

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 141 of 2016

BETWEEN : STATE

AND : GEORGE WILLIAM SENITETEVA

Counsel : Ms Uce and Ms Naibe for the State
Mr Tunidau and Mr Duanasali for the Accused

Dates of Hearing : 04, 05 and 06 June 2019

Closing speeches : 06 June 2019

Date of Summing up : 07 June 2019

SUMMING UP

Ladies and gentleman assessors,

1. I must now sum up the case to you. You must then retire to consider your opinion. I will direct you on the law that applies. You must accept those directions I give you on matters of law. You are to decide the facts of the case, based on the evidence that has been led before this court. You will then apply those directions to the facts and give me your opinions as to whether the accused person is guilty or not guilty.

2. You are bound by the directions I give you as to the law. But you are not obliged to accept any opinion I may express or appear to have expressed while going through evidence. If you do not agree with that opinion you will ignore it and form your own opinion with that evidence.
3. You must base your opinion only on evidence given by the witnesses and the exhibits tendered in court. But a few things that you heard in this court are not evidence. Opening submission, closing submissions, statements, arguments and comments made by the counsel and this summing up are not evidence. But you may consider those as a guidance when you evaluate evidence and the extent to which you do so is entirely a matter for you. If you have acquired any knowledge about the facts of this case outside this court room, you must exclude that information from your consideration. Make sure that external influences play no part in forming your opinion. You will also not let any sympathy or prejudice sway your opinions.
4. I will give you only a summary of evidence. I will not go through every word uttered by the witnesses in this case, and if I leave out something that seems to be important, nothing stops you from taking that into account. Because you decide the facts.
5. After this summing up, you may give your individual opinion as the representatives of the community. You may reject or accept any evidence in forming your opinion. Your opinions need not be unanimous. And you need not give reasons for your opinions.
6. Your opinions will assist me in giving my judgement. I will give the greatest weight to your opinions in my judgement. However, I am not bound to conform to your opinions.

Ladies and gentleman assessors,

7. I will now mention some considerations that may assist you in evaluating evidence. As I said before you may reject the whole evidence of a witness, accept the entirety or even accept only a part of a witness's evidence and may reject the rest. You have to decide whether a witness has spoken the truth or correctly recalled the facts and narrated it.

8. You have seen the demeanour of the witnesses and how they gave evidence in court. You have seen whether they were forthright or evasive in giving evidence. But you may also bear in mind that some witnesses have good memory, some may not remember every detail and it is also likely that some may perceive the same incident differently and narrate differently. You have to use your common sense in assessing the reliability and credibility of witnesses. Remember, that many witnesses are not comfortable in giving evidence in a court room, they may act in anxiety and get distracted in this environment.
9. According to the law the prosecution must prove its case beyond reasonable doubt. For the prosecution to discharge its burden of proving the guilt of the Accused, it is required to prove beyond reasonable doubt that he is guilty. The burden of proof remains on the prosecution throughout the trial. For this purpose, the prosecution must prove every element of the offence, which I will discuss later, beyond reasonable doubt.
10. The Accused need not prove his innocence. The fact that the Accused has given evidence does not imply any burden upon him to prove his innocence. It is not his task to prove his innocence. The burden is on the prosecution to prove the guilt of the Accused. That means you must be satisfied that the state has proved every element of the offence beyond reasonable doubt. That doubt should be a reasonable one and if you are left with a reasonable doubt you must find the Accused not guilty. If you are not left with any such doubt and if you are sure that the prosecution proved every element of the offence you must find him guilty.
11. The Accused is charged with one count of Manslaughter contrary to section 239 of the Crimes Act, 2009. The particulars of the offence read as follows;

“George William Seniteteva on the 19th day of June 2016, at Nadi in the Western Division, being reckless as to the risk that his conduct would cause serious harm, killed Vetaia Nabau.”

12. As per section 239 of the Crimes Act the prosecution must prove the following elements beyond reasonable doubt;

- a) the Accused
- b) engaged in conduct; and
- c) the conduct caused the death of the deceased; and
- d) the Accused was reckless as to a risk that the conduct will cause serious harm to the deceased.

