

IN THE HIGH COURT OF FIJI
AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 072 OF 2008

BETWEEN:

THE STATE

Complainant

AND:

RAYMOND RAJENDRA SINGH

Accused

Counsel: Mr. A. Rayawa & Ms. J. Shah for the State
Mr. H.A. Shah for the Accused

Date of Summing Up: Tuesday 3 February, 2009

SUMMING UP

[1] Madam and Gentlemen Assessors, it is now my duty to sum up this case to you. You will then be required to deliberate together and each of you must give a separate opinion whether the Accused is Guilty or Not Guilty of the charge. I will then pronounce the judgment of the Court and your opinions will carry great weight with me in deciding that judgment.

[2] In coming to your opinions you must apply the law as I explain it to you. It is my duty to direct you on the law. Those directions on the law must be followed by you.

- [3] However, you decide the facts of the case. As I speak to you, you may feel that I have formed some view on a particular question of fact. If you disagree, then please feel completely free to disregard my version. All matters of fact are for you and you alone. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject. You decide what facts are proved and what inferences you properly draw from those facts. You then apply the law as I explain it to you and decide whether your opinion is guilty or not guilty.
- [4] You must come to that decision solely upon the evidence you have heard from the witnesses, which includes the exhibits that have been produced. If you have previously heard anything about this case or the people involved, through the media or some other source – you must ignore that completely. If you have read, heard or come across any media publication about the proceedings during the trial or for that matter any rulings that I have made, you must ignore them completely.
- [5] The law requires that the Accused is to be judged solely upon the evidence sworn to in this Court. In considering that evidence you are expected to apply your common sense and everyday knowledge of human nature and people. You must please put aside any feelings of prejudice or sympathy which may occur to you one way or the other and arrive at your opinions calmly and dispassionately. The law should be applied in a gender-neutral way, without any value-laden preconceptions about the conduct of men and women, or husbands and wives. The law does not have different rules about assaults on wives, or husbands. So you must be dispassionate and neutral in your approach to the case.

- [6] You have seen photographs (PE1) tendered without objection. Some of the photos taken during post mortem are fairly graphic. You must look at them dispassionately and objectively. They were taken after procedures necessary for the autopsy, were performed. They are intended only to show you the injuries.
- [7] The charge against Raymond Rajendra Singh (the Accused), is set out in the information that you each have a copy of. This charge is brought by the State and the onus of proving it rests on the State from beginning to end. There is no onus on the Accused at any stage to prove his innocence or to prove anything else. He does not need to give evidence. In this case the Accused has made a statement from the dock but he does not carry any onus to prove anything. The law is that the State must prove the essential ingredients of the charge beyond reasonable doubt before there can be a finding of guilty. This means that before you express an opinion that the Accused is guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt about the guilt of the Accused, then you must express an opinion of not guilty. It is only when you are satisfied so that you are sure of guilt, that you may express an opinion of guilty.
- [8] The Accused is charged with murder. The State alleges that the Accused on 11 May 2008 at Samabula murdered Wendy Linda Singh.
- [9] There are three ingredients that must be proved for the offence of murder:
1. That the accused did an unlawful act.
 2. That this unlawful act caused the death of the victim.
 3. That the accused acted with malice aforethought.

- [10] In this case all three elements are in dispute. I will now explain these three elements to you.
- [11] An unlawful act is something done by a person that is against the law. A very common example of an unlawful act is where a person deliberately applies force to another person without legal justification such as self defence or defence of others. If a person intentionally strikes another person without legal justification then that is a criminal assault. In such circumstances a person who deliberately punches, kicks or hits another with a weapon is committing an unlawful act.
- [12] In this case the State alleges that the Accused cut the throat of the deceased using a knife, which caused her death. If that is what happened then that would be an unlawful act. The defence says that the Accused did not cut the throat of the deceased and this allegation is disputed.
- [13] The defence says the fatal injury may have been caused accidentally in a scuffle between the Accused and the deceased, where the Accused was attacked by the deceased with a knife, and the Accused was acting in self defence. If you believe the Accused's account and accept the fatal injury was caused accidentally, then no crime had been committed. If so, you should find the Accused not guilty. If you are not sure whether the fatal injury was accidental, you should also find the Accused not guilty. It is not for the Accused to establish the injury was caused accidentally. The prosecution must prove that the Accused deliberately cut the throat of the deceased and that it was not an accident.
- [14] If you are satisfied beyond reasonable that the fatal injury on the deceased was not accidental but deliberate, then you must consider whether the Accused acted in self defence. If you think that the Accused was or may have been acting in lawful

