

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 59 of 2020

STATE

v

SETAREKI RATATAGIA

Counsel: Mr. T. Naimila & Mr. L. Tuivuya for the State
Mr. N. Tuifagalele for the Accused

Date of Hearing: 19 – 21 February 2024, 17 June 2024 [*voir dire*]
8 October – 19 November 2024 [trial]

Date of Ruling: 25 April 2025

JUDGMENT

1. **Setareki Ratatagia**, the accused, is charged with ***Murder*** contrary to section 237(a) - (c) of the Crimes Act 2009, laid out as follows in the Information by the Director of Public Prosecutions dated 19 March 2020 and filed on 20 March 2020:

COUNT ONE

Statement of Offence

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

Particulars of Offence

SETAREKI RATATAGIA, on the 3rd day of February, 2020, at Namuka Landing, Nausori, in the Eastern Division, murdered one **JAOJI DUMU**.

2. The accused pleaded *not guilty* to the aforesaid indictment on 17 June 2020, and tried accordingly commencing with the *voir dire* on the admissibility of the accused's caution interview statement from 19 - 21 February 2024, and on 17 June 2024 the Court ruled that the I-Taukei and English versions of the accused's caution interview statement were admissible subject to the ordered amendments to the said statements; and the trial proper was held on 8 – 30 October 2024, both counsels then made closing submission on 19 November 2024, and this is the Court's judgment.
3. At trial, prosecution called 10 witnesses namely: PW1 – AD/Sgt Sakiasi Koroi; PW2 – Vilitati Domonakibau; PW3 – Penaia Dimuri; PW4 – Taitusi Drakivinaka; PW5 – Solomone Cati; PW6 – Mesake Tukana; PW7 – Esila Finau; PW8 – Eloni Naqiri; PW9 – Dr. Avikali Mate; and PW10 – D/IP Ilaitia Ratu Ramaya, and tendered the following prosecution exhibits:

PE1 – Photographic booklet of the alleged scene of murder at Namuka jetty on 3/02/2020, photographed by DC.4786 Iliesa on 4/02/2020, IP Ilaitia as Investigating Officer;

PE2 – Rough sketch plan of the alleged scene of murder at Namuka jetty on 3/02/2020 drawn on 4/02/2020 by A/Sgt.4309 Koroi;

PE3 – Postmortem report of Jaoji Dumu dated 5/02/2020 by Dr. Avikali Mate, Senior Forensic Pathology Registrar, Forensic Science Services, Fiji Police Force, Suva;

PE4(A) – Charge statement of Setareki Ratatagia dated 5/02/2020 in the I-Taukei language recorded by D/Cpl Mesulame Narawa;

PE4(B) – Charge statement of Setareki Ratatagia dated 5/02/2020 in the English language recorded by D/Cpl Mesulame Narawa;

PE5(A) – Caution interview statement of Setareki Ratatagia in the I-Taukei language; and

PE5(B) – Caution interview statement of Setareki Ratatagia in the English language;

4. The prosecution closed its case on 17 October 2024, and immediately thereafter the Court provided the relevant options under section 231(2) of the Criminal Procedure Act 2009 to the defence, who opted for the accused and another witness to testify under oath and be subjected to cross-examination.
5. Defence called 2 witnesses namely, DW1 – Setareki Ratatagia; and DW2 – Selina Waitale, and closed its case on 30 October 2024.
6. Both counsels made closing submission on 19 November 2024, and this is the Court’s judgment on the allegation of *Murder*.
7. According to sections 57 and 58 of the Crimes Act 2009 including Woolmington v DPP [1935] AC 462 at 481 (HL), the prosecution bears the burden to prove *beyond reasonable doubt* all the elements of *Murder* in the indictment.

Physical and fault elements for *Murder*

8. Section 237(a)-(c) of the Crimes Act 2009 state:

Murder

237. A person commits an indictable offence if –
(a) the person engages in conduct; and

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

9. Based on section 237(a) - (c) of the Crimes Act 2009, in this instant, the elements for *Murder* are:

- [1] A person i.e. the accused Setareki Ratatagia;
- [2] Engages in conduct;
- [3] His conduct causes the death of Jaoji Dumu; and
- [4] He intended to cause, or is reckless as to causing, the death of Jaoji Dumu by his conduct.

Admitted Facts by prosecution and defence

10. The *Admitted Facts* by prosecution and defence dated 7 April 2022 are as follows:

- 1) Setareki Ratatagia was born on 20 April 1984.
- 2) He is a farmer and currently reside at Lelean school compound at Davuilevu.
- 3) Setareki Ratatagia and Jaoji Dumu (the deceased) are cousins.
- 4) Setareki Ratatagia and Jaoji Dumu (the deceased) both resided in Namuka village, Tailevu.
- 5) The incident occurred on 3 February 2020 at Namuka landing, Nausori, in the Eastern Division.
- 6) Setareki Ratatagia was lawfully arrested on 3 February 2020 by DC Apisai Voravora and the CID Team, and he was transported from Namuka landing to Bau landing and then later handed over to the Taskforce team at the Nausori Police Station.
- 7) Setareki Ratatagia was interviewed under caution at the Nausori Police Station, and the Interviewing Officer was D/IP Ilaitia Ratu Ramaya.
- 8) The Witnessing Officer of the Record of Interview for Setareki Ratatagia was ASP Uraia Davu.

9) The contents of the following documents are not in dispute and may be tendered by consent:

- i) Photographic booklet of the crime scene;
- ii) Rough sketch plan of the crime scene; and
- iii) Postmortem report of Jaoji Dumu.

11. Prior to calling its first witness, prosecutor Mr. Naimila tendered the following documents as prosecution exhibit based on paragraph 9 of the *Admitted Facts* highlighted above and duly marked as follows:

PE1 – Photographic booklet of the alleged scene of murder at Namuka jetty on 3/02/2020, photographed by DC.4786 Iliesa on 4/02/2020, IP Ilaitia as Investigating Officer;

PE2 – Rough sketch plan of the alleged scene of murder at Namuka jetty on 3/02/2020 drawn on 4/02/2020 by A/Sgt.4309 Koroi; and

PE3 – Postmortem report of Jaoji Dumu dated 5/02/2020 by Dr. Avikali Mate, Senior Forensic Pathology Registrar, Forensic Science Services, Fiji Police Force, Suva.

Prosecution case via PW 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10

PW1 – Sakiasi Koroi

12. **PW1 Sakiasi Koroi**, in **examination-in-chief**, testified that he had just resigned from the Fiji Police Force effective on 27 September 2024, and before resigning he has been serving in the Fiji Police Force for the past 18 years. PW1 stated that he has served at Totogo Police Station then transferred to Valelevu Police Station and served in various units at the Valelevu Police Station including the Uniform Branch and Traffic Unit. PW1 stated that he got transferred to the Crime Scene Investigation Unit at Totogo Police Station, then got promoted and transferred to Labasa Police Station based at the Crime Scene Investigation Unit. PW1 stated that after Labasa, he got transferred to the Crime Scene Investigation Unit in the Eastern Division, and then recently got transferred to the Forensic Science Services at Nasova. PW1 stated that his primary duties in the CSI Unit are to attend to crime scenes such as burglary, aggravated robbery, murder cases, natural and unnatural deaths, documentation of each crime

scene, sketching and photographing of crime scenes. PW1 stated that he can recall the 3rd and 4th of February 2020. PW1 stated that on the 3rd and 4th of February 2020 he received a call in relation to a case of alleged murder at Namuka jetty. PW1 stated that after receiving that call, he left out with PC Iliesa to attend to the case at the Namuka jetty, which is situated across from Bau landing and accessible by taking a water taxi, dingy, or fiber boat. PW1 stated that they arrived at Namuka jetty at 6 in the evening, and they took measurements, and reattended to the scene the next morning. PW1 stated that on the next morning they arrived at the scene, the scene was photographed by DC Iliesa and he drew the rough sketch plan of the crime scene. PW1 stated that he would be able to recognize the rough sketch plan that he drew. Leave was then granted by the Court for PW1 to be shown **PE2** - Rough sketch plan of the alleged scene of murder at Namuka jetty on 3/02/2020 drawn on 4/02/2020 by A/Sgt.4309 Koroi. Once shown **PE2**, PW1 confirmed that it was the same rough sketch plan he drew. PW1 stated that the rough sketch plan is of the alleged scene of murder at Namuka jetty on the 3rd of February 2020 by A/Sgt 4309 Koroi with his initial and badge number. PW1 stated that the sketch illustrates the location of Namuka jetty directly opposite Bau landing, and it has numbering and alphabets which indicate the width, length, height, and alleged spot where the deceased was sitting and assaulted on the fixed point indicated by number 4, and the spot where the witness was sitting as indicated by number 2. PW1 stated that access to the jetty, one has to cross the Bau river, and the only way one can access Namuka village is via the shed and track that leads to the village. PW1 stated that towards the right in the rough sketch plan, there is a river which leads to Namuka village, or it can be accessed during high tide. PW1 stated that Bau landing is approximately 30 to 40 meters to the Namuka jetty across the Bau river. PW1 stated that the distance between the river and the shed next to the track leading to the village was not measured, and it is just there for reference sake. PW1 stated that a photograph was taken. Leave was then granted by the Court for PW1 to be shown **PE1** – Photographic booklet of the alleged scene of murder at Namuka jetty on 3/02/2020, photographed by DC.4786 Iliesa on 4/02/2020, IP Ilaitia as Investigating Officer. Upon viewing **PE1**, PW1 stated that the shed is in photographs numbered 1, 2, 3, 4, 5 and 6. PW1 stated that in photograph no. 4, at the edge of the jetty that is the spot where the deceased was sitting, and PW1 actually pointed to the edge of the jetty in photograph no. 4. PW1 stated that in photograph no. 3, it is the overview shot of the river and Bau landing across the river.

In **cross-examination** by Mr. Tuifagalele, PW1 stated that it is correct to say that his job is to document the crime scene. PW1 stated that he did not have a drone in his possession at that particular time. PW1 stated that a drone would have given a better aerial picture of the sketch plan that he drew, and they don't have any drone. PW1 stated that he took no other part in the investigation except documenting the crime scene.

PW1 was not **re-examined** by the prosecutor.

