

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 Mitigation/Sentencing Hearing: 16 May 2025

Date of Sentencing: 3 June 2025

SENTENCE

1. **Setareki Ratatagia**, the accused, was found guilty and convicted on 25 April 2025 for the lesser or alternative offence [Criminal Procedure Act 2009, ss.162(1) - (2)] of **Manslaughter** contrary to section 239(a) – (b) & (c)(i) of the Crimes Act 2009, having being tried for **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:

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 lesser or alternative offence of *Manslaughter* is contrary to section 239(a) – (b) & (c)(i) of the Crimes Act 2009 which state:

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.

Penalty – Imprisonment for 25 years.

Briefs facts of the Manslaughter

3. On Monday 3 February 2020 at around 4.00pm, Vilitati Domonakibau (PW2), Penaia Dimuri (PW3), Pita Tuikabe, Misaele Vakacegu, Akuila Cavuilati and **Jaoji Dumu (deceased)** were at the Namuka jetty waiting for a boat to ferry them across to Bau landing, to attend rugby training at Nadave as they usually do most afternoon. While these young boys were waiting at the Namuka jetty, **Setareki Ratatagia (accused)** then arrived at the jetty, and immediately confronted his cousin **Jaoji Dumu** and punched him 3 times with the first punch landing on the back of Jaoji's head; the second on Jaoji's forehead; and the third on the back of Jaoji's head, and then Jaoji Dumu fell into the water. While Jaoji Dumu was in the water, he was yelled at by Setareki Ratatagia (accused) saying furiously, "*That is what you have been doing to the girls in the village. Come up to get punched again*". Jaoji Dumu swam back to the jetty, got onto the jetty, and while trying to stand upright, Setareki Ratatagia (accused) threw another punch at Jaoji, which landed on the left side of the back of Jaoji's neck, Jaoji then fell back into the water and swam in an unusual circular motion as described by Vilitati Domonakibau (PW2). The boat then arrived and moored at the Namuka jetty, Setareki Ratatagia (accused) immediately boarded the boat, took hold of a wooden oar, and angrily hit

and speared Jaoji Dumu with that oar, which hit Jaoji's hip. After Setareki Ratatagia (accused) had speared Jaoji with the wooden oar, the other young boys also boarded the boat operated by Mesake Tukana (PW6), then sailed to where Jaoji was swimming in an unusual circular motion, Vilitati Domonakibau (PW2), Pita Tuikabe and Emosi then pulled Jaoji out of the water and placed him in the boat, and the boat proceeded to Bau landing. When the boat docked at Bau landing, Setareki Ratatagia (accused) and some of the young boys disembarked and went to Nadave for rugby training, while Mesake Tukana (PW6) the boat operator and Emosi remained in the boat and took Jaoji Dumu back to Namuka village accessible via the river passage. At that moment Jaoji Dumu was still breathing, but the pupils of his eyes had turned white. Upon reaching the bank or shore of Namuka village, Mesake Tukana (PW6) immediately got off the boat and ran to Jaoji's uncle's house, while Jaoji and Emosi remained in the boat. Present at Jaoji's uncle's house then were Jaoji's father Esila Finau (PW7) and uncle Viliame Devo, whom Mesake Tukana (PW6) conveyed the message that Jaoji Dumu was in his boat, hurt and needing urgent assistance. Esila Finau (PW7) and Viliame Devo then rushed to the boat, and saw Jaoji Dumu sitting and leaning on the side of the boat with eyes closed, saliva drooling from his mouth, and unconscious. Esila Finau (PW7), Viliame Devo and Eseta Wasa then lifted Jaoji Dumu out of the boat and took him to a house in Namuka village where they tried to revive him, but he remained unconscious. They then changed Jaoji's wet t-shirt and put on him a dry and clean t-shirt, lifted him into a wheelchair and took him to the Namuka jetty to wait for the boat to take them across to Bau landing. At the Namuka jetty, Jaoji was then carried into Soloveni's boat, and held onto by Esila Finau (PW7) and another passenger as they proceeded to Bau landing. Upon reaching Bau landing, they lifted Jaoji into the *Veivueti* taxi and driven to Mokani Health Center. At Mokani Health Center, Jaoji remained in the taxi while the doctor examined him and instructed them to proceed directly to Nausori hospital given the seriousness of Jaoji's condition at that moment. At Nausori hospital, the doctors attempted to revive Jaoji Dumu for about 1 ½ hours but to no avail, and thereafter Esila Finau (PW7) was informed of his son Jaoji's demise.

