

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

**CRIMINAL CASE NO. HAC 178 OF 2018**

**STATE**

**-v-**

**MONEEL YOGESH NARAYAN**

Counsel : Ms R. Uce for State  
Mr J. Singh with Ms K. Kumar for Defence

Dates of Hearing : 26 March 2025 - 04 April 2025  
Closing Submissions : 23 April 2025  
Date of Judgment : 28 April 2025

**JUDGMENT**

1. This case is about a murder committed in a domestic setting in Fiji. The Accused was the husband of the deceased. He was arraigned on the following information filed by the Director of Public Prosecutions:

*Statement of Offence*

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

*Particulars of the Offence*

2. The Accused pleaded not guilty to the charge. At the ensuing trial, the Prosecution presented the evidence of nine witnesses. At the close of the Prosecution's case, the Court, being satisfied that there was a case for the Accused to answer, put the Accused to his defence. The Accused elected to remain silent and not to adduce any evidence on his behalf.
3. The Counsel sought several adjournments to file written closing submissions and eventually filed their written submissions on 22 April 2025. Having considered the evidence presented at the hearing and the respective written submissions of the parties, I now proceed to pronounce my judgment as follows:

#### **Burden of Proof and Standard of Proof**

4. The Accused is presumed innocent until he is proven guilty. The onus or the burden of proof rests on the Prosecution throughout the trial, and it never shifts to the Defence. There is no obligation or burden on the Accused to prove his innocence. The Accused's exercise of his right to remain silent must not be held against him nor made adverse inference against him. The Prosecution must prove the charge beyond reasonable doubt. If there is a reasonable doubt, so that the Court is unsure of the Accused's guilt, the Accused must be found not guilty and acquitted.

#### **The Elements of the Offence of Murder**

5. To prove the offence of Murder, the Prosecution must prove beyond reasonable doubt that the Accused, Moneel Yogesh Narayan, was engaged in wilful conduct with the intention of causing the death of the deceased, Sonika Shivanjini Singh (Sonika), or he was reckless as to causing the death of the deceased and that the wilful conduct of the Accused caused the death of the deceased.

6. The Prosecution alleges that the Accused was engaged in wilful conduct, namely, that he strangled the deceased to death. The charge of murder requires the prosecution to prove that the accused's wilful conduct caused the death of the deceased. The charge of murder also requires the prosecution to prove state of mind that demonstrates his murderous intention or his recklessness in causing the death of the deceased at the time of the alleged wilful conduct, namely strangulation. This necessitates drawing inferences based on all the circumstantial evidence relevant to the issue of his intention or recklessness. Drawing inferences inevitably involves applying common sense alongside the fact-finder's understanding of the world and its operation based on established facts.
7. The Prosecution relies on the confessions/ admissions the Accused has allegedly made to police in the caution interview. A *voir dire* hearing was conducted by Mr Justice Sharma, who, in his lengthy Ruling, held some parts of the caution interview admissible. Since I did not have the benefit of hearing the witnesses and observing the witnesses' demeanour at the *voir dire* hearing, I allowed the parties to ventilate the issues raised for admissibility at the trial to an extent for me to be satisfied that the Accused had told the truth in those admitted parts of his caution statement.

### **Circumstantial Evidence**

8. Apart from the confessions/ admissions, the Prosecution's case is substantially based on circumstantial evidence.
9. The circumstantial evidence can, and often does, clearly prove the commission of a criminal offence, but two conditions must be met. Firstly, the primary facts from which the inference of guilt is to be drawn must be proved. 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 that are so proved. Equally, it must be shown that when taken together, the only reasonable inference that can be drawn is incompatible with the

innocence of the Accused. The drawing of the inference is not a matter of evidence: it is solely a function of this court based on its critical judgment of men and affairs, common sense, experience and reason.

10. In a circumstantial case, the fact finder must look to the combined effect of several independent items of evidence when considering the charge. While each separate piece of evidence must be assessed as part of the inquiry, the ultimate verdict on each charge will turn on an assessment of all items of evidence viewed in combination. The underlying principle is that the probative value of several items of evidence is greater in combination than the sum of the parts. The analogy that is often drawn is that of a rope. One strand of the rope may not support a particular weight, but the combined strands are sufficient to do so.

#### **The Admitted Facts**

11. The parties have agreed to the following facts before trial under Section 135 of the Criminal procedure Act. Therefore, the Prosecution is not burdened to prove these facts and can be accept by Court as having been proved.

- (1) The Accused is Moneel Yogesh Narayan also known as Mona of Malamala, Nadi.
- (2) Sonika Shivanjini Singh of Nawaicoba, Nadi is the wife of the Accused.
- (3) They had two daughters together namely Nanika Madhvi Narayan and Navia Naila Narayan
- (4) He was not staying with his wife because they had some family problems.
- (5) They were separated on 18<sup>th</sup> July, 2018.
- (6) They had a matter pending in Lautoka Magistrates Court for Child custody in the year 2018
- (7) The mobile number 8352795 belongs to the Accused person
- (8) The mobile number 9442708 was registered on Moneel Yogesh Narayan's name but was used by Sonika Shivanjini Singh

- (9) The following documents is agreed to the Call Records from Vodafone Fiji for mobile number 8352795 belonging to Moneel Yogesh Narayan, the call record from Vodafone Fiji for mobile number 9442708, the Certificate of Marriage of Moneel Yogesh Narayan and Sonika Shivanjini Singh and the Interim Domestic Violence Restraining Order dated 18 July 2018

12. Having discussed the relevant legal background and the admitted facts, I shall now summarise the salient parts of the evidence presented in the trial which I consider important to resolve the issues in this case.

### **Case for Prosecution**

#### **PW1- Pradeep Singh**

13. Pradeep Singh (Pradeep) has been residing at Nawaicoba, Nadi, for the past 30 years. He has two sons and had a daughter named Sonika Shivanjini Singh (Sonika). His two sons are police officers. In September 2018, he was residing with his wife, son Shanil, his wife and his daughter Sonika.
14. In 2018, Sonika was working at In-Fashion, a clothes shop, in Nadi. She eloped with Moneel Yogesh Narayan (Moneel), the Accused and was residing in Malamala, Nadi. They together raised two daughters. Two months preceding 11 September 2018, Sonika came home to live with him at Nawaicoba, leaving behind her two daughters with Moneel. That was after a family dispute.
15. On 11 September 2018, at around 5 pm, his wife called to inform him that Sonika had not returned from work. He called In-Fashion and found out that Sonika had not gone to work. On that day, Sonika was supposed to go to work and also attend court. He informed the Nawaicoba Police Post that Sonika had not returned home.

16. Pradeep then said it was on 10 September 2018, which was a Monday, and not on the 11<sup>th</sup> that Sonika had not returned from work. He, however, said at least thrice that it was on 11 September 2018 that Sonika had not returned home. The next day, after observing for 24 hours, he went to file a missing person report for Sonika. The police officers started searching for Sonika and arrested Moneel.
17. Under cross-examination, Pradeep said that Sonika eloped with Moneel against his will and wanted her to come back. Moneel's father told him that Sonika was refusing to go back. For that, he did not get angry. However, he did not want to do anything with Sonika's life from then onwards. He knew they had fights amongst themselves because, whenever they fought, Sonika used to come back home.
18. He stated to police on 14 September 2018, which was tendered by Defence as DE1 to prove his so-called prior inconsistent statements. He agreed that he hated Moneel and blamed him when Sonika went missing. He had no idea when Moneel got arrested because he was not present at the Nadi Police Station at that time.

