

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 180 of 2023

STATE

vs.

AKUILA NOA

Counsel: Ms. N. Ali with Mr. T. Naimila for the State
Mr. I. Emasi for Accused

Dates of Hearing: 05th, 06th, 07th, 08th, 13th, 14th and 15th of May 2025,
09, 11th, 12th, 13th, 16th, 17th, 18th, 19th, 20th, 23rd,
24th and 26th June 2025

Date of Closing Submission: 14th August 2025

Date of Judgment: 17th December 2025

JUDGMENT

1. The Acting Director of Public Prosecutions filed this Information, charging the Accused Mr. Akuila Noa together with another unknown person with one count of Murder, contrary to Section 237 read with Section 45 of the Crimes Act. As outlined in the Information, the Accused is charged either as a principal or an accessory. The particulars of the offence reads as follows:

COUNT ONE

Statement of Offence

MURDER: *Contrary to Section 237 read with sections 45 and 46 of the Crimes Act 2009.*

Particulars of Offence

*AKUILA NOA and a person unknown on the 21st day of April, 2023 at Samabula in the Central Division, as joint principles or either aided and abetted the other to cause injuries to **VINAY VISHAAL PRASAD** and the said conduct had caused the death of **VINAY VISHAAL PRASAD**.*

2. The Prosecution called thirty-one witnesses and tendered forty-nine exhibits, while the Accused gave evidence and also called his father to testify for the Defence. Following the hearing, the Court heard the closing submissions from both parties. Additionally, the Learned Counsel for the Prosecution and the Defence submitted written submissions and a bundle of case authorities, which significantly aided me in making this judgment. Having carefully considered the evidence presented during the hearing and both oral and written submissions of the parties, I now deliver the judgment of this matter.

Burden and Standard of Proof

3. The Accused is presumed innocent until proven guilty. The burden of proof on the charge against the Accused rests with the Prosecution. This is because he is presumed innocent until proven guilty. The standard of proof in a criminal trial is "proof beyond reasonable doubt". The Court must be satisfied that the Accused is guilty of the offence without any reasonable doubt.

Elements of the Offence

4. The main elements of the offence are:
 - i) The Accused,
 - ii) Engaged in conduct
 - iii) That conduct caused the death of the Deceased,
 - iv) The Accused intended to cause, or was reckless as to causing, the death of the other person by the said conduct.

Admitted Facts

5. The Accused tendered the following admitted facts under Section 135 of the Criminal Procedure Act.
 1. *The Accused person is Akuila Noa who is educated up to Form 6 at Lelean Memorial School.*
 2. *As of 21st April, 2023, Akuila Noa had resided at Block 2, Mead Road Housing in Nabua for the past 23 years.*
 3. *He was arrested on the 26th May, 2023 by the Police and interviewed via video recording at the Raiwaqa Police Station.*
 4. *Akuila Noa in his video recorded caution interview had voluntarily given his consent for his bodily samples to be taken by Police for the purposes of DNA testing. That Police took his bodily samples on the 26th May, 2023.*

Evidence of the Prosecution

6. The Prosecution alleged that the Accused, along with another accomplice, entered the compound where the Deceased was working as a night Security guard and assaulted him, resulting in his death. The Accused strongly denied the allegations, stating that he was attending the funeral of a friend on the night of 21st April 2023, and then returned to his apartment at the Public Housing Authority flats on Mead Road, where he slept until the following morning.
7. The Prosecution presented the evidence so as to establish that the Accused committed this crime with an unknown accomplice. The thirty-one Prosecution witnesses can be divided into three main clusters, i.e., the witnesses who collected the crime scene exhibits and tested them for DNA evidence, the witnesses who resided at the two flats inside the compound and assisted the Deceased after the incident occurred, and the witnesses who collected CCTV footage from a neighbouring house and identified the Accused as one of the two individuals who walked into the compound on the night of the incident.

8. The first group of witnesses includes officers from the Crime Scene Investigation unit, as well as those attached to the Police Forensic Biology & DNA Laboratory (hereinafter referred to as the Biology Lab). According to the Crime Scene Investigators, particularly the evidence presented by PC Shivneel Ram (hereinafter referred to as Mr. Ram) and Acting Sergeant Vodonakadavu (hereinafter referred to as Mr. Vodo), 26 crime scene exhibits were collected. These included a piece of blue cloth, tied to the Deceased's left leg near the ankle; a pink-coloured knapsack; and the right side of a flip-flop. These items were tested and examined at the Biology Lab. The presence of the Accused's DNA was detected in the blue long-sleeve T-shirt, the pink knapsack, and the flip-flop. The Accused's DNA was found as a minor contributor to the DNA on those items.
9. The next group of witnesses comprises the occupants of the two flats within the compound where the crime occurred. Three Fijian nationals were staying in the upper flat near the garage, and other witnesses in this group were Indian nationals employed at a restaurant in Suva. According to the three Fijian nationals, the Deceased approached their flat and knocked on the door, requesting water, which woke them while they were sleeping inside. They discovered that the Deceased was severely injured and was asking for water. While they were offering water to the Deceased, they noticed his body was motionless. The three Fijian nationals then called the Indian nationals residing in the other flat, asking them to contact the Police. They carried the Deceased to the gate and attempted to place him in a taxi they had arranged. The taxi driver refused to take the Deceased to the hospital, as he was already dead. The occupants of the two flats then placed the Deceased on the driveway outside the compound and waited for the Police to arrive.
10. The last group of Prosecution witnesses consisted of the officers who retrieved the CCTV footage from a neighbour's house, along with the four witnesses who identified the Accused as one of the persons captured on the footage. The CCTV camera captured two people exiting a taxi and entering the compound. One of them was taller than the other. The taller one was wearing a hooded jacket, shorts, and shoes, while the other was in flip-flops and shorts. The shorter one appeared to be holding something, possibly a piece of cloth, in his hand. After a while, they left the compound.