self-defence of himself and/or his children who were present with him, you must find him not guilty. Because the prosecution must prove the Accused's guilt, it is for the prosecution to prove that the Accused was not acting in lawful self defence. It is not for the Accused to establish that he was and you must consider the matter of self defence in the light of situation which the Accused honestly believed he faced. You must first ask whether the Accused honestly believed that it was necessary to use force to defend himself at all.

- [15] If you are sure that the Accused did not honestly believe that it was necessary to use force to defend himself, he cannot have been acting in lawful self-defence, and you need consider this matter no further. But what if you think that the Accused did honestly believe or may honestly have believed that it was necessary to use force to defend himself and/or his children?
- [16] You must then decide whether the type and amount of force the Accused used was reasonable. Obviously, a person who is under attack may react on the spur of the moment, and he cannot be expected to work out exactly how much force he needs to use to defend himself. On the other hand, if he goes over the top and uses force out of all proportion to the anticipated attack on him, or more force than is really necessary to defend himself and his children, the force used would not be reasonable. So you must take into account both the nature of the attack on the Accused and what he then did.
- [17] If you are sure that the force the Accused used was unreasonable, then the Accused cannot have been acting in lawful self-defence; but if you think that the force the Accused used was or may have been reasonable, you must find him not guilty.

- [18] The second ingredient that must be proved is that the unlawful act caused the death of the victim. The law requires a link between the unlawful act and the death. Usually the unlawful act causes some specific injury to the victim and that particular injury causes the victim's death. Usually the unlawful act causes an injury which is the sole cause of death. But it is sufficient if it is an operating or substantial cause of death.
- [19] The third element that must be proved for the crime of murder is that the person who caused the death of another by an unlawful act did so with "malice aforethought". This is an old legal term which describes a particular intention or state of mind.
- [20] It is an intention to cause death or grievous harm to the victim or knowledge that death or grievous harm would probably be caused, accompanied by indifference whether it is caused or not, or by a wish that it may not be caused.
- [21] Grievous harm means any bodily hurt which seriously or permanently injures health or which is likely to seriously or permanently injure health.
- [22] Therefore the State must prove that the Accused cut the throat of the deceased causing her death and at that time he intended to cause serious or permanent injury to the deceased or he knew that serious or permanent injury would be likely to be caused to the deceased and he nevertheless went ahead and did it being indifferent, that is having no concern one way or the other, whether serious or permanent injury was caused or not or that he did it wishing or hoping that such injury would not be caused.

- [23] In this case, you heard evidence that on the day in question the Accused had been drinking wine. He told you he was drunk. You must not find the Accused guilty unless you are sure that the Accused, when he did the act, intended to kill or cause grievous harm to the deceased. In deciding whether he intended to kill or cause grievous harm you must take into account the evidence that he was drunk. If you think that, because he was so drunk, he did not intend or may not have intended to kill or cause grievous harm, then you must find him not guilty of murder but guilty of manslaughter. This means that the Accused did an unlawful act that caused the death of the victim but it is not proved that the Accused had the necessary intention to kill or cause grievous harm. He would then be guilty of the crime of manslaughter, even though the fatal consequences or causing grievous harm was not intended or contemplated by him. But if you are sure that, despite his drunkenness, he intended to kill or cause grievous harm to the deceased then this element of the charge is proved against him. A drunken intent is still intent.
- [24] If you are sure that the Accused unlawfully killed the victim, intending to kill the victim, or to cause the victim really serious injury, the Accused is guilty of murder unless you conclude that this was or may have been a case of provocation. Provocation is not a complete defence, leading to a verdict of 'Not guilty'. It is a partial defence, reducing what would otherwise be murder to the lesser offence of manslaughter. Because the prosecution must prove the Accused's guilt, it is for the prosecution to make you sure that this was not a case of provocation, and not for the Accused to establish that it was.
- [25] Provocation has a special legal meaning, and you must consider it in the following way.

