

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 220 of 2016**

**STATE**

**V**

**VENKAT RAJU**

**Counsel** : Mr. T. Tuenuku for the State.  
: Ms. V. Diroiroy with Ms. K. Vulimainadave  
[LAC] for the Accused.

**Dates of Hearing** : 14, 15, 16 and 17 October, 2019  
**Closing Speeches** : 21 October, 2019  
**Date of Summing Up** : 21 October, 2019  
**Date of Judgment** : 22 October, 2019

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**JUDGMENT**

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1. The Director of Public Prosecutions charged the accused by filing the following information:

**Statement of Offence**

**MURDER**: contrary to section 237 of the Crimes Act No. 44 of 2009.

**Particulars of Offence**

**VENKAT RAJU**, on the 19<sup>th</sup> of October, 2016 at Vatulaulau, Ba in the Western Division murdered **ROSHNI LATA SHARMA**.

2. The three assessors had returned with a unanimous opinion that the accused was not guilty of Murder but guilty of Manslaughter.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The prosecution called eight (8) witnesses and the accused was deemed to remain silent since he was absent from the trial and through his counsel did not call any witness.
5. The first prosecution witness Meenal Devi, the daughter of the deceased informed the court that she knows the accused who was hired by her mother to work as a carpenter for the maintenance of their house which was damaged by Cyclone Winston.
6. On 19<sup>th</sup> October, 2016 the witness who was residing at Natabua, Lautoka received a message that her mother was admitted at Ba Mission Hospital. When she went to Lautoka Viti Mini Bus Stand to go to Ba she received information that her mother was being transferred to Lautoka Hospital.
7. The witness was at the Lautoka Hospital Emergency Department when her mother was brought in an ambulance from Ba Mission Hospital. She saw her mother's forehead was bandaged with blood on it and both her cheeks were swollen. Upon seeing her mother's condition the witness started to cry. When she asked her sister Sheenal what had happened to their mother, the witness was told that the accused had assaulted their mother and left their house.
8. On the same day at the Intensive Care Unit the witness had the opportunity to speak to her mother. When she held her mother's hand, her mother recognized her and did some actions with her

hands indicating that she was in pain. At this time the witness asked her mother, who had done this to her.

9. The response received was that it was Chandar the accused and the final words her mother said was *"has Chandar been arrested or not."* After two weeks her mother passed away at the Lautoka Hospital.
10. The second witness Sheenal Devi (the sister of PW1) informed the court that the deceased was her mother and she was living with her mother and her niece at Vatulaulau, Ba. The accused had come to build their house after Cyclone Winston in July, 2016 and was staying at their house. On 19<sup>th</sup> October, 2016 at around 2am, the witness heard her mother call her name twice. When she went into the sitting room where her mother was sleeping she was asked by her mother to switch on the light.
11. At this time, she saw her mother was covered in blood particularly her breast, face, mattress and blanket. The witness was shocked to see this, she asked her mother what had happened. The response received was somebody had assaulted her, when the witness asked her mother again she was told by her mother it was the accused. At this time her mother asked the witness to check if the accused had taken with him his bag.
12. When the witness went into the bedroom which was occupied by the accused, she did not see the bag of the accused. Later the witness with the help of her neighbours and relatives took her mother to the hospital. At the hospital two police officers came and asked the witness what had happened to her mother.

13. The witness took the police officers to where her mother was. Her mother told the police officers in her presence that the accused had hit her. The witness also recalled when she had entered the sitting room where her mother was she had seen a pinch bar lying beside her mother's pillow. Furthermore, the witness was a student at the Fiji National University Natabua Campus in the year 2016. One week before the incident her mother had called her to come home and tell the accused to leave since he was forcing her to be in a relationship with him. When she went home she had confronted the accused and had told him to leave, the accused informed her that he will leave after three days.
14. On Sunday before the alleged incident her mother had told the accused to leave her house. According to the witness on the night of 18<sup>th</sup> October at around 10 to 11pm, there was no argument between her mother and the accused.
15. The witness denied that on the night of the 18<sup>th</sup> her mother had repeatedly sworn at the accused and had used vulgar language in the Hindi language such as "*maichod*" meaning mother fucker, "*Batiara*" meaning he was not man enough to keep a wife, "*dogla*" meaning his mother and father had lots of sexual partners and also the deceased had said in Hindi "*jao apan larki ke chodo*" meaning go and have sexual intercourse with your daughter and "*gandu*" meaning not man enough when telling the accused to leave her house.
16. The witness also disagreed that her mother had also said "*bastard*" to the accused. According to the witness the accused and her mother were not talking to each other from the previous Sunday till the incident.