**PW 2 - Ram Narayan Prasad (Prasad)**

19. Prasad has been residing at Malamala in Nadi since 2012. In 2018, he was residing with his wife, two granddaughters and his son, Moneel.
20. On 11 September 2018, he dropped Moneel at his workplace in Aaralevu at 6 a.m. and returned home. He took his car to town and then went to Lautoka with his wife and two granddaughters to see their aunt. Moneel called 2-3 times to inquire about his daughters. In the afternoon, he returned to Malamala at around 5 pm. Moneel was not home when he returned.
21. On Friday morning, the police called Moneel and asked him to come to the police station. Moneel went to the police station with her sister. Moneel was kept at the police station for seven days to record his statement about his missing wife. He went to the police station on

Saturday (the next day) with his daughter Riteshni, his wife and granddaughters and talked to Moneel for about 1 to 2 minutes and asked him how he was.

22. Having perused the previous statement to the police, and the manner he was giving evidence in Court, Ram Prasad was declared to be a hostile witness and allowed the Prosecution to cross-examine him. PW2 said under cross-examination by the Prosecution that when he returned home from Satya's place after midnight, he saw Moneel sleeping.
23. The trial was adjourned because PW2 complained of chest pain. He continued his evidence two days thereafter.
24. Under further cross-examination, PW2 agreed that Moneel was with Sgt Anil when he met Moneel at the Bure. Moneel said he was well, but he looked distressed. Then Moneel told that the police officers, who smelled of liquor, tied a cloth over his eyes. Then, Sgt Anil told him to go and bring Neeraj (PW8), to whom he had sold his car.
25. When Neeraj was brought in on Saturday from Aralevu, he was allowed to speak to Neeraj. The police officers took Neeraj into a room. Sgt Anil told him to go and inform Moneel that, whatever had happened, take the blame on himself. He heard Moneel yell at him *Save me, Papa, save me!* When he called Moneel, the police officers brought Moneel to him.
26. Then he asked Moneel why he was yelling. Moneel said that one of the police officers had beaten him up on his testicles. Sgt Anil asked him to go and tell Moneel to take the blame on himself, otherwise they will lock him up also. Sgt Anil was also present with Moneel at that time. He conveyed this to Moneel. Then, Sgt Anil called him and locked him up in the cell till the afternoon.
27. On Sunday, he took his wife and the two granddaughters with him to the Police Station and recorded a statement for two hours. He gave his statement voluntarily, but they did not let him read the statement; they just told him to sign it. The police officers locked him up on Sunday as well after recording his statement for two hours. On Monday, he came to the police station to lodge a report against the police for locking him up, but nobody took his Statement.

28. He admitted to having recorded his statement on 23 September 2018 but denied having stated what is recorded in the last paragraph (5) of page 2 of the statement. However, he admitted to police that her daughter wanted to put up a fence. He agreed that Moneel arranged the digger operator and, on 18 September 2018, the digger operator came to level where the old well was.
29. Under cross-examination by the State Counsel, PW 2 denied the proposition that Moneel did not tell him that the police had beaten his testicles; that the police never locked him up and that he had told Moneel to tell the truth to the police without hiding anything and that Moneel started crying when he said that he will tell the truth to police. He also denied having heard Moneel say in Hindi, *it's finished*, when he had asked what had happened. He agreed that when he went to the police station on Sunday with his wife and his two granddaughters, the police had allowed them to spend some time with Moneel at the police *bure*.
30. Under Cross-examination by the Defence Counsel, PW2 said that the statement recorded by police on 23 September 2018, was not read back to him before signing. He signed because four officers forced him to sign, otherwise, they would lock him up again. Neeraj came to Nadi Police Station on Saturday (22). He did not tell Neeraj what to tell the police.
31. He denied meeting Moneel anytime at the Nadi Police Station on 22 in the presence of Sgt Anil where Moneel said *'I am letting go of my ego and I now want to tell the truth and confess, and I will now tell the truth, and I will confess*. He can't recall if Moneel was crying at the police station. He admitted meeting Moneel once with his Counsel when Moneel was on bail.
32. There was some excavation work carried out in his compound to prevent the goats from falling into that well. Five to six months before this excavation, two goats had fallen in to the well and burnt in the well. Moneel had given \$100.00 to be given to the digger and the balance was given by his daughter.



33. Under cross-examination by the State Counsel, PW2 denied making up a story to save his son. When he was questioned by the police, he did not tell this story because nobody had asked. He was not present when the police came to dig their compound.

**PW3 Acting Inspector Josateki**

34. IP Josateki is currently serving at the Forensic Service Division of the Crime Scene Investigation (CSI) Department. In September 2018, he received instruction from Inspector Jitoko to attend to this case. He processed a car concerning the missing person. This car was parked at a garage in Sonaisali Road. He examined the vehicle and looked for relevant evidence that might link to the case. Cop Anasa took photographs of the vehicle. They uplifted a lady's dress that was found in the boot. It was sent to the lab for DNA testing by IP Jitoko.
35. Then they proceeded to the alleged crime scene, which is Moneel's family house in Malamala. The Nadi police officers had already arrived at the scene. He took photographs and prepared a photograph booklet. Anasa prepared the sketch plan of the scene (tendered by agreement as PE 2A & PE2B). Then they went to the place where the deceased is suspected to have been buried. The digger had started digging that place where fresh soil debris were seen pushed together into that particular area probably by a machine. He took photographs of the house, where the well was, the shed where the wheelbarrow was found and the bone like material (white debris believed to be human remains) unearthed. Each evidentiary material was packed sealed and numbered. He tendered the photograph booklet (PE1) and described the photos therein.
36. It took two days, Saturday and Sunday, to complete the photography and crime scene investigation. The white debris believed to be of human remains was packed, sealed numbered and given to IP Jitoko.

37. Under cross-examination, Josateki admitted that no dusting for fingerprints were done on the vehicle. The dress found in the vehicle was not shown to the lady's family to confirm whether it belong to her or not. The DNA test produced no results because there was no reference sample to compare.
38. The CSI team could not find any material that could be used for burning or lighting a fire. They found only burnt pieces of wire depicted in Photograph Nos. 12 and 13, suspected to be from the vehicle tire. Photographs were taken of the digging, but not included in the booklet.
39. The places from where the bone-like material was found were marked as 2A & 2B and photographed. He said the pieces of bone-like material collected are depicted in Photograph 19. He can't recall the marking he put on the yellow plastic that wrapped the bone-like material. The date written on the booklet (12 September 2019) is the date the missing report was lodged. The photographs were taken on 22 & 23 of September 2019. When he reached the scene at Malamala on 22 September 2019, the suspect was there.
40. Under re-examination, Josateki said that the dusting for fingerprints was not done on the vehicle because it had been exposed to dust and mechanics during the period between 12 September and 22 September. Photograph No.12 is the overview photograph of the debris. The debris collected from the dried-up well is depicted in photograph No.19. The debris depicted in photos 16, 17 and 18 was packed together in the yellow plastic.

**PW4 Inspector Sakiusa Jitoko (Jitoko)**

41. Jitoko is attached to the Forensic Science Unit as the Deputy Director- Forensic Science, overseeing the operations in all the Divisions throughout Fiji. In September 2018, he was the OIC of the CSI Unit at the Lautoka Police Station. On 22 September 2018, SP Suliasi instructed him to examine a suspected vehicle parked in a garage at Sonaisali Road, Nadi, regarding the missing person reported on 12 September 2018.

