

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 121 of 2022

STATE

V

SHAFIL ALI

**Counsel** : Mr. Muhammed Rafiq with Ms. Sheenal Swastika for the State

Accused in Person

**Dates of Trial** : 4-5, 8-10, 12 and 15-19 April 2024

**Closing Submissions** : 10 May 2024

**Judgment** : 9 October 2024

## **JUDGMENT**

[1] As per the Further Amended Information filed by the Director of Public Prosecutions (DPP), the accused, Shafil Ali, is charged with the following offences:

### **COUNT 1**

#### ***Statement of Offence***

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

#### ***Particulars of Offence***

**SHAFIL ALI**, on the 25<sup>th</sup> day of July 2022, at Lautoka, in the Western Division, murdered **SUMAN LATA**.

### **COUNT 2**

#### ***Statement of Offence***

**ARSON**: Contrary to Section 362 (a) of the Crimes Act 2009.

### ***Particulars of Offence***

**SHAFIL ALI**, on the 25<sup>th</sup> day of July 2022, at Lautoka, in the Western Division, wilfully and unlawfully set fire to the dwelling house of **SUMAN LATA**.

### **COUNT 3**

### ***Statement of Offence***

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

### ***Particulars of Offence***

**SHAFIL ALI**, on the 25<sup>th</sup> day of July 2022, at Lautoka, in the Western Division, without lawful excuse threatened **KRITESH NAND** with a cane knife and with words intended to cause alarm to the said **KRITESH NAND**.

- [2] The accused pleaded not guilty to the three charges and the ensuing trial was held over 11 days. Thereafter, the Learned Counsel for the State and the Accused made their closing submissions.

### **The Burden of Proof and the Standard of Proof**

- [3] Section 14 of the Crimes Act No. 44 of 2009 (Crimes Act) stipulates as follows:

*In order for a person to be found guilty of committing an offence the following must be proved –*

*(a) the existence of such physical elements as are, under the law creating the offence, relevant to establishing guilt;*

*(b) in respect of each such physical element for which a fault element is required, one of the fault elements for the physical element.*

- [4] Section 57 of the Crimes Act provides that the prosecution bears a legal burden of proving every element of an offence. The Section reads as follows:

*(1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.*

*(2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.*

(3) *In this Decree (Act)—*

*"legal burden", in relation to a matter, means the burden of proving the existence of the matter.*

- [5] Section 58 (1) of the Crimes Act stipulates that a legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

#### **Legal Provisions and the Elements of the Offences**

- [6] As could be observed the accused is charged with one count of Murder, contrary to Section 237 of the Crimes Act, one count of Arson, contrary to Section 362 (a) of the Crimes Act and one count of Criminal Intimidation, contrary to Section 375 (1) (a) (i) and (iv) of the Crimes Act.

- [7] The first count the accused is charged with is a count of Murder contrary to Section 237 of the Crimes Act. Section 237 of the Crimes Act reads as follows:

*"A person commits an indictable offence if —*

- (a) the person engages in conduct; and*
- (b) the conduct causes the death of another person; and*
- (c) the first-mentioned person intends to cause, or is reckless as to causing, the death of the other person by the conduct."*

- [8] Therefore, in order to prove the first count of Murder, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case on the 25 July 2022);
- (iii) At Lautoka, in the Western Division;
- (iv) Engaged in a conduct;
- (v) The said conduct caused the death of Suman Lata (the deceased); and
- (vi) The accused intended to cause the death of the deceased; or the accused was reckless as to causing the death of the deceased by his conduct.

- [9] To further elaborate on these elements in respect of the first count.

- [10] The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond any reasonable doubt that the accused and no one else committed the offence.
- [11] The second element relates to the specific day on which the offence was committed. The third element relates to the place at which the offence was committed. The prosecution should prove these elements beyond reasonable doubt.
- [12] The fourth element relates to the conduct of the accused. Section 15(2) of the Crimes Act defines as to what is meant by the term conduct. To engage in a conduct is to do or perform an act. As per Section 16(1) of the Crimes Act conduct can only be a physical element if that act is voluntary; and as per Section 16(2) of the Crimes Act conduct is only voluntary if it is the product of the will of the accused. The prosecution has to prove beyond reasonable doubt that the conduct of the accused was deliberate and not accidental.
- [13] When dealing with the fifth element, whether the said conduct of the accused caused the death of the deceased, what must be borne in mind is that, at law, the act of the accused need not be the sole or principal cause of the death, but the act should substantially contribute to the deceased's death. Therefore, Court must be satisfied beyond reasonable doubt that the conduct of the accused substantially contributed to the death of the deceased. This would be sufficient to satisfy the element that the 'conduct caused the death of the deceased'.
- [14] With regard to the final element which concerns the state of mind of the accused, the prosecution should prove beyond reasonable doubt, either, that the accused intended to cause the death of the deceased or that the accused was reckless as to causing the death of the deceased. The prosecution should prove only one of the two limbs of this element. It is not possible to have direct evidence regarding an accused's state of mind as no witness can look into the accused's mind and describe what it was at the time of the alleged incident. However, Court can deduce the state of mind of the accused from the facts and circumstances that it would consider as proved. Knowledge or intention of an accused can be inferred based on relevant proven facts and circumstances.

[15] Section 19 (1) of the Crimes Act provides that a person has intention with respect to conduct if he or she means to engage in that conduct. In order for Court to conclude that the accused intended to cause the death of the deceased, Court should be sure that he meant to bring about the death or that he was aware that death will occur in the ordinary course of events as a result of his conduct. Court will have to consider all the evidence and draw appropriate inferences to ascertain whether the accused had the intention to cause the death of the deceased.

[16] In the event Court finds that the accused did not have the intention to cause the death of the deceased or is not sure whether he had that intention, Court will then have to consider whether the accused was reckless as to causing the death of the deceased. In terms of the provisions of Section 21 (1) of the Crimes Act, an accused will be reckless with respect to causing the death of the deceased, if;

- a. He was aware of a substantial risk that death will occur due to his conduct; and
- b. Having regard to the circumstances known to him, it was unjustifiable for him to take that risk.

[17] What Court must to consider with regard to this particular state of mind is whether the accused did foresee or realise that death was a probable consequence or the likely result of his conduct; and yet he decided to go ahead and engage in the conduct regardless of that consequence. The accused must foresee that death was a probable consequence or the likely result of his conduct and after realising that, if he decided to go ahead and engage in that conduct regardless of the likelihood of death resulting, then he was reckless as to causing the death of the deceased. In order to constitute the offence of murder by recklessness, actual awareness of the likelihood of death occurring must be proved beyond reasonable doubt by the prosecution.

[18] It must also be stated that Section 21 (4) of the Crimes Act states as follows: *"If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element."*

[19] It must be said at the outset that the prosecution is basing its case on the fact that the accused intended to cause the death of the deceased by his conduct.

[20] The second count the accused is charged with is a count of Arson, contrary to Section 362 (a) of the Crimes Act.

[21] Section 362 of the Crimes Act reads as follows:

*“A person commits an indictable offence if he or she wilfully and unlawfully sets fire to —*

*(a) any building or structure (whether completed or not); or*

*(b) any vessel (whether completed or not); or*

*(c) any commercial plantation of trees;*

*(d) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or*

*(e) a mine, or the workings, fittings or appliances of a mine.”*

[22] What is of relevance for the purpose of this case would only be Section 362 (a) which is *“any building or structure (whether completed or not).”*

[23] The second count in the Information makes reference to the dwelling house of the deceased. The Crimes Act [in its Interpretation Section-Section 4 (1)] provides that a “dwelling house” includes any building or structure.

[24] Therefore, in order for the prosecution to prove the second count of Arson, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case on the 25 July 2022);
- (iii) At Lautoka, in the Western Division;
- (iv) Wilfully and Unlawfully;
- (v) Set fire to the dwelling house of Suman Lata.

[25] To further elaborate on these elements in respect of the second count.

[26] The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond reasonable doubt that the accused and no one else committed the offence.

- [27] The second element relates to the specific day on which the offence was committed. The third element relates to the place at which the offence was committed. The prosecution should prove these elements beyond any reasonable doubt.
- [28] The fourth element for the prosecution to prove is that the accused acted wilfully and unlawfully. The term “wilfully” means to do an act deliberately or with the intention of causing harm. The term “unlawfully” simply means without lawful excuse. As such, it is for Court to consider and decide whether the accused acted in an unlawful manner in the given circumstances.
- [29] The final element for the prosecution to prove is that the accused set fire to the dwelling house of Suman Lata. As stated before a “dwelling house” includes any building or structure.
- [30] The third count the accused is charged with is a count of Criminal Intimidation contrary to Section 375 (1) (a) (i) and (iv) of the Crimes Act. Section 375 (1) of the Crimes Act is reproduced below:

***“375. — (1) A person commits a summary offence if he or she, without lawful excuse —***

***(a) threatens another person or other persons (whether individually or collectively) with any injury to —***

***(i) their person or persons; or***

***(ii) their reputation or property; or***

***(iii) to the person, reputation or property of anyone in whom that person is or those persons are interested —***

***with intent —***

***(iv) to cause alarm to that person or those persons; or***

***(v) to cause that person or those persons to do any act which that person is or those persons are not legally bound to do; or***

***(vi) to omit to do any act which that person is or those persons are legally entitled to do—***

***as the means of avoiding the execution of such threat; or***

*(b) directly or indirectly, knowingly causes a threat to be made to another person or other persons (whether individually or collectively) of any injury to*

*(i) their person or persons; or*

*(ii) their reputation or property; or*

*(iii) to the person, reputation or property of anyone in whom that person is or those persons are interested —*

*with intent —*

*(iv) to cause alarm to that person or those persons; or*

*(v) to cause that person or those persons to do any act which that person is or those persons are not legally bound to do; or*

*(vi) to omit to do any act which that person is or those persons are legally entitled to do—*

*as the means of avoiding the execution of such threat.”*

*[Emphasis is mine].*

**[31]** Therefore, in order for the prosecution to prove the third count of Criminal Intimidation, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case on the 25 July 2022);
- (iii) At Lautoka, in the Western Division;
- (iv) Without lawful excuse;
- (v) Threatened Kritesh Nand with injury to his person (by the use of a cane knife and with words);
- (vi) With the intention to cause alarm to the said Kritesh Nand.

**[32]** To further elaborate on these elements in respect of the third count.

**[33]** The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond any reasonable doubt that the accused and no one else committed the offence.



- [34] The second element relates to the specific day on which the offence was committed. The third element relates to the place at which the offence was committed. The prosecution should prove these elements beyond any reasonable doubt.
- [35] The fourth element the prosecution must prove beyond reasonable doubt is that the accused acted without lawful excuse. As stated before, the term “unlawfully” simply means without lawful excuse. As such, it is for Court to consider and decide whether the accused acted in an unlawful manner in the given circumstances.
- [36] The fifth element the prosecution must prove beyond reasonable doubt is that the accused threatened Kritesh Nand with injury to his person. The prosecution must establish that by his actions (in this instance by the use of a cane knife and by the words the accused had used at the time), that the accused threatened Kritesh Nand with injury to his person.
- [37] The final element the prosecution must prove beyond reasonable doubt is that the accused intended to cause alarm to the said Kritesh Nand. This concerns the state of mind of the accused. As stated previously, it is not possible to have direct evidence regarding an accused’s state of mind as no witness can look into the accused’s mind and describe what it was at the time of the alleged incident. However, Court can deduce the state of mind of the accused from the facts and circumstances that it would consider as proved. Knowledge or intention of an accused can be inferred based on relevant proven facts and circumstances.
- [38] As stated previously, Section 19 (1) of the Crimes Act provides that a person has intention with respect to conduct if he or she means to engage in that conduct. In order for Court to conclude that the accused intended to cause alarm to the said Kritesh Nand, Court should be sure that he meant to cause alarm to the said Kritesh Nand. Court will have to consider all the evidence and draw appropriate inferences to ascertain whether the accused had the intention to cause alarm to the said Kritesh Nand.

### **The Admitted Facts**

- [39] Section 135 of the Criminal Procedure Act No. 43 of 2009 (“Criminal Procedure Act”), deals with “Admission of facts”. The Section is reproduced below:

135. — (1) *An accused person, or his or her lawyer, may in any criminal proceedings admit any fact or any element of an offence, and such an admission will constitute sufficient proof of that fact or element.*

(2) *Every admission made under this section must be in writing and signed by the person making the admission, or by his or her lawyer, and—*

(a) *by the prosecutor; and*

(b) *by the judge or magistrate.*

(3) *Nothing in sub-section (2) prevents a court from relying upon any admission made by any party during the course of a proceeding or trial.*

**[40]** Accordingly, the prosecution and the defence have consented to treat the following facts as “*Agreed Facts*”:

1. The Accused in this case is one Mr. Shafil Ali who was residing at Nawaka, Nadi at the time of the offence.
2. At the time of the alleged offence, the accused was 44 years old.
3. The Deceased in this case is one Ms. Suman Lata who was residing at Tomuka, Lautoka at the time of the offence.

THE FOLLOWING ARE THE AGREED DOCUMENTS BETWEEN THE PARTIES

- i. LTA records on Ownership History of Vehicle registration Number JA 207.

**[41]** Since the prosecution and the defence have consented to treat the above facts as “*Agreed Facts*” without placing necessary evidence to prove them, the above facts are proved beyond reasonable doubt.

**[42]** It must be stated that the accused was originally represented by the Office of the Legal Aid Commission. All pre-trial documents-the PTC Check List and the Agreed Facts-were finalized while the Office of the Legal Aid Commission was representing the accused. Even the trial dates were fixed in their presence.

### **Case for the Prosecution**

**[43]** The prosecution, in support of their case, called the following 19 witnesses:

1. Rajesh Kumar Goundar (Senior Pastor, El-Shaddai (AOG) Church, Wairabetia, Lautoka).

2. Kritesh Nand (Nephew of the deceased).
3. Premila Devi (Ex-wife of the accused).
4. Police Constable 5862 Vishal.
5. Siteri Draunivetau (Neighbour of the deceased at Tomuka, Lautoka).
6. Sakeo Qativi (Husband of Siteri Draunivetau).
7. Virendra Narayan (Pastor and Caretaker of the Israeli Pentecostal Church, Tomuka, Lautoka).
8. Sanjay Abhi Manu (Neighbour of the deceased at Tomuka, Lautoka).
9. Police Constable 6156 Luke Torica Rocevlevu.
10. Ashwin Vikash (Taxi Driver).
11. Avikash Singh (Owner of a Dairy Shop at Tomuka, Lautoka).
12. Visha Latchmi Pillai (Former Cashier at Pacific Energy Service Station, Nadi Back Road).
13. Acting Inspector Martin Koli.
14. Samisoni Caginakana (Qualified Fire Fighter based at the Lautoka National Fire Authority – (NFA)).
15. Sergeant 3049 Josateki Seuseu.
16. Rakshita Shivanjali Dayal (Daughter of the deceased).
17. Dr. Praneel Kumar (Forensic Pathologist).
18. Detective Constable 5663 Anasa Kovea.
19. Nacanieli Gusu (Forensic Biologist).

**[44]** The prosecution also tendered to Court the following Exhibits:

- |         |   |  |
|---------|---|--|
| PE1     | - | Sketch of the deceased's house.  |
| PE2     | - | Samsung Galaxy A12 Extraction Report.  |
| PE3     | - | Samsung Galaxy A50 Extraction Report.  |
| PE4 (a) | - | Information to obtain a Search Warrant [To Uplift CCTV footage - Tomuka Mini-Mart Dairy Shop]. |

- PE4 (b) - Search Warrant.
- PE4 (c) - Search List.
- PE5 - CCTV footage - Tomuka Mini-Mart Dairy Shop.
- PE6 (a) - Information to obtain a Search Warrant [To Uplift CCTV footage - Pacific Energy Service Station, Nadi].
- PE6 (b) - Search Warrant.
- PE6 (c) - Search List.
- PE7 - CCTV footage – Pacific Energy Service Station, Nadi.
- PE7A - Fire Investigation Report-National Fire Authority (NFA).
- PE8 - Blue and black coloured bag (Green and black bag).
- PE9 - Photographic Booklet of the Scene of Crime.
- PE10 - Post Mortem Examination Report of the deceased.
- PE11 - Medical Examination Report of the accused.
- PE12 - Cane Knife.
- PE12A - Brown Envelope containing the Cane Knife.
- PE13 - T-shirt worn by the accused.
- PE14 - Long pants worn by the accused.
- PE15 - Black and white coloured canvas of the accused.
- PE16 - Maroon coloured round neck t-shirt of the accused.
- PE17 - Summary Report for DNA Investigation Officer.
- PE18 - Forensic DNA Report.

