

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 313 OF 2020

BETWEEN : **STATE**

AND : **MIKAELE LAWANIYAVI**
 : **ISIKELI LAGIBALAVU**
 : **JOSATEKI RABULA**

Counsel : Ms M Konrote for the State
 : Mr J Niudamu for 1st Accused
 : Mr N Singh for the 2nd Accused
 : Mr T Varinava for the 3rd Accused

Date of Hearing : **4 October 2023 – 6 October 2023**

Date of Judgment : **5 December 2024**

JUDGMENT

- [1] The three Accused are charged with manslaughter. The Prosecution alleges that all three Accused on 3 October 2020 at Nausori assaulted Subhas Chand which led to serious brain injury and caused his death.
- [2] The onus is on the Prosecution to prove the charge beyond a reasonable doubt. There is no onus on the Accused to prove anything. Each element of the charge must be proved beyond a reasonable doubt but not every fact of the story.
- [3] The law requires the case against each Accused to be considered separately.

- [4] There are three elements that must be proved for the offence of manslaughter:
1. That each Accused engaged in a conduct.
 2. That this conduct caused the death of the deceased.
 3. That the Accused was reckless as to a risk that the conduct will cause serious harm to the deceased.
- [5] To engage in a conduct means to do an act. The act must be a voluntary act, that is, it is done willingly and consciously.
- [6] A conduct causes death if it substantially contributes to the death. Death does not have to occur immediately after the conduct. The offender remains liable for death if it occurs at any time within one year and a day of the conduct provided the death is still caused by the conduct.
- [7] A person is deemed to cause another person's death if his conduct leads to the death of the deceased even if his conduct or act is not the sole or immediate cause of death. For instance if I were to punch someone, and that person were to fall and hit his head on the concrete floor and dies as a result of the head injury, I am deemed to have caused his death, because his fall was caused by my punch. This is so even if the deceased is not taken to the hospital in time to save his life, or even if he refused medical treatment himself.
- [8] The element of recklessness is made out if the Accused realized that his conduct might cause serious harm to the deceased yet he went ahead and acted as he did. What is in the mind of a person is not always capable of direct proof because a person's state of mind can only be known for sure by the person concerned. However, ordinary experience shows that a person's intention or knowledge can be inferred by his conduct in any given circumstances. An inference is a logical deduction from proved facts.

[9] If the Accused realized the possibility of causing serious harm to the deceased and yet went ahead to assault him in the manner as alleged then the element of recklessness is proven. But if the Accused did not realize or may not have realized the possibility of a serious harm when he engaged in the alleged act of assault on the deceased, the element of recklessness has not been proven and the Accused cannot be liable for the death of the deceased.

[10] A lesser or an alternative offence to the charge of manslaughter is assault occasioning actual bodily harm contrary to section 275 of the Crimes Act. This alternative charge can be considered even when an Accused is not charged with the offence in the Information.

[11] To establish assault occasioning actual bodily harm the Prosecution must prove each of the following matters beyond a reasonable doubt:

1. The Accused applied force, hit or touched another;
2. He did so intentionally or recklessly;
3. Without consent or lawful excuse; and
4. That action caused bodily harm to the other person.

[12] Actual bodily harm is hurt or injury that interferes with the health or comfort of the person assaulted.

[13] The Prosecution relies on section 46 of the Crimes Act to impute criminal responsibility on the three Accused. Section 46 states:

When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a

probable consequence of the Prosecution of such purpose,
each of them is deemed to have committed the offence.

[14] In the closing address, counsel for the Prosecution has pitched the common intention of each Accused as follows:

Para 42-43

42. The State submits that based on the facts of this case there was clear intent by all three Accused to assault and hurt the deceased at the time of the incident. They are all equally liable as their actions all contributed to the death of the deceased.

43. The blows which were struck on the deceased were all aimed at his head which resulted in severe traumatic injuries which led to his death. This based on the assault was a probable consequence of the Accused persons.

[15] For the three Accused to be guilty of manslaughter under the principle of joint enterprise, the Prosecution must prove:

1. That each of the three Accused had formed a common intention to assault the deceased in the manner alleged by the Prosecution.
2. And that each Accused realized the possibility of causing serious harm to the deceased when they assaulted the deceased in pursuit of their common intention to assault.

