

**IN THE SUPREME COURT OF FIJI**  
**[APPELLATE CRIMINAL JURISDICTION]**

**CRIMINAL PETITION NO. CAV No.039/2015**  
**[On Appeal from Court of Appeal No.AAU 0063]**

**BETWEEN** : **MESULAME WAQABACA**

**PETITIONER**

**AND** : **THE STATE**

**RESPONDENT**

**CORAM** : Hon. Justice Saleem Marsoof, Justice of the Supreme Court  
 Hon. Justice Sathyaa Hettige, Justice of the Supreme Court  
 Hon. Justice Buwaneka Aluwihare, Justice of the Supreme Court

**COUNSEL** : Petitioner in Person  
 Mr. S. Vodokisolomone for the Respondent

**Date of Hearing** : 8 April, 2016

**Date of the Judgment:** 21 April, 2016

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**JUDGMENT OF THE COURT**

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**Marsoof, J**

I agree with the reasoning and conclusion of the Judgment of Hettige J

**Sathyaa Hettige, J**

1. The petitioner was charged in the High Court of Suva along with four others, with one count of murder contrary to section 199 read with section 200 of the Penal Code, Cap. 17, for the murder of Simione Naulatamata on the 16<sup>th</sup> Of May 2009 at Nasinu in the Central Division.

2. After trial, which extended for 15 days in the High Court of Suva wherein the prosecution called 17 witnesses including 8 lay witnesses and 9 police officers, the three assessors returned a unanimous opinion, the petitioner and the second accused guilty of murder and were convicted of the charge of murder. The other three accused were acquitted.
3. On 13<sup>th</sup> August 2010 the petitioner was sentenced to a mandatory term of life imprisonment with a minimum term of 14 years. The other co-accused (second appellant in the Court of Appeal) was sentenced to life imprisonment with a minimum term of 12 years imprisonment.
4. The petitioner and the other co-accused who was convicted and sentenced lodged a joint appeal in the Court of Appeal seeking leave to appeal against the conviction and the petitioner ( first appellant in the Court of Appeal ) was granted leave by a single Judge of the Court of Appeal on the following grounds:
  - (i) *Whether the direction to the assessors on the defence of intoxication was adequate ; and*
  - (ii) *Whether the direction to the assessors was sufficient as regards manslaughter given the circumstances of the case.*
5. The second appellant was granted leave on the following grounds:
  - (i) *That the learned trial Judge erred in law and in fact in not adequately directing the assessors in respect of the law regarding the charge of murder.*
  - (ii) *That the learned trial Judge erred in law and in fact , given all the circumstances of the case , the charge of murder should be reduced to manslaughter.*

6. The Full Court of Appeal ( Calanchini P., Almeida Gunaratne JA and Goundar JA) on 3<sup>rd</sup> December, 2015 after hearing submissions of both the appellants and the respondent dismissed the appeal and affirmed the conviction and sentence of both the appellants.
7. The petitioner being dissatisfied with the said decision of the Full Court of Appeal filed a petition in the Supreme Court on the 30<sup>th</sup> December 2015 seeking special leave to appeal on the following grounds.
8.
  - i) *That the learned trial Judge fell short in directing the assessors before drawing inferences regarding murderous intent and knowledge in this case.*
  - ii) *That the petitioner is no longer having presented to have a murderous intent or foresee the natural consequences of his acts or sufficient directions to the assessors.*
  - iii) *The duty of the trial Judge is greater and onerous than the function of the counsel for the prosecution and counsel for defence in a criminal trial . There is an unbalanced summing up of the law towards the assessors or Judges of facts in this case. There is a risk of miscarriage of justice of the above. Inadequacy of direction towards the state of mind makes the learned trial Judge to rely and direct the assessors to rely on the caution interview.*
  - iv) *That there is no proof nor there was any foreknowledge nor after knowledge to exist by my action that I meant to murder the men by my recklessness. The unlawful act was designed only to grab and run.*
  - (v) *there is an uncorroborated evidence to show that the petitioner had punched the man's head from PW4 Mesulame Lovodrokadroka.*

### **FACTUAL MATRIX**

9. The deceased, Simone Naularamata was a hair dresser working in a hair salon in Nausori town. He was returning to his home in Makoi after work on 16<sup>th</sup> May 2009 at about 8 pm.