PW2 – Vilitati Domonakibau

13. **PW2 Vilitati Domonakibau**, in **examination-in-chief**, testified that he works at Water Authority, reached Form 7 and currently reside at Namuka, Bau, Tailevu. PW2 stated that he has lived in Namuka, Bau, Tailevu, for 32 years. PW2 stated that he can recall 3 February 2020. PW2 stated that at around 4pm on 3 February 2020, they were waiting for the boat to go for training. PW2 stated that they usually train at Nadave. PW2 stated that with him waiting to go training were Pita, Misaele Vakacegu, Akuila Cavuilati and Penaia Dimuri. PW2 stated that he was waiting at the shelter near the Namuka jetty. PW2 stated that they were sitting on top and Misaele Vakacegu was standing below. PW2 stated that if shown the photograph of the Namuka jetty, he would be able to show the place where him and others were sitting on the jetty. Leave was then granted by the Court for PW2 to be shown **PE1** – Photographic booklet of the alleged scene of murder at Namuka jetty on 3/02/2020, photographed by DC.4786 Iliesa on 4/02/2020, IP Ilaitia as Investigating Officer. Upon viewing **PE1**, PW2 then pointed to the spot in photograph no. 4 to indicate the exact place he was sitting on the day in question. PW2 stated that one was standing near the post, one stood near the edge, and the other two sitting on the other side as shown in photograph no. 3. PW2 stated that Pita Tuikabe was standing near the post close to the edge, Misaele Vakacegu was standing on the steps, and Akuila Cavuilati and Penaia Dimuri were sitting on the other side. PW2 stated that while they were sitting, Setareki Ratatagia came to where they were waiting and started a scene and started punching Jaoji Dumu. PW2 stated that he did not know the reason why Setareki Ratatagia started punching Jaoji Dumu. PW2 stated that Jaoji Dumu was sitting on the edge as shown in photograph no. 4 and pointed out by PW2, and he was facing Bau landing. PW2 stated that Setareki Ratatagia came from the

back, took a step, and started punching Jaoji Dumu who was facing Bau landing. PW2 stated that Setareki Ratatagia threw 3 punches at Jaoji Dumu. PW2 stated that he could see where those punches landed on Jaoji Dumu, the first punch landed at the back of his head; the second one landed on his forehead; and the third landed at the back of the head. PW2 stated that after the 3 punches, Jaoji Dumu fell into the water. PW2 stated that when he fell into the water, he swam and turned around to come up, while Seta shouted, *“That is what you have been doing to the girls in the village. Come up to get punched again”*. PW2 stated that Jaoji came up, and while trying to stand straight, Seta threw a punch again which landed at the back of Jaoji’s neck, PW2 pointed to the left side of the back of the neck to demonstrate. PW2 refers to photograph no. 6 showing the step where Jaoji had come up from when he swam back to the jetty. PW2 stated that Setareki was standing on the third step in photograph no. 6 when he threw that punch at Jaoji Dumu. PW2 stated Jaoji fell into the water after being punched on the back of his neck by Setareki Ratatagia. PW2 stated Jaoji started swimming, and while swimming he simultaneously swam in a circular motion compared to a fish being shot but not shot nicely. PW2 stated that Jaoji was not swimming forward, and he was just using one of his hands. PW2 stated that the boat then came, and Seta got into the boat, took an oar and then hit and spear Jaoji with the oar, hitting Jaoji’s hip. PW2 stated that the oar is approximately 3 meters in length and width similar to PW2’s arm as shown by PW2 raising his right arm. PW2 stated that it was a wooden oar. PW2 stated that after Setareki had used the oar to spear Jaoji, all of them boarded the boat and the boat went to where Jaoji was swimming, they then pulled him out of the water and into the boat, and headed to Bau landing. PW2 stated that they got off, Jaoji was still in the boat and the boat to take him back to the village. PW2 stated that they pulled Jaoji out of the water from his chest and into the boat. PW2 stated that Emosi, Pita and himself pulled Jaoji out of the water and into the boat. PW2 stated that when they pulled Jaoji out of the water and into the boat, the look on Jaoji’s eyes had changed, he was still breathing, however the black pupil in his eyes had disappeared and his eyes had turned white. PW2 stated that he also observed the mark of the punch on Jaoji’s forehead. PW2 stated that they pulled Jaoji out of the water and into the boat, and made him sit on the side of the boat. PW2 stated that there was no response from Jaoji when he was pulled out of the water and into the boat. PW2 stated that Jaoji was snoring and water kept on coming out of his nose. PW2 stated that the sound of his snoring was not like the snoring when he is sleeping. PW2 stated that they were calling him out but still there was no response

from Jaoji. PW2 stated that Mesake was operating the boat when they pulled Jaoji out of the water and into the boat. PW2 stated that Jaoji was swimming around in the water for about 2 to 3 minutes. PW2 stated that Jaoji is much taller than him and well built. PW2 stated that when they reached Bau landing, they got off, Jaoji was still in the boat with Emosi, and the boat took them back to the village. PW2 stated that Setareki was also on the boat when they pulled Jaoji into the boat. PW2 stated that when the boat reached Bau landing, Setareki was the first person to get off and started to walk off. PW2 stated that Setareki was walking on the road towards the ground. PW2 stated that he has known Setareki for all his life and they have been together in the village. PW2 stated that Setareki is his uncle. Leave was then granted by the Court for Dock ID on the basis of recognition. PW2 stated that Setareki is present in Court today and wearing a shirt and pocket-sulu. PW2 then pointed at Setareki Ratatagia sitting in the accused box.

In **cross-examination** by Mr. Tuifagalele, PW2 stated that he was around at the Namuka jetty at around 4pm together with Pita Tuikabe, Akuila and Misaele. PW2 stated that they were sitting down at the jetty and waiting to catch a boat to Bau landing to go and train. PW2 stated that he had also informed the Court the particular places they were sitting at the jetty. PW2 stated that he was sitting on the jetty facing Bau landing and back towards the village. PW2 stated that Setareki the accused came from behind him. PW2 agreed that he neither saw nor aware where Setareki came from when he was sitting down. PW2 stated that he only came to know of Setareki's presence at the jetty when he saw him threw a punch. PW2 stated that they were shocked when Setareki came past them and threw the punch. PW2 stated that he thought that the lawyer was asking about them the witnesses, and that is why he never mentioned anything about Jaoji being there at the jetty during the examination-in-chief. PW2 stated that neither him nor the other 3 stopped Setareki from punching Jaoji. PW2 stated that Jaoji was really punched by Setareki, and the first punch landed on the back of Jaoji's head, and as a result of that punch Jaoji fell into the water. PW2 stated that Jaoji will come through the steps if he swam back to the top of the jetty after falling into the water. PW2 stated that the second punch landed on Jaoji's forehead. PW2 stated that Setareki went down the steps to punch Jaoji. PW2 stated that Vilitati, Pita, Akuila, Misaele and himself did nothing to stop Setareki when he walked down the steps to punch Jaoji because they were in shock. PW2 stated that when the second punch landed, Jaoji fell back into the water. PW2 stated that during the third

punch which landed on the left side of the back of Jaoji's neck, Jaoji never swam back to the jetty, but he was swimming in a circular motion. PW2 stated that the first punch was thrown whilst Jaoji was still sitting on the jetty, which punch landed at the back of his head, then he turned then the second punch landed on his forehead whilst turning. PW2 stated that the third punch landed on the left side of the back of his head, then he fell in the water. PW2 stated that Jaoji was punched 3 times, then he landed on the water. PW2 stated that the 3 punches landed on Jaoji that made him fall into the water. PW2 stated that Jaoji fell into the water twice. PW2 stated that the second time Jaoji fell into the water was when Seta shouted at him for him to come back to get more punches, and Jaoji got back to the jetty. PW2 stated that when Jaoji got back to the steps of the jetty, Seta attacked him again, and the 4 of them did nothing. PW2 stated that he knows the deceased Jaoji who is younger than him. PW2 stated that he has known Jaoji for 21 years. PW2 stated 'yes' to defence counsel's proposition that they don't know of what had happened or the cause of the incident, but somebody has been assaulted, a person he has known for 21 years, would he still want to know the reason first before he helped him. PW2 stated that Jaoji swam in circles for about 2 or 3 minutes. PW2 stated that he still doesn't know the reason why the attack happened that afternoon. PW2 stated that it was high tide, and while Jaoji was swimming in circles, the boat arrived at the jetty, they got in and went and pulled Jaoji out of the water and into the boat. PW2 stated that when the boat came driven by Mesake, the 4 of them then fetched Jaoji from the water and into the boat. PW2 stated that none of them dove into the water to save Jaoji when he was circulating in the water for 2 to 3 minutes. PW2 stated that the reason they couldn't do anything was because they were shocked and couldn't move. PW2 stated that once Jaoji was in the boat, it took them about a minute to go to Bau landing. PW2 stated that they took Jaoji across the other side to Bau landing, and he was still seated in the boat. PW2 stated that he never saw Setareki coming closer to Jaoji on the way to Bau landing. PW2 stated that 7 of them were in the boat going to Bau landing including Seta as the 8th person. PW2 stated that when they arrived at Bau landing, they all got out of the boat, except for the boat owner or operator Mesake who went with Jaoji back to Namuka village. PW2 stated that Emosi was also in the boat who went with Jaoji back to the village. PW2 stated that he had already said that when they reached Bau landing, Emosi didn't get off and returned with Jaoji to the village. PW2 stated that Jaoji is like his father. PW2 stated that he is from Namuka village, but Jaoji is from Koro.

PW2 stated that Seta said, “*Come back up, this is what you’ve doing to the girls in the village*”. PW2 stated that he does not know the meaning of why Seta said that to Jaoji. PW2 stated that he does not know whether Jaoji has relationship with girls in the village, when he heard Seta said that to Jaoji. PW2 stated that he knew that statement when it was said by Setareki when the incident happened. PW2 stated that he does not remember Jaoji’s village in Koro. PW2 stated that he has known Jaoji for his whole life. PW2 stated he always talk and laugh together with Seta.

In **re-examination** by the prosecutor, PW2 stated that they did not do anything when Jaoji was punched because they were in shock and their body was restrained and could not move. PW2 stated that he did not accompany Jaoji back to the village because they were calling them to go for training, and that is why Emosi was there to take Jaoji back to the village.

PW3 – Penaia Dimuri

14. **PW3 Penaia Dimuri**, in **examination-in-chief**, testified that he is 25 years old, unemployed, reached Form 6, and currently live and hails from Namuka, Bau, Tailevu. PW3 stated that he is in Court to give evidence on this case. PW3 stated that on 3 February 2020 he resided at Namuka, and at about 4pm to 4.30pm they were waiting at the *natua* or jetty to go training. PW3 stated that the weather that particular day was good. PW3 stated that he was waiting at the jetty with Jaoji, Vilitati, Misaele, Pita and Akuila. PW3 stated that him and Jaoji were walking together from the village to go for training. PW3 stated that him and Jaoji went to primary school and secondary school together. PW3 stated that he has known Jaoji maybe for 20 years. PW3 stated that Jaoji had the same physical built as himself. PW3 stated that while they were at the jetty, he was lying down inside the shelter listening to music, while the rest were sitting on the cement. Leave was then granted by the Court for PW3 to be shown **PE1** – Photographic booklet of the alleged scene of murder at Namuka jetty on 3/02/2020, photographed by DC.4786 Iliesa on 4/02/2020, IP Ilaitia as Investigating Officer. PW3 then pointed at the shelter shown in photograph no. 1 of **PE1** where he was lying down inside. PW3 then pointed to the cemented area adjacent to the shelter in photograph no. 3 of **PE1** to show where the other boys sat or stood at that time. PW3 then pointed at the edge of the cemented area adjacent to the shelter in photograph no. 4 of **PE1** to show where Jaoji was sitting. PW3 stated

that Jaoji was facing Bau island, and then indicated to the Court the same via photograph no. 4 of **PE1**. PW3 stated that when he was lying down listening to music, he got a shock when someone fell into the water and then saw Jaoji was inside the water and his *Ta* or father Seta standing on the jetty calling Jaoji out to come out of the water to get punched because *'this is what he has been doing to the girls'*. PW3 stated that he has known his *Ta* or father Seta for 25 years and he is physically big in built. PW3 stated that his *Ta* or father Seta was angry when he was speaking to Jaoji. PW3 stated that the boat came and the team boarded the boat. PW3 stated that after his *Ta* or father Seta had called out to Jaoji, Jaoji then came out of the water and *Ta* Seta then landed 2 punches on him, but did not see where the punches landed. PW3 stated that when they all boarded the boat, his *Ta* or father Seta got hold of the oar and speared Jaoji with it, but did not see where the oar hit Jaoji. PW3 then demonstrated by standing up and positioning his right arm pretending to hold an oar and speared the subject. PW3 stated that his *Ta* or father Seta was really angry at that moment. PW3 stated that after being speared, Jaoji was still in the water moving in a circular motion. PW3 demonstrated by standing up and using his right arm to show how Jaoji was swimming in a circular motion using only his right arm. PW3 stated that the boat then moved closer to Jaoji and they lifted him up to the boat. PW3 stated that Emosi, Pita and Akuila lifted Jaoji out of the water and into the boat. PW3 stated that Jaoji was lying down facing upwards in the boat. PW3 stated that Jaoji was lying down breathing. PW3 stated that when they called Jaoji, he was not responding, and Emosi and Pita attended to him in the boat. PW3 stated that his *Ta* or father Seta was just sitting in the boat and doing nothing. PW3 stated that the oar used by his *Ta* or father Seta to spear Jaoji is about 3 meters in length and width of about 10cm, and can't remember the material the oar is made out of. PW3 stated that Mesake was operating the boat that they all boarded. PW3 stated that they were taken to Bau landing, and his *Ta* or father Seta, Akuila, Misaele, Pita, Vilitati and himself got dropped off at Bau landing, while Emosi and Mesake the boat operator took Jaoji back to Namuka village. PW3 stated that at Bau landing, he didn't notice much about Jaoji because they were going for training, and Jaoji was still alive and breathing. PW3 stated that the distance from Bau landing to the Namuka jetty is around 80 meters. Leave was then granted by the Court for PW3 to engage in Dock ID. PW3 stated that his *Ta* or father Seta was present in Court today, and pointed him out sitting in the accused box wearing a shirt and pocket-sulu.