[16] I now consider the evidence.

[17] Each Accused has agreed to certain facts. The admitted facts are considered true.

[18] **Agreed Facts**

The First Accused (Mikaele) admits the following facts:

1. The deceased in this matter is Subhas Chand, 56 year old bus driver of Naduru, Nausori.
2. The Accused is 43 year old school teacher.
3. On the 3rd of October 2020 the Accused was present at the Nausori bus stand together with his girlfriend Rajjeli Navo.
4. While he was at Nausori bus stand the Accused noticed that the deceased was having an altercation with two Itaukei boys.
5. The Accused witnessed the deceased pull out a Spanner. At the time he was holding an umbrella.
6. The Accused was arrested by police on foot patrol at the Nausori bus stand.
7. The deceased was rushed to the Nausori Health Centre.
8. The Accused was caution interviewed by Sgt 2204 Anoop Narayan on the 16th of October 2020 at the Nausori Police Station.
9. The caution interview of the Accused is agreed to be tendered by consent (The contents of the caution interview are not agreed to).
10. On the 9th October 2020 the deceased died.

11. The Post Mortem Examination on the deceased was carried out by Doctor Daniella John. The Post Mortem report is tendered by consent.

[19] The Second Accused (Isikeli) admits the following facts:

1. The deceased in this matter is Subhas Chand, 56 year old bus driver of Naduru Nausori.
2. The Accused was a 20 year old kitchen hand on the 3rd of October, 2020.
3. On the 3rd October 2020 the Accused was present at the Nausori bus stand together with his friend Josateki Rabula (3rd Accused).
4. The pair was watching the Vodafone arm wrestling competition.
5. The Accused was watching the competition when the deceased hit him with the bus he was driving. Specifically the side mirror of the bus hit the Accused head causing him to fall over.
6. The Accused was arrested at the Nausori Bus Station shortly after the incident.
7. The deceased was rushed to the Nausori Health Centre.
8. The Accused was caution interviewed by D/IP Ilaitia Ratu Ramaya on the 16th October 2020 at the Nausori Police Station.
9. On the 9th October 2020 the deceased died.

10. The Post Mortem Examination on the deceased was carried out by Doctor Daniella John.

[20] The Third Accused (Josateki) admits the following facts:

1. The deceased in this matter is Subhas Chand, 56 year old bus driver of Naduru Nausori.
2. The Accused is 22 years old, unemployed of Lomanisau Village.
3. On the 3rd of October 2020 the Accused was present at the Nausori bus stand together with his friend Isikeli Lagibalavu (2nd Accused).

[21] The Prosecution led evidence from the following eight witnesses:

1. Virisila Bludai
2. Veniana Devu
3. Saula Naisarani
4. Ashwant Vikash
5. Dr Rindhu Chand
6. Dr Paula Nakabea
7. Dr Daniella John
8. Dr Luke Nasedra

[22] The exhibits tendered by both the Prosecution and Defence are:

Prosecution

PE1 Record of Interview of Isikeli Lagibalavu

PE2 Record of Interview of Accused Lawaniyavi

PE3 Record of Interview of Josateki Rabula

- PE4 A long blue colour umbrella
- PE5 Medical Folder of Subhas Chand
- PE6 CT Scan Report of Subhas Chand
- PE7 ER Observation Register
- PE8 Post Mortem Report of Subhas Chand

Defence (2nd Accused)

- DE1 Medical Report of Isikeli Lagibalavu
- DE2 Photographs of the deceased depicting visible physical injuries to the face
- DE3 Medical Synopsis Report on the deceased by Dr Raiwalui

Eye witnesses' account of the alleged incident

- [23] The first four Prosecution witnesses gave an account of what they saw occurred at the Nausori bus stand on 3 October 2020 between 12 noon and 1 pm.