Dr. Avikali Mate (PW9) performed the autopsy on Jaoji Dumu and compiled the autopsy report dated 5/02/2020 [**PE3**]. Dr. Avikali Mate (PW9) opined that the cause of death was *Intracranial haemorrhage* i.e. bleeding within the skull or *Cranium*, due to or as a consequence

of blunt force trauma to the head with the external causes being that of an assault.

Setareki Ratatagia (accused) was later arrested on that same Monday 3 February 2020 by DC Apisai Voravora and CID team, and handed over to the Taskforce team at Nausori Police Station. He was then interviewed under caution by D/IP 5553 Ilaitia Ratu Ramaqa (PW10), witnessed by ASP Uraia Davu, on 4 February 2020, and subsequently charged with *Murder*.

Sentencing analysis for Manslaughter

4. The **maximum sentence** for *Manslaughter* under section 239(a) – (b) & (c)(i) of the Crimes Act 2009 is **25 years imprisonment**.
5. The applicable **sentencing tariff** or range is from **a suspended sentence to 12 years imprisonment**, in accordance with Bae v State [1999] FJCA 21; AAU0015u.98s (26 February 1999), Ului v State [2023] FJCA 111; AAU020.2018 (14 June 2023), and Vakaruru v State [2018] FJCA 124; AAU94.2014 (17 August 2018).
6. In Bae v State (supra), the Fiji Court of Appeal considered several sentences on manslaughter in the High Court and Court of Appeal for purposes of determining the correct sentencing tariff for manslaughter, and held:

The cases demonstrate that the penalty imposed for manslaughter ranges from a suspended sentence where there may have been grave provocation to 12 years imprisonment where the degree of violence is high and provocation is minimal. It is important to bear in mind that this range covers a very wide set of varying circumstances which attract different sentences in different manslaughter cases. Each case will attract the appropriate sentence within the range depending on its own facts.

7. The Bae (supra) manslaughter sentencing tariff was upheld by the Fiji Court of Appeal in Ului v State (supra), holding at paragraph [43]:

[43] The maximum penalty for manslaughter is 25 years imprisonment. The sentencing tariff is from a suspended sentence to 12 years imprisonment, covering

*a very wide set of varying circumstances which in turn attract different sentences.
(Kim Nam Bae v The State Criminal Appeal No. AAU0015 of 1998S)*

8. Furthermore, in Vakaruru v State (supra), at paragraphs [42] – [48], the Fiji Court of Appeal held:

[42] The maximum sentence for the offence of manslaughter in accordance with section 239 of the Crimes Act is 25 years imprisonment. The observation made by this court in Kim Nam Bae (supra) is that the sentence for the offence of manslaughter ranges from a suspended sentence where there was a great deal of provocation by the victim to 12 years imprisonment where the provocation by the victim was minimal. However, the final sentence will be determined on the facts of each case including the aggravating and mitigating circumstances.

[43] The appeal in Kim Nam Bae (supra) was determined by this court on 26 February, 1999 when the Penal Code Cap 17 was in existence. The maximum sentence for the offence of manslaughter under section 201 of the Penal Code was life imprisonment. Under section 239 of the Crimes Act the maximum sentence for the offence of manslaughter has been reduced. Sentencing is neither a scientific formula nor a mathematical formula which can be arrived at by doing additions and subtractions. Each time there is an offender before the court the circumstances and the culpability vary from case to case. An appropriate sentence is arrived at after a variety of considerations are taken into account. The sentencing regime followed in the High Court and the Court of Appeal is helpful to determine the appropriate range of sentence.

[44] In this court's view the range of sentence observed in the case of Kim Nam Bae (supra) need not be revisited in light of the fact that the Crimes Act has reduced the maximum punishment for the offence of manslaughter to a term of imprisonment for 25 years. We now have the Sentencing and Penalties Act which provides guidance to a sentencing court in sentencing an offender. The sentencing structure in Kim Nam Bae (supra) can be said to be applicable notwithstanding the changes in the legislative framework.

[45] It cannot be ignored that the offence of manslaughter is about the loss of another person's life and therefore is a very serious offending.

[46] The current sentencing trend for the offence of manslaughter under the Crimes Act appears to be between 5 years to 12 years imprisonment. The above sentencing range does take into account the objectives of section 4 of the Sentencing and Penalties Act. Section 26(2)(a) of the Sentencing and Penalties Act gives the High Court the powers to suspend a final sentence if it does not exceed three (3) years imprisonment. Accordingly, there is no need to establish a new tariff for the offence of manslaughter. A sentencing court can impose a suspended sentence based on the

circumstances of the offending, a tariff may be construed as a restriction or may even confuse a sentencer. In exceptional cases a sentencing court should consider suspending a sentence.