The petitioner with others were drinking liquor at a place close to Makoi Methodist Primary school . The deceased was walking along a short cut to his home close to where the petitioner and others were drinking. On hearing the deceased coming down the school's driveway, the petitioner then signaled the others to rob the deceased. The petitioner and Tiko (the second appellant in the Court of Appeal case) ran towards the deceased. The petitioner had then started punching the deceased several times and the deceased had fallen down and had developed breathing difficulties. In the caution interview the petitioner had also said that he started drinking home brew and shared three cartons of beer with his friends. At the place of the incident too, the petitioner had consumed a bottle of rum with the others.

10. It appears from the evidence that the plan to attack the deceased was initiated by the petitioner and the others had acted on his plan. There was evidence that the deceased had covered his face with his hands when he was on the ground to avoid the punches landing on his face. The other co-accused had pressed the deceased's neck down while the petitioner continued to punch him.
11. It was an agreed fact, that when the body of the deceased was recovered on the same night around 10 pm the victim was dead. According to the pathologist evidence the estimated time of the death had been 9 pm. on 16/09/2009
12. According to the pathologist Dr. Gounder's evidence the deceased had suffered severe internal injuries in his brain as there was hemorrhage present in the left temporal muscle. He also testified that a heavy severe blow to the left side of the head could have caused the internal head injuries. In other words he had said that the cause of the death was head injury.( Paragraph 36 of the summing up of SC record)

13. It is important to mention at the outset, that during the trial in the High Court the petitioner and the co-accused ( second appellant in the Court of Appeal) pleaded not guilty to the charge of murder and pleaded guilty to the lesser offence of manslaughter in the presence of the assessors, The State did not accept the plea of the petitioner and proceeded to trial with the charge of murder.

#### Grounds of Appeal Before the Supreme Court

14. The petitioner by the petition dated 21<sup>st</sup> December 2015, which was received in the Supreme Court Registry on 30<sup>th</sup> December 2015 seeks special leave to appeal against the conviction confirmed by the judgment of the Full Court of Appeal based the following grounds of appeal:

- i) *The learned trial Judge fall short in directing the assessors before drawing inferences regarding murderous intent and knowledge in this case.*
- (ii) *That the petitioner is no longer have presumed to have murderous intent or foresee the natural and probable consequences of his acts nor sufficient directions to assessors.*
- (iii) *That the duty of trial Judge is greater and more onerous than the function of the counsel for the prosecution and counsel for the defence in a criminal trial. There is an unbalanced summing up of law towards the assessors as judges of facts in this case. There is a risk of miscarriage of justice on the above. Inadequacy in the direction regarding the state of mind and ascertaining the accused knowledge makes the learned trial judge to rely and direct the assessors to only rely on the caution interview. Were they fully directed about law to help in their deliberation.*
- (iv) *That there is s no proof nor there was any fore knowledge nor after knowledge to exist by my action that I meant murder the man by my recklessness. The unlawful act was designed and only limited to a grab and run act.*
- (v) *There is an uncorroborated evidence to show the petitioner had punched the man's head from Mesulame Lovodrokadroka.*

## JURISDICTION OF THE SUPREME COURT

15. The relevant section dealing with jurisdiction of the Supreme Court with regard to exclusive and extra-ordinary power to determine leave to appeal applications from the final decisions of the Court of Appeal is section 98 (3) of the Constitution of the Fiji.
16. Section 98 (3 ) (b) of Constitution of the Republic of Fiji of 2013 which provides for exclusive jurisdiction to hear and determine , “*subject to such requirements as prescribed by law*” final judgments of the Court of Appeal is as follows:
  - a. Section 98(3) reads as follows: “*Supreme Court has exclusive jurisdiction , subject to such requirements as prescribed by law , to hear and determine appeals from all final judgments of the Court of Appeal*’
  - b. Section 98(4) also provides as follows:
 

