

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 190 of 2023

STATE

v

JONI RACIRI

Counsel: Ms. N. Ali for the State
Mr. S. Ravu for the Accused

Date of Sentence Hearing: 16th July 2024

Date of Sentence: 26th August 2024

SENTENCE

1. Joni Raciri, the accused, is indicted with the offences of *Murder* and *Act with intent to cause grievous harm* respectively contrary to sections 237 and 255(b) of the Crimes Act 2009 laid out as follows in the Information by the Director of Public Prosecutions dated 20 July 2023:

COUNT ONE

Statement of Offence

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

Particulars of Offence

JONI RACIRI also known as **JONE ELDER RACIRI** on 9th June, 2023 at Bayview Heights, Suva in the Central Division, murdered **NANISE ROROVANUA SAUKITOGA**.

COUNT TWO

Statement of Offence

ACT WITH INTENT TO CAUSE GRIEVOUS HARM: Contrary to section 255(b) of the Crimes Act 2009.

Particulars of Offence

JONI RACIRI also known as **JONE ELDER RACIRI** on 9th June, 2023 at Bayview Heights, Suva in the Central Division, with the intent to cause grievous harm to **SETAITA UDUVAKAVO SAUMATUA RASEA**, unlawfully attempted to strike **SETAITA UDUVAKAVO SAUMATUA RASEA** with a weapon, namely a garden hoe.

2. On 12 October 2023 Joni Raciri pleaded *guilty* to Count 1 – Murder and Count 2 – Act with intent to cause grievous harm voluntarily and unequivocally, confirmed by his counsel Mr. T. Varinava of the Legal Aid Commission.
3. Joni Raciri via his counsel from the LAC then applied to withdraw his guilty plea for Count 2 - *Act with intent to cause grievous harm*, which application was later withdrawn by the accused and confirmed by his LAC counsel.

4. The prosecutor read out the *Summary of facts* and submitted the *Antecedent report* on 15 May 2024, and the accused Joni Raciri voluntarily admitted the *Summary of facts* and the *Antecedent report*, confirmed by his LAC counsel Mr. T. Varinava.
5. The Court then formally convicted Joni Raciri of Count 1 – Murder and Count 2 – Act with intent to cause grievous harm as per the Information by the Director of Public Prosecutions.
6. Plea in mitigation and sentencing hearing was held on 16 July 2024, and this is the Courts finding on sentence.

Summary of facts for Count 1 – Murder and Count 2 - AWITCGHarm

7. Count 1 – Murder

The accused **Joni Raciri** (49 years, security guard) and **Setaita Uduvakavo Saumatua Rasea** (hereinafter referred as **PW1**, 18 years old, unemployed of Veidogo Settlement, Vatuwaqa, Suva) know each other as PW1 calls the accused Uncle John. On 9 June 2023 at around 1.00pm, the accused called PW1 via his mobile phone and told PW1 to meet him at the Nabua Muslim League for them to drink the Goldstone beer that he had bought. When PW1 met the accused at the Nabua Muslim League, the accused was holding two 2L bottles of Coca Cola that was already mixed with the Goldstone beer. The accused and PW1 then walked from the Nabua Muslim League to Lot 20 Paul Sloan Street, Bayview Heights, Suva, where the accused worked as security guard at the residence belonging to a James Chong and also lived there at the residence garage. At the said residence, the accused and PW1 began consuming alcohol, and while drinking PW1 received a phone call from **Nanise Rorovanua Saukitoga** (hereinafter referred as **the deceased**, 21 years, unemployed of Queen Elizabeth Barracks, Nabua, Suva) and PW1 also invited the deceased to join her and the accused to drink alcohol. The accused then went and bought two more packs of Goldstone beer, and upon returning he saw PW1 with the deceased, and they all continued drinking alcohol. When the accused got drunk, he told PW1 and the deceased not to leave the premises and went to

lock the main gate of the residence, which caused PW1 to feel scared and began crying. At around 8.30pm, the deceased suggested to PW1 that they leave, which was overheard by the accused and immediately got angry. The accused then approached the deceased and asked her as to why she had wanted PW1 to leave with her, however, the deceased and PW1 decided to stay a bit longer. PW1 and the deceased continued drinking alcohol with the accused who then asked them for his mobile phone which PW1 was using at the time, to which PW1 reacted by returning the mobile phone to the accused. Despite receiving back his mobile phone, the accused kept on asking as to where his mobile phone was, to which the deceased responded to the accused that he had received his mobile phone back and placed it in his back pocket. The accused did not accept such response and reacted furiously by grabbing his mobile phone and throwing it on the floor. Seeing that the accused was angry, the deceased then requested PW1 for them to leave. The deceased then asked the accused to open the main gate and allow them to leave, but the accused got angry at the deceased, grabbed a garden hoe, and struck the deceased face several times with the garden hoe, witnessed by PW1. The deceased then fell motionless on the floor, and the accused stood over the deceased's body and continued striking her with the same garden hoe, again witnessed by PW1.