**[45] Evidence of Rajesh Kumar Goundar**

- (i) The witness is a Senior Pastor at the El-Shaddai A.O.G. Church in Wairabetia, Lautoka. He is residing at Topline Lautoka. He is 44 years of age.*
- (ii) The witness testified that even in the year 2022 he was a Senior Pastor and was residing at the same residence. However, his church is located at Wairabetia, Lautoka.*
- (iii) As a Senior Pastor his role was to look after the entire church work. He was also the Chairperson of the Church Executive Board. He acts as a father (figure) to the members of the church who come for service. He was heavily involved with members of the church.*
- (iv) The witness testified that his church had a member named Suman Lata. She had been attending the church since 2016. She used to be the Head of Department – Women’s Ministry. The witness explained that every Sunday, the church used to have a Sunday service. On Wednesdays they had a Women’s Ministry (service only for ladies).*
- (v) In the year 2018, the witness had been introduced to a lady known as Premila (Also known to him as Lina). Premila had been introduced to the church by Suman Lata. Premila had attended the church fellowship for six months.*
- (vi) One day while attending the fellowship service, Premila had been crying. The witness had called her to his office. When he saw that he was weeping, he wanted to counsel her. She had got to know from Premila that she is married and has four children. She had told the witness that she was having problems in her marriage and that she had been abused by her husband. The witness said that he has no idea as to who the husband was or even his name. From Premila’s demeanor, he could say that she was really broken.*
- (vii) Later the witness had got to know that Premila had moved from Nadi to Lautoka. That’s the day he had got to know that she was staying with Suman Lata in Tomuka.*
- (viii) The witness testified that Premila (Lina) had been baptized in his church. She had been baptized by the witness.*
- (ix) The witness said that after the six months period, he had called Premila once. She had told him that she had moved from Suman’s residence to Koroipita in Naikabula. After moving to Koroipita, she stopped coming church because it was too far for her to travel.*
- (x) The witness was cross-examined by the accused (who was appearing in person).*
- (xi) When asked whether Premila had told him what the abuse her husband had caused her, the witness said: “She mentioned she was sexually abused, tortured and many nights she sleeps outside without food and water. She said there are many times she was beaten by the husband. She had reported the matter to the Police Station.” [Prior to this question been*

*asked from the witness, Court cautioned the accused about asking such a question which could bring an answer that would be prejudicial to him. However, the accused said he still wishes to ask the question].*

- (xii) The witness reiterated that the reason Premila had left home was because of her husband's behavior.*
- (xiii) The witness was asked whether Premila had mentioned to him that she was having an affair with one Avnit Prasad. The witness said, no.*
- (xiv) The witness testified that she had known Suman Lata from 2016 to 2022 – till the day of her death. Suman Lata was married. Her husband's name was Suren Prasad. Rishika was Suman's daughter. Suman Lata was legally married to Suren Prasad. Suren was her second husband.*
- (xv) The witness was asked as to why he did not attempt to contact Premila Devi's husband. The witness said that he did not want to do so because then it becomes a family issue. Even up to date, the witness said he was unaware as to who Premila Devi's husband was.*
- (xvi) It was suggested to the witness that Premila Devi came to him with Suman Lata in 2020 (not 2018). The witness said that according to him it was 2018.*
- (xvii) The witness further testified that he did not know which religion Premila Devi was following before she got baptized.*

**[46] Evidence of Kritesh Nand**

- (i) The witness testified that he is currently residing at Baravu, Ba. He is 21 years of age and is a student. He has been residing at Baravu, Ba for the past 7 years. He resides there with his mother and smaller brother. His father and mother had separated 7 years ago and his father is residing in Tavua Koro No. 2 [During his testimony the father of the witness was present as a support person].*
- (ii) The witness said that in the year 2022, he was staying in Tomuka with his aunty Suman Lata. Suman Lata was his mother's biological sister. He had known her his entire life. He had moved to Suman Lata's place in the second week of February 2022.*
- (iii) He had moved to Tomuka because he was studying at USP and needed a place to stay. He was pursuing a Bachelor's Degree in Agriculture and Applied Sciences (It was a 3 year Degree). His aunty Suman Lata, was giving flats for rent. Since he had financial problems she had given him a room in her house. The witness was staying in a room on the ground floor of Suman Lata's house. He was paying Suman Lata about \$150.00 for food and accommodation.*
- (iv) The witness said that Suman Lata was like a second mother to him. She didn't have a son. She only has one daughter – Rakshita Dayal. So she treated him like her own son.*

- (v) *The witness explained in detail the structure and layout of the house. In the ground floor there were two flats – one was in the front, one was in the back. His room was between the two flats. When you enter the compound you see the stairs going to the top floor – that is aunt Suman’s place. It was a double story house. The entrance to the other two flats were towards the front. But the entrance to his room was through the back. He had no washroom and kitchen in his room. So he had to go upstairs. The whole of the top floor was occupied by his aunt.*
- (vi) *A sketch of Suman Lata’s house (as drawn by the Police based on information given by the witness) was tendered to Court as Prosecution Exhibit PE1.*
- (vii) *The witness said that in the month of July 2022 he was still going to USP and residing at Tomuka at his aunt Suman Lata’s place.*
- (viii) *The witness testified to the events which took place on 25 July 2022. He had been in his room (downstairs). He had woken up around 10.30 in the morning and gone up to his aunty’s flat to use the washroom and to have breakfast. His aunty Suman Lata had been there along with one Visha Latchmi.*
- (ix) *At the time the top flat was occupied by his aunty Suman and Visha Latchmi, who was an elderly lady and a church member. Since she was sick his aunt Suman had brought Visha to her place to take care of her. The witness said that the said Visha Latchmi had now passed away (she had passed away at the end of last year). At the time Suman’s daughter Rakshita was teaching in Tailevu. She had left for Tailevu on Sunday.*
- (x) *The witness said that after having breakfast, he had come down to water the garden. He had taken the hosepipe and watered all the flowers around the compound. He had gone back to aunty Suman’s flat between 12.00 noon and 1.00 p.m. and taken a shower.*
- (xi) *The witness had also told her aunt that he had received his TELS allowance and that he will give her the rent money. She had told him to let her rest and they can go to town later. His aunty had then gone to her room and gone to her bed. The witness had been sitting in the front balcony for about 5 minutes and using his phone. Thereafter, he had gone down to his room and aunty Suman had gone to sleep. Visha had also been in the same room with his aunty. At the time he left, the front door was open but he had closed the balcony door (half gate). The witness said that from the balcony gate to the front entrance it was about 2 metres.*
- (xii) *The witness said that his room is situated right under aunty Suman’s bedroom. Aunty Suman’s house was a wooden building, with the side walls covered with tin. The whole of the upstairs had a wooden floor. So even if someone is talking above you could hear below.*
- (xiii) *About 5 minutes later the witness said he had heard heavy footsteps entering the house and coming towards aunty Suman’s bedroom. At first the*

witness said that he didn't react. He thought someone had come to meet aunty Suman. The dog had been barking fiercely inside the house. The dog was a female named Hoppy.

- (xiv) The witness said that this dog was very close to aunty Suman and she stayed inside the house most of the time. She was very protective of aunty Suman. Aunty Suman had taken care of the dog since the dog was a little puppy. At the time of the incident, Hoppy was a fully grown dog –weighing about 70 to 80 kilos.
- (xv) The witness testified: "I could hear the dog was hit and then aunty Suman said Hoppy and then there was an argument between the person (a man) and aunty Suman". When asked to explain how he thought the dog was hit, the witness said: "If you hit a dog it will make a sound in a moaning way – the dog was crying out in pain."
- (xvi) The witness continued that he could hear the man was shouting at aunty Suman in Hindi and he could also hear things breaking – he could hear drawer glass breaking. The man was quite loud and he swore in Hindi stating "You have broken/spoilt my house, you motherfucker."
- (xvii) The witness said that all this happened in a very short space of time or instantaneously. Upon hearing this, he stood up and came out of his room. While standing at his room door he heard his aunty Suman called out to him in pain. She had called him by his nickname which is 'Kunal'. His aunty was moaning in pain.
- (xviii) The witness stated that he had started running from his room towards the stairs. There is a distance between his room and the stairs. As he approached the stairs, he could see Visha Latchmi who was half way down the stairs. Since she was elderly lady and having problems in walking, the witness had helped her come down the stairs. Visha Latchmi had then stated in Hindi "Don't go upstairs, there is a man and he has hit/chopped aunty with a knife."
- (xix) The witness was asked while he was in his room whether he heard the words exchanged between the man and aunty Suman. He said the man was asking the whereabouts of his wife. In Hindi he had asked "Where is my wife." His aunt had replied in Hindi: "You go, your wife is not here."
- (xx) The witness said that he had directed Vishal Latchmi to his room. At the time she had told him in Hindi, "Don't go up, he will kill you too."
- (xxi) Nevertheless, the witness had proceeded upstairs and gone all the way to the front balcony. He had gone up carrying a small stick which was lying there. He found the front door (the main door/entrance to the living room) was closed and the man was still inside. The front wall of the balcony was covered with louver windows and the curtains were opened. So he could see inside. It was clear louveres through which he could see inside. There was a mosquito net but it did not block his vision. From where he was standing, he could clearly see aunty Suman's room.



- (xxii) *The witness testified to what he had observed: “The dog was there – the dog was hurt but not dead. The man walked out of aunty Suman’s bedroom and I could see smoke coming out of the bedroom. There was a gallon lying at the door of the bedroom – a small 2 litre gallon..... Then I saw the man coming out of the room. The dog was lying outside. He was not dead. He tried to attack the man. That is when he used the knife on the dog. He was holding on to a bag in his hand and on the other hand, he was holding on to a knife which was fully covered in blood..... On his way out, he could see that the man had used the knife on the dog. The knife struck the middle part of the dog’s body and the dog was split into two. I closed my eyes, it was a big cut. The dog was close to my aunt. I couldn’t see this.”*
- (xxiii) *The witness said that he had made a noise. He had called out (screamed out) the dog by its name Hoppy. He could see smoke emanating out of aunty Suman’s room. The witness reiterated that there was nothing obstructing his vision.*
- (xxiv) *The witness said that this incident took place between 1.00 and 2.00 in the afternoon. Later he said he did not know the exact time. It was between 1.15 and 1.20 p.m. It was a hot sunny day. The house was painted white and it had plenty of windows. It was clear to see inside the house as the lights were on.*
- (xxv) *The witness testified that the man rushed towards him because he knew someone was outside (on hearing his scream). As soon as the man made this move, the witness said that he had made a move to go down. At the time he could hear the knife being swung behind him but he did not look back but just ran away. He said he was really scared.*
- (xxvi) *The man did not follow him. He had remained at the front balcony. The witness had ran quite fast to the church on the other side of the house. There was a fence which was damaged. So he went through the fence easily.*
- (xxvii) *When he went to the church he started shouting out for help. There was a family staying near the church. They came out. He believes it was the Pastor of the church. The man (who was at Suman’s house) had stood at the balcony for a few minutes. From the balcony, the man had said in Hindi, “If anyone comes, I will kill them too.” He had then pulled the door shut (the witness said the door locks from outside) and walked along the driveway to the main road.*
- (xxviii) *The witness testified that he clearly saw the person. It was the first time he had seen this person. When asked the reason for remembering this person so clearly, the witness said: “He is the person who attacked me and my aunty. I will never forget his face.”*
- (xxix) *When the man was leaving the witness had seen the Pastor taking pictures of the man using his phone. These pictures (photos) had been transferred to his phone about 2 to 3 days after the incident. The witness said that at the*

*time he was carrying a Samsung A50 phone in his pocket. However, he had not taken any pictures that day from his phone.*

- (xxx) The witness recalls giving his phone to the Police at the Police Station. The Samsung Galaxy A50 Extraction Report was shown to the witness and he identified the photos in the said Report. The said Report was tendered to Court as Prosecution Exhibit PE3 [Initially this Report was marked for identification as MFI 1].*
- (xxxii) The witness was shown the photo at page 3 of the Extraction Report. He explained that this was the rear view of the deceased's house – view from the church side. The photo shows the house in flames.*
- (xxxiii) The witness was shown the photo at page 5 of the Extraction Report. He explained that the photo shows the same man who was inside the deceased's house. He is holding a cane knife. That is the same knife he used to chop the dog and aunty Suman. The photo depicts that he has already come down the driveway onto the main road.*
- (xxxiv) The witness was shown the photo at page 6 of the Extraction Report. He explained that the blue and black bag shown on the ground was the same bag the man was holding on to when he was inside the deceased's house.*
- (xxxv) The witness identified the accused in the dock as the same man who was in his aunty Suman's house on the day of the incident. He had seen the man at the time of the incident (while he was in the deceased's house), the man had chased him, he had seen the man while he was standing in the balcony of the deceased's house and when the person who was taking the photos was doing so (the Pastor) the witness was behind him and he clearly saw the accused at the time as well.*
- (xxxvi) The witness identified the cane knife that the accused was carrying at the time. The said cane knife was tendered to Court as Prosecution Exhibit PE12 [Initially this cane knife was marked for identification as MFI 2].*
- (xxxvii) The witness identified the blue and black bag that the accused was carrying at the time. The said bag was tendered to Court as Prosecution Exhibit PE8 [Initially this bag was marked for identification as MFI 3].*
- (xxxviii) The witness continued that after the accused left the house, he could not enter the house to save his aunty as the door was locked and the flames were too high. The house was burning and the flames were really high. All the doors were locked and the house burnt fast. The witness said he was not able to go into his flat. He was only thinking of trying to save his aunty.*
- (xxxix) The witness said that at the time he had looked through the window, he could hear aunty Suman scream and call out his name. The manner in which she was screaming and her tone at the time indicated that she was badly in pain. The last words he heard his aunty uttered in Hindi was, "Kunal save me". However, he could not do anything to save the deceased.*
- (xl) When asked about Visha Latchmi, the witness said that instead of going to his room, she had gone to a neighbour's house on the other side.*

- (xl) *The witness said that he had lost all his personal belongings that was in his room – including his clothes, laptop, fan, heater, wallet and shoes.*
  - (xli) *The witness had been sitting at a neighbour's place waiting for someone to come. This was the same neighbour where Visha Latchmi had gone to. Later personnel from the Fire Authority arrived. They had attempted to put out the fire. But they couldn't since the fire had spread so fast. Thereafter, the Police arrived. The witness said that he had given several statements to the Police regarding this incident.*
  - (xlii) *The witness continued that soon after this incident, his family had taken him to Tavua for his safety. Thereafter, he had accompanied the Police to the Police Station where his statements were recorded.*
  - (xliii) *When asked as to how this incident had affected him, the witness said: "I lost my aunt, I lost my laptop, my notes. I failed my units. I was aimless for some time." He was a TELS (Tertiary Education Loan Scheme) sponsored student at USP. However, since he could not pass the first year of his Degree programme his funding had been stopped.*
  - (xliv) *The witness was briefly cross examined by the accused.*
  - (xlv) *The accused highlighted a single omission in the evidence given by the witness vis a vis his statement made to the Police.*
- i. *In his testimony in Court he stated that the accused was holding on to a bag in his hand (one hand).*

*However, in his statement made to the Police this is not stated.*

**[47] Evidence of Premila Devi**

- (i) *The witness testified that she is residing at Nawaka, Nadi. She is 38 years of age. She is working as an Assistant Manager at Bargain Box in Nadi. Her evidence was recorded in a 'closed court'.*
- (ii) *The witness said that she had been working at Bargain Box since November 2020 as a Sales Assistant. She was promoted as Assistant Manager just 3 weeks ago.*
- (iii) *The witness said that she is originally from Nadi. Her mother's name is Savita Devi – she is mentally disable and cannot speak and talk. She was adopted by a Fijian family when she was 5 or 6 years old. Both her foster parents (adopted parents) have now passed away. Her biological mother is living with her and the witness takes care of her.*
- (iv) *The witness testified that she is no longer married. She was married to Shafil Ali in 2003. They were together for 17 years. They have four children together. The eldest is a daughter-Shafikha Manaz Bibi (she will be 20 years old on 25 May 2024), the second is a son-Shafi Nawab Ali (he will be 18 years old on 1 June 2024), the third is a son-Munnar Hassan Ali (he will be 16 years*

old on 29 November 2024) and the youngest is a daughter-Muklisha Hafza Ali (she will be 13 years old this August).