- [24] Virisila's evidence is that on 3 October 2020 at around 12 noon she was at the bus stand to catch a bus when she witnessed a bus drove by and the driver was honking the horn. When that bus came to a complete stop, two Itaukei youths entered the bus and started punching the driver. She was standing outside at the entrance of the bus and nothing obstructed her view of the incident. The driver was sitting on the driver's seat. The first youth (referring to the Third Accused) went and punched the driver three times on the head from behind the seat while the second youth (referring to the Second Accused) punched the driver three times while standing on the steps of the bus as you enter. The two Accused held the collar of the driver and punched him. The two Accused were saying something to the driver but she could not hear what was being said. The driver was afraid.

- [25] The commotion attracted a crowd. Virisila moved to the front of the bus. While she was standing in front of the bus she saw another Itaukei man (referring to the First Accused) calling the driver from the driver's window side and poked the

driver on the right side of his face near his nose with the pointing end of an umbrella from outside the bus. He poked the driver with the umbrella like someone throwing a javelin. The driver started bleeding from his face and he tried to cover his face with his hands and then he lay forward on the engine compartment of the bus and started to lose consciousness.

- [26] Virisila called out for someone to attend to the driver and some people came and helped him. On 17 October 2020, Virisila identified the three Accused in a police identification parade held at the police station.
- [27] In cross-examination, counsel for the First Accused elicited from Virisila that the Second and the Third Accused threw strong punches because they were angry. When the driver was being punched he tried to defend himself by picking up a wheel spanner. As the driver was just about to hit the boys with the wheel spanner, someone called out from outside and Virisila ran in front of the bus to see who that was. She saw the First Accused. She saw the First Accused forcefully poked the driver on the face resulting in a cut and bleeding.
- [28] Counsel for the Second Accused elicited from Virisila that when the driver honked, the First and the Second Accused got angry and ran to the bus. Virisila saw the two Accused saying something to the driver and at the same time throwing punches at him but she didn't see where the punches were landing.
- [29] Under cross examination by counsel for the Third Accused, Virisila maintained that both the Second and the Third Accused threw punches at the bus driver.
- [30] The second witness, Viniana's evidence is that she was standing at the bus stand when she saw two Itaukei men arguing and throwing punches at a bus driver. She said that the boy who was behind the driver threw short punches and the driver tried to avoid the punches by moving his head. The punches landed on the back.

of the driver's head. She said the punches were hard. She saw the driver stood up and was looking around to grab something around him perhaps to defend himself but when Veniana moved closer she saw the driver was already lying on the compartment of the engine near the driver's seat, covering his face.

- [31] In cross-examination, Veniana said that when the driver stood up to look for something to defend himself, the boys ran out of the bus and that the driver was still conscious at the time, but when she moved closer, she saw the driver down on the engine cover holding his face.
- [32] In re-examination, Veniana clarified that she saw both boys punch the bus driver. The boy on the stairs of the bus punched the driver's head. The boy behind the driver's seat punched the driver on the head twice.
- [33] The third witness, Saula's evidence is that he saw a bus drove passed right in front where he was sitting and it looked like a boy was hit maybe by the side mirror of the bus. The bus driver did not realize that he had hit someone and he did not stop the bus. The bus stand was crowded at the time. Saula saw the boy who was hit by the bus and his friend trying to look for the bus that hit the boy. He saw the two boys go towards the bus which hit the boy when the bus stopped at the stand. He did not see what the boys did but when he heard a commotion he went to the bus and saw the driver was lying on the engine cover and bleeding from his face. The driver was still conscious and Saula carried the driver and took him to the Nausori Health Centre. When a nurse took over at the Health Centre, Saula returned to his home.
- [34] The fourth witness, Ashwant's evidence is that he worked as a bus supervisor for Tacirua Transport Company. His duties involved keeping a count of the busses that arrive and depart from the bus stand. He was present at the bus stand when the deceased drove his bus and parked at the Suva Nausori Express Lane. He was

about 5-7 meters away from the bus and was talking to a passenger when he noticed two Itaukei youths talking to the deceased inside the bus. While he was talking to other passengers someone called out to him to check out his driver. Ashwant went to the driver and saw the driver was injured and bleeding from his face. The driver was sitting on his seat with his head facing downwards. The driver was still conscious but had difficulty to communicate. The driver appeared to be in pain. The driver was taken to the hospital.