17. The third prosecution witness Mereseini Naola informed the court that she was a Registered Nurse and in the year 2016, she was based at the Ba Mission Hospital. On 19<sup>th</sup> October the witness was at work when she received an emergency case, when the deceased was brought to the hospital she was bleeding from her head, eye brows and below her nose.
18. When the witness approached the patient, she tested the patient's level of consciousness and proceeded to stop the bleeding thereafter the doctor was called. According to the witness the injuries she saw on the deceased were really bad and serious. Due to the seriousness of the injury, the deceased was transferred to the Lautoka Hospital.
19. The fourth prosecution witness Laisenia Vuniivi informed the court that he was a Registered Nurse and in the year 2016 he was stationed at the Intensive Care Unit at the Lautoka Hospital. On 19<sup>th</sup> October, 2016 he received the patient Roshni Lata who was transferred from the Emergency Department.
20. The witness was able to ask the patient some questions which the patient had answered. The patient had told him that she lived with her daughter and her granddaughter and that it was her carpenter who had done this to her because he wanted to stay with her and when she refused, he used a pinch bar and struck her two times on her upper lips below her nose.
21. The witness had observed the patient had laceration on the left side of her head, her left leg was swollen and bruised and both her eyes were swollen and closed.

22. The fifth witness was DC 3016 Kamal Goundar who had interviewed the accused at Ba Police Station and also he had in his possession the pinch bar which was uplifted by the initial investigating officer from the crime scene and handed over to the witness. The red coloured pinch bar was marked and tendered as prosecution exhibit no. 1.
23. During the caution interview of the accused the witness had shown the pinch bar to the accused who had confirmed it was his and he had used it to strike the deceased.
24. The accused was caution interviewed by the witness on 24<sup>th</sup> October, 2016 before the commencement of the interview the accused was normal and cooperative. Before the interview commenced the accused did not complain about any ill treatment by the other police officers. The interview was conducted in the Hindi language which had commenced at about 1.50pm. The accused, the witness and the witnessing officer had signed the interview.
25. The original caution interview of the accused in the Hindi language dated 24<sup>th</sup> October, 2016 was marked and tendered as prosecution exhibit no. 2. The witness also translated the Hindi version into English which was marked and tendered as prosecution exhibit no. 3.
26. The witness stated that the accused was not assaulted, threatened, induced or forced to sign the caution interview or to give the answers. According to the witness the accused also did not make any complaints about any of the arresting officers or the witnessing officer before, during or after the caution interview.

27. The sixth witness PC 4707 Mosese Maraivalu informed the court that he was part of the arresting team that had arrested the accused on 23<sup>rd</sup> October, 2016. The witness was accompanied by Constables Setareki, Sekove and Eroni they had gone to Yaladro, Tavua upon receiving information and had arrested the accused. It was Constable Sekove who had approached the accused and arrested him.
28. According to the witness he heard Constable Sekove explain to the accused his rights at the time he was arrested. The accused was handcuffed and escorted to the waiting police vehicle, on the way to Ba Police Station the accused did not complain about any ill treatment, false promises, assault or threat made to him.
29. On the way to the Ba Police Station the accused requested if he could be taken to Vatulaulau to pick his clothes this was done. When the accused was arrested he was calm and cooperative.
30. The witness denied assaulting the accused with Constable Eroni and two (2) other police officers on his head and hand. The witness also denied poking the stomach and chest of the accused with his fingers and pulling his hair. According to the witness at Vatulaulau the accused was not subjected to any swears and verbal abuse by one Anand Sami. The witness did not see Constable Eroni assault the accused and take a big stick and press the accused's right thigh with the stick for about 10 to 15 minutes. Constable Eroni also did not throw the accused out of the police vehicle at the Ba Police Station.
31. The witness denied the accused had made requests to be taken to the hospital which was not allowed.
32. The seventh witness Eroni Serukalou informed the court that in 2016 he was a police officer based at the Ba Police Station. This witness

basically confirmed what PC Mosese Maraivalu (PW6) had told the court he was the driver of the police vehicle that had gone to arrest the accused. This witness denied any wrong doing after the accused was arrested and taken to the Ba Police Station.