- (v) In 2020 she decided to separate from her husband. The witness identified Shafil Ali as the accused in the dock. When she left the accused all four children remained with him. When asked to explain the reasons for the separation, the witness said that she does not feel comfortable to give the reasons as to why she left the house.
- (vi) The witness testified that upon leaving the accused she went straight to Suman Lata's house in Tomuka, Lautoka. She came to know that Suman's house was on rent. Suman's mother was their neighbour in Nadi. She was residing just besides their house. She and her husband had built their house just besides Suman's mother's house (14 years ago). Therefore, she knows Suman Lata ever since she became her mother's neighbour.
- (vii) The witness said that she stayed at Suman Lata's house for a complete 5 months – from November 2020 until 3 March 2021, when Suman had asked the witness to move out of the house. She was staying upstairs with Suman. There were a lot of arguments between Suman and the accused regarding her. The accused would call Suman to talk to her and to ask Suman to get the witness to come back to him. However, the witness said she was not interested in getting back to the accused. The witness said that she was not present when these arguments took place between Suman and the accused because she was always at work.
- (viii) The witness said that the accused would directly try to contact her as well. However, she was not wanting to be in contact with him. While at Suman's house, she and Suman had gone to the Police Station to get a DVRO against the accused contacting her. This was in December 2020.
- (ix) The accused had come to visit her at Suman's place once or twice. However, he had not come into the house. The only time she had gone out to meet him was on one occasion when the accused brought her younger daughter as she was very sick. He had wanted the daughter to stay with the witness for a while.
- (x) The witness said that Suman was not happy with her younger daughter staying with her since Suman had space in her room for only one person. So the witness had asked the accused to take their younger daughter to a doctor. She said: "If worse comes to worse I will do something about it."
- (xi) The witness further testified that Suman would get really mad and angry when the accused tries to visit her and the witness gets told off from Suman all the time this happens.
- (xii) These were the reasons why Suman Lata had asked the witness to move out of her house.
- (xiii) The witness said that while in Suman's house, she was following Christianity. After leaving the accused, she began following Christianity. The deceased took her to church and had her converted to Christianity. She used to go to

*church every Sunday and every Wednesday afternoon. Before getting married, she was a Christian. After marrying the accused, she converted to Islam and followed all his ways and rules.*

- (xiv) The witness said that after the incident that happened between the accused and Suman, she stopped following Christianity. She said a lot of problems occurred with the accused and her children. They disagree with her being a Christian.*
- (xv) The witness continued that after moving out of Suman's house she went back to her adopted house at Kennedy Avenue besides Treasure House in Nadi. One of her cousin brothers organized for the witness to stay with his mum in Ba. So she went and stayed in Ba until the lockdown was over in 2021.*
- (xvi) After 2021 she moved back to Mutlah Street in Field 40, Lautoka. She had found a house (a room) there on rent. She had stayed there for about 5 months. Thereafter, she went to Tavakubu in Lautoka and stayed there for 5 to 6 months on rent. Thereafter, she got a place in Koroipita in Lautoka. This was in 2022. She stayed at Koroipita in Lautoka for 5 to 6 months with her biological mother. This was until the incident happened.*
- (xvii) The witness said that the accused used to come and drop her children at her places of residence for them to be with her for a while.*
- (xviii) While in Koroipita, the accused tried to visit her but did not come since he could not locate her house. On one occasion when he came to drop/pick the children, the accused got to know where she was staying.*
- (xix) At the time of the incident, in July 2022, she was residing in Koroipita in Lautoka. After the incident and after the accused was remanded into custody, she had to go back to her matrimonial home to take care of her children since her children were under 18 years at the time.*
- (xx) When asked how her children's behavior towards her was, the witness said at times it was good, at times the children were disturbed. They could not comprehend with what had happened.*
- (xxi) The witness said that after leaving the accused, she did not settle down with anyone else.*
- (xxii) The witness was cross-examined at length by the accused and certain suggestions were put to her.*
- (xxiii) The witness confirmed that when she left him in 2020, their 4 children and her mother remained with the accused. She also agreed that the accused took care of her mother.*
- (xxiv) The witness agreed that the accused worked for Fiji Airways.*
- (xxv) She said that the accused used to call the deceased as 'sister Suman'.*
- (xxvi) The witness confirmed that she and the accused had family disputes in the Lautoka Magistrate's Court and the Family Court. The accused had applied for a DVRO against her and had also sought maintenance from her. She said*

*she was paying maintenance to the accused. The accused had later withdrawn his DVRO case against her.*

*(xxvii) The witness said there was no gas stove inside Suman's house. They were not allowed to do any cooking inside the house.*

**[48] Evidence of Police Constable 5862 Vishal**

- (i) The witness testified that he is currently serving at the Nadi Police Station. He is 26 years of age.*
- (ii) He had joined the Fiji Police Force on 9 November 2018 in the rank of Constable. After passing out he had been posted to the Nabua Police Station. He had been transferred to the Nadi Police Station on 20 July 2021.*
- (iii) In the year 2022, he was stationed at the Nadi Police Station attached to the Uniform Branch.*
- (iv) The witness testified to the events which took place on 25 July 2022. That day he had been on duty at the Nadi Police Station. He had been detailed by his Unit in Charge to be the Station Orderly for the 8 hour shift between 07.00 hours and 15.00 hours.*
- (v) The witness said that he is aware of this particular case. Whilst on he was on his shift at the old Police Station (they had moved to the new Police Station in January 2024), one Shafil Ali walked up the stairs and approached him and took a sit in front of him and mentioned that he had killed and burnt one Suman Lata in Tomuka Settlement.*
- (vi) Just before the date of this incident, Shafil Ali was brought in for a breach of a DVRO – whereby he refused to abide by the Court order. The witness said that he was at the Police Station and saw Shafil Ali's face clearly at the time. Therefore, when Shafil Ali came to the Police Station on 25 July 2022 he was able to recognize him as the same person (who had come to the Police Station the previous occasion).*
- (vii) The witness identified the accused in the dock as Shafil Ali.*
- (viii) The witness said that soon after he had informed his Unit in Charge, Corporal Anil and also informed his OIC, ASP Nakita as to what had transpired. The senior officers were informed by the Lautoka Police Station to keep the accused in custody as there was a case of fire in the same area of the offence.*
- (ix) The witness further testified that he had noticed blood droplets/sprinkles on both the accused's palms – on top of the palms.*
- (x) The witness said that the exact time the accused approached him at the Nadi Police Station was at 14.58 hours, on 25 July 2022.*
- (xi) In cross-examination the witness was asked whether he noticed blood stains on any other places of the accused. The witness re-iterated that the blood stains were only on the accused's palms. He said he had not seen any other injuries on the accused. It was suggested to the witness that the accused had*

*a cut on his left palm between the thumb and the index finger. However, the witness said he did not noticed any such injury.*

- (xii) The witness was asked whether he had noticed any blood stains on the accused's left front trouser pocket. The witness said no.*
- (xiii) It was suggested to the witness as follows: "I suggest to you that I only told you that I went to sister Suman's house to talk to her about my daughter, and through her to talk to my wife as she was on good terms with my wife and children – to ask her to release my daughter to at least do Form 6 education and then she can go back to the mother. So when I was coming back from the house, while I was boarding the taxi, I saw the fire. So that I won't be charged for murder or the fire." The witness said that what the accused is saying is not true and that is not what he had told him.*

**[49] Evidence of Siteri Draunivetau**

- (i) The witness testified that she is residing at Tomuka, Lautoka. She is 58 years of age and doing domestic duties. She has been residing in Tomuka, Lautoka for the past 20 years. She lives there with her family – her husband (Sakeo Qativi), 2 kids and 2 grandchildren.*
- (ii) The land where they are staying is their own land. They had built their house on the said land. They had built the house with rooms which they had rented out to three families at the time.*
- (iii) The witness said that on 25 July 2022, she was residing at Tomuka, Lautoka with her family. On that day she was in the house. She heard someone shouting. The sound was coming from their neighbour's house – they called her Mrs. Singh. She is also called Suman.*
- (iv) The witness said that her relationship with Mrs. Singh was very good. She used to communicate with her – they used to greet each other when hanging clothes outside. The witness said that they had moved in to their property first. Mrs. Singh had come there later. The distance between the two houses is about 15 to 20 metres. The witness's house comes first. Mrs. Singh's house is on the top and they are staying down. There is a driveway going besides our house leading to the main road.*
- (v) When asked to explain what kind of noise she heard, she said it was a shout for help. When she heard the shout, she had come to the back of her house and looked up towards Mrs. Singh's house. She had seen an Indian guy wearing a long pants talking to one old lady – she had seen them on the porch of Mrs. Singh's house. This old lady was residing with Mrs. Singh at the time. She has one bad eye and can't see properly. She was shouting or yelling. She was saying something in Hindi so the witness couldn't understand. The witness didn't know the old lady's name.*
- (vi) The witness testified that she had seen the Indian guy holding a green bag and a knife. The knife looked like a cane knife. The witness said that she*

- knew something had happened inside the house because she saw the Indian man holding on to the cane knife.*
- (vii) When she looked back, she saw the curtains started to be blazing in flames. He was talking to this old lady and he was trying to come down the stairs. The old lady was standing in the front porch. The curtains were burning in the sitting room of Mrs. Singh's house. The witness said she had visited the house before.*
  - (viii) The witness said that she knew the man and was able to see him clearly. This incident took place around 1.30 in the afternoon.*
  - (ix) The witness testified to a previous occasion when the same man had come to the property. One day the man had come with his mother-in-law. He wanted to leave the mother-in-law with his wife. But he could not go up because his wife had got a DVRO against him. So he had told the witness to take his mother-in-law to Mrs. Singh's residence. She had complied with the request. This may have taken place a year before the present incident. Maybe in 2021 – sometimes after Covid.*
  - (x) The witness said that she knows the man's wife. She used to stay in Mrs. Singh's residence. She always comes down the driveway in the morning and we used to greet each other.*
  - (xi) Apart from that day, on another occasion the same man had come and told her husband that he wants to see his wife. On this occasion she had not seen the man personally. However, the witness said that she recognized his face from the day he brought his mother-in-law.*
  - (xii) The witness identified the accused in the dock as Shafil Ali.*
  - (xiii) The witness explained that she couldn't ascertain as to who was shouting the first time she heard the sound. However, the sound came from their neighbour's house. After the incident she got to know that it was Mrs. Singh who was shouting. The second shout she heard was from the old lady. She was shouting or yelling. However, the witness said she could not understand what she was shouting because it was in Hindi.*
  - (xiv) At the time the accused was also in the porch trying to come down the stairs.*
  - (xv) On seeing this incident, the witness said that she went to call her husband who was weeding grass and planting cassava on the road side. He was doing so just in front of their house. He had said that he will come later. Her husband had come later and looked at what had happened and tried to talk to the accused. However, the witness does not know what they spoke about.*
  - (xvi) After the incident, the accused went down to the main road (through their driveway).*
  - (xvii) In cross-examination the witness confirmed that she saw the fire first in the sitting room. She also saw the curtains burning first in the sitting room.*



- (i) *The witness testified that he is residing at Tomuka, Lautoka. He is 55 years of age. He is employed at the Water Authority of Fiji. He has been residing in Tomuka, Lautoka for the past 20 years. He lives there with his family – his wife (Siteri Draunivetau) and 2 grandchildren.*
- (ii) *The witness said that on 25 July 2022, he was residing at Tomuka, Lautoka with his wife. On that day he was besides his house planting cassava. He heard a shout and a dog barking. However, he really did not pay any attention as it often happens.*
- (iii) *After a little while, his wife called him. She told him that the neighbour's house was on fire. The neighbour's house is situated on a hill behind their house. In 2022, he only knew the lady residing there. Her husband had passed away. There was an old lady and a young man staying there. They called the old lady aunty.*
- (iv) *When his wife called him, he had run behind their house to see what was happening. He could see his neighbour's house was really on fire. Thereafter, he could hear other neighbour's calling out that the man was coming down the driveway.*
- (v) *The witness said that he only saw the man throwing a bag into their cassava plantation and walked towards the main road. He saw the bag. It was a green coloured bag. When he smelt the bag, it smelt like benzene.*
- (vi) *Thereafter, the witness said he ran to go and see the man who had walked in front of their house and gone towards the main road. When he reached the main road, he saw the man and recognized him. The man was wearing trousers and shirt and had a cane knife in his hand.*
- (vii) *When asked how he was able to recognize the man, the witness said that he had met him once before around December 2021. The witness was about to board the bus to go to work. He had met the man on the main road. They had shook hands and greeted each other. The man had shown his house and asked whether it was his house. The witness had said yes. The man had also asked him whether he knew of the house behind referring to the neighbour's house and whether he had seen a new occupant staying there. The witness had said that he had seen a new lady in the house.*
- (viii) *The man had told the witness that that was his wife and that he was on his way to go and see her and asked whether the witness can call her. The witness had asked why the man does not go and meet her directly. The man had replied that there was a DVRO against him so he could not talk to her and whether the witness could go and call her so they could talk. However, the witness had told the man that the bus was coming right now and that he has to board the bus to go to work and told him to go and talk to the lady. He had then boarded the bus and left.*
- (ix) *The witness testified that after December 2021, this was the first time he had seen the man.*

- (x) *On the day of the incident, the witness said that he remained near his cassava plantation and just called out to the man (because he had a knife with him). When the witness called the man, he stood still and looked back towards him. The witness had asked him what happened. The man had said he did not like the neighbour – the lady up there.*
- (xi) *The witness further testified that he had asked the man why he set fire to the house. The man had kept saying that he did not like his neighbour. The witness had also told the man for him to wait so the Police can be called. The man had said for him to call the Police and that he is going. The man had then left.*
- (xii) *The witness said he went to the back of his house again. However, nothing else could be done to save his neighbour's house. There was no one to help. At that time there were strong winds. It was a double story wooden house. The flames were coming out of the windows.*
- (xiii) *The witness identified the accused in the dock as the man he had met on the day of the incident and spoken to.*
- (xiv) *The witness identified the green and black bag that the accused was carrying at the time. The said bag was tendered to Court as Prosecution Exhibit PE8 [Initially this bag was marked for identification as MFI 3].*
- (xv) *The Photographic Booklet of the Crime Scene was shown to the witness and he identified the photos in the said Booklet. The said Booklet was tendered to Court as Prosecution Exhibit PE9 [Initially this Booklet was marked for identification as MFI 4].*
- (xvi) *The witness identified the exact location where the bag was thrown near his cassava plantation. This is depicted in Photo 6 of the Booklet. The cassava plantation is seen on the right of the photo. The witness also identified the exact location where he had found the bag, which is besides his cassava plantation. This is depicted in Photo 7 of the Booklet. From the photos in the Booklet, the witness identified the accused walking towards the main road with the cane knife in hand.*
- (xvii) *The witness said that he had smelt the bag when he went near the bag. The bag smelt of benzene because it was all over the bag.*
- (xviii) *The accused did not wish to cross-examine this witness.*
- (xix) *However, Court observed the following two omissions in the evidence given by the witness vis a vis his statement made to the Police.*
  - i. *In his testimony in Court he stated that he had asked the accused why he set fire to the house. The accused had kept saying that he did not like his neighbour.*  
*However, in his statement made to the Police this is not stated.*

- ii. *In his testimony in Court he stated that he had told the accused for him to wait so the Police can be called. The accused had said for him to call the Police and that he is going.*

*However, in his statement made to the Police this is not stated.*

**[51] Evidence of Virendra Narayan**

- (i) *The witness is the Pastor and Caretaker of the Israeli Pentecostal Church, in Tomuka, Lautoka. He is 44 years of age. He testified that he is residing in the church premises for the past 11 years. He resides there with his wife, four children and his mother. The church and the place he resides in is in one building, under one roof. The church entrance and the entrance to his residence are separate. When you enter the church compound, the church entrance is first and the entrance to his residence is on the side.*
- (ii) *The witness said that the deceased Suman Lata was his neighbour. The distance between the church building and Suman Lata's building were like the distance between the two corners of the Court room. His house was a bit further away. Suman Lata's family and his family knew each other very well. He has even visited Suman Lata's house. It was a double story house and Suman Lata used to live on top. In the front there is a stairway leading to the top. Once you reached the top, there is a porch and then you enter the sitting room.*
- (iii) *Although the deceased was a member of another church, whenever she is free, she used to come to the Pentecostal Church with her husband and daughter.*
- (iv) *The witness testified to the events which took place on 25 July 2022. On that day the witness said he was at his home in Tomuka, Lautoka. Around 1.30 p.m. he heard screaming sounds from his neighbour Suman Lata. It was a loud voice/sound.*
- (v) *Upon hearing this sound the witness had quickly gone to the back of the church. From there he had shouted – a young boy was renting a portion of Suman Lata's house. The witness said he does not know the boy's name, however, he knew that he was the deceased's sister's son. The boy was outside Suman Lata's compound. The witness had called the boy and had asked what had happened. The boy had said come quickly.*
- (vi) *There is a fence between the church and Suman Lata's compound. There was a small gate/opening in the fence. Through that opening, the witness had run towards the young boy. The boy was shivering at the time. The boy had said that somebody is on the top (upstairs) of the deceased's house. At the same time another neighbour (Sanjay) came to Suman Lata's compound.*
- (vii) *At the same time the witness saw a man coming down the steps. He had a long cane knife in his hand. He was wearing a black shirt with yellow stripes. The witness said on seeing the man coming down the stairs with a knife in*

*hand, he was afraid. He had asked the man what happened. The man had said in Hindi: “(She) spoil my house/destroy my house. Call the Police.” The man had walked towards the deceased’s driveway leading towards the main road.*

- (viii) The witness said that he followed the man from a distance. He took his phone which was in his pocket and took pictures while the man was walking down the driveway. His phone is a Samsung Galaxy A12. The witness said that he had zoomed his phone and taken pictures of the man walking on the driveway towards the main road.*
- (ix) Thereafter, he had returned to Suman Lata’s compound. He had wanted to know what exactly happened. When he turned around to go towards the house, he had seen smoke. By the time he went near the house, he saw a big fire which had engulfed the house. The fire was so intense that they couldn’t even climb the stairs leading towards the upstairs. The fire had spread very fast. The witness said that he had taken one photograph of the deceased’s house on fire.*
- (x) Thereafter, the witness had quickly jumped over the fence to the church side and looked for a hosepipe. He had started watering the fire from a distance – from the compound of the church. However, he was not able to control the fire. He had then turned around and started pouring water on to the church side, since the two buildings were in close proximity to each other. With the help of the other neighbours, the witness said he had prevented the fire from coming to the church side.*
- (xi) While pouring the water, the witness had called the Police and the Fire Brigade. Both the Police and the Fire Brigade had arrived at the scene some time later. However, the deceased’s house could not be saved. It was a house built with timber and only the tin was left.*
- (xii) The witness said that the Police had instructed him to send them the pictures taken by him. He had done so accordingly.*
- (xiii) The Samsung Galaxy A12 Extraction Report was shown to the witness and he identified the photos in the said Report. The said Report was tendered to Court as Prosecution Exhibit PE2 [Initially this Report was marked for identification as MFI 5]. The Report contains 10 photographs from pages 3 to 12. The pictures clearly depict a man walking from the driveway towards the main road with a cane knife in hand. The final picture in the Report shows the deceased’s house on fire. This was a photo taken from the church compound. The picture shows the side and back part of the deceased’s house on fire.*
- (xiv) The witness identified the accused in the dock as the man who had come down the stairs of the deceased’s house with a cane knife in hand, on the day of the incident.*
- (xv) The accused did not wish to cross-examine this witness.*