[35] **Medical evidence**

The next four witnesses were medical professionals.

[36] Dr Chand attended to the deceased when he was brought to the Nausori Health Centre after 1 pm on 3 October 2020. Dr Chand's evidence is that when the deceased was brought to the Health Centre, he already had a decreased level of consciousness and was not responding. The deceased had his eyes closed and he had no verbal or motor response like movements. The deceased had visible facial injuries – hematoma on the lower eye lid, laceration on the right nostril area and fresh nose bleed. The deceased's oxygen level was decreasing and he had a high heart rate. The deceased's Glasgow Coma Scale (GCS) level was 8/15 indicating a severe brain injury.

[37] Dr Chand immediately attended to the deceased and tried to stabilize him. He was given tetanus injection to prevent infections and put on IVF and oxygen to assist with breathing. The deceased was suspected to have suffered a nasal fracture and was immediately transferred to the CWM hospital in an ambulance.

[38] Dr Chand said the injury near the nasal area could have been caused by the sharp edge of an umbrella and the blunt force injuries on the head could be caused by several punches to the head.

- [39] The next witness was Dr Nakabea. Dr Nakabea is a radiologist with forty years of experience who signed off the CT scan report of the deceased after it was conducted on 3 October 2020 at the CWM hospital. The CT scan revealed comminuted fractures on the right side of the sphenoid bone, which in his opinion were more likely to have been caused by punches to the face using considerable force.
- [40] The post mortem of the deceased conducted by Dr John found a healing linear laceration over the right cheek onto the right side of the deceased's nostril and a contusive abrasion on the lower lip. The cut was not serious to contribute in any way to other head injuries found on the deceased.
- [41] An internal examination of the deceased's skull revealed evidence of bony injury with fractures in the sphenoid bone. There was evidence of a subarachnoid hemorrhage at the base of the deceased's brain around the brainstem. Section of the brainstem revealed linear hemorrhages. Blood clots were found in the cerebral vessels and the deceased's brain was swollen.
- [42] Dr John concluded that the direct cause of the deceased's death was the right cerebral infarction and the antecedent causes were right anterior and middle cerebral artery thromboembolic, immobilization and severe traumatic head injury. In other words, the head injuries led to a stroke in the brain and death of the deceased.
- [43] The next witness was the Medical Officer of CWM Hospital, Dr Nasedra. Dr Nasedra was called to explain that after the hospital lost the medical folder of the deceased, they reconstructed a temporary folder by printing clinical notes of the patient that were kept into the hospital's information system. The doctor said that he did not find anything abnormal in the treatment that was accorded to the

patient while he was admitted at the CWM hospital. Nobody complained to him that his doctors were negligent in treating the patient while he was at the hospital.

[44] That is a summary of evidence of the Prosecution witnesses.

[45] **First and Third Accused remained silent**

The First and the Third Accused elected to remain silent and not to call any evidence. That is perfectly their right and I draw no adverse inference against them for exercising their right to remain silent. The onus is always on the Prosecution to prove the guilt of an Accused beyond a reasonable doubt.

[46] **Evidence led by the Second Accused**

The Second Accused, Isikeli elected to give evidence. He was not obliged to give evidence. He does not have to prove his innocence. He does not have to prove anything. However, he has chosen to give evidence. I am obliged to take what he has said into account when considering the charge. Even if I entirely reject the account given by him that would not relieve the Prosecution of its burden of making you sure by evidence of the Accused's guilt.

[47] Isikeli in his evidence said that on 3 October 2020 at around 12 noon to 1 pm he was standing at the bus stand with his friend Josateki when he was hit by the side mirror of a bus that came into the parking bay. He went and confronted the driver. He waited for the passengers to disembark and he then climbed on the steps and asked the driver why he hit. The driver was sitting on the driver's seat. The driver responded saying to Isikeli that he should not have been standing there.

[48] Isikeli said he asked the driver to accompany him to the police station but the driver started arguing and swearing at him. When all this was happening, Josateki was standing right behind the driver's seat, implying Josateki got onto the bus before him. When the driver refused to go to the police station Isikeli grabbed

the driver's collar with his right hand while he held to the railing that was between him and the driver using his left hand.