In **cross-examination** by Mr. Tuifagalele, PW3 stated that he was lying down on the shed on that particular afternoon and listening to music via the ear piece in his ear. PW3 stated that he heard a commotion outside that shed, and he came out of the shed and saw Jaoji in the water. PW3 stated that he doesn't know how Jaoji fell into the water. PW3 stated that he saw Jaoji tried to come out of the water into dry land. PW3 stated that he saw Seta threw 2 punches at Jaoji, but does not know where those 2 punches landed. PW3 stated that Seta used the boat oar to spear Jaoji when he was in the water, but didn't see where the oar landed. PW3 stated that he was with Peni, Akuila, Misaele, Pita and Vilitati on the jetty at that particular time. PW3 stated that he can't remember how long was the exchange between Seta and Jaoji going on for while they were looking. PW3 stated that it may have been 1 to 10 minutes or 1 to 15 minutes. PW3 stated that the 6 of them did not do anything to stop Seta. PW3 stated that none of the 6 dived into the water to fetch Jaoji out of the water when they saw him swimming in a circular motion, and have no particular reason as to why they didn't do so. PW3 stated that he did not run back to the village to ask for help. PW3 stated that he fetched Jaoji out of the water and into the boat. PW3 stated that Jaoji was lying down facing upwards and still breathing, and was in a state where he needed help. PW3 stated that they decided to go across to Bau landing despite Jaoji's condition of needing help. PW3 stated that he went to primary school and secondary school with Jaoji, and knows him quite well. PW3 stated that he calls Jaoji 'momo' or uncle. PW3 stated that Jaoji is not from Namuka village, but from Koro. PW3 stated that Seta said to Jaoji, *"Come here for you to get a good punch because this is something that you have you been doing to the young girls"*. PW3 stated that he always hear about Jaoji befriending young girls as girlfriend and boyfriend resulting in sexual relations, but hasn't seen it. PW3 stated that when they reached Bau landing, the 6 of them left Emosi, Jaoji and Mesake, enroute to Nadave for training. PW3 stated that he did not give much attention to Jaoji's status of health when he got off at Bau landing. PW3 stated that he had no worries about Jaoji being left in the boat, and there was no need for him to get back into the boat to take Jaoji back to the village.

PW3 was not **re-examined** by the prosecutor.

PW4 – Taitusi Drakivinaka

15. **PW4 Taitusi Drakivinaka**, in **examination-in-chief**, testified that he is 32 years old, a cane cutter in Ba, and currently reside at Namuka in Bau. PW4 stated that he hails from Namena village with maternal links to Namuka in Bau. PW4 stated that he knows why he is in Court today because of the incident that happened at Namuka village. PW4 stated that he was in Namuka village on 3 February 2020, and at about 4pm to 4.30pm he walked from the village towards the village jetty to go training, and the weather that day was good. PW4 stated that upon reaching the edge of the jetty, he could see Jaoji spinning in circle in the water. PW4 stated that when he went closer, the boat came, Setareki boarded the boat, took the oar and then speared Jaoji. PW4 stated that he has known Jaoji for not so long approximately 5 years. PW4 stated that Jaoji is dark and tall and same height as him. PW4 stated that Setareki who got into the boat is the one seated at the back of the Court, and he is PW4's cousin. PW4 stated that he has known Setareki for years but not exactly how long. PW4 stated that Setareki is short and fat. PW4 stated that the boat that Setareki boarded is operated by Mesake. PW4 stated that Setareki was angry when he took the oar and speared Jaoji with it. PW4 stated that Setareki speared Jaoji with the oar once, and didn't know where the oar landed. PW4 stated that the length of the oar is about 3 to 4 meters, and width of about 10cm. PW4 stated that Setareki bent down when he speared Jaoji who was in the water because it was high tide. PW4 stated that after Setareki had speared Jaoji with the oar, they all went on board the boat to head for training. PW4 stated that when they went on board the boat, Jaoji also went with them. PW4 stated that there were a few that lifted Jaoji into the boat, and he doesn't know them. PW4 stated that they positioned Jaoji upwards in the boat, and Jaoji's eyes were crossed and red. PW4 stated that he doesn't know the manner of Jaoji's breathing in the boat at that moment. PW4 stated that while Jaoji was inside the boat, he doesn't know some of the boys who were also in the boat. PW4 stated that once Jaoji was in the boat, Setareki was still standing in the boat, and doesn't know Setareki's demeanour at that moment. PW4 stated that after getting off at the Bau landing, they then went for training at Nadave. PW4 stated that when they got off at Bau landing, Mesake and Emosi remained in the boat, and Jaoji was then taken up to the village by Emosi and Mesake. PW4 stated that they just got off the boat and went. PW4 stated that he can recognize Setareki if he sees him again. Leave was then granted by the Court for PW4 to engage in Dock ID. PW4 confirmed that Setareki is present in Court, and pointed him out to the Court sitting in the accused box wearing a shirt and black pocket-

sulu.

In **cross-examination** by Mr. Tuifagalele, PW4 stated that when he came onto the jetty, he saw Jaoji in the water. PW4 stated that he cannot recall how many others were at the jetty at that time. PW4 stated that he doesn't know how long Jaoji was spinning in the water before he was fetched out of the water. PW4 stated that no one including himself jumped into the water to help Jaoji. PW4 stated that he saw Seta throw an oar at Jaoji when he was in the water, but would not be able to say that the oar landed on Jaoji. PW4 stated that he doesn't know who pulled Jaoji from the water and into the boat. PW4 stated that Jaoji was facing upwards when he was inside the boat. PW4 stated that Jaoji's eyes were crossed and red. PW4 stated that despite Jaoji's condition, they still went on to Bau landing. PW4 stated that they didn't help Jaoji when he was in that condition because they were frightened. PW4 stated they were frightened because of Jaoji's condition and appearance. PW4 stated that he is related to Jaoji, but did not help him because he was so afraid of Jaoji's appearance at that moment. PW4 stated that Jaoji is from Koro with maternal links to Gau, and neither Jaoji's mum or dad is from Namuka village.

PW4 was not **re-examined** by the prosecutor.

PW5 – Solomone Cati

16. **PW5 Solomone Cati**, in **examination-in-chief**, testified that he resides at Namuka, Bau, Tailevu, and has resided there for about more than 40 years, and once a boat operator. PW5 stated that he can recall the 3rd of February 2020. PW5 stated that on 3 February 2020 from 4pm to 4.30pm, he was a boat operator at that time, lying at the shed at Bau landing alone, then he heard people talking and he got up round about that time boys from the village normally go for training. PW5 stated that when it is high tide, they can board the boat from Namuka village, but when it is low tide, they will get on and get off at the village jetty. PW5 stated that when he stood up, he saw Setareki had speared the oar into the water but do not know what he had speared, while the other boys were already in the boat. PW5 stated that after a while the boat then came across to Bau landing, then they all got off, and only the boat operator took off with the boat to go up to the village. PW5 stated that after a while then

another boat operator who is older than him namely Lekima then asked him what had happened to Jaoji, then PW5 replied accordingly. PW5 stated that the height of the oar will be small as he was looking from Bau landing which is 70 to 80 meters away from the Namuka jetty. PW5 stated that Setareki is his wife's first cousin and from the same family, and PW5's son is named after him. Leave was then granted by the Court for PW5 to engage in Dock ID on the basis of recognition. PW5 stated that Setareki is wearing a shirt and pocket-sulu, and pointed him out to the Court sitting in the accused box.

In **cross-examination** by Mr. Tuifagalele, PW5 stated that he is 46 years old. PW5 stated that the distance between the 2 jetties is about 70 to 80 meters. PW5 stated that from where he was standing at Bau landing, he could clearly see Setareki throwing the oar, but didn't know who he threw the oar at on that particular day.

PW5 was not **re-examined** by the prosecutor.

PW6 – Mesake Tukana

17. **PW6 Mesake Tukana**, in **examination-in-chief**, testified that he is 56 years old, currently resides in Namuka village, Bau, Tailevu where he was born, and a farmer. PW6 stated that he can recall the 3rd of February 2020, and around 4pm on that day, he was taking passengers as boat operator to Ovea. PW6 stated that upon taking off to Ovea, the boys were across at Namuka jetty signaling to them that upon returning from Ovea, he will pick them up from the Namuka jetty. PW6 stated that whilst returning from Ovea, he saw someone jump into the water, and it was a bit of a distance then and didn't know who jumped into the water. PW6 stated that the tide was lowering, and he was on his way to the Namuka jetty and could see Setareki standing there at the Namuka jetty and then saw Jaoji Dumu in the water. PW6 stated that Seta was still standing and said to Jaoji, *“This is the thing that you have been doing. Come up for you to be punched”*. PW6 stated that Jaoji was still in the water, then Setareki took the oar and speared Jaoji in the water. PW6 stated that Setareki was standing at the steps of the jetty when he speared Jaoji in the water. PW6 stated that at that time they had already boarded the boat, and he then called Akuila and Vilitati for them to carry Jaoji into the boat as he was still in the water. PW6 stated that after Setareki speared Jaoji, Setareki and others then

boarded the boat and for him to drop them off to Bau landing to go training. PW6 stated that they boarded the boat, and he then told Akuila, Vilitati and Penaia for them to put Jaoji in the boat. PW6 stated that he then took them to Bau landing to drop them off to go training, and it was only PW6, Emosi and Jaoji Dumu who remained in the boat. PW6 stated that Setareki used the oar of the boat that he was operating to spear Jaoji. PW6 stated that the oar was inside the boat that he was operating. PW6 stated that he was in the boat, the boat was beside the steps of the Namuka jetty, then Setareki came and took the oar out of the boat. PW6 stated that Jaoji was in the water before Setareki took the oar out of his boat. PW6 stated that Jaoji was swimming in circles using only one hand when he was in the water. PW6 then demonstrated by lifting his right arm and moving it in a manner to demonstrate the swimming in circular motion. PW6 stated that Jaoji was swimming in circular motion for not too long when the boat came and rescued him. PW6 stated that the oar was 3 meters in length and '*tolo lailai*' or thin in width. PW6 stated that at the time Setareki speared the oar into the water, simultaneously Jaoji tried to come above water, and when the oar landed into the water, Jaoji went under water, and so PW6 wouldn't know whether the oar had landed on Jaoji or not. PW6 stated that when Vilitati and 2 other boys lifted Jaoji into the boat, he could see that Jaoji's eyes were closed but he was still breathing. PW6 stated that that is all he saw of Jaoji and his eyes were closed. PW6 stated that when Setareki speared Jaoji, he became scared after seeing Jaoji in the water. PW6 stated that Setareki was with them in the boat when Penaia, Vilitati and Akuila lifted Jaoji into the boat, and for PW6 to drop them at Bau landing. PW6 stated that Setareki, Penaia, Akuila and Vilitati got off at Bau landing, and only him, Emosi and Jaoji were still in the boat. PW6 stated that he then took Jaoji and Emosi in the fiberglass boat to the village going through the river, PW6 then came beside the village and left Jaoji and Emosi in the boat and ran to Jaoji's uncle's house and in that house were Jaoji's father and uncle, and told them for them to go to the boat where Jaoji is as he was hurt. PW6 stated that they then came together to the boat to lift Jaoji out of the boat, then they massaged him there as he was still breathing, and PW6 then came back to the Namuka landing to take a passenger to Bau island. PW6 stated that upon returning from Bau island, he was told that Jaoji was taken to the hospital. PW6 stated that transporting Jaoji from Bau landing to Namuka village is not that far, a distance of approximately 250 to 300 meters. Leave was then granted by the Court for PW6 to be shown **PE2** – Rough sketch plan of the alleged scene of

murder at Namuka jetty on 3/02/2020 drawn on 4/02/2020 by A/Sgt.4309 Koroi. PW6 then via **PE2** pointed to the 1st point from Bau landing and onto the passage to Namuka village. PW6 stated that Jaoji's father and Viliame Devo lifted Jaoji from his boat to the village, and there were 3 ladies waiting at the village namely, Maca, Nadamu and Vaseva. PW6 stated that Setareki and himself were brought up together in Namuka village, and they are closely related. Leave was then granted by the Court for PW6 to engage in Dock ID on the basis of recognition. PW6 then looked around the courtroom and stated that Setareki is seated behind him wearing a brown coloured shirt with black pocket-sulu, and pointed at Setareki sitting in the accused box.

