court room. This was not a case of recognition, where a police identification parade was not necessary. This was a case of first sighting by PW2 of the accused, thus a police identification parade was, in a sense, mandatory.
7. Furthermore, PW2 was drinking liquor at the material time. Can his identification evidence be trusted without a police identification parade? In my view his identification evidence cannot be trusted, without a police identification parade.
8. Furthermore, Bai Duruimata had pleaded guilty to the charge, before the accused's trial. He admitted punching the deceased in the mouth, whereupon the deceased fell on the concrete floor and his head fell on the same. In the accused's case, the prosecution is advancing the same theory on the accused. In his caution interview statement and sworn evidence, the accused denied the allegation against him. DW2 said, he saw Bai Duruimata punch the deceased in the mouth at the material time. I take judicial notice of Bai Duruimata's guilty plea and conviction. In my view, the above matters cast a reasonable doubt in the prosecution's case against the accused.

9. Given the above, I find that I agree with the majority opinion and reject the minority opinion. In my view, there was a lot of doubt on the prosecution's case and the benefit of that doubt must go to the accused.

10. Given the above, I find the accused not guilty as charged and acquit him accordingly.

11. Assessors thanked and released.



Salesi Temo
JUDGE

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