- [26] Firstly, you must ask yourselves whether the Accused was provoked in the legal sense at all. A person is provoked if he is caused suddenly and temporarily to lose his self-control by things that have been said and/or done by the deceased rather than just by his own bad temper. The defence says the Accused was provoked by the abusive language that the deceased used, her constant arguments over his children, her past neglect of his children, her drinking habits and her assaults on him on the night in question.
- [27] If you are sure that the Accused was not provoked in that sense, the defence of provocation does not arise, and the Accused is guilty of murder.
- [28] But if you conclude that the Accused was or might have been provoked, in the sense which I have explained, you must then go on to weigh up how serious the provocation was for this Accused. Is there anything about this Accused which may have made what was [said and/or done] affect him more than it might have affected other people?
- [29] Finally, having regard to the actual provocation and to your view of how serious that provocation was for this Accused, you must ask yourselves whether a person having the powers of self-control to be expected of an ordinary, sober person, of the Accused's age and sex (a male in his late twenties), would have been provoked to lose his self-control and do as this Accused did. If you are sure that such a person would not have done so, the prosecution will have disproved provocation, and the Accused is guilty of murder. If, however, you conclude that such a person would or might have reacted and done as the Accused did, your opinion would be 'Not guilty of murder, but guilty of manslaughter by reason of provocation.

- [30] You should consider all the proved facts and circumstances, and from them you are entitled to draw proper inferences as to the Accused's conduct, knowledge and intentions.
- [31] That completes my explanation to you on the crime of murder.
- [32] The evidence relied upon by the prosecution in this case is direct and circumstantial evidence. The prosecution says that the Accused made a confession on which you may rely. The Accused says that he did not make the confession and that it has been fabricated. The defence says the police fabricated the confession. You must consider whether the Accused did in fact make the confession. If you are not sure that he did, you must disregard it. If, however, you are sure that he did make it and that it was true, you may take it into account when considering your opinion. It is for you to assess its weight and value. Remember that police are trained witnesses, who are used to giving evidence. I do not say this because I express any opinion about their credibility, but where an oral confession is evidence against an accused such direction is usually given.
- [33] If you reject the confession, then the prosecution says you should consider the circumstantial evidence. You are asked to piece the story together from witnesses who did not actually see a 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.
- [34] A common example of circumstantial evidence is fingerprint evidence. Suppose a person's fingerprints are found on an object at the scene of a crime, such as a murder weapon. It could be inferred that the person has handled that weapon and

been present at that place. The inference could be drawn even though there is no direct evidence that the person was seen there.

- [35] On some occasions evidence like fingerprints may be the only circumstance relied upon by the prosecution as proof of guilt. However, it is not unusual to find in a criminal case that evidence is given of a number of facts and circumstances. One witness proves one thing and another proves another thing. None of those things alone may be sufficient to establish guilt but, taken together, one circumstance building upon the other, they may lead to the conclusion that the Accused is guilty of the crime.
- [36] That is, what the State is asking you to do in this case. The prosecutor has directed your attention to a number of facts and circumstances which he submits have been proved by the witnesses. You are asked to draw from those facts and circumstances the inference that the Accused is guilty of the charge. The defence says no inference of guilt can be drawn from the circumstantial evidence.
- [37] Therefore, you must first consider all the evidence and decide what facts have been proved. From those facts you are entitled to draw proper inferences. An inference is a logical deduction from facts that have been proved. It must not be mere speculation or guesswork. It is not sufficient that the proved circumstances are merely consistent with the Accused having committed the crime. To find him guilty you must be satisfied so as to feel sure that an inference of guilt is the only rational conclusion to 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 committed the crime. If the inference to be drawn from the circumstantial evidence falls short of that standard then your opinion must be not guilty.