[49] Isikeli said that the left side of the driver's face was facing him. The driver then leaned sideways trying to grab something from the floor. The driver picked up a rod about 60 cm in length and swung at him. Isikeli moved backwards and released the driver's collar at the same time. The driver swung the rod again but Isikeli leaned back and after that he saw the driver was poked twice with an umbrella from the right side of the bus window. The first poke landed on the right side of the driver's abdomen and the second one landed on the driver's face. He saw the driver started to bleed. The driver covered his face and leaned forward on the steering. That is when Isikeli got off the bus.

[50] On 15 October 2020, Isikeli underwent a medical examination at the Nausori Health Centre. His medical report (DE 1) shows nil injuries to his knuckles or any part of his body.

[51] When questioned by counsel for the Third Accused, Isikeli said that they did not plan to assault the driver and that Josateki was just standing there and that he did not assault the driver.

[52] The Second Accused called Dr Vereniki Raiwalui to give evidence for the defence. Dr Raiwalui was called as an expert witness. His professional qualifications are not disputed. He has 28 years of experience in medical science and he specializes both in intensive and critical care medicine. He compiled a medical report on the deceased after reviewing the available clinical notes and medical reports of the deceased.

[53] Dr Raiwalui noted that the deceased was brought to the Nausori Hospital with penetrating injuries in the nasal area with obvious hematoma below the right

eyelid, and penetrating trauma to the right nasal area and was bleeding from the oral cavity. Dr Raiwalui also noted that the deceased suffered from traumatic brain injury secondary to alleged blunt trauma to right maxillary antral fractures. Dr Raiwalui said that comminuted fractures indicate that there is a fracture that has opened up and has also penetrated through some of the tissues. The doctor said that in his experience comminuted fractures are caused by some kind of blunt force trauma to the part of the body where the fracture occurs. When shown the umbrella (PE 4) the doctor said that the steel point at the end of the umbrella could cause penetrating bone fractures if used with appropriate and sustain force.

[54] In cross examination by counsel for the State, the doctor agreed that comminuted fractures could also be caused by several punches using significant or considerable amount of force. The doctor agreed that it was the comminuted fracture on the right side of the deceased's face that resulted in severe brain injury.

[55] That is a summary of the evidence led by the Second Accused.

[56] **Analysis of evidence pertaining to First Accused**

I first deal with the Prosecution case against the First Accused, Mikaele. The Prosecution alleges that the First Accused in concert with the Second and Third Accused assaulted the deceased after forming a common intention to assault, resulting in the death of the deceased.

[57] The identity of the First Accused is not an issue. He admits that he was present at the bus stand when he saw that the deceased was having an altercation with two Itaukei boys. He saw the deceased pull out a spanner. At the time he was holding an umbrella (PE4).

[58] The issues for determination in relation to the First Accused are:

1. Firstly, whether the First Accused with the common intention with the Second and Third Accused engaged in a conduct of assault and battery that caused death of the deceased.
2. Secondly, whether the First Accused realized the possibility of causing serious harm to the deceased and yet went ahead to engage in the assault and battery as alleged?

[59] According to Virisila, she saw the First Accused poked the deceased on the face with the sharp metal edge of the umbrella (PE4) resulting in a cut and bleeding. If that is what happened then the First Accused engaged in a conduct of assault and battery that resulted in a physical bodily injury on the right side of the deceased's face. She described the force used as like someone throwing a javelin. When that happened the deceased started bleeding from the cut on the face and started to lose consciousness.

[60] According to Dr Chand, the deceased had visible facial injuries – hematoma on the lower eye lid, laceration on the right nostril area and fresh nose bleed when he was brought to the Nausori Health Centre. The photograph (DE2) depicts visible facial injuries in the right nasal area, hematoma below the right eyelid and bleeding around the right nasal area.

[61] The Second Accused's evidence is that he saw the deceased being poked twice with an umbrella, which is admissible against the First Accused. The deceased was first poked on the abdomen area and then on the face, causing bleeding and loss of consciousness and mobility.