*“an appeal may not be brought to the Supreme Court from a final Judgment of the Court of Appeal unless Supreme Court grants leave to appeal*
17. It is necessary at this stage, to deal with the petitioner’s application for special leave to appeal and consider the threshold criteria laid down in section 7(2) of the Supreme Court Act No. 14 of 1998 before dealing with the grounds of appeal.
18. The petitioner’s application for leave to appeal is subject to the provisions specifically contained in section 7 (2) of the Supreme Court Act No. 14 of 1998 which reads as follows:-
  - (2) *In relation to a criminal matter, the Supreme Court must not grant special leave to appeal unless-*
    - (a) *a question of general legal importance is involved;*

- (b) *a substantial question of principle affecting the administration of criminal justice is involved; or*
- (c) *substantial and grave injustice may otherwise occur.*

19. It is manifestly clear from the above provisions contained in the section 7 (2) of the Supreme Court Act special leave should not be granted as a matter of course. The Supreme Court in Aminiasi Katonivualiku v State (2003) FJSC Crim. App. No. CAV0001/1999S, 17th April 2003 clarified the jurisdiction of the Supreme Court at page 3 as follows:

*“It is plain from this provision that the Supreme Court is not a Court of criminal appeal or general review nor is there an appeal to the Court as a matter of right and, whilst we accept in an application for special leave some elaboration on the grounds of appeal may have to be entertained, the Court is necessarily confined within the legal parameters set out above, to an appeal against the judgment of the Court of Appeal which in this instance, was an order for a new trial.”*

20. It is to be noted that the above passage in Aminiasi case (supra) was cited with approval in subsequent Supreme Court decisions such as Raura v The State (2006) FJSC 4; CAV0010U. 2005S (4<sup>th</sup> May 2006), Chand v The State (2012) FJSC6 ; CAV14/2010( 9<sup>th</sup> May 2012).

21. In Dip Chand v State CAV0014/2012 9<sup>th</sup> May 2012, the Supreme Court observed that-

*“given the criteria set out in section 7 (2) of the Supreme Court Act 14 of 1998 are extremely stringent and special leave to appeal is not granted as a matter of course. The fact the majority of grounds relied upon by the petitioner for special leave to appeal have not been raised in the Court of Appeal makes the task of the petitioner of crossing the threshold requirements for special leave even more difficult.”*

22. It is worth noting that the petitioner has a greater burden to satisfy the Supreme Court that there was “substantial and grave injustice” caused to him or other requirements contained therein should be reflected in the appeal grounds under section 7(2) of the Supreme Court of 1998.
23. The extra-ordinary power of the Supreme Court in Fiji will be exercised under section 7(2) of the Supreme Court in its discretion, only if the threshold criteria encapsulated therein is met by a petitioner notwithstanding the right of appeal granted to an aggrieved party to seek special leave.
24. The exclusive jurisdiction conferred upon the Supreme Court which is meant to deal with more important issues involving questions of law of general importance by the provisions in section 98 (3) of the Constitution will be exercised sparingly and in furtherance of justice in cases where the greater burden on the petitioner to satisfy the threshold requirements under section 7(2) is fulfilled.

#### **GROUND OF APPEAL**

25. The petitioner has not raised a direct issue before the Court of Appeal on the failure on the part of the trial judge to give adequate directions to the assessors regarding the murderous intent and knowledge of the petitioner at the time the act was committed. However, the issue with regard the criminal intent of the petitioner that was raised in the Court of Appeal “*whether the direction to the assessors was sufficient as regards manslaughter given the circumstances of the case*” can be treated as an issue that can be taken up for our consideration by this court in fairness to the petitioner.

26. The grounds of appeal Nos. 1 and 2 relied upon by the petitioner referred to above are concerning insufficient directions to the assessors on the issue of intoxication and manslaughter and therefore both grounds of appeal can be dealt with together.

27. At paragraph 15 of the summing up of the trial Judge it can be seen that the learned trial Judge directed the assessors properly on the issue of intoxication.