- [38] One of the inferences that the prosecution asks you to draw in this case is the state of mind of the Accused. If he did attack the deceased, what was his intention when he did that? The State says that he intended, at the very least, to cause grievous harm to her.
- [39] A person's state of mind is as much a question of fact for you to determine as any other question of fact. It is not possible to have direct evidence of this. No witness can look into the Accused's mind and describe what he was thinking at any particular time. However, it is something that can often be inferred from all the proved facts and circumstances.
- [40] They include, for instance, what the Accused himself actually did. That will often be a very important matter. A person's actions, in themselves, may clearly show this purpose or intention. Other matters that may be relevant are what the Accused said and did before the alleged offence. What the Accused said at the time of the alleged offence. What the Accused said and did after the alleged offence, including his statement to the police, and what the Accused said in evidence.
- [41] You should consider all the proved facts and circumstances, including those I have just mentioned, and from them you are entitled to draw proper inferences as to the Accused's beliefs, knowledge, purposes and intentions.
- [42] On the basis of these legal principles that I have explained to you, you must consider the evidence in this case and decide what has been proved. As I said earlier, it is your job to assess the credibility of the witnesses. You decide who is

truthful and to be believed. However, there are some comments that I must make on a few items of evidence.

- [43] The prosecution has led evidence of the financial status of the deceased and her desire to give some of her property as inheritance to the children from earlier marriage and that the Accused was not happy about this. The prosecution says this is evidence of motive. Motive is not an element of the offence of murder. The prosecution does not have to prove why the deceased was killed. But evidence of motive is usually helpful to help you understand the events surrounding the case. It is a matter for you whether you accept the evidence about motive or not.
- [44] The Accused was interviewed at the Samabula Police Station on 12 May 2008 by police. The record of interview is (P10). In his interview, the Accused exercised his right to remain silent by offering no comments to the questions put to him. That was perfectly his right and you must not draw any adverse inference against the Accused from that refusal.
- [45] Evidence has been given about a post mortem examination of the deceased's body. That examination was conducted by Dr. Prashant at the CWM hospital and he prepared a report of his findings (P14). Normally he would have given evidence himself about the examination. However, he has left Fiji and as he is no longer available, details of what he included in his post mortem report have been given in evidence. This means, of course, that we have not had the advantage of hearing Dr Prasant's evidence on oath and the defence has not had the opportunity to cross-examine him about his findings.
- [46] However, the evidence is properly before you and you should have regard to all the circumstances in deciding the weight to be given to it. The report was

prepared by a pathologist who conducted a routine post mortem examination. It is entirely a matter for you but you may feel that there is no reason to doubt the accuracy of the report.

[47] Finally, there is the unsworn statement given by the Accused from the dock. This is something which he is perfectly entitled to do, and is not in any way taken against him. But an unsworn statement cannot have the same value as sworn evidence, tested by cross examination. You must therefore give it such weight as you think fit bearing in mind that it has not been tested.

[48] I must remind you that when an accused person has given statement he assumes no onus of proof. That remains on the State throughout. His statement must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

[49] You will generally find that an accused gives an innocent explanation and one of three situations then arises:

1. You may believe him and, if you believe him, then your opinion must be Not Guilty. He did not commit the offence.
2. Alternatively without necessarily believing him you may say 'well that might be true'. If that is so, it means there is a reasonable doubt in your minds and so again your opinion must be not guilty.
3. The third possibility is that you reject his evidence as being untrue. That does not mean that he is automatically guilty of the offence. The situation would then be the same as if he had not given any evidence at all. He would not have discredited the evidence of the

prosecution witnesses in any way. If prosecution evidence proves that he committed the offence then the proper opinion would be guilty.

[50] So it is for you to consider the Accused's statement and decide what reliance you can place on it. You should weigh it up and evaluate it against the evidence of the other witnesses and facts that have been proved.

[51] I will now remind you of the prosecution and defence cases. In doing this it would be tedious and impractical for me to go through the evidence of every witness in detail and repeat every submission made by counsel. I will summarize the salient features. If I do not mention a particular witness, or a particular piece of evidence or a particular submission of counsel that does not mean it is unimportant. You should consider and evaluate all the evidence and all the submissions in coming to your decision in this case.