[47] In State v Suliasi Dumukoro Criminal Case HAC 27 of 2014, Perera J. after considering the sentences for the offence of manslaughter from 2012 to 2016 came to the conclusion that the appropriate tariff for this offending should be between 5 years and 12 years imprisonment. Under section 26 of the Sentencing and Penalties Act a sentencing court has the powers to suspend a sentence if that sentence did not exceed three (3) years imprisonment hence the decision to suspend a particular sentence was a separate consideration.

[48] I note that a sentence of 5 years to 12 years imprisonment for the offence of manslaughter is in line with the current sentencing regime adopted by the High Court with a suspended sentence to be considered in exceptional circumstances. It does not mean that a sentencing court cannot deviate from the above range. There may be reasons to go below or higher than the range of sentencing between 5 years to 12 years imprisonment depending upon the circumstances of the offending and the sentencing court should provide reasons why the sentence is outside the range.

9. Considering the objective seriousness of the offence of *Manslaughter* in this instant, I select a **starting point** of 4 years imprisonment. See Koroivuki v State [2013] FJCA 15; AAU0018.2010 (5 March 2013), para. [27].
10. The starting point of 4 years imprisonment is enhanced by 3 years due to the following **aggravating factors**:
 - a) Setareki Ratatagia intended to cause serious harm on Jaoji Dumu when he deliberately and brutally punched Jaoji Dumu's face and head a number of times, and spearing Jaoji Dumu with a wooden oar when he was swimming in an unusual circular motion in the water and being highly vulnerable, resulting in Jaoji Dumu suffering *Intracranial haemorrhage* i.e. bleeding within the *Cranium* or skull and succumbing to death.
 - b) This was an unprovoked and violent attack by way of lethal assault on a 21 year old victim whose life has been unduly cut short and terminated, and concurrently denied the opportunity to live his life to the fullest.

- c) Setareki Ratatagia resorted to ferociously attack and assault Jaoji Dumu causing the latter's demise, instead of relying on other non-lethal means of resolving the dispute or grievance, being the older and mature adult of the two.
- d) Esila Finau (PW7) and his wife have indeed suffered an enormous and heavy loss including pain and suffering attributed to the demise of their 21 year old son Jaoji Dumu due to an unprovoked, senseless and brutal assault by Jaoji's cousin Setareki Ratatagia. The extended family of the deceased Jaoji Dumu have also endured such loss and associated pain and suffering.
- e) This incident has somewhat caused faction, tension and bad relations amongst the occupants and members of Namuka village given that the deceased Jaoji Dumu and Setareki Ratatagia are cousins.

11. The 7 years imprisonment is reduced by 1 year due to the following **mitigating factors**:

- i) Setareki Ratatagia is aged 41 years having been born on 20 April 1984.
- ii) Setareki Ratatagia hails from Namuka village, Bau District, Tailevu, is single and a subsistence farmer.
- iii) Setareki Ratatagia is a respected young man amongst his peers in Namuka village, does church engagement, and plays a leading role in the village rugby team which participates in rugby competition(s) organized by the Tailevu Rugby Union, being an affiliate of the said rugby union.
- iv) Setareki Ratatagia is remorseful of his actions in assaulting and causing the death of his cousin Jaoji Dumu on 3 February 2020, not with the intention to kill, but only to cause serious harm on Jaoji Dumu.

v) Setareki Ratatagia's 2 prior convictions for *Theft* on 2/11/2012 and 30/12/2012 in CF 1483/12 are irrelevant and/or spent convictions pursuant to sections 3(a) – (b) and 5(1)(a) of the Rehabilitation of Offenders (Irrelevant Convictions) Act 1997.

Time spent in custody

12. The 6 years imprisonment is further reduced by 12 months for **time spent in custody** resulting in the head sentence of 5 years imprisonment. See Sentencing and Penalties Act 2009, s.24.

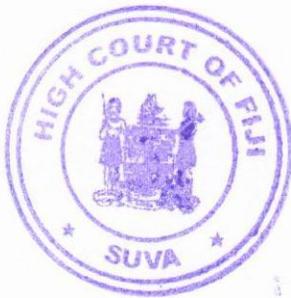
Non-parole period

13. Given the head sentence of 5 years imprisonment, I have decided to impose a non-parole period of 4 years imprisonment. See Sentencing and Penalties Act 2009, s.18.

CONCLUSION

14. **Setareki Ratatagia** stands convicted of the lesser or alternative offence of *Manslaughter* contrary to section 239(a), (b) & (c)(i) of the Crimes Act 2009, and hereby sentenced to a **custodial term of 5 years with a non-parole period of 4 years**.

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



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Hon. Mr. Justice Pita Bulamainivalu
PUISNE JUDGE

At Suva

3 June 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Tuifagalele Legal for the Accused