

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 241 OF 2013S**

**STATE**

**vs**

**YANG XIAN JIONG**

**Counsels** : Mr. T. Qalinauci for State  
Mr. J. Savou for Accused

**Hearings** : 1, 2, 3, 4, 5, 8 and 9 June, 2015

**Summing Up** : 11 June, 2015

**Judgment** : 12 June, 2015

**Sentence** : 30 June, 2015

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**SENTENCE**

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1. In a judgment delivered on 12 June 2015, you were found guilty and convicted, on the following information:

***Statement of Offence***

**MURDER**: Contrary to section 237 (a) – (c) of the Crimes Decree No 44 of 2009.

***Particulars of Offence***

**YANG XIAN JIONG** on the 8th day of April, 2012 at Suva in the Central Division, murdered **ROBERT FONG** alias **JAN QIU KUANG**.

2. The brief facts were as follows. You and two others, went to Victoria Parade, opposite a service station. The crime scene was also near the Traps Bar Nightclub. It would appear that the three of you went there to kill the

complainant. This was early morning on 8 April 2012. The three of you were standing near the complainant's vehicle waiting for his arrival. A while later, he arrived. The three of you jumped on the complainant and repeatedly stabbed him to death. He was rushed to hospital, but died thereafter.

3. In **State v Joeli Masicola**, Criminal Case No. HAC 081 of 2014S, I said the following, "...*The offence of "murder" (count no. 1) is often said to be at the top of the criminal calendar. To preserve human life is a fundamental objective in preserving and maintaining the wellbeing of our society. Our lawmakers had prescribed a mandatory penalty of life imprisonment for those found guilty of murder. The court is empowered "to set a minimum term to be served before a pardon may be considered" (Section 237 of the Crimes Decree 2009). A pardon may only be granted by His Excellency The President of the Republic of Fiji (Section 119 of the 2013 Fiji Constitution). Minimum terms for murder had been set between 26 to 11 years imprisonment, depending on the mitigating and aggravating factors: **Waisale Waganivalu v The State**, Criminal Appeal No. CAV 005 of 2007, Supreme Court, Fiji; **The State v Navau Lebobu**, Criminal Case No. HAC 016 of 2002, High Court, Suva; **State v Anesh Ram**, Criminal Case No. HAC 124 of 2008, High Court, Suva and **State v Tukana**, Criminal Case No. HAC 021 of 2009, High Court, Lautoka...*"

4. In this case, the aggravating factors, were similar to those considered, when the accused's two co-accuseds were sentenced in **State v Yang Xiu Qi and Hu Jian Zhan**, Criminal Case No. HAC 139 of 2012S, and I repeat them here, with the necessary modifications:

- "...(i) There was pre-planning to this murder. Planning to kill someone is always an aggravating factor. It showed a total disregard for human life. Human life is the most precious of all things on earth. Those who plan and bring about people's death, must expect a severe sentence from the courts, to remind them of the above;
- (ii) Use of three knives in inflicting injuries on the deceased. As a weapon, a knife is always considered seriously. People must be discouraged from using knives to carry out their evil intentions. Those who use knives in committing crimes, must expect a severe sentence;
- (iii) The extent of the injuries inflicted on the deceased. As reflected in the post mortem report, the deceased suffered numerous stab injuries. He was stabbed repeatedly in the areas surrounding the neck, the neck and head. The injuries

showed that the accuseds did intend to cause the deceased's death;

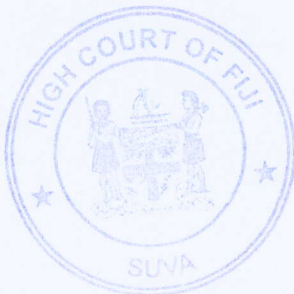
- (iv) The death of the victim. The accuseds' offending had deprived the accused's wife and his children the support of her husband and their father. The deceased was the sole bread winner for his family. His death had seriously affected the social and economic wellbeing of his family. The accused must accept the punishment he will get for depriving this family of a husband and a father..."

5. The mitigating factors were as follows:

- (i) At the age of 34 years, this is your first offence;  
(ii) You had been remanded in custody since 5 June 2013, that is, approximately 2 years 1 month ago.

6. There is only one mandatory sentence for murder and that is, life imprisonment. I start the minimum term to be served at 16 years. I add 5 for the aggravating factors, making a total of 21 years. For the time served while on remand, I deduct 2 years 1 month, leaving a balance of 18 years 11 months. For being a first offender, I deduct 11 months, leaving a balance of 18 years imprisonment.

7. Mr. Yang Xian Jiong, for murdering Mr. Robert Fong on 8 April 2012, at Suva in the Central Division, I sentence you to the mandatory life imprisonment, with a minimum term of 18 years imprisonment to be served, before a pardon may be considered, by His Excellency the President of the Republic of Fiji.



**Salesi Temo**  
**JUDGE**

**Solicitor for the State** : **Office of the Director of Public Prosecution, Suva.**  
**Solicitor for the Accused** : **Legal Aid Commission, Suva.**