*“The consumption of homebrew and liquor had been a major part of this case prior to alleged murder. Counsel have touched through the topic in their submission. As a matter of law, intoxication is no criminal defense in to a criminal charge. However, you must take into account as one of the many factors to be considered when ascertaining the accused intentions as mentions in paragraphs 9(iii) (a) (b) (c) above. Since the prosecution is not relying on paragraphs 9(iii) (a) and (b) in proving its case. You must take into account as a factor to be considered when ascertaining the accused knowledge in paragraph 9 (iii) (c).” (emphasis is mine)*

28. It is necessary to consider what the court observed in **R v Sheehan and Moore** (1975) 60 Criminal Appeal R. 308 at page 312 which is as follows:

*“Indeed, in cases of where drunkenness and its possible effect upon the defendant’s mens rea is an issue, we think that the proper direction to a jury is first, to warn them that the mere fact that the defendant’s mind was effected by drink so that he acted in a way in which he would not have done had he been sober does not assist him at all, provided that the necessary intention was there. A drunken intent is nevertheless an intent.”*

In **DPP v Majewski** (1976) 62 Crim. Appeal R.262 Lord Salmon observed at p.275 as follows:

*“If appellant killed or committed grievous harm whilst he was drunk this factor should be taken into account with all the other evidence in deciding whether he had intended to kill or to cause grievous harm. If this question was decided in accused favor, he would be found not guilty of murder but guilty of manslaughter..... This does not mean that drunkenness, of itself, is ever a defense. it is merely some evidence, which may throw a doubt upon whether the accused had formed the special intent which was an essential element of the crime with which he*

*was charged. Often this evidence is no avail because obviously a drunken man may well be capable of forming and does not form the relevant criminal intent, his drunkenness merely diminishes his power of resisting the temptation to carry out his intent."*

29. It is useful at this stage, to refer to the summing up of the trial Judge wherein the relevant evidence contained in the caution interview statement of the petitioner was quoted by the trial Judge at paragraph 33.

*"Q. 34 Are you sure about this?*

*Ans: No, I saw one slim pufter coming down the driveway. He is staying at Karobo Place Makoi. He was wearing a long trousers and a vest. I was standing there about 2 meters away from this two and I then started punching this pufter who was lying down on the ground.*

*Q.35 What else after that?*

*Ans: Whilst punching this boy (pufter) I can feel that something wrong with him. His breathing like his running of air and is very hard for him to breath)*

*Q.47 Mesu, can you tell me to who all did punch this man that night?*

*Ans; Myself.*

*Q.49 Can you tell me what part of the body did you punch?*

*Ans: I punched his ribs and stomach.*

*Q. 55 What happen after that?*

*Ans: When I saw this boy started having breathing problem I walked away down the short cut to Matanisiga with Bhuda.*

*Q. 69 Do you wish to say anything else?*

*Ans: Yes, This place where we assaulted that boy but when we return back he was lying down naked near the school sign board.*

*Q.71 Have a look at this post mortem report ( post-mortem report shown to Mesulame)The cause of death is brain hemorrhage due to assault, is that understood?*

*Ans: Yes.*

*Q. 74 Do you wish to say anything else ?*

*Ans: Yes I would like to apologize for what I have done because we don't mean to kill this man during the incident.I was drunk, but I know what I was doing to this man.I would apologize to his family.*

*Q 78 Did I assault you or did something to you in order for you to give your answers to me during this interview.*

*Ans. No.*

*Q. 79 Is this your real statement?*

*Ans: Yes.*

*At paragraphs 34 and 35 in the summing up of the trial Judge, he refers to the charge statement of the petitioner wherein he said that:*

*“ I,. Mesulame Waqabaca do admit that I threw few punches on the Simone Naulatamata. I did it for the sake of robbing him and not to kill him. I am sorry for what I have done on Simi...”*

30. It is important to refer to the directions on post-mortem report evidence to the assessors by the trial Judge at paragraph 35 thereof:

“Doctor Ponnu Swammy Gounder who had previously done more than 3000 post-mortem examination, did the post-mortem examination on Simone Naulatamata , on 19<sup>th</sup> May 2009. He submitted his post-mortem report as prosecution Exhibit No.9. He estimated the time of death as 2100 hours on 16<sup>th</sup> May 2009. He said external injuries revealed a cut over the left eye brow...and at paragraph 36 of the summing up, the trial Judge further

directed that according to the Doctor's evidence, that the deceased Simone suffered severe internal brain injuries."