13. The first element is the identity of the Accused. The prosecution must produce evidence that it was the Accused who committed the offence and no one else. You should examine closely the circumstances in which the identification by each witness came to be made. You should consider how long did the witnesses have the Accused under observation? At what distance? In what light? Was the observation impeded in any way? Had the witnesses even seen the Accused before? How often? If only occasionally, had they any special reason for remembering the Accused? How long elapsed between the original observation and the subsequent identification to the Police?

14. The second element is engaged in conduct. The phrase "engaged in conduct" means "to do an act or omit to perform an act". For example, if you hit someone with a stick, or assault someone, that is, to "engage in conduct" because you have performed an act. Similarly, if you hit someone with a stick and the victim is seriously injured, and you fail or omit to take him to hospital, that is also, to "engage in conduct" by omitting to take him to hospital for medical treatment.

15. The next element is "the conduct must cause the death of the deceased". It means "the conduct must be a substantial cause of the deceased's death". For example, if you hit someone with a stick or assaulted someone, and the person suffered serious injuries to his body, which later led to his death, then "your conduct caused the death of the deceased". Without the assault, the deceased would not have died. So, the assault was a major and/or substantial cause of the deceased's death. In law, the Accused's act need not be the sole cause or even the main cause of death of the deceased, but it is enough that the Accused's act significantly contributed to that result.

16. The final element of manslaughter involves with the state of mind of the Accused. It must be shown beyond reasonable doubt that the Accused was reckless as to a risk that his conduct will cause serious harm to the deceased. 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.

17. The question whether taking a risk is unjustifiable is one of fact for you. You must consider the parties' conduct, and the surrounding circumstances, to decide whether or not the Accused was reckless. Was he reckless to the risk that his conduct will cause serious harm to the deceased? Was he aware of a substantial risk that the deceased would suffer serious harm, as a result of his conduct? If so, was it justifiable for him to take the risk? If it was not justifiable to take the risk, then he would be reckless. If it was otherwise, he would not be reckless.

18. If you find that all the elements of manslaughter were satisfied by the prosecution beyond a reasonable doubt, then you must find the Accused guilty as charged. If you find that some of the elements of manslaughter are not satisfied by the prosecution beyond reasonable doubt, then you must find the Accused not guilty as charged. It is a matter entirely for you.

Ladies and Gentleman assessors,

19. I will now briefly outline the evidence adduced by the prosecution.

20. The prosecution called the pathologist who conducted the post mortem of the deceased as their first witness. The Post Mortem Report was tendered by the witness as Prosecution Exhibit 1. The pathologist gave evidence that the estimated time of death is 5 am on 19 June 2016. He has observed four contusions on the right forehead of the deceased. He explained that a contusion is a classification of wounds where there is no obvious damage to the skin but discolouration of the skin due to ruptured blood vessels under the skin. He said that any kind of blunt force trauma, such as hitting with an object or a punch could cause a contusion.

21. The Pathologist has further observed left intracerebral hemorrhage, subdural hemorrhage and subarachnoid hemorrhage. He explained intracerebral hemorrhage as bleeding in the major part of the brain, which is called cerebrum. When he was asked as to how bleeding could occur on the left side of the brain when the contusions are on the right side of forehead, the pathologist explained that blunt force trauma could cause coup injuries and contrecoup injuries. He said that contrecoup injuries occur on the opposite side of the area which was hit while coup injuries occur under the side of the impact.
22. He further explained subarachnoid hemorrhage as bleeding between two outer layers of the brain. The third bleeding was observed as subdural hemorrhage. He explained the subdural hemorrhage as bleeding below the layer under the inner table of the skull which is not attached to the brain. According to the pathologist there had been hematoma or a blood clot towards the bottom of the brain which he described as brainstem region.
23. The Pathologist has determined the cause of death as left cerebral hemorrhage, subdural hemorrhage and sub-arachnoid hemorrhage due to blunt force trauma.
24. He further explained that when considerable force is applied to head with an object, with a fist or even by a fall, it could cause the categories of bleeding he noted in this case. He also said that even a single punch with considerable force and good contact could cause these types of injuries.
25. During the cross examination the witness said that the contusions he observed could have caused due to one punch or several punches. He explained during cross examination that there could be injuries to the brain without any injuries on the scalp or the skull, due to a sudden velocity change. He ruled out that presence of high level of alcohol in the body as a cause of hemorrhage in the brain.
26. The second prosecution witness was Petaia Bogi. He said that on 19 June 2016 he came from Suva and at about 2.30 am he went to White House Night Club in Nadi with his brother and two other friends. The witness had known the deceased and he had met the deceased outside the night club before he entered. The witness said that the deceased looked good and he had a chat with the deceased. The witness said that he saw "some bouncer trying to pull" the deceased when he was drinking with his friends inside the night club. He said he saw two bouncers and one bouncer punching the