42. He attended to the scene with Sgt. Josateki and Constable Anasa. They inspected a grey colour Toyota Caldina, bearing registration number EF052, of which the photographs were taken. The garage owner informed that the vehicle was brought in by one Neeraj on the 17<sup>th</sup> of September. During the search, they found a purple and black sleeveless lady's dress in the boot of the vehicle. It was photographed and uplifted by Sgt. Josateki. No other forensic evidence was found on the vehicle. The dress was brought and dispatched to the Investigation Team for identification. The vehicle was not dusted for fingerprints because it was covered with dust.
43. After the examination of the vehicle, he received a call from Sgt. Anil for them to visit the suspect's house in Malamala. Upon arrival at the suspect's house, he instructed Sgt. Josateki and Anasa to photograph the scene. Anasa was directed to prepare a sketch plan of the scene. The rough sketch plan (PE2A) and the fair sketch Exhibit (PE 2B) were tendered in evidence.
44. The suspect's parents with their kids were present in the house. The Nadi Police CID team with Sgt Anil were already there at the scene by 4.20 p.m. He could not find any forensic evidence in the house. According to the briefing by Sgt Anil, he directed himself to the place where the deceased was believed to have been buried. It was about 33 meters away from the house and appeared to have been recently excavated. They took the photographs of that place and informed Sgt Anil to call a digger to assist them in digging that place. Sgt Anil showed him a wheelbarrow and everything important found at the scene. The wheelbarrow was handed over to the Investigation Team.
45. In the evening, they returned to the Nadi Police Station. After a short briefing, they resumed the scene investigation the next day, 23 September 2018. A digger came and started digging the place. About 2- 3 meters down, some burnt wires mixed with burnt rubber and bone like white substance came out from the well. The debris found on the well was separated from soil, examined, photographed, packed and marked at the scene.
46. All those items were returned to Nadi Police Station. They were in his custody at the lab in Lautoka until they were dispatched to the Forensic Lab in Suva on the 24 September 2018,

the next day. He dispatched the bone like items to the DNA Forensic Lab where one Apole acknowledged receiving the same by signing the Chain of Custody Form. Burnt wires from the well and the lady's dress from the boot of the vehicle were handed over to the Investigation Team.

47. On the 24 September 2018, he took buccal swabs from the deceased's parents at Nadi Police Station and, along with the swabs taken from the oil like substance found on the wheelbarrow, he submitted them to the Bio lab in Suva on 25 September 2018 for DNA analysis. The receipt of which was acknowledged by Scientific Officer Paulini.
48. Having perused the Photograph Booklet (PE1), he confirmed that they were the photos taken from Sonaisali as well as Malamala. He described each photograph in detail. The bone like items depicted in photo Nos.18 and 19 were packed together in a yellow plastic as depicted in the photographs. Explaining the reason why there were two separate batches of bone like items, marked as 2A and 2B, Jitoko said that each batch was collected from two separate buckets (of the digger).
49. Under cross-examination, Jitoko agreed that photo 19 depicts mixture of everything that was collected from what photo Nos. 16, 17 and 18 depicted. He believes that 2A and 2B were packed separately. He admitted that the Chain of Custody Form was not with him in Court.

**PW5 Vishal Kumar (Vishal)**

50. Vishal is currently a businessman. He used to be a Detective Constable before he started his business. In September 2018, he was based at CID, Nadi Police Station. On 21 September 2018, he was appointed to investigate a case of a missing person. He started off the investigation by recording statements, uplifting call records from Vodafone Fiji and a copy of the DVRO from Magistrate Court relating to the missing person Sonika and her husband Moneel. Moneel was questioned when he visited the police station to check on the missing person report as a suspect because he was already on a DVRO.

51. He recognized the call records of Sonika Singh (PE 3B for 8769315) and two call records under the name of Moneel Narayan (PE3A1 for 8352795) and (PE3A2 for 9442708) which he had obtained from Vodafone Fiji by the Cybercrime Unit and tendered them in evidence (the last two call records are part of admitted facts). A copy of the DVRO dated 18 July 2018 uplifted from Lautoka Magistrate Court (PE4) and the marriage certificate (PE5) were also tendered in evidence. The call records were uplifted to find out the last person who had contacted the missing person. There had been a lot of call exchanges between Moneel and his wife on the day she was reported missing and the day before.
52. The call record for mobile phone number 9442708 that was being used by Sonika (PE3A2) showed a series of incoming calls made by the phone number 8352795 (PE3A1) that was being used by Moneel on 11 September 2018. (It is admitted that 9442708 was being used by Sonika). These calls had been received by 9442708. There were three calls made by 8352795 and received by 9442708 on the 11 September 2018 and the last call was made at 20.40.11 (8.40 pm), but no call duration was recorded either because the phone was switched off or not answered. The last conversation (answered call) for 16 seconds was recorded at 6.47 a.m. on 11 September 2018. Moneel and Sonika were the only people who were in contact that day.
53. Vishal also interviewed Moneel under caution from 21 -23 September 2018 at the CID office of Nadi Police Station. At the beginning, Moneel was interviewed as a suspect in a missing person report. He arrested Moneel when he visited Nadi Police Station because Moneel was the last person in contact with the missing person. The interview was conducted in English in the presence of DC Anil Kumar (as he then was) witnessing officer. The suspect was cautioned and given his constitutional rights. The suspect appeared normal before and throughout the interview, and he made no complaint. The interview lasted three days because the search for the missing person was still in progress. The suspect gave all the recorded answers on his own free will and he signed on each page. The suspect was not assaulted threatened or intimidated by any police officer; no promise was given to the suspect to extract a confession. The suspect was given sufficient breaks. During breaks, he spoke to his family members, parents and sisters in private in

recreational *area*. Most of the time, they were waiting somewhere around the police Station.

54. After the interview, the suspect was given ample time to read and understand the record which he signed voluntarily. He recognized the record of interview and tendered (PE6) it in evidence. He read the questions and answers recorded till Q & A 179 which were held admissible at the *voir dire* hearing.
55. The suspect started making admissions after Q&A 179. After the suspect made admissions, the interview was suspended because he had stated that he had strangled his wife and later destroyed the body. Upon hearing this he informed his superiors to call the forensic experts and cordon off the area to do the investigation at the scene.
56. After receiving answer to Q179, he checked with Corporal Anil if the suspect had made that admission to him. Corporal Anil was present throughout the interview. He did not threaten or make any promises to the suspect to make any admissions. He was present at the scene with the CSI Team during excavation from which fragments or the bones were collected. He escorted the suspect to the scene with Corporal Anil. He received a copy of the photographs that were taken at the scene in his presence.
57. After the interview was concluded, the superior officers decided to charge the suspect for murder of his wife based on the last communication and the admissions he made. During the breaks, when the suspect requested for him to have a talk with the family members, he remained in the Crime Office while Corporal Anil was with the suspect on the recreation *bure*. Most of the time, the family members of the suspect were waiting outside the police station premises because they were eager to know what had happened to the suspect. The suspect's father was never locked in a police cell.
58. Under cross-examination, Vishal agreed that the information to obtain the search warrant from court on Vodafone Fiji (disclosed to the defence) was effected in February 2022 and that the call records were uplifted approximately four years after the suspect was charged.