31. The post-mortem report tendered to court at the trial indicates that the deceased had following injuries and cause of death was "*subdural hemorrhage around the pons and medulla oblongata due to or as a consequence of Assault*"
32. In the present case the prosecution relied on the evidence in the caution interview statement of the petitioner and the evidence of PW 4 Masulame Lovodrokadroka. PW 4 said that "*he saw Mesulame and TikoUate attack the man. He said Mesulame punched the man and Tiko pressed the man's neck. When cross-examined by defence counsel, he said he saw accused NO 1 punch the man who fell down and Accused No. 2 was pressing the victim's neck ...*" he also said at page 339 of the Supreme Court record that "*he saw Simone blocking his face with his hands to avoid the punches landing on his face*"
33. It appears from the pathologist's unchallenged evidence that the deceased had died of brain injuries which is consistent with the heavy blows landed to the victim's head with a heavy fist, kick. In his caution interview statement the petitioner had said that he punched the deceased in his stomach and ribs. He also said that although he was drunk, he knew what he was doing to the victim.
34. In the case of Tej Deo v The State (2008) FJCA23; AAU0045.2006. (23 June 2008) the court observed that the law on intoxication as a defence is settled. Self-induced intoxication is usually no defence except to offences requiring a specific intent such as the offence of murder. In Fiji the common law position on intoxication as a defence is codified in the Penal Code.

35. The court further observed in paragraph 36 of the same judgment that “ *Given the appellant’s evidence that he was not so drunk, that he knew what he was doing, that he had accidentally hit the deceased with a frozen chicken and that he had not assaulted her, we are satisfied that there was no evidential basis requiring directions on the appellant being unable to form the specific intent required for murder due to the influence of alcohol, and we are satisfied that there is no risk of miscarriage of justice having resulted.*”
36. In this case, the petitioner had consumed liquor, but he knew what he was doing to the deceased at the time of the act committed and that evidence was sufficient to establish that the petitioner had formed, the criminal intent required for murder when he continuously assaulted the victim. This ground of appeal fails and therefore we refuse to grant leave on this ground of appeal.
37. It is relevant to state that in this case intoxication was self-induced. Under section 13 of the Penal Code, Cap.17. the issue of Intoxication as to whether it can be taken as a defense to a criminal charge must be considered. Section 13 of the Penal Code reads as follows:
- “13(1) *Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.*
- 13(2) *Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and-*
- a) *The state of intoxication was caused without his consent by the malicious or negligent act of another person; or*
- b) *The person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.*

*13(3) Where the defence under subsection 2 is established, then in a case falling under paragraph (a) thereof the accused shall be discharged, and in a case falling under paragraph (b) the provisions of this Code and of the Criminal Procedure Code and of the Criminal Procedure Code relating to insanity shall apply.*

*13(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence."*

38. It is pertinent to state that the intoxication in this case is voluntary. Section 13 (2) above referred to does not apply to the present case as the petitioner had not complained that he did not know the act he did was wrong or did not know what he was doing as contemplated in section 13 (2).
39. It is the provisions contained in section 13 (4) that seems to apply to this case. The question is whether the petitioner can rely on section 13 (4). The prosecution story is that the act of assaulting the deceased's head with the fist had caused serious harm and the fact that the petitioner knew what he was doing though he had consumed liquor and continuing to assault the victim shows that the petitioner knew that his unlawful act would cause serious bodily harm to the deceased which resulted the victim's death.

We accordingly dismiss the ground of appeal No 1 as we do not see any merit in the petitioner's argument.

40. The petitioner's allegation as referred to in ground of appeal 2 that the trial Judge did not direct the assessors on the issue of murderous intent of the petitioner. This appeal ground

was not raised in the Court of Appeal. However, the ground of appeal ‘*Whether the direction to the assessors was sufficient as regards to manslaughter given the circumstances*’ was argued in the Court of Appeal. Therefore, in fairness to the petitioner we will consider as to whether there is any lack of direction as alleged by the petitioner on manslaughter.