Prosecution Case

[52] The first witness was Gina Jit. On 9 May 2008 Gina met the Accused in her coffee shop. She recognized him because they went to the same high school. The following day the Accused returned to Gina's Coffee Shop accompanied by his wife Wendy Singh and their two children. While the Accused waited for his hair to be done in the hair saloon next door, Wendy went and bought two bottles of wine. With Gina's permission, the Accused and Wendy drank wine while waiting for the hairdresser. While the couple was still at the coffee shop, Wendy's son George joined them. The Accused was upset to see George. He said to Wendy what George is doing here; it was supposed to be a family day. When the second bottle of wine was almost finished the Accused went and bought more wine.

- [53] The next witness was Julia Bulai. She was the Accused's neighbour at Ragg Avenue. On 11 May 2008 Julia heard the Accused and the deceased arguing. Julia could recognize the deceased's voice. She heard something like "please no, no, no". After the scream had stopped, there was a complete silence. Julia stood with her husband in their balcony facing the Accused's house. She saw the Accused inside the house. He was carrying one of his sons and was looking for something in the kitchen. The Accused then came out with both of his sons, got into his car and drove away. Julia and her husband came to their driveway from where she saw Wendy lying on the floor. She called the police.
- [54] The next witness was Tomasi Bulai, Julia's husband. Tomasi gave a similar account of the event on 11 May 2008. He heard the argument between the Accused and the deceased. He heard the sound of glasses being broken. Tomasi said he heard a cry for help from the deceased like "help no". Tomasi also heard a forceful voice from the Accused and then there was a complete silence. When the Accused had left, Tomasi saw the deceased lying on the floor and there was no response from her and he also saw blood inside the house.
- [55] The next witness was Sean James Quai Hoi who resided at 176 Ragg Avenue, that is, to the right of the house occupied by the Accused and the deceased. On 11 May 2008 he heard screams from a female voice saying "please stop, stop". After the yelling had stopped James saw the Accused inside his house. He saw the upper torso of the Accused. The Accused was staring at the floor. The Accused then went into the kitchen and after few minutes came out with his two children. He threw the baby at the back seat of his car and drove away.

- [56] In cross examination Julia, Tomasi and Sean said the Accused and the deceased had arguments on many occasions after they had moved to Ragg Avenue but they could not tell what they were arguing over.
- [57] The next witness was Sgt. Tanasio who was first to attend the scene. He saw the deceased lying on the floor in a pool of blood. The blood was scattered every where. He saw bloody footprints leading to the kitchen. He saw a kitchen knife about 2 feet on the right side of the deceased's arm. He saw scattered broken bottles on the floor. The scene was sealed for forensic team.
- [58] The next witness was Sgt. Mosese, the police photographer. He took photographs of the scene and during the post mortem. The photographs are (PE1).
- [59] The next witness was Inspector Iliesa Bula. He is a fingerprint expert. Inspector Bula's qualification was not challenged. He tested the footprints obtained from the scene and compared them with the Accused's footprints. The footprints matched.
- [60] The next witness was Melika Tinai a waitress at the Capital Palace where the Accused and the deceased dined on the evening of 10 May 2008. Tinai witnessed a commotion between the Accused and the deceased while they were dining. The commotion developed with an argument over George who was present with them. The Accused said "I don't want this piece of shit in our family". George got up and pushed the Accused. The Accused pushed George back and he fell.
- [61] The next witness was Shalin Kiran. She is a senior scientific officer at the Fiji Police Forensic Lab. She uplifted biological swabs from the scene for DNA testing in Australia.

- [62] The next witness was Dr. Andrew Donnelly, a senior forensic biologist based in Australia. He tested the samples uplifted from the scene. His findings are contained in a report (P.7) and the findings are not in dispute. DNA test revealed that Wendy's blood was found on the Accused's clothes, and the vehicle he drove on the night in question.
- [63] The next witness was Dr. Josese Vuki who on 11 May 2008 examined the Accused. The Accused had abrasions (loss of skin surface) on his right foot and right knee. The Accused's left finger was bleeding. His nail was missing. In cross examination Dr. Vuki said he examined the entire body of the Accused but he did not state that in his report.
- [64] The next witness was Stanley Raniga. He is the owner of the vehicle No. ES026. He had lent the vehicle to the Accused and Wendy to use. In cross examination Stanley said the deceased used to party a lot. She used to drink and smoke.
- [65] The next witness was Cpl. Rakabatia. The Accused was handed over to him at the Samabula Police Station upon his arrest. Cpl. Rakabatia said he seized the Accused's t-shirt but not his shorts before locking him up in the cell.
- [66] The next witness was Sylvia Joytika Raniga. Sylvia is the Accused's sister. She said the deceased used to drink a lot.
- [67] The next witness was Vejai Singh, the Accused's father. He said the police arrested the Accused from his house in Fletcher Road. He accompanied the Accused to the police station. Mr. Singh said the Accused arrived at his house with his two sons on 11 May 2008 at around 1 to 2 am. The Accused told Mr. Singh that he had a