In **cross-examination** by Mr. Tuifagalele, PW6 stated that he dropped off somebody at Ovea before he returned to Namuka jetty, and the tide was low, and using his outboard engine. PW6 stated that when he took Jaoji from Bau landing to Namuka village, he used his outboard engine. PW6 stated that it took approximately 2 minutes to go from Namuka jetty to Bau landing when he took the boys for training. PW6 stated that it takes about 3 minutes to go from Bau landing to Namuka village. PW6 stated that he saw Jaoji's condition in the boat when he took the boys across from Namuka jetty to Bau landing. PW6 agreed that when he saw Jaoji's condition, he knew that Jaoji needed help. PW6 stated that he felt sorry for Jaoji for what he went through with his life, and that being the reason why he wanted to take Jaoji back to the village seeing the condition he was in. PW6 stated that it was better to take Jaoji to the village at that time. PW6 stated that Seta was also in the boat when he took the boys from Namuka jetty to Bau landing. PW6 stated that he was operating the boat from Namuka jetty to Bau landing. PW6 stated that he was sat at the back of the boat while the passengers sat in front, and Jaoji sat below the front of the boat. PW6 stated that Seta stood in front of him in the boat. PW6 stated that he did not see Seta assault Jaoji or spear him again with an oar when he was travelling from Namuka jetty to Bau landing. PW6 stated that he heard Seta say in I-Taukei, "*Na ka oqo iko dau cakacakava, lako mai cake mo mai lau vacu*" [English translation – 'This is what you have been doing, come up for you to be punched'] PW6 stated that for them, they don't know why Seta had said that, and also don't know what had happened, but after that particular incident then they found out what Jaoji was up to or had done. PW6 stated that when that incident happened, then they found out what Jaoji had done. PW6 stated that Jaoji usually visit Setareki's house, and he supposedly harassed one of the

girls who lives there. PW6 stated that Jaoji and him are cousins. PW6 stated that Jaoji is from Namuka village, and he was born and bred in Namuka. PW6 stated that Jaoji hails from Koro. PW6 stated that Seta is his paternal cousin, and their fathers are brothers. PW6 stated that Seta and him love and are close to each other. PW6 stated that Seta has never been angry at him nor threaten him.

PW6 was not **re-examined** by the prosecutor.

PW7 – Esila Finau

18. **PW7 Esila Finau**, in **examination-in-chief**, testified that he is 69 years old, a farmer and resides in Namuka, Bau. PW7 stated that he can recall the 3rd of February 2020. PW7 stated that at 4pm on 3 February 2020, he was at home when Mesake came home and called him to go and see Jaoji in the boat. PW7 stated that when he went to the boat, Jaoji was sitting and leaning on the side of the boat. PW7 stated that Jaoji is his biological son. PW7 stated that when he went to the boat, Jaoji was sitting and leaning on the boat, his eyes were closed and saliva was coming out from his mouth. PW7 stated that Jaoji was sitting in Mesake's boat. PW7 stated that they then lifted Jaoji to dry land. PW7 stated that his brother Viliame Devo, Eseta Wasa and himself lifted Jaoji from the boat by holding one side of each of his arm and Eseta Wasa lifted his leg. PW7 stated that they lifted Jaoji out of the boat and took him to a house, laid him inside the house, and tried to revive him. PW7 stated that they tried to revive him, and he was still unconscious. PW7 stated that they changed Jaoji's wet t-shirt and put a clean and dry one, and then lifted him into the wheelchair and took him right to the Namuka jetty to wait for the boat. PW7 stated that him and Eloni lifted Jaoji up to the wheelchair. PW7 stated that where they lifted Jaoji out of the boat was at that river adjacent to the village, which is different from the Namuka jetty. PW7 stated that when they reached the jetty, Soloveni's boat was there, and they put Jaoji inside Soloveni's boat. PW7 stated that him and Eloni lifted Jaoji into Soloveni's boat. PW7 stated that they carried Jaoji into the boat, sat him down on the seat, and they held onto him inside the boat. PW7 stated that the boat then departed to go to the other side, and upon reaching the landing, the taxi called *Veivueti* was there, and then him and Eloni lifted Jaoji into the taxi. PW7 stated that they sat inside, Eloni and him sat on Jaoji's sides and held onto Jaoji inside the car while Susana sat in front. PW7

stated that while travelling in the taxi, Jaoji was still breathing and saliva coming out of his mouth. PW7 stated that Jaoji's eyes were closed and saliva and foam came out from his mouth. PW7 stated that they took Jaoji to Mokani hospital, and when they reached Mokani hospital, they called the doctor. PW7 stated that when the doctor observed Jaoji, he told them to take Jaoji directly to Nausori hospital. PW7 stated that Jaoji was sitting inside the car when the doctor observed him. PW7 stated that they then took Jaoji right to Nausori, and upon reaching Nausori hospital, the doctors were waiting. PW7 stated that they then lifted Jaoji up into the hospital bed in the hospital, laid him on the bed, and the doctor tried to revive him. PW7 stated that the doctor then called him to relay the message that Jaoji had died.

In **cross-examination** by Mr. Tuifagalele, PW7 stated that Jaoji is his son. PW7 stated that the boat operated by Mesake carried his son back to the village. PW7 stated that with the help of others, they lifted Jaoji and carried him into the house in the village after the boat arrived. PW7 stated that the distance that they lifted Jaoji from the boat to the house in the village is approximately 30 steps and about 70 to 80 meters in length. PW7 stated that Jaoji's eyes were closed and still breathing when he was in the boat. PW7 stated that they took Jaoji home because his clothes were wet. PW7 stated that it is true that Jaoji had saliva and foam coming out of his mouth. PW7 stated that he didn't mention any saliva or foam coming out of Jaoji's mouth in his statement to the police, but he explained it to the police. PW7 stated that he remembers making a statement to the Nausori Police Station. PW7 stated that he would be able to recognize his statement. Leave was then granted by the Court for PW7 to be shown his statement to the police. PW7 confirmed that the document is his statement to the police. PW7 stated that he doesn't understand reading English. PW7 stated that he remembers signing on top of his statement, and pointed at his signature on the top righthand side of the statement. PW7 stated that he made 3 signatures on the statement. PW7 stated that it is true that he placed his signatures on that statement, and he cannot read the English content of his statement. PW7 stated that he explained to the police about saliva or foam coming out of Jaoji's mouth from the boat in the village to the taxi. PW7 stated that he explained to the police about the foam and saliva coming out of Jaoji's mouth. PW7 stated that he carried Jaoji in a wheelchair from his house to the jetty in Namuka. PW7 stated that they pushed Jaoji in a wheelchair. PW7 stated that he is not objecting to his statement. PW7 stated that Jaoji was

carried into the emergency room and he was observed by the doctor. PW7 stated that Jaoji was seen by the doctor for approximately 1 and half hours of trying to revive him before telling him that Jaoji was dead.

PW7 was not **re-examined** by the prosecutor.

PW8 – Eloni Naqiri

19. **PW8 Eloni Naqiri, in examination-in-chief**, testified that he is 43 years old, a farmer and resides at Namuka village. PW8 stated that on 3 February 2020, he was staying in Namuka village. PW8 stated that about 4pm to 5pm that day, he was at home and received a message that Jaoji was lying in another house. PW8 stated that Jaoji is a tall young man and usually stays home. PW8 stated that Jaoji was lying in PW8's uncle Seva's house. PW8 stated that when he reached his uncle Seva's house, it was overcrowded, and they were massaging Jaoji. PW8 stated that Jaoji was not moving, and he then asked them if they could go to the hospital. PW8 stated that he went to the hospital with his wife and Jaoji's father. PW8 stated that they lifted Jaoji from the house and into the wheelchair, and they took Jaoji in the wheelchair until they reached the jetty. PW8 stated that him and Jaoji's father lifted Jaoji from the floor to the wheelchair. PW8 stated that when they reached the jetty, there was a boat waiting, they then carried Jaoji again in the wheelchair into the boat. PW8 stated that the boat operator was Solo who was in the boat, and then they carried Jaoji into the boat. PW8 stated that from the jetty, they then reached the Bau landing and there was a taxi *Veivueti* waiting for them. PW8 stated that when they arrived at Bau landing, they were told to take Jaoji to Mokani Health Center. PW8 stated that his wife sat in front of the taxi, while him and Jaoji's father held onto Jaoji at the back seat. PW8 stated that when they reached Mokani Health Center, they did not get off the taxi, then the doctor came and observed Jaoji in the car, and then told them to take Jaoji directly to Nausori hospital. PW8 stated that when they reached Nausori hospital, they then carried Jaoji and put him on the hospital bed and pushed him inside the hospital. PW8 stated that at that point in time, he did not see any sign of life on Jaoji. PW8 stated that they were told to wait for a while outside, while the doctors were trying to revive Jaoji inside. PW8 stated that after trying to revive Jaoji, the doctor opened the door and relayed the message that Jaoji passed away. PW8 stated that they left Bau landing after 4pm, they arrived at Mokani,

then Jaoji was rushed to Nausori hospital. PW8 stated that they reached Nausori at about 5.30pm.

In **cross-examination** by Mr. Tuifagalele, PW8 stated that he was at his house on the afternoon of 3 February 2020. PW8 stated that he heard that Jaoji was in a different house. PW8 stated that he saw some people gathered around that particular house. PW8 stated that it was his *momo* or uncle Seva's house. PW8 stated that his *momo* or uncle Seva is not Jaoji's father. PW8 stated that the house is not Esila Finau's house but *momo* or uncle Seva's house. PW8 stated that he accompanied Jaoji and his father down right to the hospital. PW8 stated that when he was lying down at home, his wife called him for him to take Jaoji to the hospital. PW8 stated that he doesn't know what happened to Jaoji, but only for him to take Jaoji to the hospital. PW8 stated that his wife is Jaoji's cousin. PW8 stated that he is from Namuka and so is Jaoji. PW8 stated that Jaoji is not from Koro. PW8 stated that it is true that Jaoji's parents are not from Namuka, but from Koro and Gau.

PW8 was not **re-examined** by the prosecutor.