- [62] I feel sure that the First Accused engaged in the conduct of assault and battery. The issue is whether he was acting in concert with the Second and Third Accused to assault the deceased?
- [63] Virisila's evidence is that before the First Accused assaulted the deceased, the Second and Third Accused had already punched the deceased on the face and head several times. There is no evidence to suggest that the First Accused was part of the initial intention to assault the deceased. He did not know the Second and Third Accused. He was not with the Second and Third Accused at any time. He was present at the bus stand with his spouse and when he saw the deceased having an altercation with two Itaukei boys and that the deceased was pulling out a spanner, he poked the deceased with an umbrella.
- [64] It is not necessary for all three Accused to have come together to agree to assault the deceased. The formation of joint enterprise may be spontaneous, and the fact the participants acted on the spur of the moment does not negate their criminal liability on the basis of joint enterprise.
- [65] According to Virisila, the First Accused was forceful when he poked the deceased on the face with his umbrella. The evidence regarding use of force makes sense. Immediately after the deceased was poked on the face with the pointy metal edge of the umbrella, the deceased lay his head on the engine compartment of the bus and started to lose consciousness. That is when Virisila called out for help and Saula came and carried the deceased to the Health Centre.
- [66] I don't believe that the First Accused used the umbrella to diffuse a heated impasse involving the deceased and the Second and Third Accused. I believe the First Accused intentionally used the umbrella as a weapon to assault the deceased. It must have occurred to him that the deceased was trying to defend himself with the spanner from a sitting position and surrounded by two men. Yet

the First Accused chose to attack the deceased with his umbrella. I find the First Accused intentionally assaulted the deceased with the umbrella on the spur of the moment as part of joint enterprise to assault the deceased.

[67] The cause of death is not an issue. The medical evidence is that the deceased died of brain injury caused by blunt force trauma to the head and face. While the medical opinion is conclusive that comminuted fractures are caused by use of significant or considerable force, the doctors are not certain as to whether the serious injuries, that is, bone fractures found on the right side of the deceased's face were caused by the assault with the umbrella or with the punches to the face. The doctors quite rightly concluded that since they did not see the assault they cannot determine which particular assault caused the fatal injury to the deceased.

[68] In a case of joint enterprise, it is not necessary for the Prosecution to prove who struck the fatal blow. What the Prosecution has to prove is that the assault on the deceased was in pursuit of common intention to assault leading to death of the deceased. I find that is what occurred in this case.

[69] The issue is whether the First Accused realized the possibility of causing serious harm to the deceased when he assaulted the deceased in concert with others. The First Accused knew that the umbrella he was holding was long and had a sharp metal edge at the end. He made a conscious decision to use that part of the umbrella with force to attack the face of the deceased slightly below the eye. Anyone in his position would have realized the possibility of serious harm to the deceased. I feel sure that the First Accused did in fact realized the possibility of serious harm to the deceased and yet went ahead to forcefully poke the deceased with the sharp metal edge of the umbrella he was holding.

[70] I find the First Accused guilty of manslaughter of Subhas Chand as charged.

[71] **Second and Third Accused**

I now deal with the evidence for and against the Second and Third Accused, Isikeli and Josateki.

[72] The Second Accused's evidence is that he only went to the deceased to confront him as to why he hit him with his bus. He says he did not punch the deceased as alleged by the Prosecution. In his evidence he also exonerates the Third Accused saying the Third Accused stood behind the deceased and that he did not strike any blows to the head of the deceased as alleged by the Prosecution.

[73] As for the Second and Third Accused, their identity is not an issue. The issues for determination for the Second and Third Accused are:

1. Whether or not they acted in concert to assault the deceased?
2. Whether or not they realized the possibility of causing serious harm to the deceased?
3. Whether the deceased died as a result of the injury inflicted by their assault and battery?

[74] I accept the evidence of the Second Accused that he and the Third Accused went to the deceased to confront him after he was hit by the deceased's bus, but I don't believe that he had not carried out any assault and battery during that altercation with the deceased. The Second Accused down plays his role during the altercation with the deceased. His denial of any wrongdoing is consistent with what he told the police in his caution interview. He says he did not assault the deceased at all. He says his friend, the Third Accused did not assault the deceased at all. He says the deceased was assaulted with an umbrella by someone else which led to death of the deceased.