fight with his wife and asked him if he could stay overnight. In cross examination Mr. Singh said when the police was escorting the Accused from his house to the police vehicle the Accused did not say anything to the police officers. Mr. Singh said that when the deceased had returned to Fiji from England in 2006 she lived with them in Fletcher Road. Mr. Singh said the deceased used to drink a lot and hit the children.

[68] The next witness was Inspector Dharmen Chandra. Inspector Dharmen arrested the Accused with a team of officers. After Inspector Dharmen had cautioned the Accused of his right to remain silent, the Accused made a statement saying "all this happened out of frustration". When Inspector asked the Accused what happened out of frustration, the Accused replied "I killed my wife out of frustration". In cross examination Inspector Dharmen said when he cautioned the Accused he had not opened a police enquiry paper nor did he have the pathologist report.

[69] The next witness was D/Sgt Epeli Senitiri. D/Sgt Senitiri was present with Inspector Dharmen when the Accused was arrested. D/Sgt. Senitiri said the Accused made statements to Inspector Dharmen after he was cautioned of his right to remain silent. D/Sgt. Senitiri was cross examined on his self recorded police statement dated 11 May 2008 (D1) which does not mention anything about the statements the Accused made to Inspector Dharmen. D/Sgt. Senitiri explained he wrote the statement after long hours of work and without getting much sleep. As a matter of law, evidence is what a witness says in the witness box. What witnesses say out of Court is not evidence. However, if a witness has told inconsistent stories about the same event, you cannot put much weight on his or her evidence. So you can look at previous statement of D/Sgt Senitiri to decide what weight you can put on the witness's evidence in Court. His previous statements will help you to decide on his credibility.

- [70] The next witness was Peter Hilman. He said the Accused and the deceased had bought a property and that they were going to develop it. Mr. Hilman said after the Accused and the deceased had defaulted in the mortgage payment, the property was forfeited.
- [71] The next witness was Constable Alipate. He tendered the caution interview of the Accused (P10). He said the only motive he suggested to the Accused in his caution interview was a fight over a baby.
- [72] The next witness was Dr. Reapi Natuva. She examined the Accused's son Jahan Singh on 11 May 2008 and found no visible bruises or cut on the child.
- [73] The next two witnesses gave evidence from England through video link. There is nothing unusual about this procedure. The procedure was used to save the State costs in bringing these witnesses to Fiji from England. You must not draw any adverse inference against the Accused from the use of this procedure.
- [74] Claire Borret gave evidence. She is the deceased's daughter. Claire said the deceased was a kind and caring person. She cared for her children. Claire said the deceased was a social drinker. In cross examination Claire said she stopped living with the deceased and the Accused in January 2005.
- [75] The next witness was Christine, the deceased's sister. She said the deceased's relationship with her children was very good. The deceased made sure her children had the best of all. In cross examination Christine said she could not remember if she had visited the deceased in 2004 and 2005.

- [76] The final witness was Dr. Abha Gupta. Dr. Gupta is a qualified pathologist. Her qualifications are not disputed. Dr. Gupta tendered the post mortem report (P14) and explained you the injuries sustained by the deceased as contained in the report. According to (P14) the deceased died of hemorrhage shock as a complication of cut throat injury. According to (P14) external injuries (total 79) were found on the deceased's body. The fatal injury was the cut on the throat. The cut was from the front to the back causing injury to the bones. Dr. Gupta said a sharp object with irregular edges could have caused the injury. Dr. Gupta said forceful impact was used to inflict the injury.
- [77] What weight you attach to Dr. Gupta's opinion is entirely a matter for you bearing in mind she did not herself conduct the post mortem.
- [78] That was the prosecution case.