59. The Cybercrime Unit had intervened to get call records before the suspect was arrested. At this stage, the Prosecutor revealed another set of information/ search warrant obtained by the witness on 22 September 2018 (tendered by Defence as DE3A and DE3B). He agreed that the call records were still not available to him when the suspect was arrested on 21 September 2018 and therefore, he had not known that the last person to call the missing person was the suspect.
60. Vishal could not recall if the DVRO was in his possession when the suspect was arrested. He could not recall if the father of the missing person had ever complained to him that Moneel was responsible for his daughter's disappearance.
61. Vishal agreed that Sonal, the brother of the missing person, had come to Nadi Police Station enquiring about his sister as a concerned brother. He agreed that Moneel, before his arrest, had come to the police station several times inquiring about his missing wife. He agreed that the mere fact that the Accused was the last person in contact with his wife on the phone does not suggest that the Accused was the last person being with his wife.
62. Vishal agreed that SIM number registered under Sonika's mobile number (8769315) had recorded nil outgoing calls. He disagreed that the last communication with the missing person was done from mobile number 2126687. He agreed that the Accused had called the missing person's phone on 11 September 2018 at 6.47am. for 16 seconds and that was the last communication between the two.
63. Vishal agreed that zero duration calls had been recorded at 2040 Hrs (8.40 pm) on the Accused's call record for 11 September 2018 and on the 12 September at 6.50 am, having been made on the missing person's phone. He agreed that if the Accused had killed Sonika on 11 September 2018 between 6.30 am and 6.30 pm, it made no sense that the Accused was trying to get in touch with Sonika at 8.40 pm on the same evening and at 6.50 am on 12 September 2018. He agreed that these two call records were not put to the suspect at the interview. He said he could not locate any of the phones used by the missing person.

64. Vishal admitted that he had never asked questions in the caution interview about the DVRO (PE4) but asked only about the child custody case (at Q58), and that DVRO did not contain a non-contact order. He agreed that the two pieces of evidence he said he used to form a reasonable suspicion against the Accused were not put to the Accused.
65. He agreed that the right to remain silent and the consequences of not remaining silent under Section 13 of the Constitution were not correctly put to the suspect at Q6 of the caution interview. He denied having unduly influenced the suspect to answer the questions. Although not noted in the record [at Q 58, Q115 and Q118], the breaks were given to the suspect to see his family on his request as he knew they were there in the vicinity.
66. Vishal disagreed that the breaks were given to the suspect at short intervals for him to meet his family was a tactic to soften him to admit to the offence. He denied that he arrested the Accused because he had formed a negative opinion about the Accused after he was influenced by the family members of Sonika.
67. Vishal agreed that he, in the presence of the Forensic Team, had asked Moneel to point out where he is alleged to have strangled the alleged deceased. He agreed that Moneel was escorted to the place where he burnt and buried the alleged deceased and the forensic team took photos at the same time.
68. When the interview was suspended after Q.175 at 1638 *for Moneel to talk with his father Ram Narayan and Sister Madhu Prasad in privacy and have a break*, he had already, at Q 173, had mentioned that Anil was also part of this meeting. (Q. 173). *That I wish to inform Moneel that Detective Corporal Anil will be present during the conversation with the father*). He disagreed that Anil was not part of this conversation that took place between Moneel and his father/sister.
69. In answer to Q. 179 the Accused said:

*‘no but I want to tell you I have informed Corporal Anil in the presence of my father that I killed my wife by strangling her to death at our house in Malamala, Nadi and later burnt her body in a dry water well full of dried wood and diesel near my house.*



*I have agreed to show the police the place where I burned the body which was later covered by the Digger.*

- 70. Vishal disagrees with the Defence Counsel that this answer is not the truth.
- 71. Under re-examination Vishal said that he didn't include Anil's name in Q 175 at 1638 Hrs because he did not take note of that. He confirmed that calls made after 6.47 am. on 11 September 2018, recorded 0.0 duration.

**PW6 Detective Sergeant Anil Kumar**

- 72. In September 2018, Sgt Anil was based at Nadi Police Station in the Criminal Investigation Department as the Supervising Officer. On 21 September 2018, a missing person report was lodged with the Uniform Branch. Because of the delay, concerns were raised, and calls were coming from Police Headquarters for Criminal Investigation Department to take over the investigation.
- 73. He appointed DC Vishal of the CID team at Nadi Police Station to be the Investigating Officer. The call records obtained through the Cyber Crimes Unit established that, on that particular and prior to that day in question, there had been conversation between the missing person and her husband Moneel. Information received that they were going through some family problems, and they were staying separately.
- 74. More detailed investigation was carried out and, finally, the investigating officer was advised to call Moneel, the husband to the Station. That was prior to his formal interview. When Moneel came to enquire about his wife, the decision was made to arrest and interview him under caution.
- 75. Sgt Anil was the witnessing officer at Moneel's interview conducted at the Crime Office by Corporal Vishal on 21 September 2018. When the 48-hour detention period was over, the CID Headquarters instructed them to continue with the interview because they were still waiting for the test results from Australia. All constitutional rights were afforded to the suspect. The suspect was given adequate breaks during the interview for him to rest and talk to his family in the recreation area. He was present in the vicinity whenever the

suspect had taken his breaks. The suspect was not intimidated, threatened, assaulted or given any false promises to make a statement. The suspect provided all the answers He confirmed PE6 to be the record of interview of Moneel Narayan.

76. Sgt. Anil, in one of the conversations, spoke to the father of the suspect on the second day of the interview (22 September 2018). When he was going to the toilet, he overheard adult people crying. He was concerned so he came into the *bure*. He saw both Moneel and his father crying with their family. He wanted to know what was happening. He heard them in a conversation where Moneel was telling his father that he had given his wife everything, she had betrayed him. While he was still crying, Moneel said he did it. The father tried to calm him down and informed him that Moneel had done a crime and wanted to confess. Moneel, in his presence of his father, said that he had strangled his wife and later loaded her in a wheelbarrow, taken her to one isolated well near their house and dumped her inside, put the old tires and some firewood and burnt his wife for three days, then he had hired two excavators to cover the well.
77. He told them that whatever had happened had happened, but it's good that he was letting it out so the police could do their job. No other police officers were present in the *bure* at that time. The confession was made voluntarily. After that, Moneel was taken back for the formal interview, the question was put to him if he could show the place where the well was and where the incident took place and what vehicle he used. Moneel took them to the scene, where he dumped the wife after struggling her.
78. When referred to Q & A 179 of the Record of Interview, Sgt Anil confirmed that it was the answer that Moneel had given at the interview soon after the conversation he had had with Moneel and his father at the *bure*. After making the confession, Moneel appeared relaxed because he had let his emotions out. At the conclusion of the interview, he ensured that the suspect was medically examined and seen by a Justice of Peace.
79. Under Cross-examination, Sgt Anil said that the request for call records was made during the investigation. The initial report came before the arrest, but a formal report was obtained later.

80. Before the arrest, they had information that Moneel had used a vehicle, and it had crossed somewhere near the MH Supermarket in Nadi Town where the missing person was seen around. He agreed that this information is not reflected on his statement dated 25 September 2018 (DE3).
81. Sgt Anil said that when a suspect goes on a break and talks to his family members, he is not bound by the caution that he had the rights to remain silent. Moneel made a request to see his father when he was informed that his father had come. He agreed that there was no conversation during the interview that he will go together with the suspect to talk to the father. He agreed that his conversation with Moneel's father is not contained in his witness statement.
82. He agreed that Moneel was not cautioned during the break before he made the confession because he had already been cautioned inside the interview room. At Q. 173 the question was *would you like to consult your lawyer* the answer is *no maybe later. I have talked to the father in private at the police bure and I request to talk to Anil police and my father in isolation*. It was after this conversation that the interview got suspended after Q. 175.
83. After that the interview was suspended and, after two more questions, the interview was again suspended and recommenced at Q.179 where the alleged confession was made. He disagreed that there were two versions as to the circumstances that led to the alleged confession being made. He denied that the Accused was allowed to meet his family members on very short intervals because they were engaged in an unlawful conduct of threatening the accused and his family members in order to obtain a confession.
84. Under re-examination, Sgt. Anil said that the Fiji Police Force has entered into an agreement with the network providers that only the Cybercrime Unit have access to the records. There is a specific officer who deals with all the network providers. He confirmed that the breaks that were given to the suspect to see his family members were given upon his request. The reason why he did not specifically mention in his witness statement about the confession made during the break because he considered the breaks to be part of the

interview. The confession suddenly came out during the break. Although he had not cautioned the suspect, the interviewing officer cautioned the suspect at Q 173 before the break.