**[52] Evidence of Sanjay Abhi Manu**

- (i) The witness testified that he is residing at Tomuka, Lautoka. He is 45 years of age. He is a Carpenter by occupation. He has been residing in Tomuka, Lautoka for the past 18 years. He lives there with his uncle and aunty. He is married and has three children. They are all living with him.*
- (ii) The witness said that on 25 July 2022, he was at home in Tomuka, Lautoka. On that day around 1.00 p.m. he had been resting in his porch (it was lunch hour). At that time he had heard the dogs barking very loudly from his neighbour Suman Lata's house. So the witness had stood up to see – because his house was very near to the deceased's house where the dogs were barking. When he stood up he could see an Indian man there. Later the witness explained that he saw the man in the deceased's compound.*
- (iii) The witness said that he had known the deceased for about 5 to 6 years. He has spoken to the deceased frequently. He had been residing in Tomuka before the deceased came to reside there. The distance between the deceased's house and his house was about 8 to 10 metres.*
- (iv) In July 2022, there were two tenants downstairs and the deceased was staying upstairs. Her sister's son Kunal was a tenant staying downstairs.*
- (v) The witness testified that he was in his porch and about to open the small gate to go to his compound. At the time the Indian man was in the deceased's compound and he was holding on to a big cane knife. When the witness tried to go near the man, the man had said in Hindi: "Don't come near me, I will hit you with the knife." The witness said he had felt frightened and could not do anything.*
- (vi) At the time the deceased's house was burning. It was a big fire. Since the weather that day was very windy, the direction of the wind was towards his house. So the witness had taken action to save his house (to prevent the fire from coming towards his house). The witness explained the steps he had taken to prevent the fire from coming towards his house.*
- (vii) The witness said that the Indian man had walked along the deceased's driveway towards the main road. At the time, the witness had also seen Kunal. He was running through the back of Suman's house.*
- (viii) The witness testified that he had seen this Indian man once or twice coming to Suman's compound in his car. The houses are situated close to each other. Therefore, if anyone comes to the neighbourhood, they could clearly see.*
- (ix) The witness identified the accused in the dock as the Indian man he had seen on the day of the incident.*
- (x) After the man left, a large crowd had gathered at the scene. The Fire Brigade had arrived and his house was saved. However, they could not save Suman's house. What was left was the burnt pieces of tin.*
- (xi) The witness was cross-examined at length by the accused.*

- (xii) *He confirmed that there are dogs at his place. He said that his house was at a high elevation and the deceased's house is below.*
- (xiii) *The witness was asked about an uncle of his named Dhirendra Naicker who is in his 60's. The witness said that his uncle was at home at the time of this incident. However, since it was lunch hour, he was resting in his room. After hearing the loud noise, then his uncle came to see what was happening outside. When asked if he had seen the accused talking to his uncle, the witness said, no.*
- (xiv) *The witness confirmed that one old lady (church lady) was staying with the deceased at the time of the incident. He said he had seen the old lady was going with Kunal.*
- (xv) *When asked whether he can confirm that the accused came down first and then the lady, the witness said: "That I cannot confirm – because when I stood up, I saw the accused and then I saw Kunal and the lady."*
- (xvi) *The witness said he did not see the accused attacking Kunal with the cane knife or attacking anybody else with the cane knife.*
- (xvii) *It was put to the witness that the accused did not say "Don't come near me, I will hit you with the knife" and that he is lying. The witness said: "Why will I lie when I have taken oath on the Ramayan."*
- (xviii) *It was put to the witness that the accused had in fact told him certain other things. The witness categorically denied that the accused had told him anything else.*
- (xix) *The witness was asked as to where Pastor Virendra Narayan was at the time. He answered: "The same time he came into Suman's compound and the accused started moving down the driveway. That's the same time he took pictures (of the accused)."*
- (xx) *The Court asked the witness where his uncle Dhirendra Naicker is at present. The witness said that he is still in Tomuka staying with the witness. However, his brother had passed away yesterday (on 9 April 2024) and the funeral is on Sunday. So his uncle is very upset about the passing away of his brother.*

**[53] Evidence of Police Constable 6156 Luke Torica Rocevalevu**

- (i) *The witness testified that he is a Digital Extraction Officer with the Fiji Police Force. He is 31 years of age. In 2019, he obtained a Bachelor of Science Degree from the University of the South Pacific, majoring in Computer Science and Information Systems.*
- (ii) *He had joined the Fiji Police Force in March 2019. After 2 years of service at the Raiwaqa Police Station, he was picked up by the Cyber Crime Unit at the CID Headquarters in Suva. That was in early/mid 2022.*
- (iii) *As to his responsibilities, the witness said that he extracts evidence from CCTV footage, from mobile phones, computers and even online social media websites.*

- (iv) *The witness explained in details as to how evidence extraction is done in relation to mobile phones. He referred to the use of a software named cellebrite by which the extraction of the information is done. After extraction of the information, the information is analyzed and a report compiled. The witness explained as to how the said software works in extracting the relevant information.*
- (v) *The witness said that in the year 2022 the software was updated targeting the most frequent selling phones – Android phones and iPhones. The operating system for Samsung phones is Android.*
- (vi) *The witness testified to his role in this case. He was the Digital Extraction Officer for the mobile phones brought for the case. He recalls it was 2 Samsung phones – one A12 and the other A50. The phones were brought to him by the Investigating Officer, IP Saten from the Lautoka Police Station.*
- (vii) *IP Saten had instructed the witness to extract images taken on a particular day (25 July 2022). The witness said, he was able to extract the said images from the said 2 phones. Having done so, he had prepared an analysis report for the 2 phones.*
- (viii) *The Samsung Galaxy A12 Extraction Report was shown to the witness and he identified the said Report as one prepared by him. He confirmed his signature on the Report. The extraction was done on 5 September 2022. The said Report was tendered to Court as Prosecution Exhibit PE2 [Initially this Report was marked for identification as MFI 5].*
- (ix) *As per the Extraction Report, it is revealed that the 10 photos shown therein were taken between 13.38 and 13.42 on 25 July 2022.*
- (x) *The Samsung Galaxy A50 Extraction Report was shown to the witness and he identified the said Report as one prepared by him. He confirmed his signature on the Report. The extraction was done on 5 September 2022. The said Report was tendered to Court as Prosecution Exhibit PE3 [Initially this Report was marked for identification as MFI 1].*
- (xi) *The Extraction Report contains 37 images. The witness said that the owner of the A12 phone had sent images via viber to the owner of the A50 phone. Images 1 to 8 were such viber messages/photos that were downloaded. Images 9 to 33 were images created on the phone itself. Images 34 to 37 were again images downloaded from viber.*

**[54] Evidence of Ashwin Vikash**

- (i) *The witness testified that he is residing at Tomuka, Lautoka. He is 38 years of age. He is a Taxi driver and Welder by occupation. He has been residing in Tomuka, Lautoka for the past 13 years.*
- (ii) *The witness said that even in the year 2022, he lived in Tomuka, Lautoka. At the time he was running a small business - a High Pressure Welder and a Taxi Driver.*

- (iii) *The witness testified to the events which took place on 25 July 2022. He said he remembers that day. Around 2.00 p.m. he was parked at the bus shelter in Tomuka – opposite the dairy shop. He said that he usually parks his taxi at the said bus shelter every day at 2.00 p.m. since he has to pick up his daughter at Ami Chandra School in Tomuka (at 2.45 p.m.). His taxi is a Honda Fit Shuttle vehicle blue in color.*
- (iv) *The road he had parked on was a straight road going towards the school and the Tomuka road was going down on to his left. Then he saw a male person was coming from the place where the incident had happened that day. He was wearing a black and yellow stripe shirt. He came up to the driver's side and he asked whether he can hire his taxi. This was around 2.00 – 2.15 in the afternoon. The witness had said he can take the hire.*
- (v) *Prior to getting into the taxi, the man had opened the boot of his vehicle. The witness said he got a shock when the man had done this. From the rear view mirror, the witness saw that the person put a knife into the boot of his vehicle. It was a big knife, like a cane knife.*
- (vi) *The witness said he never saw the knife at the time the man had approached his taxi. The witness demonstrated in Court as to how this man was hiding the knife which he had left in the boot.*
- (vii) *Thereafter, the man had closed the boot and got into the back seat of the taxi – the left side passenger seat. So the man was sitting opposite to the witness (the driver). The witness had asked the man as to where he wishes to go. The man had said to just go.*
- (viii) *At this stage the witness had started the taxi and was going towards Lautoka town. While travelling the man had asked the witness for matches to smoke. The witness had told him, it's a taxi and that he cannot smoke inside the taxi. While the taxi was moving, the man had told the witness to stop at a shop so he can buy matches. The witness had stopped close to a shop at Tomuka. There the man had got off to get the matches.*
- (ix) *At the time the man had got off to buy the matches, the witness said he had got to know from another taxi driver that there was an incident of a fire in Tomuka, Lautoka.*
- (x) *After buying the matches the man had then returned back to the vehicle. However, the man had never smoked inside the taxi. The witness had asked the man again, where he wishes to go. The man had said to the Lautoka Police Station.*
- (xi) *The witness was travelling towards the Lautoka Police Station. On the way there is a Vinod Patel yard – it is on Sukanaivalu Road. At this stage the man had remembered that he had brought his car with him. So the man had told him to drop him at the Total Service Station in Tavakubu – opposite the Beer Factory. Accordingly, the witness had dropped the man near the ANZ ATM.*
- (xii) *The man had got off the vehicle and had given the witness \$5.00 for the hire. The witness had returned balance of 80 cents to the man. At the time the*



witness had seen blood on the man's hand. The man had then gone to the back of the vehicle and taken the cane knife from the boot. Then he had come in front of the vehicle again. The witness said he had seen blood on the blade of the knife and on the man's hand.

- (xiii) The witness said he had just parked his car there and was observing the man as to where he was going. The man had opened his car. It was a Prius 1.5 vehicle white in color. The man had sat in his car, taken a bottle of water and washed the blood off his hands.
- (xiv) The witness said he had left the man there and gone straight to the Tavakubu Police Post to complain about the incident.
- (xv) The witness identified the accused in the dock as the man who had hired his taxi on the day of the incident.
- (xvi) In cross-examination it was suggested to the witness that the taxi the accused got into was a white Honda Fit Shuttle vehicle. The witness said his vehicle is blue in color.
- (xvii) It was also put to the witness that at the time the accused was in his taxi, the witness had told him that he is a Christian and that he does not smoke. The witness agreed and said that at the time he was going to church because his wife was very sick. However, now she is okay. Therefore, they have come back to their religion (Hindu).
- (xviii) The witness confirmed that on the day of the incident, his wife had gone to pick up his daughter from school, since he had gone to Tavakubu Police Post.
- (xix) The witness said that he had seen blood on the accused's left hand. He had not seen blood anywhere else on the accused or on his clothes.
- (xx) The witness was asked whether he had checked the boot of his vehicle to see whether there were any blood stains. He answered yes and said he had found blood stains on the boot of the vehicle and also on the door handle.

**[55] Evidence of Avikash Singh**

- (i) The witness testified that he is residing at Tomuka, Lautoka. He is 38 years of age. He is a Taxi driver by occupation. He is also running a shop named Tomuka Dairy Shop. It is located in Tomuka Road, opposite the Tomuka bus shelter. The shop is a retail shop. He sells all grocery items there. He had started the shop in August 2018.
- (ii) The witness said that even in the year 2022, he was operating the Dairy Shop. He had five CCTV cameras installed outside and three cameras installed inside of the shop during the time. The cameras worked 24 hours.
- (iii) The witness testified that on 27 July 2022, he was in his shop. The Police came requesting for CCTV footage for the 25 July 2022. So the witness requested for the Police IT Officer to come in and take the footage. They extracted the footage they needed. The Police took the footage on a USB and put it on a disc.

- (iv) *The witness said he had seen the said footage. The footage shows a man coming on Tomuka Road towards the bus shelter. There is a blue cab parked there. He sits in the cab and the cab goes away headed towards Tomuka junction. The time of the footage is 1.45 p.m. on 25 July 2022. The witness said the time on the footage is accurate.*
- (v) *The CCTV footage for Tomuka Mini-Mart Dairy Shop was tendered to Court as Prosecution Exhibit PE5 [Initially this footage was marked for identification as MFI 6].*
- (vi) *In cross-examination the witness reiterated that the CCTV footage shows the man getting into the taxi. At the time there was no other vehicle parked there other than for the taxi.*

**[56] Evidence of Visha Latchmi Pillai**

- (i) *The witness testified that she is residing at Malolo, Nadi. She is 41 years of age. Currently she is a Manager at Gounder Shipping in Nadi.*
- (ii) *The witness said that in the year 2022, she was employed at Pacific Energy Service Station located on Nadi Back Road. She had been working there from 2012 up to March 2024 (a period of 12 years). In the year 2022, she was working as a Cashier at the service station. It was a service station plus a grocery store. Her duties were to take charge of the customer's fuel money and also to serve customers purchasing groceries inside the grocery store.*
- (iii) *The witness testified that on 25 July 2022, she was at work. She started her shift at 1.30 p.m. that day. During her shift, Shafil Ali came there. The witness said she did not know his name at the time. He was wearing a black t-shirt with yellow stripes and black long pants. She said the time may have been around 2.30 – 3.00 p.m.*
- (iv) *He had given her a car key and told her to keep it and had said he will come and pick it up soon. She had said they are going to close the store at 9.00 p.m. Shafil had said he will come there by 7.00 p.m. She did not know the reason why Shafil gave the key to her.*
- (v) *The witness said that she had taken the key from him. She had showed him where she was keeping the key and put it in the drawer. However, the witness said that Shafil did not come by 7.00 p.m. to collect the keys.*
- (vi) *The witness testified that the key was there in the drawer for about 1 hour. Then the Police had come and taken the key.*
- (vii) *She said there are CCTV cameras installed in the service station. Those cameras were working at the time. Any movement inside the shop would be recorded.*
- (viii) *The CCTV footage for Pacific Energy Service Station was tendered to Court as Prosecution Exhibit PE7 [Initially this footage was marked for identification as MFI 7].*

- (ix) *The witness said she had seen the said footage. The footage clearly shows the accused coming into the service station. The time of the footage is 2.46 – 2.47 p.m. on 25 July 2022.*
- (x) *The witness identified the accused in the dock as the man who had come to handover the car key to her on 25 July 2022.*
- (xi) *In cross-examination the witness stated that she got to know the accused's name from a copy of the Summons.*
- (xii) *She confirmed that the Nadi Police Station is just opposite the bowser (across the road) a bit further inside.*
- (xiii) *The witness also stated that she did not see any blood stains on the accused's face, hands or clothes. She only saw the accused's face eye to eye and the clothes he was wearing. She did not see any blood stains on him or his clothes.*

**[57] Evidence of Acting Inspector of Police Martin Koli**

- (i) *The witness testified that he is 38 years of age and currently serving at the Namaka Police Station. He has been serving in the Fiji Police Force since 2013. He had joined the Force as a Police Constable (PC). He had been promoted as a Corporal in 2017 and as a Sergeant in 2018. He is currently serving as an Acting Inspector of Police.*
- (ii) *During his career he has served at 4 Police Stations – Lami Police Station, Nasinu Police Station, Lautoka Police Station and currently he is serving at Namaka Police Station. He had been serving at Lautoka Police Station from 2016 to 2024 attached to the CID Branch. He was transferred to the Namaka Police Station in March 2024.*
- (iii) *The witness said that in the year 2022 he was based at the Lautoka Police Station-in the CID Unit. He recalls being on duty on 25 July 2022. Around 3.00 p.m. they had received information that there was a case of Arson and Alleged Murder in Tomuka. The information had been received from his supervisors.*
- (iv) *The witness said that a Police team was directed to go to the scene at Tomuka. They were informed that there was a Police team already at the scene. So the witness went to the scene at Tomuka together with three other CID officers who were on standby.*
- (v) *On arrival at the scene he witnessed that a house was completely burnt. The house was located on top of a hill on the left hand side while going into Tomuka – just before Ami Chandra Primary School.*
- (vi) *The witness had begun conducting house to house inquiries. Whilst doing so, his supervisors (ASP Maciu Vava and Inspector Belo) had verbally informed him to go down to Nadi Police Station after work, since the suspect from Tomuka had turned himself in at the Nadi Police Station.*
- (vii) *Accordingly, the witness had proceeded to Nadi. He had reached Nadi around 4.00 p.m. on 25 July 2022. He had received information that the*

*suspect was brought to the Pacific Energy Service Station at Nadi Back Road. The said information had been transmitted to the witness by way of a phone call from PC Temo of the K9 Unit.*