33. The final witness Dr. Praneel Kumar a Forensic Pathologist who had graduated with MBBS Degree in 2010 from the Fiji School of Medicine.
34. After completing his internship he worked for 1 year as a medical officer. Thereafter the witness joined Forensic Pathology and at the same time did a two year Post Graduate Diploma in Pathology from the Fiji National University.
35. On 2<sup>nd</sup> November, 2016 the witness had conducted the post mortem examination of the deceased Roshni Lata Sharma at the Lautoka Hospital Mortuary. The post mortem report of Roshni Lata Sharma dated 2<sup>nd</sup> November, 2016 was marked and tendered as prosecution exhibit no. 4.
36. The doctor explained the deceased had received blunt force trauma to her head which had resulted in cerebral edema which was the swelling of the brain. As a result it came into contact with the dura mater. The doctor explained the swelling of the brain can also be caused by fall from a height, motor vehicle accident as well.
37. Furthermore, the membrane covering the brain contained blood which meant there were two areas of subarachnoid hemorrhages seen on the left and the right side of the brain measuring 75mm x 45mm and 80mm x 40mm respectively. According to the doctor, any kind of blow to the head could cause subarachnoid hemorrhage which can also be by natural causes as well but in this case the

injuries caused were due to trauma to the head of the deceased. The injuries were serious which led to the death of the deceased.

38. According to the doctor the cause of death was a result of blunt force trauma to the head of the deceased resulting in cerebral edema (brain swelling) and subarachnoid hemorrhage (bleeding of the brain).
39. On the other hand the accused denies committing the offence as alleged. According to the line of cross examination the defence takes the position that the accused and the complainant were in a defacto relationship and he never intended to kill the deceased. There was an argument between the deceased and the accused in which the deceased had sworn at the accused and used vulgar language against the accused, his parents and his daughter which was very insulting to him. Moreover, the accused had hit the deceased with the pinch bar once only.
40. I accept the evidence of all the prosecution witnesses as truthful and reliable. There is no doubt that it was the accused who had struck the deceased with his pinch bar about 5 or 6 times which resulted in the death of the deceased.
41. The only dispute is whether the accused had intended to cause the death of the deceased. The prosecution contends that the accused at about 2 am in the early morning of the incident had struck the deceased about 5 to 6 times on her head with a pinch bar leading to her death shows an intention on the part of the accused to kill the deceased.

42. The defence says the accused did not intend to kill the deceased the swear words uttered by the deceased were so vulgar that any reasonable person in the place of the accused would have been easily provoked to do what the accused did. The swear words were not only directed at the accused but his parents and his daughter as well.
43. To answer the question whether the accused had intended to kill the deceased or not, it is important to look at the caution interview of the accused. I accept that the accused had given his answers in his caution interview voluntarily on his freewill and which was the truth.
44. The answers given by the accused in his caution interview from questions 49 to 63 is worth looking at:

*“Q. 49: Then what happened next?*

*A: I was quietly taking the anger and she was talking to one Indian man on phone and was saying you come darling I am waiting for you the door is open what can that mother fucker do.*

*Q. 50: What happened next?*

*A: My blood was boiling and I was taking it quietly.*

*Q. 51: What happened next?*

*A: Roshni was continuously swearing at me and told me to move out of the house.*

*Q. 52: Then what happened next?*

*A: At about 1.00am Roshni threw a pinch bar at me.*

- Q. 53: *Then what happened?*  
A: *I told Roshni to go and sleep and in the morning I will go away.*
- Q. 54: *What happened next?*  
A: *I wrote a letter.*
- Q. 55: *What letter did you write?*  
A: *I wrote the letter on Tuesday in the day time and in the night time.*
- Q. 56: *What you wrote in the letter?*  
A: *That I loved her from my heart and she gave me a lot of injury and now I will give you injury.*
- Q. 57: *What happened next?*  
A: *I was really angry and I picked up a pinch bar which Roshni threw at me and I struck the pinch bar at Roshni's mouth.*
- Q. 58: *How many times did you struck Roshni with pinch bar?*  
A: *About 5 or 6 times I struck the pinch bar.*
- Q. 59: *Whose pinch bar was it which you used to struck Roshni?*  
A: *It is my pinch bar.*
- Q. 60: *Why did you struck her with pinch bar.*  
A: *I was angry when Roshni hit me with my pinch bar. Then I kept the pinch bar and struck with pinch bar.*