Defence Case

- [79] The Accused said he met the deceased in Fiji in 2003. He was 24 years old while she was 35 years of age. Later they moved to England and had a son Kaileb. The deceased already had two children from an earlier relationship.
- [80] In 2006 they moved to Fiji. In January 2008, they had their second son Jahaan. While being married they had arguments over the deceased's inability to care for the welfare of the children. The Accused said when Jahaan was born, the deceased became depressed. She started drinking a lot more on a daily basis. When the Accused would return home after work he found the kids unchanged and unfed. They argued over this.
- [81] On 10 May 2008, the deceased started drinking beer from the morning. In the evening they went to a restaurant where the Accused said he had to stop George

from drinking alcohol because he was a minor. They returned home without having dinner. The deceased kept on arguing with the Accused. The Accused went to sleep. Later in the night, the deceased woke the Accused to feed the baby. While the Accused was preparing the milk for the baby, the deceased started arguing with him. The Accused said the deceased was abusive and at the same time drinking beer by the bar. They started arguing. The deceased then tried to stand up but fell down the steps. The Accused rushed to her but she pushed him away and both fell. The deceased pulled the Accused's shirt and started blaming him. The Accused returned to the sofa to pick up the baby. The deceased threw a beer bottle at the Accused and the baby. The Accused turned aside and the bottle missed him. The deceased charged the Accused and his son with another beer bottle but she tripped on the rug and fell.

[82] The Accused said he panicked and ran towards the kitchen. He placed the baby on the sofa and went to help the deceased. The deceased started hitting the Accused. She grabbed his t-shirt and both fell. She sat on top of the Accused slapping him continuously. The Accused pushed her off and she started charging towards their baby. The Accused threw the baby car seat at the deceased. The Accused asked the deceased to stop. The Accused thought the deceased will kill his baby. The deceased pushed the Accused and he fell on the steps. The deceased started kicking the Accused. He pushed her away but she grabbed his hand and started tearing his finger with her teeth. She bit and tore off his finger. She spat on him. The Accused pushed the deceased away, picked up his baby and ran to the kitchen. The deceased came running into the kitchen and picked up a kitchen knife and threatened to hurt the children.

[83] The Accused said his son Kaileb walked into the room. The deceased grabbed Kaileb's hand and kept shaking him. She was still holding the knife and wagging it around in anger while shouting at the Accused. The Accused grabbed the

deceased's hand with the intention of snatching the knife from her but she would not let go. They fell down a couple of times as the Accused tried to push the deceased away from the children. The deceased stood up and started swinging the knife at the Accused. At this stage the Accused was at the main door trying to open it. The deceased grabbed the Accused by his hair and both fell. The Accused fell on top of the deceased. The Accused got up but felt dizzy. He fell again but got up and saw the deceased on the floor face down. The Accused believed the threats made by the deceased. He said the deceased had written an email to him threatening him that she would kill him if he leaves her. The Accused grabbed his two sons and drove to his parent's house. He said he feared that the deceased would attack them again and so he left for his and his children's safety. When the police came to his parents house the Accused said he did not say to Inspector Dharmen that he killed his wife out of frustration.

[84] That was the defence case.

Analysis

[85] It is not in dispute that the deceased and the Accused were married and had two young children. It is not in dispute that on 10 May 2008 they consumed wine together. It is not in dispute that the Accused and the deceased on the night of 10 May 2008 had a scuffle in their house. During the scuffle the deceased sustained some serious injuries to her body. One injury, that is, the cut to her throat resulted in her death. It is not in dispute that the Accused was present at the scene when the deceased sustained the fatal injury. It is not in dispute that the Accused left the deceased while she was lying on the floor in a pool of blood, with his two children, and went to his father's house where he was arrested.