PW9 – Dr. Avikali Mate

20. **PW9 Dr. Avikali Mate**, in **examination-in-chief**, testified that he has a MBBS degree attained in 2009 from the Fiji School of Medicine and a Postgraduate Diploma in Pathology attained in 2014 from the Fiji National University, College of Medicine and Health Sciences, Nasinu. PW9 stated that he has been a Forensics Pathology Registrar for 10 years and now a Senior Forensics Pathology Registrar based at CWM hospital, Suva. PW9 stated that he had undergone training in pathology and further training in forensics pathology in Victoria Institute of Forensic Medicine in Melbourne, Australia. PW9 stated that the Forensics Pathology Registrar conducts postmortem examination on deceased individual to ascertain cause of death. PW9 stated that he has conducted around 1300 postmortems. PW9 stated that he records his findings while conducting postmortem examination. PW9 stated that the postmortem findings are recorded in the postmortem register which is then typed into the postmortem report form. PW9 stated that he signs the postmortem report. PW9 stated that he

would be able to recognize the postmortem report of Jaoji Dumu dated 5 February 2020 if shown the report. Leave was then granted by the Court for PW9 to be shown **PE3** – Postmortem report of Jaoji Dumu dated 5/02/2020 by Dr. Avikali Mate, Senior Forensic Pathology Registrar, Forensic Science Services, Fiji Police Force, Suva. PW9 stated that the document is the postmortem report for the deceased individual named Jaoji Dumu, and he compiled the postmortem report. PW9 stated that his signature is on the last page i.e. page 8 of the postmortem report. PW9 stated that the External Examination findings in page 2 of the postmortem report were that of a young adult male with swelling of the upper eye lids, and also noted was the wrinkling of the skin of the hands and feet including *livor mortis* and *rigor mortis*. PW9 stated that *rigor mortis* is the muscle contraction of the body when a person is deceased, and *livor mortis* is the settling or collection of blood in parts of the body when a person is deceased and gravity dependent. PW9 stated that there were no other obvious injuries or deformities. PW9 stated that the Internal Examination is the examination of the internal organs and structures of the body. PW9 stated that the findings on the scalp examination were a *subscalpular haemorrhage* seen at the *subcutaneous tissues* between the skin that covers the skull and the skull bone itself. PW9 stated that this is seen over the back or occipital area which is towards the back of the head and predominant on the left side, and there were also areas of haemorrhage noted on the frontal area which is towards the front of the head. PW9 stated that the scalp is the skin that is over the top, the sides and back of the head. PW9 stated that *subscalpular haemorrhage* refers to bleeding in the inner surface of the skin that covers the head. PW9 stated that the *subcutaneous tissue* is the inner most layer of the scalp or the skin that covers the head. PW9 stated that *subscalpular haemorrhage* is usually caused by blunt force trauma to the area, and blunt force is usually one of the causes of *subscalpular haemorrhage*. PW9 stated that blunt force trauma is usually caused by an object coming into contact with that part of the body, or the part of the body coming into contact with an object or surface. PW9 opined that a punch could cause a *subscalpular haemorrhage*. PW9 stated that the Skull showed no evidence of bone injury. PW9 stated that the Cerebral vessels also showed no abnormalities. PW9 stated that the Dura also did not show any evidence of injury. PW9 stated that the *cerebral vessels* are the blood vessels that supply blood to the brain, and the *Dura* is the outermost covering of the brain. PW9 stated that the brain has 3 coverings, out of the 3, the *Dura* is the outermost cover. PW9 stated that on page 3 of the postmortem report, the Lepto-meninges are the inner covering around the brain of which there

are 2. PW9 stated that there are 3 coverings around the brain, the outermost being the *Dura*, the other two inner coverings one is termed *Arachnoid* covering and the innermost named *Pia* covering. The *Arachnoid* and *Pia* make up the *lepto-meninges*. PW9 stated that the *lepto-meninges* showed *sub-arachnoid haemorrhage* over the brain, and this is bleeding into the space of the *Arachnoid* covering and *Pia* covering, so the bleeding is occurring between these 2 coverings and is termed *sub-arachnoid haemorrhage*. PW9 opined that *sub-arachnoid haemorrhage* can be caused by trauma or non-traumatic causes. PW9 stated that the non-traumatic causes are due to abnormalities in the blood vessels that supply the brain that can cause it to easily rupture. PW9 opined that the traumatic cause can be caused by, as mentioned earlier, blunt force trauma to the head, and this can be an object coming into contact with the head, or the head coming into contact with an object or surface, for example, a fall from a height, also in motor vehicle accidents. PW9 opined that to cause a *sub-arachnoid haemorrhage*, if there is pre-existing abnormalities in the blood vessels in the brain, not much force is required to cause damage to the blood vessels leading to a *sub-arachnoid haemorrhage*. PW9 opined that, however, if there are no abnormalities to the vessel, more force would be required, that is, moderate to severe force, to cause a *sub-arachnoid haemorrhage*. PW9 stated that he didn't find any pre-existing abnormalities in the blood vessels. PW9 opined that a single punch to the head would not cause a *sub-arachnoid haemorrhage*. PW9 opined that multiple heavy punches on the head can cause *sub-arachnoid haemorrhage*. PW9 stated that as he had mentioned earlier, the force that is required to cause a *sub-arachnoid haemorrhage* can be moderate to severe. PW9 stated that as to his findings on *lepto-meninges*, there was also bleeding seen in the lower parts of the brain that also extends into the opening of the skull, through which the brain stem or part of the brain which is the brain stem exits the skull to form the spinal cord, and this is explained in the second half of the *lepto-meninges* finding in the postmortem report; however his explanation was in laymen's terms of the medical terms or jargons used in this section. PW9 opined that blunt force trauma was the likely cause of the bleeding seen in the lower parts of the brain. PW9 opined that moderate to severe force is needed to cause bleeding in the lower parts of the brain. PW9 opined that multiple punches to the head could cause such bleeding. PW9 opined that the symptoms of *sub-arachnoid haemorrhage* can be severe headache, particularly to the back of the head, vision abnormality, the person can be confused and disoriented as to their surroundings, unsteady posture, the person will want to vomit or vomiting, loss of consciousness, and seizures.

PW9 stated that the *Brain* showed swelling and contusions which is internal bruising on the back part of the brain or the posterior. PW9 opined that the swelling of the brain can be caused by blunt force trauma to the head. PW9 stated that, as to any other findings on the brain, there weren't any other abnormalities found. PW9 stated that in the *Spinal cord*, the upper part of the spinal cord which is the part he had explained earlier i.e. the opening in the skull that exits the brain, this area is blood stained. PW9 opined that the blood stains on the upper part of the spinal cord is caused by the bleeding of the lower parts of the brain that had extended or tract down into the uppermost part of the spinal cord. PW9 stated that, as to any other findings on the spinal cord, there were no other abnormalities seen. PW9 stated that there aren't any other important findings other than those that he had mentioned. PW9 stated that the other areas that were examined appear to be or are within normal limits. PW9 opined that the **cause of death** was *Intracranial haemorrhage*, that is, due to or as a consequence of blunt force trauma to the head with the external causes being that of an assault, as noted in page 8 of the postmortem report. PW9 stated that *Intracranial haemorrhage* is any bleeding within the skull or *Cranium*, so any bleeding in this structure is what is termed as *Intracranium haemorrhage*. PW9 opined that, as mentioned earlier, the symptoms that can be seen or noted of *Intracranial haemorrhage* are severe headaches, dizziness, vision abnormalities, confused and disoriented of their surroundings and people, loss of consciousness, and seizures. PW9 opined that if a person who is incapable of defending himself, receives multiple sudden heavy blows or punches on the head, the expected reactions would be subjective and would be dependent on the injury that is sustained that could affect response to having being unexpectedly and repeatedly hit. PW9 opined that foaming or frothing on the mouth is a symptom of *Intracranial haemorrhage* or any injury to the brain, particularly in cases where the person has lost consciousness. PW9 opined that if the person is unconscious and snoring, these are symptoms of *Intracranial haemorrhage* and brain injury in which the person loses consciousness. PW9 opined that if a person receives multiple punches on the head and falls into the water and swimming in circles, this is a symptom or sign of *Intracranial haemorrhage*, and as mentioned earlier the person becomes confused and disoriented of his or her surroundings, and could manifest in that scenario, swimming in such a manner. PW9 opined that as for vision abnormalities, it is not commonly seen in *Intracranial haemorrhage* instances where the pupil of the eyes retracts and turns white of a person who received multiple punches on the head. PW9 further opined that the vision abnormalities that can

be seen or noted are blurred vision, double vision, and the retraction of the coloured part of the eye is commonly seen in seizures or when a person is suffering from a seizure, and in cases where there are abnormalities in the ocular muscles which are muscles that control eye movement. PW9 stated that given the nature of the *Intracranial haemorrhage*, the likely chances of survival with or without treatment, there is a 20 to 25% chance of death, PW9 further opined that in the first 24 hours for those who have been admitted, if they do survive and being admitted for over a 1 month period, the chances of death is 40% , and for over a 6 month period than 50% chance of death, and the percentage is increased to 80% if bleeding occurs. As to the impact of any medical intervention or help to the result, PW9 opined that, as mentioned earlier, with or without treatment, the chance is 20 to 25% of survival within 24 hours, and there is still a chance of having a similar outcome i.e. the individual would have passed away or survived.

Prior to PW9's cross-examination, both counsels agreed that the Charge statement of Setareki Ratatagia in the i-Taukei and English languages be tendered by consent as prosecution exhibits **PE4(A)** and **PE4(B)**.

In **cross-examination** by Mr. Tuifagalele, PW9 stated that the scalp is the skin on top, the side and back of the head, and when he examined the scalp, he actually examined the whole head. PW9 stated that the thickness of the scalp is usually 3 layers thick, and this can range from as thin as 10mm, which is around 1cm to 20 to 25mm which is 2 ½ to 3cm in thickness. PW9 stated that there was *subscalpula haemorrhage* on the scalp. PW9 stated that when he conducted the external examination of the body, he saw that there were no obvious deformation on the body or injuries externally on the body. PW9 stated that when he examined the head of the deceased, there were no obvious injuries on the top of the head. PW9 stated that there were no obvious deformities or injuries seen on the forehead and on the left and back of the neck. PW9 stated that there were injuries seen on the occipital area or the back of the head, and PW9 actually pointed to the back of his head, and this was seen predominantly on the left side of the back of the head, which is stated in the postmortem report. PW9 stated that if there were multiple assault punches that would cause substantial bleeding and also injure the scalp. PW9 stated that from the finding of the postmortem of the brain and injuries seen, would require more than one hit to the head. PW9 opined that there can be multiple punches given in the same area and would show only that area being affected,

multiple hits in that area can be a possibility and can be seen. PW9 stated that any blood vessel abnormality, he would have noted it down in his finding. PW9 opined that given that the deceased had no pre-existing blood vessel abnormality, a single punch, as opposed to multiple punches, would not have caused *sub-arachnoid haemorrhage*. PW9 stated that the *lepto-meninges* are the covering of the brain, it is within the scalp, and the *lepto-meninges* are the 2 inner most coverings over the brain. PW9 opined that it is not always the case that the moderate or severity of injury on the head would be proportionate on the power or strength of the blow on the head, and there are instances where the proportionality of force applied may not be seen to that degree to the area that has been hit. PW9 stated that he had repeatedly used the terms ‘moderate or severe’ with regard to the force applied, and this is attributed to the findings of the postmortem examination of the brain. PW9 stated that he found no evidence of bony injury when examining the skull. As to the proposition that the punches landed would not have been severe, PW9 opined that the force that was applied did not exceed the ability of the skull to absorb without breaking or fracturing, and a single punch to the head would not have caused a bony injury effect. PW9 stated that he arrived at his conclusive finding that the ‘External cause is by Assault’ based on the police investigation that was relayed to him prior to the postmortem examination, and together with the postmortem examination findings, is how he came about this external cause. PW9 stated ‘no’ to the proposition that he formulated his opinion based on an allegation which he himself did not know it was an assault. PW9 stated that he arrived at the conclusion of assault based on the information relayed to him by the police investigation, and together with the postmortem findings that the external cause was assault. PW9 stated that the blunt force trauma to the head was because of an assault. PW9 stated that a *sub-arachnoid haemorrhage* would be caused by something landing on the head, or the head landing on the surface. PW9 stated that it can be difficult to tell in certain instances whether the area of the head came into contact with a surface, or an object hit the area. PW9 stated that based on the findings, he would not be able to ascertain whether it is a blunt force trauma landing on the head, or the head hitting a surface. PW9 opined that falling onto a surface of a boat or coming into contact with a surface of a boat can cause injury in terms of the head hitting the surface of a boat or water. PW9 opined that recovery and survivability from such injuries resulting in *sub-arachnoid haemorrhage* would be improved if medical attention, help or assistance, is provided as soon as possible, but having said that,

even with medical treatment, there is also a chance that the individual may not survive. PW9 opined that the survival chance would be lower if no assistance was given to the affected person within an hour from the time of the injury. PW9 stated that to take that figure into context, the 20% to 25% chance of dying within 24 hours is implying that 75% to 80% survival beyond the 24 hours, it does not mean that they have recovered or their chances of passing away is negated, it is still a possibility. PW9 opined that the deceased passed away within the 24 hours due to the injury that he sustained, which in this case was *Intracranial haemorrhage*. PW9 agreed that because the deceased was not given the immediate care that he needed, that could have contributed to the increased chance of not surviving.