Autopsy report of the deceased

The autopsy of the deceased was conducted on 11 June 2023 by Pathologist Dr. James Kalougivaki who found the cause of death as follows: *(a) Severe sub-arachnoid haemorrhage; The Antecedent Causes of death were: (b) Severe traumatic head injuries; and (c) Severe traumatic chest injuries; The External Cause was: (d) Sharp and blunt force trauma.* A copy of the autopsy report of the deceased was annexed by the prosecutor as PE1.

Count 2 – Act with intent to cause grievous harm

PW1 Setaita Uduvakavo Saumatua Rasea said that the accused also struck her arm with the same garden hoe, and fearing for her life she then desperately ran and climbed over the main gate which remained locked. While climbing the main gate, the accused struck PW1 again

with the garden hoe causing PW1 to fall on the other side of the gate. The accused then tried to open the main gate to get at PW1 but couldn't, and then tried to climb over with no success due to being drunk. PW1 called out loud for help and was heard by some neighbours who then came out to assist PW1 and also calm the accused who was very aggressive. The police were called and soon thereafter arrived and attended to the scene of the crime, and also arrested the accused who smelt heavily of liquor on that evening of 9 June 2023.

Medical report of PW1

PW1 was medically examined at the CWM Hospital on 9 June 2023 at 10.24pm by Dr. Ratu Saula Tunisau who found that PW1 had sustained injuries on her left arm with tenderness, which injury was fresh with minimal swelling. PW1 was admitted and then discharged after review by the surgical team on 11 June 2023. Dr. Tunisau at D(16) of the medical report opined that the *'physical injuries should heal but emotional and mental injuries could be life-long. Further investigation required to ascertain events and risk of further altercations'*. A copy of the medical report of PW1 by Dr. Tunisau was annexed by the prosecutor as PE2.

Video recorded caution interview of Joni Raciri

The accused Joni Raciri made admissions in his video recorded caution interview. The caution interview was held at Raiwaqa police station commencing on 10 June 2023 by DC.3094 Josateki (Interviewer) witnessed by DC.3090 Inoke and concluded on 11 June 2023. A copy of the transcripts of the video recorded caution interview of Joni Raciri (i.e. Disc 1: Part 1; Disc 1: Part 2; Disc 2: Part 1; Disc 3: Part 1; Disc 4: Part 1) were annexed by the prosecutor as PE3. The accused admitted murdering the deceased because he was very angry with them and had wanted to take revenge, noted at pages 6 and 7 of Disc 3: Part 1. On the same disc at page 8, the accused stated that he took hold of the hoe and whacked the deceased with it 6 or 7 times. The accused said that he got angry and he meant to whack the deceased, but he didn't know that she had passed away. At page 11 the accused admitted that he meant to hit the deceased as he was angry. Furthermore, in Disc 4: Part 1, pages 1 of 6 and 2 of 6,

the accused admitted hitting the deceased with the sharp part of the garden hoe, and when he hit her with the garden hoe he knew that it could cause death.

Charging of Joni Raciri

The accused was formally charged by the police on 12 June 2023 with the offences of *Murder* and *Act with intent to cause grievous harm*.

Sentence for Count 1 - Murder

8. ***Murder*** is contrary to section 237 of the Crimes Act 2009, and the penalty is '*[m]andatory sentence of imprisonment for life, with a judicial discretion to set a minimum term to be served before pardon may be considered*'.
9. Pursuant to section 237 of the Crimes Act 2009, the penalty for *Murder* is fixed in law, that is, the custodial term of life imprisonment. However, the matter to be determined by this Court in this instant is what minimum term to set in accordance with the steps enunciated by the Fiji Court of Appeal in Tevita Vuniwai v State [2024] FJCA 100; AAU176.2019 (30 May 2024), paragraphs 91 - 121.
10. Relying on the steps prescribed by the Fiji Court of Appeal in Tevita Vuniwai v State (supra), I find as follows:

Step 1 – Category of seriousness of the *Murder*

The category of seriousness of the *Murder* in this case is '**High**' justified by the fact that the accused Joni Raciri took a garden hoe and whacked the deceased with it 6 or 7 times, intentionally causing her death, which category according to the table at paragraph 91 of Tevita Vuniwai v State (supra) deserves a starting point of 20 years imprisonment, and minimum term range of 15 – 25 years imprisonment.

Step 2 – Aggravating and mitigating factors

With the starting point of 20 years imprisonment, 4 years is added due to the aggravating factors in that the accused Joni Raciri prevented the deceased, who at that juncture was vulnerable and intoxicated, from leaving the premises by locking the main gate, and acted angrily towards her prior to whacking her 6 or 7 times with a garden hoe. This includes the loss and associated trauma caused to the deceased's family including PW1 who had initially invited the deceased to join that tragic drinking session. Furthermore, in 2018 the accused was given a 5 months imprisonment term for *Assault causing actual bodily harm* suspended for 3 years with a permanent DVRO as per the *Antecedent report*.