- [86] What is in dispute is how the fatal injury was caused and whether it was caused with an intention to either kill the deceased or to cause her serious harm.
- [87] The prosecution says that this was a cold blooded killing. The prosecution says the Accused had a financial motive to kill the deceased, that is, the Accused did not want the children from the deceased's earlier marriage to benefit from the wealth that they have acquired as a couple and that only the children from their marriage should be the beneficiary of their properties.
- [88] The prosecution says that the seriousness and the extent of injuries sustained by the deceased as compared to the minor injuries sustained by the Accused shows that the deceased was not the aggressor. The prosecution says that the Accused has confessed to the killing. The prosecution says that the attack on the deceased was not accidental or in self-defence and was without provocation.
- [89] The prosecution submits the Accused is guilty of murder.
- [90] The defence says there is no direct evidence that the Accused inflicted the fatal injury. The defence says no fingerprints of the Accused were found on the broken bottles or the kitchen knife to suggest that the Accused cut the throat of the deceased. The defence says the Accused did not confess killing his wife to the police.
- [91] The defence invites you to reject the confession of the Accused. The defence submits that the circumstantial evidence relied on by the prosecution do not lead to sure conclusion that the Accused inflicted the injuries on the deceased. The defence invites you to accept the statement of the Accused that he acted in his self defence and the defence of his children when the deceased attacked them with a

knife and that the fatal injury may have been caused accidentally during the scuffle . The defence says the Accused honestly feared for his and his children's safety because of an earlier threat by the deceased to kill him, and that she was drunk.

[92] The defence says if you reject self defence or accident, then you should consider whether the Accused was provoked and find the Accused guilty of manslaughter.

[93] You will have to evaluate all the evidence when you consider the charge against the Accused has been proved.

[94] Let me sum up for you the various steps you are to follow:

- (1) You must first of all consider whether the act of the accused that caused death was deliberate and not an accident. If you are not satisfied beyond a reasonable doubt that the act of the accused was deliberate or if you are satisfied beyond a reasonable doubt that the act was an accident, then you must find the accused not guilty and the matter ends there.
- (2) If you are satisfied beyond a reasonable doubt that the act of the accused was deliberate and not an accident, then you will consider the question of self-defence.
- (3) If you are not satisfied beyond a reasonable doubt that death was not due the accused acting in self-defence as I have defined it, you will deliver opinions finding the accused not guilty and the matter ends there.
- (4) If you are satisfied beyond a reasonable doubt that it was not in self-defence you will go on to consider the charge.

- (5) In this case if you reject self-defence then there is little doubt, you may think, that the death of the deceased was caused and that it was caused by an unlawful act of the accused. Therefore the real question you have to decide is whether it was done with malice aforethought i.e. whether the accused either
- (a) intended to cause the death of the deceased or
 - (b) intended to cause her serious injury or
 - (c) knew that his act would probably cause death or
 - (d) knew that his act would probably cause serious injury.
- (6) If you are not satisfied beyond a reasonable doubt that the accused had malice aforethought, you will render opinions of manslaughter.
- (7) If you are satisfied beyond a reasonable doubt that the accused acted with malice aforethought and that he was not so drunk as to form the intention to kill or cause serious harm, you will go on to consider provocation.
- (8) If you are not satisfied beyond a reasonable doubt that there was no provocation or accept that there was provocation then you will render opinion of guilty of manslaughter.
- (9) If you are satisfied beyond a reasonable doubt that he acted with malice aforethought and are also satisfied beyond a reasonable doubt that there was no provocation, you will advise me that the accused is guilty of murder.

[95] Your possible opinions are, guilty of murder, or guilty of manslaughter, or not guilty of any offence.

Conclusion

- [96] Madam and Gentlemen assessors, that concludes my summing up of the law and the evidence in this particular trial.
- [97] We have now reached the stage where you must retire to your room to deliberate together and form your individual opinions on the charge against the Accused. You may have with you any of the exhibits that you would like to consider.
- [98] When you have reached your separate decisions you will all come back into Court and you will each be asked to state your separate opinion.
- [99] Would you please now retire to consider your opinions? When you have made your decisions would you please advise the Court officer and the Court will reconvene to receive your opinions?
- [100] Thank you.

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Daniel Goundar
JUDGE

At Suva
Tuesday 3rd February, 2009

Solicitors:

Office of the Director of Public Prosecutions, Suva for the State
Haroon Ali Shah Lawyers, Lautoka for the Accused