[75] The Prosecution evidence suggests that the Second Accused was angry that the driver of the bus did not stop when the side mirror of the bus hit him. He and his friend, the Third Accused immediately went to confront the driver. Both Accused entered the bus as soon as the passengers disembarked and both confronted the deceased while he was sitting on the driver's seat. The Third Accused went and stood right behind the driver and faced the back of the deceased's head. The Second Accused stood right next to the deceased on the steps and held him by his collar and while conversing punched the deceased several times. On the evidence, I find that the Second and Third Accused were the aggressors and that the deceased picked up the spanner to defend himself from the punches thrown at him.

[76] I believe and accept the evidence of Virisila and Veniana that both Accused punched the deceased on the face and head during the altercation. These two witnesses may not be clear exactly as to which part of the face and the head the punches landed but they were consistent in their account that both Accused punched the head and the face of the deceased several times. Further, their account is that the punches were hard. I don't find any material inconsistency in their evidence regarding this particular aspect of their evidence.

[77] The only logical inference that is being drawn from the evidence is that both Accused were acting in concert and in pursuit of their common intention to assault the deceased. It does not matter who struck the fatal blow although the evidence points to the Second Accused. He was standing next to deceased and the evidence is that he threw several punches at the deceased's face while conversing with him, meaning the deceased had turned his head left and faced the Second Accused during the conversation where the Second Accused was standing. The deceased's full face was exposed to the left side of the bus where the Second Accused was standing, and it was not impossible for the Second Accused to inflict the fatal trauma injury on the right side of the deceased's face.

- [78] Further, I am not surprised that there were nil injuries to the Second Accused's knuckles for two reasons. Firstly, it is not necessary for you to sustain injuries on the knuckles when you punch somebody's face. Secondly, the medical examination that revealed nil injuries on the knuckles of the Second Accused was done on 15 October 2020, twelve days after the incident.
- [79] The number of punches and the targeting of the head and face of the deceased while he was in a sitting position with a restricted mobility proves that both the Second and Third Accused realized the possibility of causing serious harm to the deceased and yet went ahead to engage in the conduct of assault and battery.
- [80] There is not an iota of evidence of medical negligence in the treatment of the deceased at the Nausori Health Centre and the CWM hospital as suggested by counsel for the Second Accused.
- [81] It was the joint assault on the deceased by all three Accused on 3 October 2020 that substantially contributed to his death on 9 October 2020. As Dr Chand said in his evidence that the deceased was brought to the Health Centre in a critical condition with a decreased level of consciousness and not able to respond. He had his eyes closed and he had no verbal or motor response like movements. He had visible facial injuries – hematoma on the lower eye lid, laceration on the right nostril area and fresh nose bleed. His oxygen level was decreasing and he had a high heart rate. His Glasgow Coma Scale (GCS) level was 8/15 indicating a severe brain injury.
- [82] The doctor immediately attended to the deceased and tried to stabilize him. He was given tetanus injection to prevent infections and put on IVF and oxygen to assist with breathing and he was immediately transferred to the CWM hospital in an ambulance. I find the doctors treated the deceased in good faith and with competent skills.

[83] The Prosecution has proved the charge of manslaughter against all three Accused beyond a reasonable doubt. There is no need to consider the alternative charge.

[84] **Verdict**

I ask all three Accused to stand up for the verdict.

- **Mikaele Lawaniyavi, the Court finds you guilty of manslaughter of Subhas Chand and convicts you of the charge accordingly.**
- **Isikeli Lagibalavu, the Court finds you guilty of manslaughter of Subhas Chand and convicts you of the charge accordingly.**
- **Josateki Rabula, the Court finds you guilty of manslaughter of Subhas Chand and convicts you of the charge accordingly.**

[85] **Orders**

Bail revoked, All three Accused are remanded in custody for sentencing.



Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Niudamu Lawyers for the 1st Accused

K S Law for the 2nd Accused

Legal Aid Commission for the 3rd Accused