Evidence of the Accused

11. As previously outlined, the Accused's defence was an alibi, claiming that he was elsewhere when this murder occurred at Bakshi Street, Samabula. His father provided evidence confirming that the Accused was at their flat on Mead Road during the early hours of 21st April 2023.

Evaluation of Evidence

12. Having briefly set forth the evidence adduced at the hearing; I now move to evaluate it so as to determine the evidential trustworthiness of the evidence adduced. The Court must consider two factors in assessing the testimonial trustworthiness of the evidence: the credibility of the witness and the reliability of the evidence. Credibility is linked to the correctness or veracity of the evidence, while reliability is related to the accuracy of the evidence. In doing that, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (**vide; Matasavui v State [2016] FJCA 118; AAU0036.2013 (the 30th of September 2016, State v Solomone Qurai (HC Criminal - HAC 14 of 2022).**)

Circumstantial Evidence

13. As per the evidence presented by the Prosecution, there is no direct evidence establishing what had happened inside the compound that eventually led to the death of the Deceased. Hence, the Prosecution's case against the Accused primarily relies on circumstantial evidence.
14. Keith JA in **Naicker v State [2018] FJSC 24; CAV0019.2018 (1 November 2018)** has explained the nature of circumstantial evidence and its evidential effects, where His Lordship held that:

“It is sometimes said that circumstantial evidence is less compelling than direct evidence. What better evidence can there be than that someone saw the

defendant commit the crime he is Accused of? But eyewitnesses can sometimes be mistaken, and they have also been known to lie. That is why it is also said that circumstantial evidence can be just as compelling, if not more so. If I go to bed at night and the ground outside is dry, and I wake up in the morning to find that it is wet – true, I have not actually seen it rain, but the inference that it rained during the night is irresistible. As long ago as 1866, 8 years before Fiji became a Crown Colony, a distinguished judge likened circumstantial evidence to a rope comprised of several chords. He said that “one strand of the chord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.” One of the issues in this case is whether the circumstantial evidence was sufficient to justify the conviction of the petitioner for murder.”

15. Having outlined the nature of the circumstantial evidence, Keith JA further explained that:

“The essence of it is that the prosecution is relying on different pieces of evidence, none of which on their points directly to the defendant’s guilt, but when taken together leave no doubt about the defendant’s guilt because there is no reasonable explanation for them other than the defendant’s guilt”

16. The New Zealand Court of Appeal in **David Wayne Tamihere v R [2024] NZCA 300 at 58** expounded that:

“As this is a circumstantial case, it is important to note that, as this Court explained in R v Guo, the individual strands of evidence themselves need not be proven beyond reasonable doubt. The question whether guilt has been proved beyond reasonable doubt is answered by reference to the evidence as a whole”

17. Accordingly, the Prosecution does not need to prove every link in the chain of circumstances beyond reasonable doubt; instead, it must prove the element of the offence beyond reasonable doubt. (*see: Scott Watson v R (2025) NZCA 455*). The Court can find the Accused's guilt by considering the evidence as a whole.

Corpus Delicti

18. Every criminal Prosecution involves two main components. The first is the “*corpus delicti*”, which means that a crime has been committed. Therefore, the Prosecution must first prove beyond reasonable doubt that a murder was committed. The second component concerns the identification of the perpetrator who committed the murder. Once the "*corpus delicti*" is established, the Prosecution is then required to prove that the Accused was responsible for this crime.
19. The CCTV footage confirms that two individuals entered the compound early on the morning of 21st April 2023 and later left. All the occupants of the two flats testified that they were sleeping at that time, with only the Deceased awake, as he was the night Security guard. Shortly after the two youths departed, CCTV footage shows that the light in the top flat was turned on, supporting the testimonies of the three Fijian nationals who stated that the Deceased came to their flat and asked for water. A few minutes later, the CCTV footage shows the occupants of the two flats moving the Deceased to the driveway and attempting to place him in a taxi. Subsequently, they left the Deceased on the driveway and waited for the Police to arrive.
20. Doctor Anjali Narayan, who received the Deceased at the emergency department of CWM Hospital, testified, explaining the nature of injuries she observed on the Deceased and how she pronounced him dead on admission. Doctor Praneel Kumar explained his findings from the post-mortem examination and the cause of death, confirming that the Deceased's death was not natural.
21. Considering this evidence, it is evident that the Deceased's life ended unnaturally, and the death took place shortly after the visit of the two individuals. Therefore, this enables the Court to draw an undeniable inference that the two individuals were responsible for causing the Deceased's death.