*Moneel Yogesh Narayan, I wish to inform you that because the detective Corporal Anil will be present during the conversation with your father. You are reminded that you are not obliged force compel required to say anything unless you wish to do so. But you have to say in presence of Detective Corporal Anil may be put into writing and given evidence. You understand the nature of question given to you. Yes.*

**PW7 - Paulini Saurogo (Paulini)**

85. Paulini is the Senior Scientific Officer at the Fiji Police Forensic Biology and DNA Laboratory since 2014. She explained her qualifications and experiences and her current responsibilities as an expert in her field. She also explained in detail the process by which the scientific findings on DNA analysis is obtained.
86. Upon receipt of the exhibits of evidence at the counter, they were stored in the optimum temperature awaiting case registration and assignment of a case officer. In this case, the suspected bone remains, wet and dry swabs from the crime scene, particulars from the wheelbarrow and the reference buccal samples of the deceased parents, a lady's top were received by Salome Apole from Inspector Jitoko Sakiusa of the CSI, Western Division.
87. Paulini tendered the report she had prepared (PE7) and she explained the work she had done in this case. The suspected bone remains that had been wrapped in a brown colour bag were assigned to Eta Kedrayate to do the general examination and cleaning for the extraction process. That was the first stage to isolate the DNA on that sample. The second stage, the DNA quantitation process was carried out by Naomi Tuitoga to determine the amount of DNA in the sample tested. The DNA could not be obtained from this samples due to insufficient DNA quantity in the bone material.
88. According to the summary there was no sufficient DNA profiles extracted from the bones. There was some DNA quantity, but it fell below the detection limit. This result could have

been caused due to significant degradation, for example, the bones having been exposed to high temperature causing the DNA to break down.

89. The kit used in the lab was specifically designed for human DNA extraction and not for other species. In sample 1.C2, the cuttings from the exhibit 1, the concentration that obtained was 0.001 genogram per microliter. This low concentration /low detection confirms that there is a presence of human DNA in the sample that was tested. They don't usually put the concentration or the quantity of DNA into their reports, but generally put it as being insufficient when it fell below the detection limit. They don't generally mention in their reports that the bones were from a human Skelton.
90. Under Cross-examination, Paulini said that Apole Salome had received the first batch of submissions at the lab on the 24 September 2018. A copy of the chain of custody form is generally retained by the lab and the original would be given to the CSI team, in this case to IP Jitoko. She agreed that a Forensic Anthropologist has the expertise to identify the charred bones and confirm whether they are human or otherwise.

**PW 8 - Neeraj Shankar (Neeraj)**

91. In September 2018, Neeraj was employed as a driver. He was driving a Toyota Caldina EF 052 owned by Ram Narayan. On 10 September 2018, at about 7.00 pm he went to pick Ram Narayan's son Moneel from his workplace at Aralevu Road, Sonaisali. Moneel gave him \$10.00 to fill up diesel at the gas station. Then they bought grog and went to his house to tint the car. They drank grog while the car was being tinted. After drinking grog, he dropped Moneel home. Moneel told him that he wants to use the vehicle the next day (11<sup>th</sup> of September 2018) to take his girlfriend.
92. On 11 September 2018, he received two or three missed calls from Moneel in the morning around 6.30 am. He picked up the phone and informed that he is coming to pick him up from his workplace. He picked Moneel halfway through and then Moneel took over the car and promised to return it by 12 noon. After 12 noon, he called Moneel three times, and

every time, Momeel informed that he was busy with either goats or shower. Moneel finally came to his place at 2 pm. and dropped off the car.

93. On 21 September 2018, the car was parked at a garage in Nadovi because its engine was locked. On 22 September 2018, he received a call from Ram's daughter, Madhu. She asked about Moneel and, he said Moneel had used the car the day in question. The Ram Narayan and her daughter came to his house and accompanied him to the police station. Moneel's father asked him to inform the police that he was with Moneel the whole day, but Moneel was never with him. He went to the police station and told the police everything he knew about this case.
94. Under cross-examination, Neeraj agreed that Moneel had called him using 8352795. He said that he used two numbers at that time. One was 9334278 and he couldn't remember the other number. He agreed the other number could be 9846672. When being questioned based on the call records, Neeraj agreed that Moneel made the first call at around 6 am for 26 seconds, the second was at 6.09 for 7 seconds and the third was at 6.35 for 12 seconds on 11 September 2018. He agreed that the four calls that were made to Moneel after 12 noon on 11 September 2018 were all answered. He denied the proposition that he had not made any calls to Moneel after 12 noon when the Defence Counsel put questions based on the call records. He denied that he owed Moneel's father \$2,000.00 and that to avoid making payments for the car, he decided to give false evidence.

**PW9 - Sheik Abdul Mazid (Sheik)**

95. In September 2018, Sheik was employed at Motorex as a digger operator. On 17 September 2018 Moneel called him. Before that, Moneel had called him one week prior and wanted his digger to repair his drain, make the contour and the goat farm. After talking to his manager, he promised to do Moneel's work on 18 September 2018 as the machines would be free.
96. On 17 September 2018, when Moneel called him, Moneel asked him to come early, because his dad was attending a prayer. On 18 September, around 8.50 am, he brought the

digger to Moneel's place and finished the work for which he was given \$260. He cut the drain, made the contour and covered the well. Moneel's father who was with him wanted him to cover the well saying that the goats will fall in. The next day, the police called him and informed that he had buried a body. He showed to the police the place where the well which he had covered up was. It was a dried up well and wasn't that deep.

97. Under cross examination, Sheik agreed that he had not noticed anything suspicious or that something had been burnt in the well. He used big stones and little bit of soil to cover up that well. He could not recall exactly how wide and deep the well was because it's been 7 years. When they took out the stone then he saw it's deep. He was still on the digger when he made these observations.

### **Evaluation/ Analysis**

98. It is the case for the Prosecution that the Accused on 11 September 2018 strangled his wife Sonika Singh to death with the intention to kill her and later burnt her body in dry water well. The defence is one of complete denial. There are no eyewitness accounts in this case. The Prosecution rely on the confession allegedly made by the Accused in his caution interview and circumstantial evidence led in trial.
99. The Prosecution took upon itself the burden to prove the truthfulness of the caution statement and strands of circumstances for the Court to draw the necessary inference that the Accused is guilty of murdering his wife Sonika.

### **The Confession**

100. A lengthy *voir dire* hearing was conducted before Mr Justice Sharma to test the lawfulness and voluntariness of the caution statement of the Accused. The Court was satisfied beyond reasonable doubt that some parts of the caution statement were made voluntarily and held those parts to be admissible at trial proper.

101. The admissible parts of the caution statement were read in evidence at the trial by the interviewing officer Vishal (PW5). In answer to Q179, the Accused made the following confession:

Q: Would you like to consult your lawyer or use the service of Legal Aid Commission?

A: No but I want to tell you I have informed Corporal Anil in presence of my father that I killed my wife by strangling her to death at our house in Malamala, Nadi and later burnt her body in a dry water well full of dried wood and diesel near my house. I have agreed to show the police the place where I burnt the body which was later covered by the digger.

102. Prosecution says that the Accused told the truth in his caution statement when he confessed to the killing of his wife on 11 September 2018. The Defence denies the truthfulness of this statement and claims that the alleged confession was obtained unlawfully by using force/ tactics/ brutality.