- (viii) Accordingly, the witness had proceeded to the Pacific Energy Service Station at Nadi Back Road. Upon arriving there he had been briefed by PC Temo that the suspect was in a Police vehicle parked at the Station.*
- (ix) The witness had then seen the suspect who was seated in the back seat of the vehicle (behind the driver's seat). The witness had sat in the front passenger seat. He had introduced himself to the suspect. He in turn had introduced himself as Shafil Ali, the accused. At the time the witness observed that the accused had a cut on his palm. It was a fresh cut and was bleeding. He had also observed blood stains on the accused's shirt, his long pants and his canvas.*
- (x) The witness testified that he had then had a conversation with the accused. The accused had stated that he really wanted to kill that lady in Tomuka. The witness had immediately cautioned the accused in terms of Judge's Rule No. 2 – Stating to him that he was not obliged to say anything unless he wish to do so. However, whatever he would say would be put in writing and produced as evidence against him. The witness said that the accused had understood what have been told to him.*
- (xi) The accused had stated that he was at peace now. He continued that the lady named Suman Lata was the reason his wife converted to another religion. He said she (the deceased) had arranged for his wife to be with another man. He said his wife had taken out a DVRO and he was not with the family because of the DVRO. He had further said that he had prayed so hard that day before going down to Tomuka. The accused had pointed/showed a bruise/scar on his forehead to indicate that it was caused by him making contact with the concrete floor whilst praying.*
- (xii) The accused had said that soon after praying that day, he had taken a cane knife and a bottle of kerosene and got into his vehicle. He then stated that he drove down to Lautoka and parked his vehicle at the Service Station at Tavakubu. He then got a taxi from the Service Station to go to Tomuka. Before reaching Tomuka, he stopped the taxi at a shop to buy some matches. He got down at Ami Chandra Primary School and he went up to the house of Suman Lata.*
- (xiii) He stated whilst going up to Suman Lata's house, he saw an old lady. He told the old lady to move aside as she had nothing to do. He then told the witness that he went inside the house to Suman Lata and he struck her on the head with the cane knife. He also struck her on her legs and her buttocks (the bum). He then poured kerosene from the bottle of kerosene that he took and he set the house on fire with the matches.*

- (xiv) *The accused then stated that he walked out of the house and he saw a crowd gathered outside. He shouted out for everybody to move back – if anybody stopped him, he will chop them with the knife.*
- (xv) *He had then stated that he got a taxi back to where his vehicle was parked. Then he drove his vehicle back to Nadi to the Town End at Nadi – the industrial area – where he threw the cane knife in a creek and then he drove his vehicle to Pacific Energy Service Station where he parked his vehicle there and went up to the Nadi Police Station and turned himself in.*
- (xvi) *The witness said that the accused had told him that he can show the Police the place he threw the cane knife. Accordingly, the witness together with officers from the K9 team and officers from CSI had proceeded immediately (the same afternoon) to the place where the accused had said the cane knife had been thrown. The team had proceeded to the industrial area at the Town End.*
- (xvii) *The accused had pointed out to the exact place he threw the cane knife inside the creek. The officers had searched the creek and located the cane knife. The witness said that he was present at the time the cane knife was recovered/uplifted. The cane knife had been uplifted by an officer of the K9 unit and had been handed over to officers of the CSI unit. The CSI team had handled the matter from there.*
- (xviii) *The witness said that at the time the accused had made the admissions, they were inside the Police vehicle. The CSI team was processing the accused's vehicle which had been parked at the car park of the Service Station.*
- (xix) *The witness confirmed that he had made notes of the admissions made by the accused in his Police Note Book. He had done so contemporaneously (then and there). The witness had brought the relevant Police Note Book to Court. Pages 29 to 38 of the Police Note Book contains notes relating to the investigation into this case. The admissions made by the accused are found from pages 29 to 36.*
- (xx) *The Police Note Book was produced in Court and examined by myself. It reveals that at 17.15 hours the witness was at Pacific Energy Station at Nadi Back Road. The recording of the admissions made by the accused commences at 17.25 hours.*
- (xxi) *There is a note at page 37 of the Police Note Book indicating the fact that at 18.15 hours the accused had been taken to the creek where he stated that the knife was thrown by him.*
- (xxii) *The Photographic Booklet of the Crime Scene was shown to the witness and he identified certain photos in the said Booklet. The said Booklet was tendered to Court as Prosecution Exhibit PE9 [Initially this Booklet was marked for identification as MFI 4].*
- (xxiii) *The witness stated that Photo 12 in the Booklet depicts the overview of the Nadi Town Industrial Park where the accused drove to and threw the cane knife into the creek below. Photo 13 in the Booklet shows the overview of the*

creek at the Nadi Town Industrial Park where the accused threw the cane knife into. Photo 14 in the Booklet shows the accused pointing to the creek where he had thrown the cane knife into. Photo 15 in the Booklet depicts the Police Officers searching in the creek for the cane knife. Photo 19 in the Booklet shows the cane knife recovered from the creek by a Police Officer (soon after its recovery). Photos 20 and 21 in the Booklet shows a close up view of the cane knife recovered from the creek.

- (xxiv) The witness said that he was also part of the investigation team that went to obtain the CCTV footage from the Tomuka Mini-Mart Dairy Shop and the Pacific Energy Service Station at Nadi Back Road. This was done on 26 July 2022 (the following day).
- (xxv) The witness explained the procedure to obtain CCTV footage during investigations. A Search Warrant is executed and once the footage is obtained, a Search List is prepared and the most Senior Officer present signs the Search List together with the owner of the CCTV footage. The relevant CCTV footage was uplifted onto a USB stick personally by the witness. He had then handed over the USBs to the IT team to download and prepare DVDs containing the said footage.
- (xxvi) Information to obtain a Search Warrant [To Uplift CCTV footage - Tomuka Mini-Mart Dairy Shop] was tendered to Court as Prosecution Exhibit PE 4(a); the Search Warrant was tendered to Court as Prosecution Exhibit PE 4(b); and the Search List was tendered to Court as Prosecution Exhibit PE 4(c). The witness confirms that his signature is found on the Search List. The CCTV footage - Tomuka Mini-Mart Dairy Shop was tendered to Court as Prosecution Exhibit PE 5.
- (xxvii) The witness said that the CCTV footage shows the accused coming on Tomuka Road towards the bus shelter. There is a blue taxi parked there. He sits in the taxi and the taxi goes out of Tomuka to Sukanaivalu Road. The time of the footage is 1.45 p.m. on 25 July 2022.
- (xxviii) Information to obtain a Search Warrant [To Uplift CCTV footage - Pacific Energy Service Station, Nadi] was tendered to Court as Prosecution Exhibit PE 6(a); the Search Warrant was tendered to Court as Prosecution Exhibit PE 6(b); and the Search List was tendered to Court as Prosecution Exhibit PE 6(c). The witness confirms that his signature is found on the Search List. The CCTV footage - Pacific Energy Service Station, Nadi was tendered to Court as Prosecution Exhibit PE 7.
- (xxix) The witness said that the distance from the Pacific Energy Service Station to the Nadi Police Station was about 300 to 400 metres.
- (xxx) The witness was able to identify the clothes and canvas the accused was wearing at the time he was in contact with the accused. The t-shirt worn by the accused was tendered to Court as Prosecution Exhibit PE13 [Initially this t-shirt was marked for identification as MFI 8]; the long pants worn by the accused was tendered to Court as Prosecution Exhibit PE14 [Initially this

*long pants was marked for identification as MFI 9] and the black and white coloured canvas worn by the accused was tendered to Court as Prosecution Exhibit PE15 [Initially this canvas was marked for identification as MFI 10].*

*(xxxi) The witness identified the accused in the dock as Shafil Ali.*

*(xxxii) In cross-examination it was suggested to the witness that he never told him that he wanted to kill that lady (the deceased). The witness denied this suggestion.*

*(xxxiii) It was also suggested to the witness that he never explained to the accused the Judge's Rules No. 2. The witness denied the suggestion and said that he had done so.*

*(xxxiv) The witness agreed that he had had a long conversation with the accused on 25 July 2022. When asked whether there was anyone else in the vehicle at the time, the witness said the driver of the vehicle (an officer from the K9 unit) was present.*

**[58] Evidence of Samisoni Caginakana**

- (i) The witness is a Qualified Fire Fighter with the National Fire Authority (NFA). He is based at the Lautoka Fire Station. He is 32 years of age.*
- (ii) He has undergone 3 months Recruitment Training at the Naval Base in Togalevu in Suva. This was in the year 2015. Thereafter, he had attended a Probationary Training for 1 year (from 10 October 2015). During this training he was based at the Lautoka Fire Station and attended to fire courses, community awareness programs and also attended to emergency calls in the Lautoka boundaries.*
- (iii) Thereafter, the witness had undergone Fire Fighter Phase 1 Training in October 2016. This course was of 2 weeks duration. After the successful completion of this training, he became a Fire Fighter for 5 years. Thereafter, he underwent the Qualified Fire Fighter Course in the year 2020. This course was also of 2 weeks duration. At the end of this program, he obtained the position of a Qualified Fire Fighter.*
- (iv) The witness testified to his experience and responsibilities as a Qualified Fire Fighter. He said that he has conducted over 100 fire examinations for all types of cases.*
- (v) The witness said that in the year 2022 he was serving as a Qualified Fire Fighter with the National Fire Authority based at the Lautoka Fire Station.*
- (vi) The witness stated that on the day of this incident, 25 July 2022, he was on leave. However, his team of Fire Fighters had attended to the report of fire at Tomuka. They had tried to put out the fire but were not successful as the intensity was too high. The officers had prepared a Preliminary Report.*
- (vii) Based on the said Report, the witness said he had attended to the scene on 26 July 2022 (the next day) and 27 July 2022. He attended to the scene the day after as he had to allow for the scene to cool down in order to conduct his investigation safely.*

- (viii) *The witness confirmed that the entire house was completely burned down with the person inside of it. He had prepared the Fire Investigation Report in respect of the said incident. The said Fire Investigation Report was tendered to Court as Prosecution Exhibit PE 7A.*
- (ix) *As per the Report, it is stated that the date of the fire incident is 25 July 2022. The time of the incident is 13.45 hours. The time the officers of the NFA attended to the scene has been noted as 13.58 hours.*
- (x) *The Report shows that on the day of incident the wind speed was 22 km/hour. This indicates that the wind speed was quite high on the said day. The witness testified that if the wind speed is under 20 km/hour, it indicates it is not that windy. If it is between 20 to 50 km/hour it means it is really windy. If the wind speed is over 50 km/hour, it indicates high winds such as cyclones.*
- (xi) *A rough sketch of the house is found at page 6 of the Report. The witness said that the sketch was done by himself.*
- (xii) *The external findings have been noted from pages 8 to 10 of the Report. As per the external findings, it is stated that the building is a double story house which was floored by the fire. Fire damaged was noted all over the structure, but it is noted that the greatest fire damages was found on the top floor of the structure.*
- (xiii) *The internal findings have been noted from pages 11 to 14 of the Report. As per the internal findings, it is stated that the whole structure has totally collapsed and sustained greatest damage due to its contents and internal wooden structure, which were mainly destroyed by direct flame contact. Fire damages are noted over the whole of the structure. Greatest fire damage is noted on the top floor of the building. This indicates that the fire had originated from this area before it spreads to other parts of the building.*
- (xiv) *Accordingly, the area of origin of the fire was on the top floor of the building as indicated on the sketch. The point of origin has been stated as the entrance door to the deceased's house. The cause of the fire has been noted as incendiary, which means a fire being ignited or introduced by someone. In this case there was evidence that an accelerant has been used. An accelerant can be any fuel like kerosene or benzene. This was the reason why the fire at the deceased's house had spread so quickly.*
- (xv) *Although, the point of origin of the fire has been stated as the entrance door to the deceased's house, the witness explained that the exact point of origin of the fire cannot be determined with absolute certainty.*
- (xvi) *The witness testified that the fire is like a human being (living person). It needs heat, air and fuel for it to grow. Oxygen is there in the air. Heat can be by way of a match light/candle light/electric fiction. Fuel can be an accelerant like kerosene or benzene.*
- (xvii) *The witness said that all other possible causes of fire including unattended cooking, chemical reactions and electrical fault were eliminated as a possible*



*cause of the fire at the deceased's house. The witness explained as to the basis on which these causes were eliminated.*

- (xviii) The witness was cross-examined by the accused. In cross-examination, the witness confirmed that an accelerant was used to start the fire. However, he cannot say with certainty what specific type of accelerant it could be.*
- (xix) The witness confirmed that this was the only Fire Investigation Report that he had prepared. It was suggested to the witness that another Fire Investigation Report is available and was shown to him by lawyers from the Legal Aid Commission. The witness denied that there was any other Fire Investigation Report prepared in this case.*
- (xx) The witness confirmed that there was no evidence to indicate that the fire started from the kitchen.*
- (xxi) He explained that incendiary means, somebody introducing the fire. He came to the conclusion that the cause of the fire was incendiary from his overall investigations in this case.*

**[59] Evidence of Sergeant 3049 Josateki Seuseu**

- (i) The witness testified that he is 56 years of age and currently attached to the Forensic Science Services, Western Division, based at the Lautoka Police Station.*
- (ii) He has been serving in the Fiji Police Force since 2003. He joined the Force as a Police Constable. He has worked in various Departments before joining the Crime Scene Investigation Unit (CSI Unit) in 2005. Thus he has been serving in the Forensic Science Services of the Fiji Police Force for the past 19 years. He was promoted as a Corporal in 2009; and as a Sergeant in 2018.*
- (iii) The witness explained the role of the Forensic Science Services in Crime Scene Investigations. The Unit is responsible for attending to crime scenes throughout the Western Division, Crime Scene Management, Crime Scene Photographing and uplifting and safe keeping of Crime Scene Exhibits. The Unit also conducts sketching of the crime scenes and finger printing. He testified to the specific training and experience he has acquired in this field.*
- (iv) The witness testified that in the year 2022 he was stationed at the Forensic Science Services of the Lautoka Police Station. He held the rank of Sergeant at the time.*
- (v) The witness recalls being on duty on 25 July 2022. He had received a call from SP Iakobo Waiseva, who was the Divisional Crime Officer, Western Division at the time. He had informed the witness that there was a house burning at Tomuka and it is believed that somebody is burnt inside and deceased. This call had been received around 4.00 p.m.*
- (vi) During the day of the alleged offending (25 July 2022), DC 5243 Lemeki was the Standby Officer for the Crime Scene Unit. He was the first to receive information about the incident. He had proceeded to the crime scene together with DC 5663 Anasa Kovea and Detective Inspector Silio.*

- (vii) *From the crime scene they had called the witness and informed him that they had received information that the accused had handed himself over at the Nadi Police Station. The witness had informed the said officers to cordon the scene of crime and proceed to Nadi. Accordingly, Detective Inspector Silio, DC Lemeki and DC Anasa had proceeded to Nadi.*
- (viii) *The witness had proceeded to the crime scene with one of his colleagues PC 5769 Temesi (Police Driver). He had taken with him his crime scene camera and the crime scene kit. On arrival at the scene, he found a group of Police Officers from the Lautoka Police Station were already at the scene. Acting ASP Belo had briefed the witness of what had happened at the scene.*
- (ix) *ASP Belo had shown the witness a green bag on the driveway leading to the deceased's house – besides the deceased's neighbour's house. It was alleged that the accused had brought that bag with him. The witness had taken photographs of the said green bag and uplifted the same.*
- (x) *At the time he found the bag, the bag was a bit soaked (it was wet), the zip was open and it smelt of kerosene. Other officers present at the scene also confirms the smelt of kerosene. The said bag was tendered to Court as Prosecution Exhibit PE8 [Initially this bag was marked for identification as MFI 3].*
- (xi) *The witness testified that the said bag had been sent to the Chemistry Lab in Suva but had not been tested due to the machines at the lab not been working at the time.*
- (xii) *Thereafter, the witness said that the Fire Officers came and told him that they cannot access the scene of the fire as it was still hot. They also said they had found a body at the scene. This confirmed that the deceased's body was found at the scene. The deceased's body was amongst the burnt debris.*
- (xiii) *The witness had taken some photos of the scene from a distance. He had informed the Fire Officers that the Police will guard the scene until a proper examination can be done the next day.*
- (xiv) *The witness had met Kritesh Nand who was at the neighbour's house at the time. He had personally interviewed Kritesh at the scene. Kritesh had informed the witness as to what he had seen of the incident. Kritesh had also taken photographs with the use of his mobile phone of the accused going down the footpath with a green bag and a knife in hand.*
- (xv) *The witness had instructed Kritesh to send the photographs to him. Kritesh had done so via viber. The witness had downloaded the said photos and included it in the Photographic Booklet which he had prepared for this case.*
- (xvi) *The next day the witness had returned to the crime scene with the full CSI team, namely DC Lemeki (who was the Crime Scene Recorder), DC Anasa (who was the Crime Scene Examiner) and PC Temesi (the Police Driver) to conduct further investigations. The witness had assigned the said officers with their respective roles at the crime scene. The witness functioned as the Crime Scene Photographer for that day.*