In **re-examination** by the prosecutor, PW9 stated that the immediate care that the patient needed in order to survive would be surgical intervention, which can only be done in the divisional hospital which would be CWM hospital.

PW10 – IP 5553 Ilaitia Ratu Ramaqa

21. **PW10 IP 5553 Ilaitia Ratu Ramaqa**, in **examination-in-chief**, testified that he is 30 years old and have been a police officer for the past 8 years currently serving in the Eastern Division under the Community Policing Unit. PW10 stated that he knows why he is in Court today being the Investigating Officer for a case of murder. PW10 stated that on 4 February 2020, he was based at Nausori Police Station. PW10 stated that as the Investigating Officer, his role or task in this particular case was as Interviewing Officer, and interviewed one Setareki Ratatagia which was conducted in the I-Taukei language. PW10 stated that the interview was recorded via computer. Leave was then granted by the Court for PW10 to be shown the amended record of interview both in the I-Taukei language and English translation. PW10 stated that himself and the witnessing officer ASP Davu including the suspect were present during the interview. PW10 stated that the interview was conducted inside a room at the Eastern Division Command Center. PW10 stated that the 3 signatures in page 2 below question 14, are his signature as interviewing officer, the witnessing officer and the accused signatures. PW10 stated that that is the same record of interview that was recorded on 4

February 2020. PW10 stated that the 3 signatures on page 3 of the I-Taukei version belong to the accused, interviewing officer and witnessing officer, and the signatures are of the same sequence throughout the interview. PW10 stated that the I-Taukei version was translated into the English language. PW10 confirmed that the English version is the exact translation of the I-Taukei version of the record of interview. PW10 then read the amended version of the English translation of the record of interview. The prosecution then tendered the I-Taukei and English versions of the record of interview respectively as prosecution exhibits **PE5(A)** and **PE5(B)**. PW10 stated that he hadn't seen Setareki Ratatagia before the interview. PW10 stated that there was a long tube light inside the interview room. PW10 stated that the distance between him and Setareki Ratatagia during the interview was more than 120cm. PW10 stated that the interview lasted for approximately 1 day. PW10 stated that Setareki Ratatagia was tall, broad, black skin tone and very silent during his interview. PW10 stated that his view of Setareki Ratatagia was not obstructed. PW10 stated that he would be able to recognize Setareki Ratatagia if he sees him again. Leave was then granted by the Court for PW10 to engage in Dock ID. PW10 then looked around the Courtroom and stated that Setareki Ratatagia is present in Court. PW10 then pointed Setareki Ratatagia out wearing a bula shirt and sitting in the accused box.

In **cross-examination** by Mr. Tuifagalele, PW10 stated that he has the amended caution interview statement in front of him. PW10 stated that he did not prepare the amended caution interview statement. PW10 stated that he read out the amended English version of the record of interview, which he did not prepare. PW10 stated that the amended versions of the caution interview statements were given to him by the DPP. PW10 stated that he did not sign the amended versions of the caution interview statements, nor on any of the pages of the caution interview statements. PW10 stated that the witnessing officer did not sign on any of the pages of the amended caution interview statements. PW10 agreed that Setareki Ratatagia never signed on the amended caution interview statement. PW10 stated that he has not seen the amended caution interview statements at any time before he came to Court, and this is the very first time he is seeing the amended caution interview statement. PW10 stated that this incident is alleged to have happened in 2020, and he had spent 4 years as police officer then, and in 2024 he has substantially grown as a police officer for 8 years. PW10 stated that he is now a full inspector, and have an IO in other cases other than this case, of which he has been

an IO for more than 30 to 40 cases. PW10 agreed that he would have to sign in every caution interview statement that he has conducted or witnessed, but did not sign this particular amended caution interview statements. PW10 stated that the State had not shown him this particular amended caution interview statement. PW10 stated that he had prepared a caution interview statement earlier on, and in front of him is the amended caution interview statement which was tendered this afternoon. PW10 then read out Q70 in the amended caution interview statement and stated that he remembers asking that question during the interview. PW10 stated that the cause of death 'Axphysia' was a typing error, and it should have been 'Haemorrhage'. PW10 stated that he typed 'Axphysia' in capital letters in the I-Taukei and English versions of the record of interview, and it was a typing error. PW10 stated that he was orally asking the question and then type it. PW10 stated that 'Axphysia' was not asked to the accused, but it was a typing error during the interview. PW10 stated that he does not know the meaning of 'Axphysia'. PW10 stated that he did not deliberately type in the word 'Axphysia'. PW10 stated that he did not look up the word 'Axphysia' and used it in the question and answer thinking that anyone deprived of oxygen will die. PW10 stated that he did not deceive the suspect when asking him question 70. PW10 stated that he cannot recall as to whether he had received the postmortem report when he asked question 70. PW10 stated that cannot recall as to whether he had read the postmortem report before asking question 70. PW10 stated 'no' to the proposition that the suspect has answered a question i.e. Q70/a to a false fact provided by PW10.

PW10 was not **re-examined** by the prosecutor.

22. Soon after the testimony of PW10, the prosecution then closed its case, the Court then put the following options to the accused whether to: i) remain silent; ii) given sworn testimony; or iii) call other independent witness, to which the defence opted for the accused Setareki Ratatagia (DW1) and another witness (DW2) namely, Selina Waitale, to testify under oath and be subjected to cross-examination.

Defence case via DW1 and DW2

DW 1 – Setareki Ratatagia

23. **DW1 Setareki Ratatagia**, in **examination-in-chief**, testified that he is 40 years old, a farmer at Namuka. DW1 stated that he hails from Namuka village, Bau, Tailevu, and live with his older brother and his wife and children. DW1 stated that his older brother and family live below, while he stays on top of the same house. DW1 stated that he is single and not married with no children. DW1 stated that on 3 February 2020 he was in his house at Namuka, and at 9.00am in the morning he came down for breakfast with Selina at his older brother's place below where they normally have breakfast. DW1 stated that he was having breakfast that morning with Selina and Eseta who is Selina's daughter. DW1 stated that Selina, Eseta, the 3 children who were in school, Selina's younger sister including himself, all live in his older brother's house. DW1 stated that Selina is his older brother Maciu's wife, Eseta is Selina's daughter, and the 3 children who are all girls are Maciu's and Selina's children and DW1's nieces, the eldest is studying at USP, while the other 2 are attending secondary school. DW1 stated that he was having breakfast that morning with Selina, and Eseta was sitting in the living room. DW1 stated that while having tea that morning, Selina told a story to DW1 explaining on what Jaoji had done in his house. DW1 stated that Selina told him that Jaoji came and harassed Eseta in the house, and DW1 assumed that Jaoji had raped Eseta. DW1 stated that Selina also told him that her younger sister was also harassed by Jaoji in the house and she is having a baby, and DW1 thought that Jaoji had raped Selina's younger sister. DW1 stated that Selina told him what happened to those two, and she was worried about the girls who are still in secondary school. DW1 stated that Selina said that *'if it is possible for Jaoji to do to those two, it is possible too for him to do the same to the other young girls who are in secondary school'*. DW1 stated that when he heard that story, he was angry because he has been hearing stories of what Jaoji has been doing in his village. DW1 stated that he was angry about the stories of what Jaoji was doing to the young girls in the village. DW1 stated that he questioned himself as to why nothing was done about it, or something to be done to Jaoji to put a stop to what he has been doing in the village. DW1 stated that add on to his anger is that Jaoji is not from Namuka and he has been doing all that in his village and spoiling the relationship. DW1 stated that he can't stand doing all those to the young girls, and he does not like it, and that is the reason that made him angry that morning. DW1 stated that after that Selina also told him to look after Eseta as she is about to go to Nausori, and to make sure that

Jaoji does not come there again. DW1 stated that Selina then left, and at quarter to 4 in the afternoon they normally have their training at Nadave, and whilst he was at the top of the house where he lives, he then saw Jaoji standing at the verandah of their house, and DW1 then came down to approach him, and upon reaching the verandah he could see Jaoji leaving for training, and at that time Eseta was the only one in the house. DW1 stated that when he came to see Jaoji, Eseta told him that Jaoji had left for training to Nadave, and at the same time DW1 took all his sports gear and equipment and followed Jaoji down to the Namuka jetty. DW1 stated that the only reason of going to the jetty was because he was angry at what Jaoji has been doing in his house. DW1 stated that upon reaching the jetty, he saw Jaoji sitting on the edge of the jetty facing Bau island. DW1 stated that Jaoji sat on the left, while Vilitati and Pena sat on the right side, and in the waiting shed were Taitusi, Pita, Misaele and Akuila. DW1 stated that he then walked towards Jaoji and Jaoji looked up at him, and DW1 punched Jaoji. DW1 stated that his second punch was thrown when Jaoji tried to punch him, and then Jaoji dived into the water. DW1 stated that his first punch landed on Jaoji's face on the right cheek. DW1 stated that he threw the second punch but it did not land on Jaoji as he had already jumped into the water. DW1 stated that Jaoji was then swimming in the water, and he told Jaoji, *"The reason you have been punched is because of what you have been doing to the girls in the village. Come up so that I give you more punches"*, to which Jaoji replied to DW1, *"Wait for me up there"*. DW1 stated that he then stood there and waited for Jaoji to come up expecting that Jaoji will punch him. DW1 stated that Jaoji came up expecting him to throw a punch, then DW1 threw a punch at Jaoji, and after that punch, Jaoji jumped into the water again. DW1 stated that when Jaoji came out of the water he was looking at DW1, and DW1 punched him. DW1 stated that he used his left hand to punch Jaoji which landed on the left side of Jaoji's face and he then jumped into the water again. DW1 stated that he was really angry at the moment, and his demeanour correlates with his anger. DW1 stated that he realized what he had done to Jaoji, and the extent of his anger on that day he had only intended to go and punch him, and it was not his intention to kill Jaoji. DW1 stated that he had only intended to approach Jaoji and tell him to refrain from what he had been doing to the young girls in the village. DW1 stated that he was also thinking that Jaoji did not hail from Namuka and he has been spoiling relationships even to the point of him harassing Eseta at home, which DW1 did not like. DW1 stated that Jaoji jumped into the water for the second

time, and at the same time the boat had arrived. DW1 stated that Jaoji was swimming in the water, he then boarded the boat, took the oar of the boat and speared Jaoji. DW1 stated that when he speared Jaoji with the oar that day, it did not land on him. DW1 stated that at the same time the others also boarded the boat and DW1 could see Jaoji swimming. DW1 stated that when he took the oar to spear Jaoji, he was angry at the same time. DW1 stated that at that time since he had punched Jaoji, his anger had gone down when he speared Jaoji with the oar. DW1 stated that after he had speared Jaoji with the oar, his anger had gone down. DW1 stated that they all boarded the boat, at the same time when he saw Jaoji he felt sorry for him and told Mesake the boat operator, "*Mesake please go and rescue Jaoji*", and DW1 then asked the others if they can put Jaoji into the boat. DW1 stated that they all boarded the boat including Jaoji, then Mesake took them to drop them off at Bau landing. DW1 stated that they were taken across and he felt really sorry for Jaoji. DW1 stated that all the boys got off, while Jaoji and Mesake the boat operator remained in the boat, then DW1 told Emosi for him to take Jaoji to the village. DW1 stated that when he was confronting Jaoji at the jetty, other boys were standing there too. DW1 stated that none of the men or young men stopped him when he confronted Jaoji. DW1 stated that the confrontation with Jaoji lasted for roughly 15 minutes. DW1 stated that he was angry within that 15 minutes. DW1 stated he was no longer angry, but felt sorry for Jaoji, after seeing Jaoji being rescued into the boat. DW1 stated that he can recall making a statement at the Nausori Police Station. DW1 stated that he was angry from the story that he heard from Selina. DW1 stated that he can recall having told the same story to the police.