deceased. The witness showed a distance of 3-4 meters from the place where he was to where the deceased was standing. According to the witness the deceased had been punched on his head. Later he said that the bouncer punched two times on the head and once on the chest. He said that after the punching the two bouncers took the deceased out. When the witness was leaving the night club he had seen the deceased lying down at the car park outside the night club. He said he tried to wake him up, but the deceased did not respond. Therefore, he had gone home.

27. Petaia Bogi further said that the lights were dim inside the night club and only lights of assorted colours were there. The witness said that he saw the bouncer who punched the deceased sitting at the entrance of the nightclub when he entered. The witness also said that he identified the bouncer who punched the deceased at an ID parade held at Namaka Police Bure. He said that he identified the 5th person from the left side. The witness identified the Accused as the person who punched the deceased at the night club and as the person he identified at the ID parade.

28. During the cross examination the witness admitted that the lighting condition inside the nightclub was dim as there were only neon lights of assorted colours. He said he cannot recall how much he drank from 2.30 am till 4.30 am. But he said that he was not drunk. When it was suggested to the witness that he won't be able to recognize a person in a low light condition the witness said that he could recognize a person if he knew that person. But he admitted that the bouncer was a total stranger to him. The witness said under cross examination again that he could identify only one bouncer out of the two. He said that he could see the punches as they were near him when the deceased was punched. However, he said that the bouncer who punched the deceased was turning his back to the witness. The witness also said that he cannot recall whether the deceased fell after he was punched.

29. The witness, Petaia Bogi denied that he was told by Superintendent Chand that the Accused will be standing at the 5th position at the parade. During the cross examination the witness confirmed that he could still remember the face of the Accused even after two weeks from the incident. However, during re-examination, the witness again said that he did not see the face of the Accused, but he recognized him from his built.

30. The third prosecution witness was Taniela Damaso. He said that on 19 June 2016 at about 11 pm he left home to go to White House Night Club in Nadi. He said that a boy was drinking with him beside him. He said then a security officer came and started pulling that boy who was drinking with him. The witness said that the boy then held on to his shirt and it got torn. The witness further said that the security officer then punched the boy and he fell down. Then three other security officers had come and taken the boy outside. The witness described the security officer who punched the boy as fair in complexion, broad in built and said that he was wearing a white shirt. The witness gave evidence that there were assorted lights at the night club and he had the opportunity to see the security officer who punched the boy next to him, for about ten minutes. He said there was nothing which obstructed him seeing the incident. The witness also said that he had seen the security officer who punched the boy at the entrance as well. He said that "he always sits at the main entrance." The witness said that he saw the face of the security officer when he punched the boy. The witness gave evidence that he later left the night club and did not see the boy who was punched by the security officer again.

31. The witness, Taniela Damaso also said that he identified the security officer who assaulted the person, during an ID parade. He said he identified the person at the 5th place from the far corner of the ID parade as the security officer who punched the man at the night club. The witness identified the Accused as the person who punched the man standing beside him at the night club.

32. Under cross examination the witness said that he had been to White House night club two times prior to the incident. He said that on the day of the incident he drank only an alcohol named Woodstock and he did not drink beer. When it was suggested to him that he could not recognize any person due to drunkenness, the witness said that he did not drink that much as he was thinking about walking back home after clubbing. However, he admitted that his eyes were blurry, he was sleepy and was staggering. The witness also said during cross examination that the Accused used his both hands to punch the person next to him. He further said that he did not know whether that man was smoking Marijuana, but he confirmed that he was not crouching.