41. It appears that the trial Judge at paragraph 14 of the summing up has given sufficient direction on manslaughter as follows:

*“If, on the other hand, the prosecution failed to prove beyond reasonable doubt, the mental element required in paragraph 9 (iii) ( c ) , but have only proven beyond reasonable doubt the elements in paragraph 9 (i) and 9(ii) , then you are entitled to find him guilty of the lesser offence of manslaughter. The elements of manslaughter are the two elements of murder , that is, the accused did an unlawful act, which caused the deceased’s death. In this case , if you find that the prosecution has failed to prove beyond reasonable doubt the mental element mentioned in Paragraph 9 (iii) ( c ) but they have proven beyond reasonable doubt the elements mentioned in paragraphs 9 (i) and 9 (ii) , then you are obliged to return a verdict of not guilty of murder, but guilty of manslaughter.”*

42. The petitioner also has complained that sufficient direction on manslaughter was not given by the trial Judge to the assessors. However, the issue on manslaughter has been explained by the trial Judge when the elements of the offences of murder and manslaughter was dealt with at paragraphs 12, and 13 of the summing up.

*“ The third element of murder is outlined in paragraphs 9(iii) (a) ,(b) and (c) which concerned the accused’ mental status at the of committing the unlawful act. As a matter of common sense , no one can look into a person’s brain to ascertain the person’s intention,at the time him doing the unlawful act. Nevertheless, his intentions could be inferred from his physical actions and spoken words, and the surrounding circumstances. You must put yourselves in the shoes of the accused and from his physical actions, spoken words, and surrounding circumstances , you will be able to ascertain his intentions at the time, he was doing the unlawful act.”*

43. The trial Judge at paragraph 20 of the summing up to the assessors after explaining the elements of the offence of murder and manslaughter in line 11 of the summing up at page 58 of the Supreme Court record) said that “ ... *Alternatively , according to the prosecution, if they lacked a guilty intent required by paragraph 9 (iii) ( c ) above then you should return the alternative verdict of guilty of manslaughter.*”
44. In view of the above we are of the opinion that the trial judge has explained sufficiently to the assessors on the issue as to whether the petitioner had the required intent to commit the offence of murder or manslaughter. Accordingly we dismiss the ground of appeal on manslaughter . We also note that there is no miscarriage of justice as alleged by the petitioner.

### Ground of Appeal 3

45. The petitioner urged the following grounds of appeal which can be argued together as they refer to same issue on state of the mind of the petitioner .
- i) *The inadequacy of direction on the state of mind makes the learned trial Judge to rely on and direct the assessors to rely on the caution interview.*
  - ii) *There is no proof nor there was any fore knowledge nor after knowledge to exist by my action that I meant to murder the man by my recklessness .The unlawful act was designed only to a grab and run.*
46. The counsel for respondent argued that this ground of appeal on the inadequate directions to the assessors was not raised in the Court of Appeal. The learned trial Judge has referred to the issue alleged by the petitioner at pages 12 to 15 of the trial Judge’s summing up which are at pages 55 and 56 of the Supreme Court record.

*“The 3<sup>rd</sup> element of murder is outlined in paragraphs 9(iii) (a) (b) and (c) which concerned the accused’s mental state at the time of committing the unlawful act. As a matter of common sense, no one can look into a person’s brain, to ascertain the person’s intention, at the time of him doing the unlawful act. Nevertheless, his intentions could be inferred from his physical actions and spoken words, and the surrounding circumstances, you will be able to ascertain his intentions at the time, he was doing the unlawful act.*

*In this case you will not be required to decide on the accused’s mental state in paragraph 9(iii) (a) and (b) because the prosecution is not running its case on these mental states. It had the option to do so..the prosecution is simply relying on the mental state mentioned in 9(iii) (c), to prove its case against the accused. beyond reasonable doubt. So when referring to the example we discussed in paragraphs 10 and 11 above, if the prosecution proved that when I threw the punch at the person’s head, I knew at the time, the death or serious injury would be caused on the person, but nevertheless I threw the punch at him, I would be guilty of murder, because they have satisfied beyond reasonable doubt the mental element mentioned in paragraph 9(iii) (c).”*