Q. 61: *Why did you struck Roshni with a pinch bar 5 or 6 times?*

A: *I was angry and I knew that whether I struck one pinch bar or 5 pinch bar I will go to jail. Then I struck her with a pinch bar.*

Q. 62: *When you took the pinch bar to Roshni what was the time like?*

A: *About 2.00 am or 3.00 am.*

Q.63: *What was Roshni doing when you took the pinch bar to her?*

A: *She was sleeping on the side and watching Facebook.*

45. From the above answers the accused was angry with the deceased, for hitting him with the pinch bar and also he heard the deceased talking to someone intimately over the phone and was also continuously swearing at him and telling him to move out of the house. The accused wrote a letter to the deceased whereby he had made up his mind that he will injure her.
46. In answer to Q. 52 the accused said that the deceased had thrown the pinch bar at him at 1am during the early morning of the alleged incident wherein his response was *"I told Roshni to go and sleep and in the morning I will go away."* The accused in his answer to question 62 says it was about 2am or 3am that he took the pinch bar and struck the deceased who was lying down on her side and watching Facebook. The accused had made it known in his caution interview that he did not retaliate when the pinch bar was thrown at him but he did so later.
47. I have also directed my mind to the question of whether there is enough evidence before the court for self defence to be looked at.

Looking at the circumstances of the offending this defence is not available to the accused because when the pinch bar was thrown at him he did not react to the situation at that moment.

48. The next question that comes to mind is whether the accused had been provoked to suddenly and temporarily lose his self-control. In my judgment the accused had more than enough time to "cool off". He only retaliated after he had time to think what he was going to do.
49. In this regard I accept the evidence of Sheenal Devi as truthful and reliable when she told the court that on the 18<sup>th</sup> of October she did not hear any argument between her mother and the accused. Sheenal was a forthright witness who was in the house of the deceased at the material time. Sheenal was able to promptly respond to her mother when her name was called twice in the early morning of 19<sup>th</sup> October.
50. This witness was not discredited in cross examination and there was no suggestion made by the defence that this witness was not telling the truth. According to Sheenal her mother and the accused were not in talking terms from the previous Sunday. Sheenal knew the relationship between the accused and her mother was not good hence I am sure Sheenal would have responded if she would have heard any argument between the accused and her mother. This witness was referred to her police statement which she had given to the police when facts were fresh in her mind. The inconsistency between the evidence of the witness and the police statement was not significant to affect the credibility of the witness.
51. Bearing in mind the above, this court is satisfied that the accused was not provoked by the deceased. Here the accused had time to think about what he wanted to do, to reflect on how he is going to

react, and to decide how he is going to react. In the circumstances of the alleged offending the defence of provocation does not exist. In answer to question 60 of the caution interview the accused had made it clear that he was angry when the deceased had hit him with the pinch bar so he had kept the pinch bar and struck the deceased.

52. I reject the defence of provocation raised by the defence, the prosecution has been able to rebut this defence beyond reasonable doubt that there was no provocation by the deceased. In this case the three main elements of the defence of provocation are not available to the defence namely:
- 1) The act of provocation;
  - 2) The loss of self-control (both actual and reasonable); and
  - 3) Retaliation proportionate to provocation.
53. From the evidence this was not a case of provocation by the deceased but one of revenge by the accused. The defence has not been able to create a reasonable doubt in the prosecution case.
54. I am satisfied beyond reasonable doubt that the accused on the 19<sup>th</sup> of October, 2016 murdered Roshni Lata Sharma. I accept that the accused by his conduct of striking the deceased with a pinch bar about 5 to 6 times intended to cause the death of the deceased.
55. For the above reasons, I overturn the unanimous opinion of the assessors that the accused is not guilty of Murder but guilty of the lesser count of Manslaughter.
56. I find the accused guilty of Murder as charged and I convict him accordingly.

57. This is the judgment of the court.



A handwritten signature in black ink, appearing to be "Sunil Sharma", written over a horizontal line.

**Sunil Sharma**  
**Judge**

**At Lautoka**

22 October, 2019

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**