- (xvii) *The CSI team was able to identify where the deceased's body was located. They cleared the debris and located the charred body of the deceased. DC Anasa had placed crime scene exhibit numbers at the location where the deceased's body was found, while the witness had taken photographs of same. The witness testified that DC Anasa and the team had uplifted the remains of the charred body of the deceased for the purpose of forensic examinations.*
- (xx) *The witness testified that he had taken coloured photos of the crime scene. Those photos were later downloaded onto a computer and a Photographic Booklet was prepared for this case. The Photographic Booklet had been compiled by the witness. The said Photographic Booklet was tendered to Court as Prosecution Exhibit PE9 [Initially this Booklet was marked for identification as MFI 4]. The Booklet comprises of 19 pages and has 36 photos marked from Photo 1 to 36.*
- (xxi) *For the purpose of viewing the photos clearly in Court, it was shown on the screen via the use of a projector.*
- (xxii) *Photos 5, 6, 8, 9 and 10 in the Booklet were the photos that were sent to the witness by Kritesh Nand via viber. Photograph 7 was a photograph taken by the witness at the scene. That photo depicts the overview of the green bag at a cassava patch. When going to the main road, along the driveway, the cassava patch is on the right. The said bag had been uplifted from the place it is shown in Photograph 7 of the Booklet.*
- (xxiii) *The witness testified that some of the photos in the Photographic Booklet were photos taken by DC Lemeki. These include Photos 12 to 15 which were photos taken at the creek, located at the Nadi Town Industrial Park, from where the cane knife had been recovered (Originally the witness testified that these photos were taken by him. However, in cross-examination he said they were taken by DC Lemeki). Also Photos 16 and 17, which depicts the accused's private car (Bearing No. JA 207) shown parked at the Pacific Energy Service Station in Nadi. Photo 18 was a photo taken by the witness showing the accused's private car after it was brought to the Lautoka Police Station for investigations.*
- (xxiv) *The witness said that photographs 31, 32 and 33 in the Photographic Booklet, which were photos taken by him, shows a close up view of the deceased's remains at the scene of crime covered in fire debris (burnt/charred remains of the deceased).*
- (xxv) *The witness identified the accused in the dock as Shafil Ali.*
- (xxvi) *The witness said that as per the information he had received, the accused had been arrested at the Nadi Police Station by the team led by Detective Inspector Silio and comprising DC 5243 Lemeki and DC Anasa. Therefore, at the time the accused was taken to the Pacific Energy Service Station in a K9 vehicle and spoke to IP Koli, he was under arrest.*

- (xxvii) *The witness was cross-examined by the accused and certain suggestions put to him.*
- (xxviii) *The witness confirmed that all the photographs that were taken in Nadi were taken by DC Lemeki, including the photos taken at the creek. The witness also agreed that he was not present in Nadi at the time the cane knife had been recovered by the Police at the creek.*

### **Scene Visit**

- (xxix) *During the course of this witness's evidence, a scene visit was made to the scene of crime in Tomuka, Lautoka. The request for a scene visit had been made by the prosecution. It was stated by the prosecution that in light of the evidence elicited during the trial, it would be in the interest of justice to make a visit of the crime scene in Tomuka, Lautoka in order to obtain a clearer perspective of the said crime scene.*
- (xxx) *Considering the evidence that had transpired, Court was of the opinion that it would be prudent and in the best interest of justice to visit the scene of crime in this case.*
- (xxxi) *Accordingly, the scene visit took place in the afternoon on 17 April 2024. I travelled to the scene together with my two Assistant Court Officers (ACOs) and my Court Orderly. State Counsel, Ms. Sheenal Swastika and Mr. Mohammed Rafiq came to the scene on behalf of the prosecution, along with prosecution witnesses Sgt. Josateki Seuseu, DC Lemeki and Police Driver Mr. Shanil Kant. The accused was accompanied to the scene by two officers of the Prison Management Team (PMT) and a Police Driver.*
- (xxxii) *Accordingly, we all arrived at the scene of the crime in Tomuka around 2.20 p.m. We spent around 15 – 20 minutes at the scene and made our observations. Thereafter, we proceeded along the adjoining driveway to the Israeli Pentecostal Church premises. Prosecution witness Virendra Narayan was present. We spent a few minutes at these premises. From the church premises we saw the side and the back view of the deceased's residence (as depicted in photograph 4 of the Photographic Booklet).*
- (xxxiii) *Thereafter, we returned on Tomuka road. On the way was stopped briefly at the following places:*
- 1. The Tomuka Mini-Mart Dairy Shop – opposite the bus shelter – where it is stated in evidence that the accused had boarded a taxi. We also observed the CCTV cameras placed around the Mini Mart Dairy Shop.*
  - 2. Another small shop where the accused stated that he had purchased a bottle of water and matches after the alleged incident. It is named Asishma Dairy Shop. We stopped at these premises at the request of the accused.*
  - 3. The Total Service Station situated at Tavakubu/Sukanaivalu Road.*
- (xxxiv) *We returned back to the Court premises around 3.15 p.m. to continue with the trial.*

**[60] Evidence of Rakshita Shivanjali Dayal**

- (i) The evidence of this witness was recorded in a 'closed court' and a screen was placed so that she could not see the accused.*
- (ii) The witness testified that she is currently residing in Tavua. She is 26 years of age. She is a secondary school science teacher at Balata College, Tavua. She has been teaching for the past 3 years. Her evidence was recorded in a 'closed court'.*
- (iii) The witness said that her mother is Suman Lata and her father is Ravindra Dayal. Her mum and dad were separated. Later in evidence the witness said that her mum and dad had been divorced. She was residing with her mother at Tomuka in Lautoka.*
- (iv) The witness said that her mother had passed away on 25 July 2022. At the time of incident, she was teaching at Saint Vincent College (SVC) at Tailevu and was staying there. She had come to Lautoka the Friday before and stayed with her mum over the weekend (Saturday and Sunday). She had left home on Sunday. The incident which led to her mother's death had happened on a Monday.*
- (v) The witness testified that at the time of incident, her cousin Kritesh was staying with her mother (as a tenant). There were two other tenants staying on the premises. In addition, one old aunty named aunty Visha was staying with her mother. She had passed away 2 – 3 months after her mother had passed away.*
- (vi) The witness said that her father Ravindra Dayal is still alive. He had remarried when she was in high school. Therefore, she does not have much connections with him. Not even after her mum's death.*
- (vii) The witness testified that for the purpose of getting the remains of her mother, she had interacted with the Police. She said she was very overwhelmed after the incident. Police had asked for her DNA sample. She believes it was a sample of saliva that was taken. She had given the sample willingly. She had signed the consent form at the time of giving the sample for DNA analysis.*
- (viii) Later she got to know that pursuant to the DNA analysis being done, her DNA sample had matched that of her deceased mother.*
- (ix) Around 21 days after the incident, her mother's remains were released to the witness for the purpose of burial.*
- (x) The Samsung Galaxy A50 Extraction Report which was tendered to Court as Prosecution Exhibit PE3 was shown to the witness. The witness confirmed that the photo appearing at page 22 of the Report is that of her mother's.*
- (xi) The witness testified as to the manner in which the loss of her mother had affected her. She said: "It has affected me financially, emotionally and mentally. I have lost a house. I have lost the only parent who I had. Just because of the fear, I am not coming to Lautoka. I literally lost everything*

*that I had. It will be 2 years in July (since her mother passed away). I have still not got over it. I don't think I will ever get over the loss of my mother. I am the only daughter/child. I have no siblings".*

**[61] Evidence of Dr. Praneel Kumar**

- (i) The Doctor testified that he is 39 years of age and serving as a Senior Forensic Pathology Registrar at the Forensic Science Services in the Fiji Police Force, based at Suva. The Forensic Science Services came under the Fiji Police Force in 2009. Prior to that it was under the Ministry of Health and Medical Services.*
- (ii) The witness testified that he graduated with a Bachelor in Medicine and Bachelor in Surgery (MBBS) Degree from the Fiji School of Medicine in 2010. In 2014, he obtained a Post-Graduate Diploma in Pathology from the Fiji National University, College of Medicine, Nursing and Health Sciences.*
- (iii) Subsequent to his graduation, he had followed his internship at Labasa Hospital in 2011. He had worked as a Medical Officer at Taveuni Hospital in 2012 and worked for a few months in the Dermatology Unit at Tamavua Hospital in early 2013. Subsequently, he had joined the Forensic Pathology Unit in February 2013.*
- (iv) His role is to conduct autopsies or post-mortems for medico legal cases to establish the cause of death. During his entire career he has conducted over 1,000 post mortem examinations. The findings of the examination are recorded in the form of a report – Post Mortem Examination Report.*
- (v) The witness recalls conducting the post mortem examination on the deceased Suman on 27 July 2022, at the Lautoka Hospital mortuary. His findings have been recorded in the form of a Post Mortem Examination Report.*
- (vi) The Post Mortem Examination Report of the deceased, was tendered to Court as Prosecution Exhibit PE10.*
- (vii) The body of the deceased was identified by Acting Inspector of Police, Satendra Kumar (who was an Investigating Officer in the case). The deceased was said to be 46 years of age at the time.*
- (viii) The estimated time of death has been given as approximately 13.30 hours, on 25 July 2022. This is the estimated time of death according to witnesses.*
- (ix) The doctor explained in detail the external examination he conducted on the deceased and the observations he noted on the head, upper limb, trunk and lower limb of the deceased. There were extensive third degree burns to the entire body with destruction of all soft tissues which includes the skin, sub-cutaneous tissue and muscle layers giving a charred appearance all over.*

*The doctor elaborated on the injuries as follows:*

### Head

- The head shows extensive third degree burns where there is charring of all the soft tissue on the face. There is complete loss of the facial structure and architecture. There is also loss of the frontal bone of the skull which extends to the parietal areas exposing charred remains of the brain.

### Upper limb

- Both the right and left upper limb are extensively charred with loss of the distal third forearm and hand.

### Trunk

- The trunk is extensively charred with third degree burns. The abdominal cavity is open with charred abdominal contents.

### Lower limb

- Right lower limb shows upper third portion remaining with charred soft tissue covering the upper quarter of the right femur bone. The right femur bone has only the third remaining. The left lower limb is completely missing.
- (x) The doctor explained that the third degree burns are the highest category of burn injuries. In this instance everything from the fat to muscles to bone was exposed and charred.
- (xi) The doctor testified that all internal organs of the deceased were charred. All organs were lump together like a 'charred mess'.
- (xii) The doctor has noted that the cause of death cannot be ascertained due to extensive third degree burns.
- (xiii) During his testimony, the doctor was shown the Photographic Booklet of the crime scene (Prosecution Exhibit PE9). He confirmed that photographs 35 and 36 were photographs taken during the post mortem examination.
- (xiv) Every post mortem examination is assigned a unique number. In respect of the post mortem examination conducted on the deceased, the number assigned was WMLC 197/22. This number is reflected on the Post Mortem Examination Report (Prosecution Exhibit PE10).
- (xv) The doctor testified that due to the excessive burning it was very hard to find any wounds or injuries or to establish the cause of death. However, he can confirm that the charred remains was of a human body.
- (xvi) The doctor said that he had taken a femur bone sample of the deceased for purpose of DNA testing. The sample was handed over to the crime scene investigating officer for taking to the biology lab in Suva for DNA analysis. Only after confirmation that the remains were of Suman Lata's was the Post Mortem Examination Report released by him.

[62] *An application was made by the State to tender the Medical Examination Report of the accused by consent. The accused had no objections to doing so. Accordingly, the Medical Examination Report of the accused, pertaining to the medical examination conducted on him, on 28 July 2022, by Dr. Shynl Singh, was tendered to Court as Prosecution Exhibit PE11.*

[63] **Evidence of Detective Constable 5663 Anasa Kovea**

- (i) *The witness testified that he is 35 years of age and currently attached to the Crime Scene Investigation (CSI) Unit at the Lautoka Police Station. He had joined the Fiji Police Force on 18 August 2008, as a Special Constable. In 2010, he joined the Crime Scene Investigation Unit (CSI Unit).*
- (ii) *From 2008 to 2017, he was serving as a Special Constable. He has taken part in major investigations during this period.*
- (iii) *In 2017, he underwent a 6 months recruitment training program so as to be absorbed into the Regular Force. (After having being recruited to the Regular Service) in December 2017, he was transferred to the Lautoka CID.*
- (iv) *In 2019, he had joined the CSI Office in Lautoka. He is serving in that capacity since then.*
- (v) *The witness testified that in the year 2022 he was based at the CSI Unit of the Lautoka Police Station. On 25 July 2022, he was on duty at the CSI Office. On that day, he had received instructions to attend a fire case in Tomuka. The instructions had been received from Sergeant Josateki Seuseu.*
- (vi) *Upon receipt of the instructions, he had informed his workmate DC Lemeki to accompany him to Tomuka. Accordingly, they had arrived at the scene of the fire in Tomuka at 3.30 p.m. On arrival they observed that the house was still on fire. DC Lemeki had taken a few photographs of the fire scene.*
- (vii) *The witness said that the house was a double story wooden house. It was fully engulfed by the fire. Fire Officers and Police Officers from the CID were also present at the scene. Their duty at the time was to control the crowd and to cordon the crime scene/fire scene.*
- (viii) *While at the scene, they were informed by the Fire Officers that there was a dead body found in the fire scene. They had informed Sergeant Josateki of the situation - Sergeant Josateki was still in his office at the time.*
- (ix) *While at the scene, they had also been informed by the Divisional Crime Officer (DCO), Western Division that the suspect in relation to the incident was heading towards Nadi. He had been instructed to proceed to Nadi.*
- (x) *Accordingly, he had proceeded to Nadi with the Police team comprising Sergeant Koli, DC Lemeki and Officers of the K9 team. On their way to Nadi, they had been informed that K9 Officers had already arrested the suspect and that he was at the Pacific Energy Service Station. The team had proceeded directly to the Pacific Energy Service Station, situated on the Nadi Back Road.*



- (xi) *The suspect was in the custody of K9 Officers. He was informed that the suspect was one Shafil. At the time he saw the suspect, he was inside a Police vehicle with DC Temo.*
- (xii) *The suspect's vehicle was already parked at the Service Station. They had conducted a vehicle examination on the said vehicle (JA 207)-a Toyota Prius Hybrid vehicle white in colour. They had photographed the vehicle and uplifted material evidence. They had uplifted blood from the vehicle using swabs. The swabs were taken from the steering wheel, driver's side door handle (front door handle) and the rear right door handle. These swabs were then brought to the Crime Scene Office in Lautoka.*
- (xiii) *The witness said that the team had then proceeded to the Nadi Town End since the suspect had said he can show where he had thrown the cane knife into a creek. He together with other officers had jumped into the creek and looked for the cane knife. The cane knife had been located by DC Temo and handed over to the witness.*
- (xiv) *After uplifting of the cane knife, it was photographed at the back of the vehicle (by DC Lemeki) and labelled and packed by the witness into a brown exhibit paper bag. These exhibits were then brought to the Crime Scene Office in Lautoka.*
- (xv) *The cane knife was tendered to Court as Prosecution Exhibit PE 12, while the brown coloured envelope containing the cane knife was tendered to Court as Prosecution Exhibit PE 12A.*
- (xvi) *The suspect had been brought to the Lautoka Police Station. The t-shirt, long pants and the black and white coloured Asics canvas shoes the suspect was wearing at the time had been taken in as exhibits in the case. The witness testified that he had noticed blood stains on the accused's canvas at the time.*
- (xvii) *The t-shirt worn by the accused (Adidas Chiefs branded jersey) at the time of the incident was tendered to Court as Prosecution Exhibit PE 13 [Initially this t-shirt was marked for identification as MFI 8]; the long pants was tendered to Court as Prosecution Exhibit PE 14 [Initially this long pants was marked for identification as MFI 9]; and the Asics canvas shoes was tendered to Court as Prosecution Exhibit PE 15 [Initially this Asics canvas shoes was marked for identification as MFI 10].*
- (xviii) *The maroon coloured round neck t-shirt worn by the accused at the time of the alleged incident (which he was wearing together with the jersey), was tendered to Court as Prosecution Exhibit PE 16.*
- (xix) *The cane knife, the t-shirt worn by the accused, the long pants, the Asics canvas shoes and swabs uplifted during the investigation were taken by the witness to the Biology Lab in Suva for DNA analysis.*
- (xx) *The witness said that on the next day the witness had returned to the crime scene with the full CSI team, namely Sergeant Josateki (who was the Crime Scene Photographer), DC Lemeki (who was the Crime Scene Recorder), and*

*PC Temesi (the Police Driver) to conduct further investigations. The witness functioned as the Crime Scene Examiner for that day.*