103. The Court must be satisfied beyond reasonable doubt that the Accused told the truth to the police in his caution statement. If the Court finds that the Accused had not told the truth to the police for whatever reason, the caution statement must be rejected.

104. To test the truthfulness or otherwise of the alleged confession, the Court proposes to take two approaches. The first approach is to scrutinise the circumstances under which the alleged confession was made. For this, the Court had the benefit of hearing three witnesses, Prasad- the father of the Accused (PW2), Vishal the interviewing officer (PW5), Sgt Anil Kumar, the witnessing officer (PW6) and what the Accused had told the police. The second approach is to scrutinise the other circumstantial evidence led in trial.

105. According to Sgt Anil Kumar (PW6), the Accused made the confession for the first time to his father (PW2) during a break, then to him at the *bure*, and finally to Vishal (PW5) at the formal interview. PW6's evidence was that he was present in the vicinity whenever the suspect (the Accused as he then was) had taken his breaks. In one such break, he overheard adult people crying when he was going to the toilet. He was concerned and came into the *bure*. He saw both the suspect and his father (PW2) crying with their family. PW6 heard



the suspect say to his father that he had given his wife everything, but she betrayed him. The suspect, while he was still crying, said '*I did it*'. PW2 then informed PW6 that the suspect was ready to confess. When PW6 inquired about this, the suspect, in the presence of his father, said that *he had strangled his wife and later loaded her in a wheelbarrow, taken her to one isolated well near their house and dumped her inside, put the old tires and some firewood and burnt his wife for three days, then he had hired two excavators to cover the well.*

106. After that, the suspect was taken back to the formal interview where the question was put to him if he could show the place where the well was, where the incident took place and what vehicle he used. The suspect took them to the scene and showed where he dumped his wife after strangling her. When referred to Q & A 179 of the Record of Interview, PW6 confirmed that it was the answer that the suspect had given at the interview soon after the conversation he had had with the suspect and his father in the *bure*.
107. Vishal (PW5) confirmed Anil's Kumar (PW6)'s evidence and said that after receiving the answer to Q179, he checked with PW6 if the suspect had made any admissions during the break. PW5 confirmed that he and PW6 accompanied the suspect to his house at Malamala and that they were present when the excavation was done.
108. The Defence Counsel contended that the version of PW6 is not consistent with what is recorded in the caution interview because, according to the caution given at Q173, the meeting with PW6 and PW2 during the break was not accidental as PW6 said but was pre-arranged and granted on the request of the suspect.
109. However, there had been several breaks given to the suspect to talk to his family and PW6 did not say when exactly he overheard the conversation between the suspect and his family where the suspect first made his confession to his father.
110. The suspect's answer to question 173 indicates that he had already talked with his father and sister in private at the police bure and then only he made another request to talk with his father and Anil police in isolation. At this point, the interview was suspended at 1638

Hrs for the suspect to talk with his father and sister in private and have a break, with the following caution:

*Moneel Yogesh Narayan, I wish to inform you that because Detective Corporal 2019 Anil will be present during the conversation with your father, you are reminded that you are not obliged [forced/compelled/required] to say anything unless you wish to do so but what you say in presence of D/CPL Anil may be put into writing and given in evidence.*

111. It is clear that Sgt Anil (*D/CPL Anil as he then was*) had been part of the conversation that took place between the suspect and his father/sister during the break. I do not see any material inconsistency between what Sgt Anil said and what is recorded in the interview notes. Even though Sgt Anil had not cautioned the suspect immediately before the confession was made to him, the suspect was properly cautioned before the suspension with a clear warning that *‘what you say in presence of D/CPL Anil may be put into writing and given in evidence.* Therefore, no prejudice was caused to the suspect as he was made aware what consequences would entail his statement.
112. Let me now examine the Accused’s father Prasad (PW2)’s evidence in that regard. PW 2 was called by the Prosecution. He was made a hostile witness when the Court was satisfied that he was deliberately going back on his witness statement. However, merely because PW2 was made hostile, his evidence should not be rejected without it being scrutinised to find where the truth lies.
113. PW2 was subjected to lengthy cross-examination by the Prosecution as well as the Defence. PW2 admits that he was present at the police *bure* when the alleged confession was made by the suspect. His evidence is that the police officers used force on him to convince his son to take responsibility for the killing his wife and that they used force and brutality on the suspect to extract a confession from him.
114. The Court perused PW2’s witness statement when the Prosecution expressed its intention to make PW2 a hostile witness, only for the purpose of satisfying itself that PW2 was deliberately giving evidence hostile to the Prosecution and testing his credibility. PW2

admits giving his witness statement on 23 September 2018 voluntarily and his signature. He also admits its contents running into three pages but denies only the last paragraph (paragraph 5) of the 2<sup>nd</sup> page, which the Court finds to be unfavourable to his son's defence. I reproduce this paragraph bearing in mind that it does not form part of PW2's evidence but is relevant only to test his credibility.

My son Moneel then told me that he will tell the truth to Cpl Anil and started crying. I asked him in Hindi language *konchi bhae?* (what happened?) My son replied back to me in Hindi language saying *Khalas* (meaning finish). Cpl Anil and my son then went to the Police Bure next to the crime office while I remain at the crime office and went to the hospital.

115. According to PW2's evidence under oath, he had gone to the police station on Saturday and Sunday (22,23 September 2018) with his family members and had talked to his son Moneel. He talked to Moneel 1-2 minutes and asked him how he was. Moneel's reply was that he was well and okay. He agreed that D/CPL Anil was with Moneel when he met them at the bure. D/CPL Anil asked him to convince Moneel for him to take the blame on himself, otherwise they will lock him up; D/CPL Anil called him and locked him up in the afternoon. After recording his statement on Sunday, the police put him in the cell again. He heard Moneel yell asking for help.
116. Having said that, he went on to say what he heard from Moneel. He heard from Moneel that the police officers, who smelt of liquor, blindfolded him and beaten him on his testicles. Since, Moneel did not give evidence, what he heard from Moneel should be regarded as hearsay and thus be rejected.
117. In his statement, PW 2 had never told that he was locked up or forced to convince his son to confess. Instead, in paragraphs 1 of page 3 of his statement, he had informed police that *"My son was treated well by the police and when he wanted to see his daughters Cpl. Anil asked me to bring them the next day"*.
118. I would separate PW2's evidence into two parts and accept one part and reject the rest for the reasons I shall record. I accept his evidence that he went to the police station on Saturday and Sunday (22 & 23 September 2018) with his family members and talked to the

Accused; he talked to the Accused and asked him how he was; Accused replied he was well and okay; D/Cpl Anil was with the Accused when he met them in the *bure*. I accept this part because PW2 had told almost the same story to police in his statement recorded on 23 September 2018, and because this part is consistent with other evidence led in trial.

