

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 310 OF 2017S**

**STATE**

**VS**

**EPELI TALAKUBU**

**Counsels : Mr. E. Samisoni and Ms. J. Fatiaki for State  
Mr. J. Rabuku for Accused**

**Hearings : 16, 17, 18, 21, 22 and 23 October, 2019.**

**Summing Up : 24 October, 2019.**

**Judgment : 25 October, 2019.**

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**JUDGMENT**

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1. The accused was charged with the following information:

***“Count 1***

***Statement of Offence***

**MURDER: Contrary to section 237 of the Crimes Act 2009.**

***Particulars of Offence***

***EPELI TALAKUBU on the 8<sup>th</sup> of October 2017, at Nasinu in the Central Division, murdered  
MASI KALARO.***

***Count 2***

***Statement of Offence***

**CRIMINAL INTIMIDATION: Contrary to section 375 (1) (a) (i) and (iv) of the Crimes Act  
2009.**

*Particulars of Offence*

*EPELI TALAKUBU on the 8<sup>th</sup> of October 2017, at Nasinu in the Central Division, without lawful excuse, threatened SAMUELA TABUAVOU with a chopper with intent to cause alarm to the said SAMUELA TABUAVOU”.*

2. On 16 October 2019, the information was put to the accused, in the presence of his counsel. He pleaded not guilty to both counts. In other words, he denied the allegations against him. The matter then proceeded to trial before myself and three assessors for 6 days. I delivered my summing up to the assessors yesterday. They deliberated for 45 minutes. They are unanimously of the opinion that the accused, on count no. 1 was not guilty of murder, but guilty of the lesser offence of manslaughter, and on count no. 2, they unanimously found the accused guilty of criminally intimidating Samuela Tabuavou.
3. On the murder allegation (count no. 1), the assessors had rejected the prosecution's version of events. However, they are of the opinion that the accused was guilty of the manslaughter of the deceased. On count no. 2, the assessors accepted the prosecution's version of events.
4. I had reviewed the evidence called in the trial, and I had directed myself in accordance with the summing up I gave the assessors yesterday. The assessors' opinions were not perverse. It was open to them to reach such conclusion 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. Assessors represent the public, and their views must be treated with respect.
6. The prosecution's case was obviously built on the evidence of Mr. Samuela Tabuavou (PW1), Mr. Kaminieli Matayabone (PW2) and Doctor James Kalougivaki's (PW5) evidence. I accept the evidence of Samuela and Kaminieli that the accused stabbed the deceased with a broken beer bottle on the left chest, at the material time. I accept their evidence that

they saw blood coming from the deceased's chest after the stabbing. I find that on the above issue, PW1 and PW2's evidence were credible, and I accept the same. This evidence satisfied the first element of murder and manslaughter, as described in paragraphs 10 (i) and 17 (i) of my summing up.

7. On the second element of murder and manslaughter, as described in paragraphs 10 (ii) and 17 (ii) of my summing up, I accept the evidence of Doctor James Kalougivaki (PW5). He said, the deceased died as a result of the injury to his left chest. He said, the deceased died as a result of excessive blood loss due to the complete cut to the major artery from the heart that supplied blood to the left side of the chest and upper limb, due to sharp force or trauma. PW5 said, it was highly likely that the use of a broken beer bottle may amount to "sharp force injury or trauma". Given PW5's above evidence, I find and accept that when the accused stabbed the deceased on the left chest, he thereby caused his death, as a result of the deceased's abovementioned injury.
8. On the third element of murder, as described in paragraph 10 (iii) (a) or (b) of my summing up, I am guided by the three assessors' opinion. They appear to find that the accused did not intend to kill nor was he reckless in causing the deceased's death, when he stabbed him with a broken beer bottle. The assessors appeared to have found that the accused, at the material time, when he stabbed the deceased with the broken beer bottle, intended to cause him serious harm, or was reckless in causing him serious harm, the third element of the offence of manslaughter. I accept the three assessors' opinion on the above issue, and in my view, it was credible evidence, given the totality of the evidence.
9. On count no. 2, I accept the assessors' unanimous opinion. I accept Samuela's evidence on count no. 2. It was credible evidence.
10. Given the above, I agree with and accept the three assessors' unanimous opinions, finding the accused on count no. 1 not guilty of murder, but guilty of manslaughter, and on count no. 2, find the accused guilty as charged. Consequently, I acquit the accused of murder,

but convict him for the manslaughter of the deceased on 8 October 2017. On count no. 2, I convict the accused as charged.



A handwritten signature in blue ink, appearing to read "Salesi Temo".

**Salesi Temo**  
**JUDGE**

**Solicitor for the State** : **Office of the Director of Public Prosecution, Suva.**  
**Solicitor for the Accused** : **Mr. J. Rabuku, Barrister & Solicitor, Suva.**