47. Accordingly the counsel for the respondent argued that the trial Judge had directed the assessors on the state of mind of the petitioner and the requisite intention for the offence of murder and it was left to the assessors to determine on the mental state of the petitioner at the time of the unlawful act committed.
48. In the caution interview statement the petitioner admitted that he was aware of what he was doing to the deceased and therefore the assessors could arrive at the inference that the petitioner knew what the mental state of the petitioner when he committed the unlawful act which resulted in the death of the deceased. Therefore we conclude that there is no merit in the argument urged by the petitioner and we dismiss granting leave to appeal on this ground of appeal. The petitioner complains that there is uncorroborated evidence to show that the petitioner had punched the man’s head from PW 4 Mesulame Lovodrokadroka.

#### **Ground of Appeal No.4**

49. It can be seen from the evidence elicited at the trial Court that it was the petitioner who punched the deceased's head and the victim fell down. In the caution interview statement of the petitioner it is very clearly stated that the petitioner punched the deceased. PW 4 Mesulame also testified in court and he said that *at page 339 of the Supreme Court record that, "he saw Simone blocking his face with his hands to avoid the punches landing on his face"*
50. The caution interview statement of the petitioner wherein he has admitted punching the victim, and the evidence of PW 4 Mesulame Lovodrokakadroka are consistent with the cause of death of the deceased. The pathologist Dr Gounder's evidence was that *"the cause of death was subdural hemorrhage around the pons and medulla oblongata due to assault. a severe blow to the left side of the head could result in these injuries in the head"*.( Paragraph 37 of the summing up at page 65 of the SC record.)
51. It appears from the summing up of the trial Judge, that all evidence that was elicited in the course of the trial was put to the assessors and directed them to arrive at a finding on the facts. The assessors appear to have relied on the petitioner's caution interview statement where he admitted that he threw punches at the deceased, the evidence of Mesulame Lovodrokadrova PW 4 at page 339 of the SC record where he said the petitioner had punched the deceased and he fell on the ground and the deceased was blocking his face with his hands to avoid the punches landing on his face and the pathologist evidence.
52. The learned counsel for the respondent in the written submissions filed before the Supreme Court has referred to the following Court of Appeal decision in the case of

Sakiusa Mocevakaca & Others v State (1992) FLR 102 wherein the Court of Appeal observed the following.

*“The better direction is taken from the Judgment (per Lord CJ Reading) in R v Baskerville (supra) namely, Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed but also that the defendant committed it”*

Lord CJ .Reading went on to say-

*“The corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime.”*

53. In view of the reasons set above we are not satisfied that the ground of appeal No. 4 has any merit and therefore leave to appeal is refused on that ground as well.

## CONCLUSION

- 54.. We agree with the submissions of learned counsel for the respondent and we have carefully considered the submissions of the petitioner. For the reasons set out above, we are inclined to conclude that there is no question of general legal importance involved in this matter, nor is there any substantial question of principle affecting the administration of criminal justice. We also conclude that there is no substantial or grave injustice that would otherwise, occur.
55. We agree with the submissions of the counsel for the respondent and we are inclined to mention that the petitioner has not been successful in establishing grounds of appeal urged by him in the petition in terms of the threshold criteria encapsulated in section 7(2) of the Supreme Court Act No 14 of 1998.

56.. In the circumstances we are of the considered view that the application for special leave to appeal lacks any merit and should be dismissed.

**Aluwihare, J**

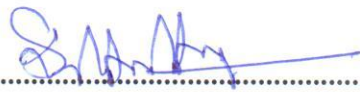
I concur with the judgment of Hettige J and agree with reasons and the Orders proposed.

**Orders of the Court:**

- i) Special Leave to Appeal is refused.
- ii) The Judgment of the Court of Appeal dated 3<sup>rd</sup> December, 2015 is affirmed.



.....  
Hon. Mr. Justice Saleem Marsoof  
**Justice of the Supreme Court**

.....  
Hon. Mr. Justice Sathya Hettige  
**Justice of the Supreme Court**



.....  
Hon. Mr. Justice Buwaneka Aluwihare  
**Justice of the Supreme Court**