In **cross-examination** by the prosecutor, DW1 stated that he can clearly recall what happened on 3 February 2020. DW1 stated that he was having breakfast at his brother's house with Selina and Eseta was sitting in the living room, and this is when Selina told him what Jaoji had done to Eseta. As to the proposition that he assumed that Jaoji had raped Eseta and Selina's younger sister, DW1 stated that he heard the story from Selina. DW1 agreed that that was the reason that made him angry that morning. DW1 stated that straight after breakfast, Selina told him to look after Eseta while she goes to Nausori. DW1 stated that he became more angry or more frustrated of the fact that Jaoji was not originally from Namuka village. DW1 stated that he did not know the truth about what Jaoji did to the girls. DW1 stated that at

around 4pm that same day, he then saw Jaoji come around to his brother's house, and this was after 8 hours when he heard the story from Selina. DW1 stated that after he saw Jaoji, he then followed Jaoji to the jetty. DW1 stated that Vilitati, Penaia and Taitusi were there at the jetty including Jaoji who was looking towards Bau landing. DW1 stated that he did not give 3 punches to Jaoji when he was looking towards Bau landing. DW1 stated 'no' to the proposition that his first punch actually landed on the back of Jaoji's neck, the second punch landed on the forehead, and the third punch landed on the back of the head. DW1 stated that Vilitati was actually there when he punched Jaoji, but he did not give 3 punches to Jaoji. DW1 stated that after he punched Jaoji, he then fell into the water. DW1 stated 'no' to the proposition that when Jaoji was trying to come up the steps of the jetty and standing up straight, DW1 then threw another punch that landed on the back of Jaoji's neck. DW1 stated that he punched Jaoji when he tried to come up the steps, and he then fell into the water again. DW1 stated that after Jaoji fell into the water, he started swimming in circles, and at that point in time Mesake's boat was in front of the jetty. DW1 stated that after he saw Jaoji swimming in circles, he then took an oar and whacked Jaoji with it and used the same oar to spear Jaoji. DW1 stated that he only used the oar once, and did not hit but speared Jaoji with the oar. DW1 stated that after that, then Vilitati went and pulled Jaoji into the boat, and at that same time his anger had gone down. DW1 stated that he told the boat operator to go and pick Jaoji whilst he was swimming in a circular motion, and told those in the boat for them to put Jaoji into the boat. DW1 stated that he was the one and not Mesake who spoke up pleading with the young men to put Jaoji into the boat because his anger had gone down and had sympathised with Jaoji. DW1 stated that he was the one who told the young men to put Jaoji into the boat, and at that time his anger had stopped. DW1 stated that when Jaoji was pulled into the boat, he saw Jaoji still breathing but not moving and snoring. DW1 stated that they then went in the same boat to Bau landing. DW1 stated 'yes' to the proposition that whilst travelling to Bau landing, he did not even want to help Jaoji whilst he was motionless. DW1 stated that he got off at Bau landing and then told Emosi who is his nephew to take Jaoji to the village because of his sympathy towards Jaoji. DW1 stated that Emosi said yes to his request for him to take Jaoji back to the village, and he then went to Nadave. DW1 stated that on that same afternoon he came to know that Jaoji had died in the hospital.

In **re-examination** by Mr. Tuifagalele, DW1 stated that he followed Jaoji to the jetty because he was angry and also to go and play. DW1 stated that the reason why he didn't help Jaoji when they were going across from Namuka to Bau landing was because when he saw Jaoji was still breathing, he sympathised with Jaoji, and then told Emosi i.e. his elder brother's son to take Jaoji back to the village.

DW 2 – Selina Waitale

24. **DW2 Selina Waitale**, in **examination-in-chief**, testified that she is 49 years old and lives in Namuka, Bau, Tailevu, looking after her family at home. DW2 stated that she hails from Delaidamanu in the province of Naitasiri. DW2 stated that she is married to Maciu Saqanavere of Namuka village and they have 6 children i.e. 5 daughters and 1 son. DW2 stated that her eldest is 25 years, second eldest is 23 years, third eldest is 22 years, fourth eldest is 21 years, the fifth child is 19 years, and the youngest is 16 years old. DW2 stated that her son is the fourth child. DW2 stated that she has lived in Namuka village for 24 years. DW2 stated that on 3 February 2020, in the morning she was at home, she woke up the kids as they were all schooling and prepared them for school. DW2 stated that when the children had gone to school, she then prepared breakfast for her brother-in-law Setareki and herself, and called Setareki to come and have breakfast with her. DW2 stated that they then sat on the table to have breakfast, and then she told Setareki that there are rumours or stories going around in the village about Jaoji and her daughter, and that Jaoji harassed her daughter Eseta inside her house. DW2 stated that she also told Setareki that she is worried about her 3 daughters who are still schooling, in case that Jaoji will do the same thing that he did to her daughter Eseta and her younger sister. DW2 stated that she does not know Jaoji and his family. DW2 stated that after she relayed the stories to Seta that morning, she then prepared herself to go to Nausori, and also asked Seta to look after Eseta while she is out of the house. DW2 stated that she left her house to go to Nausori between 1pm and 2pm in the afternoon.

In **cross-examination** by the prosecutor, DW2 stated that she only heard stories and rumours about what happened to her sister and Eseta, but did not see what Jaoji did to her sister and daughter. DW2 stated that she asked Seta to look after her daughter before she left for Nausori that same morning.

DW2 was not re-examined by Mr. Tuifagalele.

25. After DW2's testimony, the defence then closed its case.

26. Both counsels then made closing submissions, and this is the Court's judgment.

Analysis of the evidence by the prosecution and defence

Elements for *Murder*

27. The prosecution must prove *beyond reasonable doubt* the following elements of *Murder* under section 237(a) - (c) of the Crimes Act 2009:

[1] A person i.e. the accused Setareki Ratatagia;

[2] Engages in conduct;

[3] His conduct causes the death of Jaoji Dumu; and

[4] He intended to cause, or is reckless as to causing, the death of Jaoji Dumu by his conduct.

Element 1 : A *person* - Identification

28. **Who is '*the person*' in accordance with Element 1?**

29. The *Admitted Facts* at paragraph 5 state that '*[t]he incident occurred on 3 February, 2020 at Namuka Landing, Nausori, in the Eastern Division*', which incident, in accordance with the following evidence, prove *beyond reasonable doubt* that '*the person*' involved in the aforesaid incident was none other than the accused Setareki Ratatagia who punched his cousin Jaoji Dumu more than once and also speared Jaoji Dumu with an oar, which conduct allegedly caused Jaoji Dumu's death:

a) PW2 – Vilitati Domonakibau, PW3 – Penaia Dimuri, PW4 – Taitusi Drakivinaka, PW5 – Solomone Cati, and PW6 – Mesake Tukana, positively identified Setareki Ratatagia in Court via Dock ID as '*the person*' who had punched Jaoji Dumu more than once and

speared Jaoji Dumu with an oar on 3 February 2020 between 4.00pm and 5.00pm at the Namuka jetty.

b) This is also substantiated by Setareki Ratatagia's admission in his caution interview statement [**PE5(A)** & **PE5(B)**] including his testimony in Court as DW1, that he indeed punched Jaoji Dumu more than once and speared Jaoji Dumu with an oar on 3 February 2020 between 4.00pm and 5.00pm at the Namuka jetty.

30. Based on the entire evidence adduced in this Court, I find that the first element for *Murder of 'A person'* being the accused Setareki Ratatagia has been proven *beyond reasonable doubt* by the prosecution.

Element 2 : Engages in conduct

31. **What conduct did 'the person' Setareki Ratatagia do as per Element 2?**

32. PW2 Vilitati Domonakibau testified that Setareki Ratatagia approached from behind, took a step, and punched Jaoji Dumu 3 times with the first punch landing on the back of Jaoji's head, the second punch landed on Jaoji's forehead, and the third punch landed on the back of Jaoji's head. Jaoji Dumu then fell into the water and Setareki Ratatagia shouted at Jaoji saying, "*That is what you have been doing to the girls in the village. Come up to get punched again*". Jaoji Dumu then swam back and got back on the jetty and while trying to stand straight, Setareki Ratatagia threw another punch which landed at the left side of the back of Jaoji Dumu's neck, and Jaoji Dumu fell back into the water and swam in a circular motion. The boat then came to the jetty, and Setareki Ratatagia got into the boat, took hold of an oar and then hit and speared Jaoji Dumu with the oar, hitting Jaoji Dumu's hip.

33. PW2 Vilitati Domonakibau's account is substantiated by the following witnesses accounts, notwithstanding that these witnesses did not see Setareki Ratatagia throw the initial 3 punches at Jaoji Dumu before falling into the water for the first time as testified by PW2:

- i) PW3 Penaia Dimuri, whilst waiting at the Namuka jetty, got a shock when someone fell into the water and then saw Jaoji Dumu was inside the water and his *Ta* or father Setareki Ratatagia standing on the jetty angrily calling Jaoji Dumu to come out of the water to get punched because, *'this is what he has been doing to the girls'*. Jaoji Dumu then came out of the water and PW3's *Ta* or father Setareki Ratatagia then punched Jaoji Dumu twice, but PW3 did not see where those punches landed. PW3 stated that when they all boarded the boat, his *Ta* or father Setareki Ratatagia got hold of the boat oar and speared Jaoji with it, but he did not see where the oar hit Jaoji.

- ii) PW4 Taitusi Drakivinaka stated that upon reaching the edge of the Namuka jetty, he could see Jaoji Dumu spinning in circle in the water, and when the boat came, Setareki Ratatagia boarded the boat operated by Mesake, took the oar and then speared Jaoji Dumu. PW4 stated that Setareki was angry when he took the oar and speared Jaoji with it once, but does not know where the oar landed. PW4 stated that the length of the oar is about 3 to 4 meters, and width of about 10cm.

- iii) PW5 Solomone Cati stated that when he stood up, he saw Setareki Ratatagia had speared the oar into the water, but do not know what he had speared, while the other boys were already in the boat.

- iv) PW6 Mesake Tukana stated that the tide was lowering, and he was on his way to the Namuka jetty when saw Setareki Ratatagia standing at the Namuka jetty and Jaoji Dumu in the water, and Setareki Ratatagia was saying to Jaoji Dumu, *"This is the thing that you have been doing. Come up for you to be punched"*. PW6 stated that Jaoji Dumu was still in the water, then Setareki Ratatagia took the oar and speared Jaoji Dumu whilst in the water. PW6 stated that Setareki was standing at the steps of the jetty when he speared Jaoji in the water. PW6 stated that at that time they had already boarded the boat, and he then called Akuila and Vilitati for them to carry Jaoji Dumu into the boat as he was still in the water. PW6 stated that after Setareki speared Jaoji Dumu, Setareki Ratatagia and others then boarded the boat and for him to drop them off at Bau landing to go training. PW6 stated that they boarded the boat, and he then told Akuila, Vilitati and Penaia for

them to put Jaoji in the boat.