33. The next witness for the prosecution was Mosese Varasikete. He said that on 19 June 2016 at about 2 am he went to White House Night Club in Nadi. He said that he saw Nabau was drinking at the night club when he was looking for any one from his village. The witness said that the only other time he saw Nabau was when he was coming out of the night club in the morning, around 6 am. He said that Nabau was lying down in the car park beside the stairs. The witness had tried to wake him up and had checked for pulses as Nabau was not breathing. He had loaded the deceased to a vehicle to take him to Nadi Hospital. The witness said that he came to know that Nabau had passed away at the hospital.
34. The 5th prosecution witness was ASP Shiu Chand. He gave evidence that on 7 July 2016 he was requested by the Crime officer in Namaka to hold an Identification Parade regarding a case of murder at White House Night Club. He said there were 3 witnesses and he arranged 9 persons similar to the appearance of the suspect, George Wiliam Seniteteva. He gave a detailed account of how the ID parade was conducted. ASP Chand said that Petaia Bogi and Taniela Damaso identified the suspect. He said a witness named Peneiasi Qoro did not identify the suspect.
35. During the cross-examination ASP Chand denied that he directed the two witnesses to point out the Accused at the ID parade. Further he denied that the prosecution witness Petaia pointed out another person next to the Accused at the ID parade.
36. After the closure of the prosecution case the Accused was explained his rights. You must bear in mind that although those options were given, still the burden is on the prosecution to prove the guilt of the Accused and he need not prove his innocence. The Accused decided to give evidence.
37. The Accused said that he is the Chief Security officer at the White House Nightclub. He said on 19 June 2016 he was suffering from a medical condition called Gout and his right wrist was swollen. The Accused gave evidence that at about 5 am when he was doing his last round to check, he came to the corner where the deceased was standing. He said he saw through the crowd that the deceased was crouching and was smoking Marijuana. The deceased had stood up when he saw the Accused. The Accused said then he told the deceased to leave the Nightclub while holding from the deceased's trousers with his left hand. The Accused said then he pulled the deceased and when he resisted the Accused had lost balance. The Accused said then he tried to

wrap the deceased with his arms to take him out of the nightclub. He said when he took another two steps the deceased's knees buckled. The Accused had put him down slowly as the deceased had lost consciousness. Then the Accused had called two other bouncers and they have taken the deceased out.

38. The Accused said they put the deceased on top of a bench and after a while the deceased had fallen off. Then they have put him on the pavement. He said later he went upstairs.

39. During the cross examination the Accused said that he said everything he could remember regarding what happened on 19 June 2016 to the police. However, he later admitted what he told the police about the incident is different to the evidence given by him in court. He said that he lied to the police as he wanted to avoid getting charged. He also said that "I was alone, I thought this would lead to me being blamed for confrontation". However, the Accused denied that he punched the deceased and said that whatever he said in court was the truth.

40. That was the case for the defence.

Ladies and gentleman assessors,

41. I have now given you the directions of law and summarized the evidence adduced in this case. The prosecution case was that the deceased was punched by the Accused and thereby the deceased received injuries which led to his death. You have seen how the prosecution witnesses gave evidence in this case. It is for you to decide what weight you should attach to the evidence adduced by the prosecution. You heard the evidence given by ASP Chand regarding the identification parade. It is a matter for you to decide whether the Identification Parade was held fairly or not.

42. The position of the defence was that although the Accused had a confrontation with the deceased, the Accused never punched him.

43. You have to consider whether the prosecution proved the ingredients which constitute the offence of Manslaughter beyond reasonable doubt. Even if you do not believe the

evidence given by the Accused, you still have to consider whether the prosecution proved the elements of Manslaughter against the Accused beyond reasonable doubt.

44. If you are satisfied that the prosecution has proved all the elements of the offence of Manslaughter you must find the Accused guilty for the offence of Manslaughter. If you find the prosecution failed to prove the offence of Manslaughter beyond reasonable doubt, then you must find the Accused not guilty.

45. You may now retire and consider your opinions. Before you do so, may I ask the counsel of both parties whether you wish to request any redirections?

46. When you are ready with your opinions, the Court will reconvene for you to inform your opinions to court.



Rangajeeva Wimalasena
Acting Judge

Solicitors :

Office of the Director of Public Prosecutions for the State
Mr Tunidau for the Accused