Of the 24 years imprisonment, 3 years is deducted for the mitigating factors taking into consideration the accused Joni Raciri being 50 years old (D.O.B – 31 July 1973), divorced with two children aged 20 and 15, and worked as a security guard earning \$200 per week.

Step 3 – Guilty plea

Having arrived thus far at 21 years imprisonment, 3 years is deducted further for the accused's early guilty plea on 12 October 2023, hence arriving at a term of 18 years imprisonment.

Step 4 – Time served on remand

A further deduction of 1 year 1 month is made of the 18 years imprisonment, for time served on remand, thus arriving at a term of 16 years 11 months.

Step 5 – Proportionality

The 16 years 11 months arrived at in step 4 is within the minimum term range of 15 – 25 years imprisonment for this *Murder* being categorized as ‘High’ in terms of seriousness as per step 1.

11. Therefore, for Count 1 – Murder, Joni Raciri is sentenced to life imprisonment, with a minimum term of 16 years 11 months.

Sentence for Count 2 - Act with intent to cause grievous harm

12. The maximum sentence for the offence of *Act with intent to cause grievous harm* contrary to section 255(b) of the Crimes Act 2009 is life imprisonment.

13. In State v Kavneel Kishant Lal [2020] FJCA 44; AAU001.2017 (28 April 2020), the Fiji Court of Appeal held at paragraph 17:

[17] Thus, Mokubula [2003] FJHC 164; HAA0052J.2003S (23 December 2003) provide general sentencing guidance that tariff for cases under section 255 of the Crimes Act, 2009 committed by any means other than a weapon, is between 6 months to 5 years of imprisonment, but if the attack is by a weapon the starting point should range from 2 to 5 years which means that the final sentence could be over 5 years depending on the nature of the weapon and other aggravating circumstances. As stated by the Court of Appeal in Vosa v State [2019] FJCA 89; AAU0084.2015 (6 June 2019) the list of aggravating and mitigating circumstances set out in Mokubula is not exhaustive.

14. Based on the above authority, I rely on the tariff of 2 to 5 years imprisonment justified by the fact that the accused Joni Raciri had used a garden hoe to strike PW1 Setaita Uduvakavo Saumatua Rasea’s arm and also while PW1 was climbing over the main gate to run away from the accused.

15. I choose a starting point of 4 years, and enhance it by 4 years for the aggravating factors bearing in mind the extent of injury sustained by PW1 including the emotional and psychological trauma having being struck with a garden hoe by the accused while being

highly vulnerable due to intoxication and the accused having prevented PW1 from leaving the premises by locking the main gate causing PW1 to escape by climbing over the gate while intoxicated and fearful of the accused. For the mitigating factors, I reduce the sentence by 2 years, thus arriving at 6 years.

16. Of the 6 years, a further deduction of 2 years for the early guilty plea, thus arriving at 4 years. 1 year 1 month is further deducted from the 4 years for time spent in custody, thus arriving at the custodial term of 2 years 11 months.

17. Therefore, for Count 2 – *Act with intent to cause grievous harm*, Joni Raciri is sentenced to 2 years 11 months imprisonment.

Totality principle of sentencing

18. Considering the totality principle of sentencing, I hereby order that the sentences for Count 1 – *Murder* and Count 2 – *Act with intent to cause grievous harm*, to run **concurrently** to the effect that Joni Raciri is hereby sentenced to life imprisonment, with a minimum term of 16 years 11 months.

Conclusion

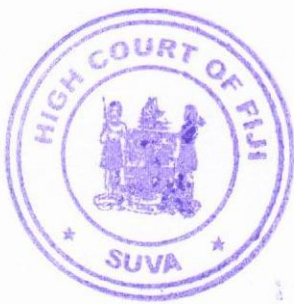
19. Having pleaded guilty voluntarily and unequivocally to Count 1 – *Murder* and Count 2 – *Act with intent to cause grievous harm* in the Information dated 20 July 2023 by the Director of Public Prosecution, I hereby convict Joni Raciri of the said offences.

20. Joni Raciri is sentenced to life imprisonment, with a minimum term or non-parole period of 16 years 11 months.

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

Order(s) of the Court

22. Joni Raciri is convicted of the indictments of Count 1 – Murder and Count 2 – Act with intent to cause grievous harm in the Information dated 20 July 2023 by the Director of Public Prosecution, and sentenced to life imprisonment, with a minimum term or non-parole period of 16 years 11 months.



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Hon. Mr. Justice Pita Bulamainivalu
PUISNE JUDGE

At Suva

26th August, 2024

Solicitors

Office of the Director of Public Prosecutions for the State.
Legal Aid Commission for the Accused