34. DW1 Setareki Ratatagia, on the other hand, testified that upon reaching the Namuka jetty, he saw Jaoji Dumu sitting on the edge of the jetty facing Bau island on the left, while Vilitati and Pena sat on the right side, and in the waiting shed were Taitusi, Pita, Misaele and Akuila. He then walked towards Jaoji Dumu and the latter looked up at him, and he then punched Jaoji Dumu. DW1 stated that his second punch was thrown when Jaoji Dumu tried to punch him, and then Jaoji Dumu dived into the water. DW1 stated that his first punch landed on Jaoji's face on the right cheek, while his second punch did not land on Jaoji Dumu as he had already jumped into the water. Whilst Jaoji Dumu was in swimming in the water, he then told Jaoji Dumu, *"The reason you have been punched is because of what you have been doing to the girls in the village. Come up so that I give you more punches"*, to which Jaoji Dumu replied to DW1, *"Wait for me up there"*. DW1 stated that he then stood there and waited for Jaoji Dumu to come up expecting that Jaoji Dumu will punch him. DW1 stated that Jaoji Dumu came up expecting him to throw a punch, then DW1 threw a punch at Jaoji Dumu, and after that punch, Jaoji Dumu jumped into the water again. DW1 stated that when Jaoji Dumu came out of the water he was looking at DW1, and DW1 punched him. DW1 stated that he used his left hand to punch Jaoji Dumu, which landed on the left side of Jaoji's face and he then jumped into the water again. DW1 stated that he was really angry at the moment, and his demeanour correlates with his anger. DW1 stated that he realized what he had done to Jaoji Dumu, and the extent of his anger on that day he had only intended to go and punch him, and it was not his intention to kill Jaoji Dumu. DW1 stated that he had only intended to approach Jaoji Dumu and tell him to refrain from what he had been doing to the young girls in the village. DW1 stated that he was also thinking that Jaoji Dumu did not hail from Namuka and he has been spoiling relationships even to the point of him harassing Eseta at home, which DW1 did not like. DW1 stated that Jaoji Dumu jumped into the water for the second time, and at the same time the boat had arrived. DW1 stated that Jaoji Dumu was swimming in the water, he then boarded the boat, took the oar of the boat and speared Jaoji. DW1 stated that when he speared Jaoji Dumu with the oar that day, it did not land on him. DW1 stated that at the same time the others also boarded the boat and DW1 could see Jaoji Dumu swimming. DW1 stated that when he took the oar to spear Jaoji Dumu, he was angry at the same time.

DW1 stated that at that time since he had punched Jaoji Dumu, his anger had gone down when he speared Jaoji Dumu with the oar. DW1 stated that after he had speared Jaoji Dumu with the oar, his anger had gone down. DW1 stated that they all boarded the boat, at the same time when he saw Jaoji he felt sorry for him and told Mesake the boat operator, “*Mesake please go and rescue Jaoji*”, and DW1 then asked the others if they can put Jaoji Dumu into the boat. DW1 stated that they all boarded the boat including Jaoji, then Mesake took them to drop them off at Bau landing. DW1 stated that they were taken across and he felt really sorry for Jaoji Dumu. DW1 stated that all the boys got off, while Jaoji Dumu and Mesake the boat operator remained in the boat, then DW1 told Emosi for him to take Jaoji Dumu to the village. DW1 stated that when he was confronting Jaoji Dumu at the jetty, other boys were standing there too. DW1 stated that none of the men or young men stopped him when he confronted Jaoji Dumu. DW1 stated that the confrontation with Jaoji Dumu lasted for roughly 15 minutes. DW1 stated that he was angry within those 15 minutes. DW1 stated he was no longer angry, but felt sorry for Jaoji Dumu, after seeing Jaoji Dumu being rescued into the boat.

35. Based on the pertinent evidence of the prosecution and defence in relation to Element 2, I find as follows:

- i) As to the manner and number of punches by Setareki Ratatagia that landed on Jaoji Dumu, I accept the version elicited by PW2 Vilitati Domonakibau held together with that of PW3 Penaia Dimuri, PW4 Taitusi Drakivinaka and PW6 Mesake Tukana, and reject DW1 Setareki Ratatagia’s version.
- ii) That Setareki Ratatagia took the oar from within the boat and angrily speared Jaoji Dumu while the latter was in the water.
- iii) Bearing in mind my findings noted in i) – ii) above, I therefore find that as a matter of fact, the accused Setareki Ratatagia punched Jaoji Dumu 3 times with with the first punch landing on the back of Jaoji’s head, the second punch landed on Jaoji’s forehead, and the third punch landed on the back of Jaoji’s head, and then Jaoji fell into the water. Whilst in the water, Setareki Ratatagia then shouted at Jaoji saying, “*That is what you have been doing to*

the girls in the village. Come up to get punched again". Jaoji Dumu then swam back and got back on the jetty and while trying to stand straight, Setareki Ratatagia threw another punch which landed at the left side of the back of Jaoji Dumu's neck, and Jaoji Dumu fell back into the water and swam in a circular motion. The boat then came to the jetty, and Setareki Ratatagia got into the boat, took hold of an oar and then hit and speared Jaoji Dumu with the oar.

Element 3 : Causation

36. **Did the conduct of 'the person' Setareki Ratatagia cause the death of Jaoji Dumu?**
37. Pursuant to section 246 of the Crimes Act 2009, the relevant tests for *Causation* are:
- (1) Factual causation or '*But for*' test i.e. '*But for*' the accused person's conduct, the deceased would have remained alive.
 - (2) Legal causation test i.e. What was the substantial and operational cause of death?
38. PW9 Dr. Avikali Mate, Senior Forensic Pathology Registrar, who conducted the autopsy on the deceased Jaoji Dumu opined that the **cause of death** was *Intracranial haemorrhage* or bleeding within the skull or *Cranium*, that is, due to or as a consequence of blunt force trauma to the head with the external causes being that of an assault, as noted in page 8 of the postmortem report [PE3].
39. Based on PW9 Dr. Avikale Mate's evidence including **PE3** held together with, in particular, the evidence of PW2 Vilitati Domonakibau, PW3 Penaia Dimuri, PW4 Taitusi Drakivinaka and PW6 Mesake Tukana, prove *beyond reasonable doubt* that the substantial and operational cause of Jaoji Dumu's death was the assault by the accused Setareki Ratatagia, and '*but for*' the accused's conduct, Jaoji Dumu would have remained alive, and there was no intervening act in this instant to break the chain of causation.

Element 4 : Intention to kill or Reckless as to causing death

40. **Did the accused Setareki Ratatagia intend to kill, or was reckless as to causing the death, of Jaoji Dumu?**

41. Having carefully scrutinized the entire evidence of the prosecution *vis-à-vis* defence, I find as follows:

i) The accused Setareki Ratatagia did not intend to kill Jaoji Dumu, nor was reckless as to causing the death of Jaoji Dumu.

ii) However, the accused Setareki Ratatagia only intended that his conduct will cause serious harm to Jaoji Dumu, thus the alternative finding of the lesser offence of *Manslaughter* pursuant to section 239(a), (b), (c)(i) of the Crimes Act 2009 which state:

Manslaughter

239. *A person commits an indictable offence if-*

(a) the person engages in conduct; and

(b) the conduct causes the death of another person; and

(c) the first-mentioned person-

(i) intends that the conduct will cause serious harm.

Partial defence to Murder – Killing with provocation

42. **Did Jaoji Dumu provoke the accused Setareki Ratatagia?**

43. Section 242(1) – (4) of the Crimes Act 2009 state:

242.-(1) *When a person who unlawfully kills another under circumstances which, but for the provisions of this section would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as defined in subsection (2), and before there is time for the passion to cool, he or she is guilty of manslaughter only.*

(2) The term “provocation” means (except as stated in this definition to the contrary) any wrongful act or insult of such a nature as to be likely when-

(a) done to an ordinary person; or

(b) done in the presence of an ordinary person to another person-
(i) who is under his or her immediate care; or
(ii) who is the husband, wife, parent, brother or sister, or child of the ordinary person-
to deprive him or her of the power of self-control and to induce him or her to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered.
(3) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as stated in sub-section (2), the former is said to give to the latter provocation for an assault.
(4) An act which a person does in consequence of incitement given by another person in order to induce him or her to do the act and thereby to furnish an excuse for committing an assault is not provocation to that other person for an assault.

44. Bearing in mind section 242(1) – (4) of the Crimes Act 2009 noted above, in Masicola v State [2023] FJSC 27; CAV0011.2021 (30 August 2023), the Fiji Supreme Court, at paragraphs 8 – 11 held:

Provocation

[8] Provocation has been the subject of many appellate court decisions, in Fiji and elsewhere. The limitations inherent in the law and its overall complexity have led to calls for the abolition of the defence and, in its place, giving judges the discretion to make allowance for circumstances in the nature of provocation through the sentencing process. Nevertheless, Fiji, in common with many other jurisdictions, retains the defence.

[9] Under s.242(1) of the Crimes Act 2009, murder is reduced to manslaughter where the killer “does the act which causes death in the heat of passion caused by sudden provocation before there is time for the passion to cool”. Relevantly, “provocation” is defined in s.242(2) as:

“The term provocation” means ... any wrongful act or insult of such a nature as to be likely when-

(a) done to an ordinary person; ...

to deprive him or her of the power of self-control and to induce him or her to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered.”

[10] In Codrokadroka v State [2015] FJSC 15; CAV07.2013 (20 November 2013) at para [17], the Supreme Court approved the following principles from the judgment of the Court of Appeal in Codrokadroka v State [2008] FJCA 122;

AAU0034.2006 (25 March 2008), at para. [38] as accurately reflecting the approach that a trial judge should take to the issue of provocation:

- “1. The judge should ask himself/herself whether provocation should be left to the assessors on the most favourable view of the defence case.
2. There should be “a credible narrative” on the evidence of provocative words or deeds of the deceased to the accused or to someone with whom he/she has a fraternal (or customary) relationship.
3. There should be “a credible narrative” of a resulting loss of self-control by the accused.
4. There should be “a credible narrative” of an attack on the deceased by the accused which is proportionate to the provocative words or deeds.
5. The source of the provocation can be one incident or several. To what extent a past history of abuse and provocation is relevant to explain a sudden loss of self-control depends on the facts of each case. However, cumulative provocation is in principle relevant and admissible.
6. There must be an evidential link between the provocation offered and the assault inflicted.”

[11] The authorities establish that a trial judge has the responsibility to raise provocation where there is the necessary “credible narrative” on the facts even if an accused is represented by counsel and does not wish to raise the defence. The authorities recognise that this can, in some circumstances, place the judge in a difficult position.

45. Having carefully considered the entire evidence adduced by the prosecution and defence, in particular, that testimonies of DW1 Setareki Ratatagia and DW2 Selina Waitale, I find that there was no sudden provocation and there was time for the passion to cool, thus provocation is not available in this instant as partial defence to murder.

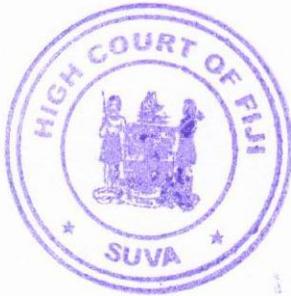
CONCLUSION

46. Based on the reasons articulated above, I ultimately find that the prosecution has proved *beyond reasonable doubt* that on 3 February 2020 between 4.00pm and 5.00pm at the Namuka jetty, the accused Setareki Ratatagia assaulted Jaoji Dumu causing Jaoji Dumu’s death having intended to cause serious harm to Jaoji Dumu, thus is guilty of the lesser offence of *Manslaughter* pursuant to section 239(a), (b), (c)(i) of the Crimes Act 2009.
47. I hereby find the accused Setareki Ratatagia not guilty of *Murder*, but **guilty** of the alternative

lesser offence of *Manslaughter* and **convict** him accordingly.

48. Setareki Ratatagia is hereby remanded in custody to await sentencing.

49. Thirty (30) days to appeal to the Fiji Court of Appeal.



.....
Hon. Mr. Justice Pita Bulamainivalu
PUISNE JUDGE

At Suva

25 April 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Tuifagalele Legal for the Accused