- (xxi) They had examined the overall layout of the deceased's building, the area where the fire was concentrated and the location where the deceased's body was found.*
- (xxii) The deceased's body was located at the left corner of the burnt structure. The location was already marked by the Fire Officers. At first, the Sergeant Josateki had taken overall photographs of the crime scene before removing the debris and the falling iron/roof of the structure.*
- (xxiii) The CSI team had then tried to process the deceased's body. They tried to collect all the parts of the leftover bones and other remnants of the deceased's body. The deceased's body (the leftover bones and remnants), was taken to the morgue by the Investigating Officers for the purpose of post-mortem examination.*
- (xxiv) Furthermore, debris was taken from the scene to test whether any accelerant (kerosene) was used. These debris were packed in a colourless round shaped container and sent to the Chemistry Lab for examination. In addition, the bag recovered from the scene was also sent to the Chemistry Lab for examination.*
- (xxv) The witness testified that he had also taken the buccal samples of the accused for the purpose of further analysis. This was on 26 July 2022, during the recording of the caution interview statement of the accused. The caution interview statement had been recorded by DC 3895 Dhiresh Kumar, at the Lautoka Police Station. Detective Sergeant 2932 Shamim was the Witnessing Officer, during the recording of the caution interview statement.*
- (xxvi) The witness said that he had explained to the accused all the details/particulars written in the Consent Form. The accused had understood what was explained to him. The Form had been filled by the witness and thereafter signed by the accused in his presence. Detective Sergeant Shamim and DC Dhiresh Kumar had also been present at the time the accused had placed his signature on the said Consent Form. After the accused had signed the said Consent Form, the witness said that he had also signed the said Form at the same time.*
- (xxvii) The witness testified that thereafter the buccal sample of the accused had been taken by him with the use of a swab stick. This had been done inside the CSI room. The original copy of the Consent Form together with the buccal sample collected from the accused had then been sent to the Biology Lab in Suva for DNA analysis.*
- (xxviii) The witness was shown the Photographic Booklet-Prosecution Exhibit PE 9 and taken through the photographs therein.*
- (xxix) The witness was cross examined by the accused.*
- (xxx) He confirmed that a statement was recorded by himself on 9 September 2022. He also confirmed that he examined the taxi that the accused had*

*travelled in on the day of the incident (LK 1274). He had done swabbing outside the boot of the vehicle (on the handle). He said there was no need to do any swabbing inside the boot. This examination had been carried out around 8.00 p.m. on the same day.*

*(xxxi) The Fire Examination Report (dated 28 August 2022), compiled by the witness was tendered to Court as Defence Exhibit DE1.*

**[64] Evidence of Nacanieli Gusu**

- (i) The witness testified that he is 34 years of age and working as a Scientific Officer - Biology at the Fiji Police Forensic Biology and DNA Laboratory in Suva. He is a Forensic Biologist. He joined the laboratory as a Police Officer in 2015. In 2018, he had converted as a civilian employee for the post of Scientific Officer – Biology (since it is a civilian post). The Head of the Unit is a Principal Scientific Officer (PSO).*
- (ii) The witness said that he was awarded a Bachelor of Science Degree (majoring in Biology and Chemistry) from the University of the South Pacific in 2012.*
- (iii) The witness has completed training in DNA facilitated by counterparts in Australia and New Zealand. He also obtained a Post-Graduate Diploma in Biology from the University of the South Pacific this year. The witness said his graduation ceremony was last week.*
- (iv) The witness testified to the job requirements for conducting of DNA examinations and the procedure followed in conducting such examinations, including the 4 stages of DNA analysis. During his career, he said he has compiled more than 100 DNA Reports (approximately).*
- (v) The witness stated that he was assigned as the case officer in this case.*
- (vi) The witness testified that all samples for DNA testing in this case were delivered at the Forensic Biology and DNA Laboratory in Suva by PC 5663 Anasa. All samples had been received by Maikeli Rauqueqe another Scientific Officer at the DNA Laboratory.*
- (vii) The reference samples were the following:*
  - 1. Buccal reference sample of Shafil Ali.*
  - 2. Bone reference sample uplifted from Suman Lata.*
  - 3. Crime Scene Swab (Exhibit 1) – this was a swab uplifted from the steering wheel of vehicle registration number JA 207. A dark red blood like stain was observed on the cotton portion of the swab. The stain tested positive to the presumptive test for the presence of blood.*
  - 4. Crime Scene Swab (Exhibit 2) – this was a swab uplifted from the boot handle of vehicle registration number LT 1274. A black and yellow like stain was observed on the cotton portion of the swab. The stain tested positive to the presumptive test for the presence of blood.*
  - 5. Cane Knife.*
  - 6. Jersey.*

7. *Pants.*

8. *Canvas.*

- (viii) *The Summary Report for Investigation Officer, which was a Report prepared by the witness, was tendered by the prosecution as Prosecution Exhibit PE17. This Report was compiled to confirm the identity of the deceased, Suman Lata.*
- (ix) *The Report was compiled by comparing the DNA profile-buccal reference sample of Rakshita Shivanjali Dayal (daughter of the deceased) with the bone sample uplifted from the deceased during post-mortem examination.*
- (x) *A female DNA profile was said to have been obtained from the said bone sample. This female DNA profile was compared with the reference DNA profile of Rakshita Shivanjali Dayal. 50% of the DNA profile obtained from this bone sample matched the reference DNA profile of Rakshita Shivanjali Dayal. Therefore, Rakshita Shivanjali Dayal cannot be excluded as a biological offspring of the contributor of the DNA for this sample. Therefore, Suman Lata cannot be excluded as the contributor of DNA for this bone sample, given the assumption that Rakshita Shivanjali Dayal is a biological offspring.*
- (xi) *The witness submitted that in his opinion, the DNA profiling results provides strong scientific support for the preposition that the DNA profile obtained from the bone sample belongs to the deceased Suman Lata given the assumption that Rakshita Shivanjali Dayal is a biological offspring.*
- (xii) *The Forensic DNA Report prepared by the witness was tendered by the prosecution as Prosecution Exhibit PE18.*
- (xiii) *As per the Report, it is stated that a complete DNA profile was obtained from the Crime Scene Swab (Exhibit 1), which was a swab uplifted from the steering wheel of vehicle registration number JA 207. The DNA profile obtained matched the reference DNA profile of Shafil Ali. Therefore, Shafil Ali cannot be excluded as the contributor of DNA for this sample.*
- (xiv) *It is stated that a DNA profile could not be obtained from Crime Scene Swab (Exhibit 2), which was a swab uplifted from the boot handle of vehicle registration number LT 1274, due to insufficient DNA quantity.*
- (xv) *It is stated in the Report that a blood like stain was uplifted from the upper left region of the exterior front of the pants and from the interior front left pocket region of the pants. A complete DNA profile was obtained from these samples. The DNA profile obtained matched the reference DNA profile of Shafil Ali. Therefore, Shafil Ali cannot be excluded as the contributor of DNA for this sample.*
- (xvi) *With regard to the canvas, it is stated that a wet and dry swab was uplifted from a dark red blood like stain observed on the bottom region of the right shoe. However, a DNA profile could not be obtained from this sample due to insufficient DNA quantity.*

(xvii) *It is stated further that a wet and dry swab was uplifted from a dark red brown, blood like stain observed on the bottom region of the left shoe. A mixed DNA profile was obtained from this sample consisting of major and minor components. At least three individuals have contributed DNA unequally to this sample. The DNA profile obtained from the major component was similar to the reference DNA profile of Shafil Ali. Therefore, Shafil Ali cannot be excluded as the contributor of the major component of this sample. A DNA profile obtained from the minor component was similar to the reference DNA profile of Suman Lata. Therefore, Suman Lata cannot be excluded as a contributor of the minor component of this sample (meaning that the deceased's DNA was found on accused's left shoe).*

(xviii) *The witness testified that with regard to the cane knife and jersey, the swabs obtained therefrom were not forwarded for further analysis and the reasons for not doing so.*

[65] At the end of the prosecution case Court decided to call for the defence in respect of all three counts. The accused was then explained his legal rights. I explained to him that he could address Court by himself. He could also give sworn evidence from the witness box and/or call witnesses on his behalf. He could even remain silent. He was given these options as those were his legal rights. I explained to the accused that he need not prove anything. The burden of proving his guilt rests entirely on the prosecution at all times.

[66] The accused testified on his own behalf. He did not call any other witnesses in support of his case. He also tendered as Defence Exhibit DE1-Fire Examination Report, dated 28 August 2022; and as Defence Exhibit DE2-Interim Domestic Violence Restraining Order in Family Court of Lautoka, Application No: 269 of 2022.

### **Case for the Defence**

#### **[67] Evidence of Shafil Ali**

- (i) *The witness testified that he is 45 years old (his date of birth is 9 June 1978). Prior to being remanded for the case, he was residing at Nawaka, Nadi. He was a Taxi Driver and Truck Driver by occupation. He owned his own taxi.*
- (ii) *The witness said that he was staying with his parents since the year 2000. In 2009, he built his own house, which was next door to his parent's house and moved there.*
- (iii) *The witness testified that he has studied up to Form 6. He was working on the ground as a Utility Hand for Fiji Link Domestic Airlines. He started working in*

*this capacity in 2007 and worked there for nearly 15 years. However, after Covid he said he had lost his job. This was around 2022.*

- (iv) The witness said that he was married to Premila Devi. They got together in 2004 and got legally married in 2011. They have four children together –
  1. Shafikha Mehnaaz Bibi – in May she will be 20.
  2. Shafee Nawab Ali – in June he will be 18.
  3. Mukhtar Hassan Ali – in December he will be 17.
  4. Mukhlisha Hafsa Ali – in August she will be 16.*
- (v) They were all living together in Nawaka, Nadi. His mother-in-law was also staying with them.*
- (vi) The witness testified that the reason for him to go to sister Suman's house was to ask her to reconcile between himself and his wife Premila, as she had done earlier and to release his daughter to him (his elder daughter – Shafikha).*
- (vii) The witness said that he knew the deceased Suman Lata since her mother was their neighbour at Nawaka, Nadi. So he got to know the deceased through the deceased's mother.*
- (viii) He said that in the year 2020 (he doesn't recall the exact month), he got to know that his wife was having an affair with one Avnit Prasad on Facebook.*
- (ix) The witness referred to a particular Sunday (in the year 2020). That day he had driven his taxi and come home around 3.00 in the morning. When he returned home, he found that his wife had left home leaving all the children and her mother behind. She had told him that she was staying in Lautoka at Suman's house.*
- (x) On that occasion, the deceased had reconciled between himself and his wife. However, his wife did not come back home with him at that time. He had picked her up at 1.00 p.m. from Shirley Park and brought her home.*
- (xi) The witness further testified that his wife is still having an affair on Facebook. He said his mother had passed away in October/November 2020. He said his wife had taken off again and gone to the deceased Suman's house. Although he went to the deceased's house, there was no reconciliation between himself and Premila on that occasion.*
- (xii) In the year 2021, he had applied for maintenance and child custody. However, his wife had not returned home until the time of this alleged incident. He had received \$25 per week from his wife as maintenance for his children.*
- (xiii) On 21 June 2022, an interim order was made. At that time his wife was staying in Koroipita, Lautoka and working at Bargain Box.*
- (xiv) In July 2022, his eldest daughter left during the school holidays. She went to stay with her mother, at Koroipita, Lautoka. She decided to stay with her mother. The witness said that he wanted to make his daughter a pilot.*
- (xv) The accused referred to an Interim DVRO Magistrate's Court/Family Division at Lautoka, bearing Application No. 269 of 2022. A copy of this order has been tendered to Court as Defence Exhibit DE2.*

- (xvi) *This was an application filed by Premila Devi against the accused. An order had been entered by the Resident Magistrate, on 18 July 2022 (which was a Monday). The order protects Premila Devi and Shafikha Mehnaaz Bibi (the elder daughter of the accused). Additional Orders have also been made for Police assistance to remove belongings (school staffing, school bags and clothes and personal belongings of Shafikha Mehnaaz Bibi) for the benefit of the protected parties. The matter was scheduled for mention in the Magistrate's Court of Lautoka on 28 July 2022.*
- (xvii) *The accused testified that the Police had taken him into custody for breach of DVRO (for not obeying lawful orders of Court) and produced him in Court. He had been released on bail.*
- (xviii) *On 21 July 2022, the witness stated that he had a case in the Family Court. The Resident Magistrate had given the next date as 26 July 2022.*
- (xix) *On 22 July 2022 (the day of the alleged incident), he went to meet the School Principal at Nadi Muslim School (for the Principal to try to reconcile the matter).*
- (xx) *The witness said that the last person who came to his mind was sister Suman (the deceased) as she had done reconciliation before. Accordingly, on 25 July 2022, after praying his afternoon prayer (Zuhar prayer), he had tried to call Suman on her phone. However, her phone had been diverted. So the accused had just thought that he should go and talk to her. He had decided not to take his car. So he had parked his car at the bowser (at the Service Station).*
- (xxi) *Since there were plenty of dogs he thought he would take a wheel spanner to protect himself. However, when he opened the boot of his vehicle, he had ended up taking a knife to defend himself from the dogs. He had also taken with him a bag. He had gone by taxi to the deceased's house.*
- (xxii) *The accused testified that at that time, there was nothing - no smoke or fire. When he got into the taxi (to leave), he saw the smoke coming from the deceased's house. On his way, he had purchased water and matches. The taxi had dropped him off at the Service Station (where his vehicle was parked).*
- (xxiii) *He had then proceeded to Nadi in his car. He had parked the car at the bowser (Service Station) and proceeded to the Nadi Police Station. He said an officer at the Police Station had told him what had happened (in Tomuka). He stated that he was just lost as to what had happened.*
- (xxiv) *The witness said that as a single parent he was going through a lot of hardship. He had gone to the deceased's house for his daughter – to ask his wife to release his daughter to him.*
- (xxv) *The accused was cross-examined that length and the prosecution case theory put across to him. The accused denied that he went to the deceased's house with intention to kill the deceased. The accused also denies that he attacked the deceased with the cane knife causing her death or that he set fire to her house.*

## **Analysis**

- [68] The prosecution in support of their case, called a total of 19 witnesses. The accused testified on his own behalf.
- [69] The burden of proving each ingredient of the three charges rests entirely and exclusively on the prosecution and the burden of proof is beyond a reasonable doubt. Therefore, it is incumbent on the prosecution to prove the elements of the three charges beyond reasonable doubt. I have made reference to the elements that the prosecution has to prove in respect of each count at paragraphs 8, 24 and 31 of this judgment. I have further elaborated on those elements in respect of the three charges.
- [70] Accordingly, in this case, the prosecution has to prove beyond a reasonable doubt that the accused, Shafil Ali; on 25 July 2022; at Lautoka; engaged in a conduct; and the said conduct caused the death of the deceased, Suman Lata; and that the accused intended to cause the death of the deceased or the accused was reckless as to causing the death of the deceased by his conduct.
- [71] In respect of count 2, the prosecution has to prove beyond a reasonable doubt that the accused, Shafil Ali; on 25 July 2022; at Lautoka; wilfully and unlawfully; set fire to the dwelling house of the deceased Suman Lata.
- [72] In respect of count 3, the prosecution has to prove beyond a reasonable doubt that the accused, Shafil Ali; on 25 July 2022; at Lautoka; without lawful excuse; threatened Kritesh Nand with injury to his person (by the use of a cane knife and with words); with the intention to cause alarm to the said Kritesh Nand.
- [73] As I have stated before, in this case it has been agreed by the prosecution and the defence to treat certain facts as admitted facts without placing necessary evidence to prove them. Therefore, those facts are considered as proved beyond reasonable doubt.
- [74] Based on the said admitted facts it is admitted that Shafil Ali is the accused in this case and was residing at Nawaka, Nadi at the time of the offence; and that Suman Lata is the deceased in this case and was residing at Tomuka, Lautoka, at the time of the offence.



[75] I have summarized the evidence of all witnesses led during the trial.

[76] The prosecution is relying on circumstantial evidence to establish its case. In a criminal case, the evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as the testimony of an eye witness. Circumstantial evidence is proof of one or more facts from which you could find another fact. Circumstantial evidence is evidence of facts that the Court can draw conclusions or inferences. However, these conclusions or inferences must be logical and reasonable.

[77] With regard to circumstantial evidence, the Fiji Supreme Court in *(Josateki) Lulu v The State* [2017] FJSC 19; CAV0035.2016 (21 July 2017); held as follows:

*[15] The direction given on circumstantial evidence by the trial judge in his summing up was as follows:*

*“In circumstantial evidence, you are asked to piece the story together from witnesses who did not actually see the crime committed, but give evidence of other circumstances and events, that may bring you to a sufficiently certain conclusion regarding the commission of the alleged crime.*

*In drawing that inference, you must make sure that it is the only inference that could be drawn, and no other inferences ... could have been possibly drawn from the said circumstances. That should also be the inescapable inference that could be drawn ... in the circumstances.*

*It is not sufficient that the proved circumstances are merely consistent with the accused person having committed the crime. To find him guilty you must be satisfied so as to feel sure, that the inference of guilt is the only rational conclusion that could be drawn from the combined effect of all the facts proved. It must be an inference that satisfies you beyond reasonable doubt, that the accused person committed the crime.”*

*[16] This was wholly correct, nor was his direction challenged before us. The proper direction is to be based on the following passages in Chamberlain v R (No 2) [1984] HCA 7; (1983) 153 CLR 521 per Gibbs CJ and Mason J at 535f:*

*“Similarly, in a case depending on circumstantial evidence, the jury should not reject one circumstance because, considered alone, no inference of guilt can be drawn from it. It is well established that the jury must consider “the weight which is to be given to the united force of all the circumstances put together”: per Lord Cairns, in Belhaven and Stenton Peerage (1875) 1 App. Cas. 278, at p. 279, cited in Reg. v Van Beelen (1973) 4 S.A.S.R. 353, at p. 373; and see*

*Thomas v The Queen* [1972] N.Z.L.R. 34, at pp. 37, 38, 40 and cases there cited.