119. I reject the rest of his evidence because he had not told the police what he said in evidence; it is implausible that the police had put him in the cell, forced him and tortured the Accused. PW2 had not complained to anyone about his unlawful detention. If his complaint was not accepted by the police as he claims, he could have complained to a higher authority.
120. I accept the evidence of PW5 and PW6 in this regard and find that the Accused made the confession to his father, Sgt Anil and Vishal.
121. Let me then scrutinise the record of formal interview to find where the truth lies. On the first day of the interview, the Accused did not make any admission or confession. He denied meeting his wife on 11 September 2018. He said he went to his workplace at Aralevu with his father (PW2) at about 6.15 am [Q&A 74,75]. This was confirmed by PW2.
122. Although the Accused was dropped at his workplace, he said he did not go to work and was at Queen's Highway at about 6.45 am and called his wife Sonika on her mobile phone about 45 seconds [Q&A 92-97]. Vishal (PW5) referring to call records (PE2A1 /PE2B2) confirmed that the Accused had called Sonika at 6.47 am for 16 seconds and that was the last answered call recorded between the two on 11 September 2018. The Accused then said he went to Lodhia Street in Nadi to see a dentist [Q&A 115].
123. On day two (22 September 2018), the interview was suspended at 1200 Hrs for the suspect to speak to his father and sisters and recommenced at 1241 Hrs. When the interviewer asked at Q137 if he wanted to consult his lawyer, the suspect confirmed that he had already talked to his father and sisters in private in the police *bure*. After this meeting, the suspect had started making admissions when the interviewer inquired about the tears rolling down

his cheeks. This conversation is significant because it corroborates what Sgt Anil said in his evidence.

*Q 138: Moneel when you came out of the Police Bure after talking with your father and sisters, I saw tears rolling down your cheek. Did anyone assault you or threaten you in the bure?*

*A: No after talking to my father and sisters I realised that I was not telling the truth to police. Now that I have let the ego. I am willing to cooperate with police.*

124. From Q&A 141 to Q&A 152, the Accused explains how he had met Sonika on 11 September 2018 in Lodhia Street, his engagement with Neeraj (PW8) at 6.20 am and about his Toyota Caldina, grey colour, bearing registration number EF 052.
125. These statements of the Accused are consistent with the evidence of his father (PW2), Neeraj Shankar (PW8) and Sgt Anil (PW6). PW2 said that whilst the interview was in progress on 22 September 2018, Sgt Anil told him to go and bring Neeraj (PW8) to whom he had sold his car. He then went and brought Neeraj to the police station.
126. Neeraj (PW8) said that the Accused tinted the car and told him that he needed it the next day (11 September 2018) to take his 'girlfriend'. On 11 September 2018, Neeraj received two or three missed calls from Moneel at around 6.30 am. When he finally picked the call, he informed Moneel that he is coming to pick Moneel up from his workplace. He picked Moneel halfway through and then Moneel took over the car and promised to return it by 12 noon. After 12 noon, he called Moneel three times, and every time, Moneel informed that he was busy. Moneel finally came to his place at 2 pm. and dropped off the car.
127. Defence suggests that Neeraj is not a trustworthy witness. They say he gave false evidence to avoid payment he owed Accused's father (PW2). However, when PW2 took stand, it was never put to PW2 that Neeraj owed him money. It is also contended that Neeraj's evidence is not consistent with Q&A 148 where the Accused had stated that he met Neeraj at his company yard whereas Neeraj said he met the Accused at Aralevu near his house. I do not see any significant inconsistency because the Accused's workplace and Neeraj's

house were both situated somewhere near Aralevu. What Neeraj had said was that he had met the Accused halfway towards the workplace and handed over the car to the Accused at Neeraj's house.

128. It was also contended that the call record of the Accused is not consistent with Neeraj's evidence because it does not reflect any missed calls as was said by Neeraj. When being questioned based on the call records, Neeraj agreed that on 11 September 2018, the Accused had made the first call at around 6 am for 26 seconds, the second at 6.09 for 7 seconds and the third at 6.35 for 12 seconds. The fact that all these calls had been picked up (not missed) by Neeraj is not that crucial. What is crucial is that there had been telephone conversations between the Accused and Neeraj before the car was handed over to the Accused to transport his wife.
129. Neeraj said that three calls were made to the Accused after 12 noon on 11 September 2018 because the Accused failed to return the car as promised. Based on Accused's call records, the Defence argues that no calls had been made by Neeraj after 12 noon and Neeraj is lying. Neeraj said he used two numbers at that time. One was 934278 and he couldn't remember the other number. It is possible that he may have used the forgotten number to contact the Accused after 12 noon. Therefore, the fact that the call records do not show the calls made after 12 noon by Neeraj does not suggest that the Neeraj is lying.
130. It is significant that Neeraj was summoned to the police station on 22 September 2018, while the interview was still in progress. No doubt, Neeraj's presence was sought by the police when the Accused in the interview revealed his engagement with Neeraj and Neeraj's Toyota Caldina.
131. Jitoko (PW4) and Josateki (PW3) confirmed that they received instructions to inspect this vehicle on 22 September 2018. They discovered this car at a garage in Nadi. Although nothing linking to the missing person was found on the vehicle, the discovery of these facts (the car and Neeraj) as a result of the Accused's statement proves that the Accused had told the truth to the police in his interview.

132. Not only that, but the Accused also said that he had asked Neeraj to bring this car as he wanted to use it on 11 September 2018, and that he took over the car from Neeraj and drove it towards Nadi at around 6.20 am. [Q&A 15-152] Neeraj's evidence was that the Accused tinted the car on 10 September 2018 at his place and requested it to be used the following day to take his 'girlfriend'. Neeraj was not aware that the Accused was a married man. It is reasonable to assume that the Accused's reference to 'his girlfriend' was his wife.
133. The Prosecution's case theory was that the Accused tinted Neeraj's vehicle on 10 September 2018 and borrowed it from Neeraj on 11 September 2018 to take his wife from Nadi, where she worked, and transported her to the Accused's house at Malamala where she was killed. The inference that can be drawn from these pieces of circumstantial evidence is consistent with the Prosecution's case theory.
134. Not only the discovery of these facts (the car and Neeraj) by police that prove that the Accused told the truth in his caution statement, but also the discovery of some substance from the dry water well in the Accused's land that linked to the alleged offence. It was the Prosecution's case that the white substance unearthed from the well during the excavation was the pieces of burnt bones of the deceased and the burnt wires were the residue from the tires used by the Accused to burn her body.
135. The Accused in his caution statement said that he killed his wife by strangling at his house in Malamala, Nadi and later burnt her body in a dry water well full of dried wood and diesel near his house. He agreed to show the police the place where he burnt the body. He told Sgt Anil in the presence of his father that he strangled his wife and later loaded her in a wheelbarrow, taken her to one isolated well near their house and dumped her inside, put the old tires and some firewood and burnt his wife for three days, then he had hired two excavators to cover the well. Sgt Anil said that the Accused directed them to the place where he strangled his wife and burnt her body.
136. The Prosecution called the digger operator Sheik (PW9) to prove that his excavator was used to cover up the dry water well where the body was believed to have been burnt. According to Sheik, the Accused had called him in advance and wanted his digger to be

used on Accused's land to repair his drain, make contour for the goat farming. Sheik promised to do the job on 18 September 2018. On 17 September 2018, the Accused called Sheik again and asked him to come early, because his dad was attending a prayer.

137. On 18 September 2018, Sheik covered the well on the directions of the Accused's father (PW2) who wanted to prevent his goats from falling into it. He was paid \$260 for the job. The next day, the police called him and informed that he had buried a body. He showed the police where the well which he had filled-up was.
138. The Defence appears to claim that the Accused was not involved in filling the well, the digger was employed by him to cut the drain for contour fencing for goat farming, and the well was filled up to prevent the goats from falling into it. PW2 also said that he had burnt a dead goat in the well about six months ago, apparently to suggest that the bone like material unearthed from the well was from that goat. It was also suggested that a human body could not have fitted in such a small well that Sheik described.
139. Sheik said the well was not that deep, its diameter was less than 1.5 meters, and he noticed nothing suspicious, or something had been burnt in the well. However, he had made all these observations on 18 September 2018 (about a week after the alleged murder) and from a distance whilst he was still on the excavator. Sheik also said that he could not recall exactly how wide and deep the well was because it's been seven years. Sheik's description of the well was a mere guesswork and is not reliable. Therefore, his evidence does not create a doubt in the credibility of the Prosecution's case theory, that the Accused burnt deceased's body in the well, which was based on Accused's confession.
140. Although the Accused was not present when Sheik filled up the well, PW2 confirmed that the Accused was the one who had made all arrangements to engage Sheik for the job. Although PW2 said the Accused contributed only half of the digger's fee, he had told the police that the Accused gave \$100 to be given to the digger. The Accused himself admitted that, after burning the body in the well, it was later covered by the digger [Q&A 179]. I accept the Accused told the truth to police.