*It follows from what we have said that the jury should decide whether they accept the evidence of a particular fact, not by considering the evidence directly relating to that fact in isolation, but in the light of the whole evidence, and that they can draw an inference of guilt from a combination of facts, none of which viewed alone would support that inference. Nevertheless the jury cannot view a fact as a basis for an inference of guilt unless at the end of the day they are satisfied of the existence of that fact beyond reasonable doubt. When the evidence is circumstantial, the jury, whether in a civil or in a criminal case, are required to draw an inference from the circumstances of the case; in a civil case the circumstances must raise a more probable inference in favour of what is alleged, and in a criminal case the circumstances must exclude any reasonable hypothesis consistent with innocence (see Luxton v Vines [1952] HCA 19; (1952) 85 C.L.R. 352, at p. 358; and Barca v The Queen [1975] HCA 42; (1975) 133 C.L.R. 82, at p. 104.*

*Per Brennan J at 599:*

*The prosecution case rested on circumstantial evidence. Circumstantial evidence can, and often does, clearly prove the commission of a criminal offence, but two conditions must be met. First, the primary facts from which the inference of guilt is to be drawn must be proved beyond reasonable doubt. No greater cogency can be attributed to an inference based upon particular facts than the cogency that can be attributed to each of those facts. Secondly, the inference of guilt must be the only inference which is reasonably open on all the primary facts which the jury finds. The drawing of the inference is not a matter of evidence: it is solely a function of the jury's critical judgment of men and affairs, their experience and their reason. An inference of guilt can safely be drawn if it is based upon primary facts which are found beyond reasonable doubt and if it is the only inference which is reasonably open upon the whole body of primary facts."*

- [78] In the instant case, the prosecution relies heavily on the evidence of Kritesh Nand, a nephew of the deceased and who was residing at the deceased's house at Tomuka at the time of the alleged incident. He testified that he had moved to Tomuka because he was studying at USP and needed a place to stay (he is originally from Ba). His aunty Suman Lata, was giving flats for rent. Since he had financial problems she had given him a room in her house. The witness was staying in a room on the ground floor of Suman Lata's house. He was paying Suman Lata about \$150.00 for food and accommodation per month.

- [79] The witness explained in detail the structure and layout of the deceased's house. It was a double story house. In the ground floor there were two flats – one was in the front, one was in the back. His room was between the two flats. When you enter the compound you see the stairs going to the top floor – that is where his aunt Suman stayed. The entrance to the other two flats were towards the front. But the entrance to his room was through the back. He had no washroom and kitchen in his room. So he had to go upstairs. The whole of the top floor was occupied by his aunt.
- [80] At the time of the incident the top flat was occupied by his aunty Suman and one Visha Latchmi, who was an elderly lady and a church member. Since she was sick his aunt Suman had brought Visha to her place to take care of her.
- [81] The witness said that his room is situated right under aunty Suman's bedroom. Aunty Suman's house was a wooden building, with the side walls covered with tin. The whole of the upstairs had a wooden floor. So even if someone is talking above you could hear below.
- [82] The witness testified to the events which took place on 25 July 2022. On that day, he had been in his room (downstairs). He had woken up around 10.30 in the morning and gone up to his aunt's flat to use the washroom and to have breakfast. His aunty Suman Lata had been there along with Visha Latchmi. The witness said that after having breakfast, he had come down to water the garden. He had taken the hosepipe and watered all the flowers around the compound. He had gone back to aunty Suman's flat between 12.00 noon and 1.00 p.m. and taken a shower.
- [83] Thereafter, he had gone down to his room while his aunty Suman had gone to sleep in her room. Visha had also been in the same room with his aunty. About 5 minutes later the witness said he had heard heavy footsteps entering the house and coming towards aunty Suman's bedroom. At first the witness said that he did not react. He thought someone had come to meet aunty Suman. His aunt's dog named Hoppy had been barking fiercely inside the house.
- [84] Kritesh Nand testified in Court as follows: "I could hear the dog was hit and then aunty Suman said Hoppy and then there was an argument between the person (a man) and aunty Suman". When asked to explain how he thought the dog was hit, the witness said:

“If you hit a dog it will make a sound in a moaning way – the dog was crying out in pain.” The witness continued that he could hear the man was shouting at aunty Suman in Hindi and he could also hear things breaking – he could hear drawer glass breaking. He said the man was asking the whereabouts of his wife. In Hindi he had asked “Where is my wife.” His aunt had replied in Hindi: “You go, your wife is not here.” The man was quite loud and he swore in Hindi stating “You have broken/spoilt my house, you motherfucker.”

**[85]** The witness said that all this happened in a very short space of time or instantaneously. Upon hearing this, he stood up and came out of his room. While standing at his room door he heard his aunty Suman called out to him in pain. She had called him by his nickname which is ‘Kunal’. He said his aunty was moaning in pain.

**[86]** The witness stated that he had started running from his room towards the stairs. There was a distance between his room and the stairs. As he approached the stairs, he could see Visha Latchmi who was half way down the stairs. Since she was elderly lady and having problems in walking, the witness had helped her come down the stairs. Visha Latchmi had then stated in Hindi “Don’t go upstairs, there is a man and he has hit/chopped aunty with a knife.” The witness said that he had directed Vishal Latchmi to his room. At the time she had told him in Hindi, “Don’t go up, he will kill you too.”

**[87]** Nevertheless, the witness had proceeded upstairs and gone all the way to the front balcony. He had gone up carrying a small stick which was lying there. He found the front door (the main door/entrance to the living room) was closed and the man was still inside. The front wall of the balcony was covered with louvre windows and the curtains were opened. So he could see inside. It was clear louvres through which he could see inside. There was a mosquito net but it did not block his vision. From where he was standing, he could clearly see aunty Suman’s room.

**[88]** The witness testified to what he had observed: “The dog was there – the dog was hurt but not dead. The man walked out of aunty Suman’s bedroom and I could see smoke coming out of the bedroom. There was a gallon lying at the door of the bedroom – a small 2 litre gallon..... Then I saw the man coming out of the room. The dog was lying outside. He was not dead. He tried to attack the man. That is when he used the knife on the dog. He was holding on to a bag in his hand and on the other hand, he was holding on to a knife which was fully covered in blood..... On his way out, he could see that the

man had used the knife on the dog. The knife struck the middle part of the dog's body and the dog was split into two. I closed my eyes, it was a big cut. The dog was close to my aunt. I couldn't see this."

**[89]** The witness said that he screamed out the dog by its name Hoppy. He could see smoke emanating out of aunty Suman's room. The witness reiterated that there was nothing obstructing his vision at the time. The witness testified that the man rushed towards him because he knew someone was outside (on hearing his scream). As soon as the man made this move, the witness said that he had hurried to go down. At the time he could hear the knife being swung behind him by the man, but he did not look back but just ran away. He said he was really scared. The man did not follow him. He had remained at the front balcony. The witness had run quite fast to the church on the other side of the house.

**[90]** The man had stood at the balcony for a few minutes. From the balcony, the man had said in Hindi, "If anyone comes, I will kill them too." He had then pulled the door shut (the witness said the door locks from outside) and walked along the driveway to the main road.

**[91]** Kritesh Nand testified that he clearly saw the person, although it was the first time he had seen this person. When asked the reason for remembering this person so clearly, the witness said: "He is the person who attacked me and my aunty. I will never forget his face." The witness clearly identified the man as the accused Shafil Ali.

**[92]** The witness continued that after the accused left the house, he could not enter the house to save his aunty as the door was locked and the flames were too high. The house was burning and the flames were really high. All the doors were locked and the house burnt fast. The witness said he was not able to go into his flat. He was only thinking of trying to save his aunty. The witness said that at the time he had looked through the window, he could hear aunty Suman scream and call out his name. The manner in which she was screaming and her tone at the time indicated that she was badly in pain. The last words he heard his aunty uttered in Hindi was, "Kunal save me". However, he could not do anything to save the deceased.

- [93] Several other prosecution witnesses, who are neighbours of the deceased, corroborate the fact that the accused was present at the time of the incident at the deceased's house. They are Siteri Draunivetau, her husband Sakeo Qativi, Sanjay Abhi Manu and Virendra Narayan, who was the Pastor and Caretaker of the Israeli Pentecostal Church, in Tomuka, Lautoka.
- [94] The Photographic Booklet of the Scene of Crime (Prosecution Exhibit PE9), clearly depicts the accused, armed with a cane knife, walking down the driveway of the deceased's house and walking towards the main Tomuka Road. The same photographs are also found in the Samsung Galaxy A12 Extraction Report (Prosecution Exhibit PE2) and the Samsung Galaxy A50 Extraction Report (Prosecution Exhibit PE3).
- [95] Prosecution witness Ashwin Vikash testified as to how the accused had on 25 July 2022, come up to him and asked to hire his taxi. He had a cane knife in hand which he kept in the boot of the taxi. The accused had told him to drop him at the Total Service Station in Tavakubu – opposite the Beer Factory. Accordingly Ashwin Vikash had dropped the accused near the ANZ ATM. He had seen the accused getting into a white coloured Prius vehicle, which was parked there.
- [96] The accused had then proceeded to the Nadi Police Station and surrendered himself the same afternoon. Police Constable 5862 Vishal testifies to this fact. The Officer stated that close to 3.00 p.m. on 25 July 2022, the accused had come to his office and said that he had killed and burnt one Suman Lata in Tomuka Settlement. Soon after, the accused had been taken into custody.
- [97] Acting Inspector of Police Martin Koli, testified to the verbal admissions made to him by the accused, while they were in a Police vehicle at the Pacific Energy Service Station at Nadi Back Road. The witness said that the accused admitted to going inside Suman Lata's house and striking her on the head with a cane knife on the said day. He had also struck her on her legs and her buttocks (the bum). He had then admitted to pouring kerosene from the bottle of kerosene that he took and setting the house on fire with matches.
- [98] Acting Inspector of Police Koli confirmed that he had made notes of the admissions made by the accused in his Police Note Book. He had done so contemporaneously (then

and there). The witness had brought the relevant Police Note Book to Court. The Police Note Book was produced in Court and examined by myself. It reveals that at 17.15 hours the witness was at Pacific Energy Station at Nadi Back Road. The recording of the admissions made by the accused commences at 17.25 hours. Pages 29 to 38 of the Police Note Book contains notes relating to the investigation into this case. The admissions made by the accused are found from pages 29 to 36.

**[99]** The State is relying on the said verbal admissions made by the accused to Acting Inspector of Police Koli. The accused is denying that he made any such verbal admissions.

**[100]** Having carefully considered the evidence of Acting Inspector of Police Koli, led during the trial, I am of the opinion that the said verbal admissions made to him were made voluntarily by the accused and that there was no general grounds of unfairness in the recording of the said statements. I am also of the view that the contents of the statements are true and accurate and that Court can rely and accept the statements as a true version of the incident which took place.

**[101]** These admissions are further corroborated by the evidence of the Forensic Pathologist, Dr. Praneel Kumar. He had conducted the post mortem examination of the deceased, on 27 July 2022. The Post Mortem Examination Report of the deceased, was tendered to Court as Prosecution Exhibit PE10.

**[102]** In his opinion the doctor testified that due to the excessive burning it was very hard to find any wounds or injuries or to establish the cause of death of the deceased. However, he can confirm that the charred remains was of a human body.

**[103]** The prosecution is also relying on the evidence of the Forensic Biologist, Nacanieli Gusu. He had conducted the DNA analysis in this case. The Forensic DNA Report prepared by the witness was tendered by the prosecution as Prosecution Exhibit PE18. As per the Report it is revealed that the deceased's DNA was found on the accused's left canvas shoe that he was wearing at the time of the incident.

**[104]** The accused totally denies the charges against him. The accused agreed to being at the crime scene on the date of the incident. He agrees going to the deceased's house with a cane knife and a green bag, although he denies taking a bottle or gallon of

kerosene with him. He also denies the allegation that he attacked the deceased with the cane knife or that he poured kerosene in her house to set it on fire. He also denies that he intimidated witness Kritesh Nand with the cane knife and with words intended to cause alarm to him.

[105] However, considering the totality of the evidence in this case, the defence version cannot be accepted as true and as such, the version of the accused is rejected.

[106] The accused attempted to impeach the credibility of certain prosecution witnesses (primarily Kritesh Nand and Sakeo Qativi) by highlighting certain inconsistencies and omissions in their statements made to the police, in comparison to the testimony given by her in Court. I have identified and made reference to the said inconsistencies and omissions when summarizing the evidence of the said witnesses.

[107] In ***Sivoinatoto v. State*** [2018] FJCA 68; AAU0049.2014 (1 June 2018); the Fiji Court of Appeal discussed as to how a Court should deal with issues arising out of contradictions and omissions. His Lordship Justice Gamalath held as follows:

*[9] When a court is dealing with the issues arising out of “contradictions”, “omissions”, it is necessary for the Court to carefully examine the impact that such discrepancy could have on the total credibility of evidence of a witness. As decided in the case of ***Appabhai v. State of Gujarat***, AIR 1988, S.C. 694, (1988 Cri.L.J.848) (a decision of the Indian Supreme Court).*

*“The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters, in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishment to their version perhaps for the fear of their testimony being rejected by the Court. The Courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.”*

*In the case of ***Arjun and Others v. State of Rajasthan***, (1994) AIR - SC-2507, it was held that; (A decision of the Indian Supreme Court).*



*“A little bit of discrepancies or improvement do not necessarily demolish the testimony. Trivial discrepancies, as is well known, should be ignored. Under circumstantial variety, the usual character of human testimony is substantially true. Similarly, innocuous omissions are inconsequential.”*

*[10] More often contradictions and omissions become the main tool used in courts to evaluate the testimonial trustworthiness of a witness's evidence. As defined in the Oxford Dictionary “contradictions” means ‘to offer the contrary’. On the other hand, if a witness has testified in the examination-in-chief on a certain thing which he has omitted to state in his statement to the police, it is called “omission”. If the said omission is on minor points, it is not contradiction and court will not take cognizance of those omissions. Court will take cognizance of those omissions which are on material points and they are called “contradictions by way of omissions”. In order to prove the omissions, it is necessary to find out as to what the witness has deposed before the court in the examination-in-chief.*

*[11] Any statement of a witness made to an investigating police officer does not form part of the evidence in trial. Court would not be looking into police statements of witnesses to find out the truth involved in a case. However, if any party to a law suit is depending on ‘contradictions’ or ‘omissions’ to assail the trustworthiness of the evidence of any witness, it is necessary not only to highlight the ‘contradictions’ or ‘omissions’, but also to prove them at trial, so that the court could consider the effect of them according to the criterion laid down in the decided decisions referred above.*

*[12] Whenever it appears in the proceedings of a trial that the witness's evidence is tainted with certain contradictions and/or omissions, opportunity should be given to such witness to explain the basis for such infirmities. If the explanation is plausible that would have a direct impact on the credibility issue.*

*[13] In the case of **Sri Cruz Pedro Pacheco v. State of Maharashtra**, 1998 (5) Bom. L.R. 521-1998 Crim.L.J.4628, it was decided that; (an Indian Decision)*

*“Credibility of the witness can be impeached only after obtaining his explanation for the contradictory statement and by pointing out that the explanation given by him is not true or unsatisfactory. Then only the Court will be in a position to consider whether or how far the credibility of that witness is affected in that court. It is absolutely necessary to give the witness an opportunity of explaining the alleged contradiction. It must be borne in mind that the trial has to be fair not only to the accused but also to the witness who may be the aggrieved party himself.”*

**[108]** I have duly considered the explanations offered by the said witnesses in respect of the inconsistencies and omissions in their evidence as highlighted by the accused. It is my opinion that the said explanations are reasonable and acceptable. As such, I am of the opinion that the reliability and credibility of the witnesses' evidence is unaffected.

[109] Considering the nature of all the evidence before this Court, I am satisfied beyond reasonable doubt, that it was the accused and no one else who had committed this crime.

[110] As to the fault element for the offence of Murder, from the evidence available this Court is satisfied that the prosecution has established beyond reasonable doubt that by his conduct the accused intended to cause the death of the deceased. However, even if it is said that there may be some doubt that the accused intended to cause the death of the deceased by his conduct, I am of the opinion, when analysing the available evidence, that there is absolutely no doubt that the accused was reckless as to causing the death of the deceased. The accused was well aware of a substantial risk that death will occur due to his conduct and having regard to the circumstances known to him, it was unjustifiable for him to take that risk.

[111] Having analysed all the evidence in this case in its totality, I am of the opinion that the prosecution witnesses were all truthful, credible and reliable in their testimony.

[112] Considering all the above and having analysed the evidence led in this case in its totality, I am of the opinion that the prosecution has proved the three charges of Murder, Arson and Criminal Intimidation against the accused beyond reasonable doubt.

[113] In the circumstances, I find the accused guilty of the three charges of Murder, Arson and Criminal Intimidation with which he is charged.

[114] Accordingly, I convict the accused of the three charges of Murder, Arson and Criminal Intimidation with which he is charged.

**Riyaz Hamza**

**JUDGE**

**HIGH COURT OF FIJI**

**AT LAUTOKA**

Dated this 09<sup>th</sup> Day of October 2024

**Solicitors for the State:**

**Office of the Director of Public Prosecutions, Lautoka.**

**Solicitors for the Accused:**      **Accused in Person.**