141. DC Josateki (PW3), IP Jitoko (PW4) described how the excavation was done about 33 meters away from the Accused's house at Malamala, when the interview was still in progress on 22 and 23 September 2018. DC Josateki had observed fresh soil debris pushed together into this place probably by a machine. DC Josateki photographed the bone like white fragments and burnt wires mixed with burnt rubber that were taken out from the well by the digger. The photograph booklet containing the photographs he took were exhibited in evidence (PE1).
142. It is the Prosecution's case that the bone-like white fragments unearthed were the remnants of the Sonika's burnt body and that the burnt wires mixed with burnt rubber were the residue of the tyres used to burn the deceased's body.
143. The Prosecution called Paulini (PW7) to establish the identity of the bone-like material. The Defence challenged the finding of PW7 and the chain of custody. The DNA analysis did not confirm that the bone fragments originated from Sonika Singh because it contained insufficient DNA quantity. However, PW7 confirmed that the bone fragments were of human origin because the test kit used in the laboratory was specifically designed for human DNA and it does not respond to DNA of other species. According to her, the low concentration of DNA confirmed a presence of human DNA in the bone fragments although they don't generally mention this finding in their reports.
144. PW7's finding is consistent with the confession of the Accused, and it eliminates any doubt that the bone fragments originated from the goat that PW2 said he burnt in the well six months ago. The PW2's evidence in this regard should be rejected as he had never stated in his statement to police that he had burnt a goat in the well although he had admitted that the filling was done under his supervision.
145. The Analyst further said that high temperatures can cause DNA degradation, making it difficult to analyse the genetic material. This finding is also consistent with Accused's admission (made to Sgt Anil) that he burnt the dead body using diesel and tyres for three days.

146. Before, linking the finding of the DNA analysis to the alleged murder, the Court must be satisfied as to the chain of custody in the sense that what was collected from the scene was the item sent to the Analyst and tested to eliminate any doubt that it was contaminated or tampered with.
147. The evidence of DC Josateki (PW3), IP Jitoko (PW4) and Paulini (PW7) is relevant in this regard. PW3 said that the bone-like white fragments unearthed were packed, sealed, numbered and given to PW4. PW4 confirmed that bone like white substance was separated from soil, examined, photographed, packed and marked at the scene. He confirmed that the photographs of those items are depicted in PE1. He further said that those items were in his custody until they were dispatched the next day (24 September 2018) to the Forensic Laboratory in Suva, where one Apole acknowledged receiving the same by signing the Chain of Custody Form.
148. Although the bone like material and the Chain of Custody Form were not exhibited in evidence, PW7, based on her report, confirmed that PW4 had handed it over to Apole Salome. Although there was some inconsistency in PW4's evidence as to whether the white fragments were packed together, or in two separate parcels, this inconsistency is not material as the debris was collected from the same location and they were looking to identify only one deceased.
149. I am satisfied that the Prosecution established the continuity beyond a reasonable doubt. The finding of the Government Analyst is consistent with the confession of the Accused. The only inference that can be drawn from the proved facts and circumstances is that the Accused killed his wife Sonika Singh by strangling with the intention to kill and later burnt her body in the dry water well as was confessed to by the Accused.

### **The Motive**

150. It is the Prosecution's case that the long-standing family dispute between the Accused and his wife Sonika led to the murder. It is admitted that they had been living separately from 18 July 2018 and a DVRO was obtained by Sonika on the same day. It is also admitted that

a child custody matter was pending in Lautoka Magistrates Court in 2018. According to Pradeep (PW1), Sonika had come home to live with him after a family dispute two months prior to the alleged incident. He knew they had fights amongst themselves because, whenever they fought, Sonika used to come back home. This evidence is not disputed. The suggested motive is established.

151. The Defence contended that the Prosecution failed to establish the date of the alleged murder. It is the Prosecution's case that Sonika went missing on 11 September 2018 and was killed on the same day between 6 am and 6 pm. There is some inconsistency in PW1's evidence as to the exact date Sonika went missing. However, he maintained in his evidence-in-chief that Sonika went missing on 11 September 2018 and had not returned from work. He had not seen Sonika ever since. In his statement (DE1), PW1 had informed that Sonika had gone missing since 11 September 2018. PW1 gave evidence after seven years with a fading memory. Therefore, this inconsistency would not affect the Prosecution's case theory. The Accused in his caution interview admitted that he met Sonika on 11 September 2018 and his confession relates to an offence committed on that date. I am satisfied that the Prosecution proved that the murder was committed on the date stated in the information.

### **The Alleged Right Violations**

152. The Defence further contended that the Accused was arrested and interviewed without a reasonable suspicion, and later implicated in the offence of murder because of the pressure coming from the superior officers and the family of the missing person. There is no dispute that the Accused was arrested when he visited the police station to inquire about his missing wife and interviewed as a suspect in a missing person case.
153. According to PW5, the arrest was made based on the history of the family dispute, the DVRO, the custody case and the call records. The DVRO, and the call records were tendered as admitted facts. The child custody matter is also admitted. The call records indicate that the Accused was the last person to have contacted his wife. Although the first call record had been obtained on 22 September 2018, after the arrest of the Accused, I accept the evidence of PW6 that the Police Cyber Crime Unit had access to the data base of

the service provider even before the call record was obtained. All the information relating to the family dispute may have been made available to the police by Sonika's family and the child custody matter was indeed put to the Accused at his interview.

154. PW1 agreed that he hated the Accused and blamed him when his daughter went missing. He and his two police sons may have put pressure on the investigators. That could naturally be expected of a father and the brothers who knew about the Accused and his relationship with Sonika. The investigation had been taken over by the Criminal Investigation Department (CID) because the Uniform Branch was sleeping over the complaint. The CID would also have been under pressure to resolve the crime. However, there is no plausible evidence to cast any doubt on the Prosecution's case that the Accused was wrongly implicated in the offence of Murder.
155. There is no dispute that the Accused was kept in police custody for more than 48 hours. However, all the admissions made after 48-hour period had been excluded by the Judge who ruled on admissibility. Therefore, no prejudice was caused to the Accused. Even if it is assumed that the confession was extracted by using police tactics, the Constitution allows the unlawfully obtained evidence to be adduced against an Accused if the interests of justice require it be admitted<sup>1</sup>. The ascertainment of truth is the ultimate goal in criminal proceedings, and it is also in the interest of justice to ensure that no innocent person is wrongly convicted. The confession proved to be truthful when some vital facts and evidence implicating the Accused in the alleged offence were discovered on it. Therefore, the interests of justice require the confession of the Accused be admitted.
156. The Prosecution proved the confession to be a truthful statement of the Accused. It also proved all the strands of circumstances for the Court to draw the only inference that the Accused killed his wife Sonika Singh by strangling her, with the intention to kill. I find the Accused guilty of Murder as charged and convict him accordingly.

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<sup>1</sup> Section 14(2)(k) of the Constitution

Aruna Aluthge  
Judge

28 April 2025

At Lautoka

Solicitors:

Office of Director of Public Prosecutions for State

JK Singh Lawyers for Defence