Evidence of identification

22. Based on the above conclusion, the next issue to be addressed is whether the Accused was among the two individuals who entered the compound and murdered the Deceased.

23. The Prosecution asserts that the taller person, wearing a hooded jacket and shoes, was the Accused. To establish the identity of the taller youth as the Accused, the Prosecution presented two types of evidence, viz, the testimony of four witnesses who identified the taller person as the Accused, and the DNA evidence confirming the presence of the Accused's DNA in three exhibits found at the crime scene.
24. I will first turn to the identification evidence. In doing so, it is prudent to discuss the purpose of CCTV footage in evidence and the appropriate approach to evaluating it.
25. In **Attorney General's Reference (No 2 of 2002) ([2003] 1 Cr App R 321)**, the Court of Appeal of England, considering the three questions referred to it regarding the admissibility of evidence of the witness who identified the Accused not from the scene of the crime, but from a film captured at the time of the crime, set forth the following guidelines.

“In our judgment, on the authorities, there are as it seems to us at least four circumstances in which, subject to the judicial discretion to exclude evidence is admissible to show and, subject to appropriate directions in the summing up, a jury can be invited to conclude that the defendant committed the offence on the basis of a photographic image from the scene of the crime.”

- i) *Where the photographic image is sufficiently clear, the jury can compare it with the defendant sitting in the dock (Dodson and Williams).*
- ii) *Where a witness knows the defendant sufficiently well to recognize him as the offender depicted in the photographic image, he can give evidence of this (Fowden and White Kajala v Noble, Grimer, Caldwell and Dixon and Blenkinsop); and this may be so even if the photographic image is no longer available for the jury (Taylor v Chief Constable of Chester).*
- iii) *Where a witness who does not know the defendant spends substantial time viewing and analyzing photographic images from the scene, thereby acquiring special knowledge which the jury does not have, he can give evidence of identification based on a comparison between those images and a reasonably contemporary photograph of the defendant, provided*

that the images and the photograph are available to the jury (Clare and Peach)

iv) *A suitably qualified expert with facial mapping skills can give opinion evidence of identification based on a comparison between images from the scene, (whether expertly enhanced or not) and a reasonably contemporary photograph of the defendant, provided the images and the photograph are available the jury (R v Stockwell (1993) 97 Cr App R 260, R v Clarke [1995] 2 Cr App R 425 and R v Hookway [1999] Crim LR 750.*

26. The Court of Appeal of England in **R v Ozger [2022] All ER (D) 89 (Aug)** found that the list outlined in the AG's Reference did not intend to be exhaustive. The Court in **R v Ozger (supra)** further observed that, based on the AG's Reference guidelines, the Court is also able to compare and conclude that the person shown on CCTV footage is the same individual as in the comparator still photograph or the film. Warby LJ in **R v Ozger** expressed the concern about the quality of the comparison between the CCTV footage of the crime scene and the Accused in the Court, where Warby LJ observed that:

"A photograph, assuming it was agreed or proved to depict the defendant, could be so blurred, old or otherwise flawed that it provided no adequate basis for concluding that it showed the same person as shown in CCTV of a crime scene. Certainly, the use of such a photograph might be in no way comparable to a comparison between the CCTV and the defendant in the dock. However, it was not difficult to imagine cases in which a good quality, high resolution still image of undoubted authenticity from around the time of the offence would provide a better comparator than studying the defendant in court, perhaps years later, when his appearance might have changed, whether deliberately or not". (emphasis added)

27. In this case, three of the four witnesses (PW 25, 26, and 28) who identified the Accused as the taller individual in the CCTV footage at the crime scene compared it with CCTV footage obtained from PRB Flat at Mead Road. The CCTV footage from the PRB Flat showed three youths walking towards the church end; one of them then turned back, went to the bus stand,

and boarded the bus. The three witnesses identified the youth who boarded the bus as the Accused. However, nowhere in this CCTV footage did it show the youth's facial features, making it impossible to identify him definitively as the Accused. The witnesses based their identification on his walking style, which I will discuss in detail later. Consequently, there is no clear, high-quality, and definitively authentic image of the Accused in the PRB Flat's CCTV footage to compare with the CCTV footage from the crime scene.

28. All four Prosecution witnesses who identified the Accused in the CCTV footage claimed that they had known the Accused for several years. However, the quality of the crime scene CCTV footage is insufficient to clearly see the facial and bodily features of the two individuals. The four witnesses testified that they had spent several hours reviewing the CCTV footage and had compared it with the PRB Flat CCTV footage before concluding that the taller individual was the Accused. As I emphasized before, the PRB CCTV footage was not a clear or authentic comparator for a proper comparison with the crime scene CCTV.
29. PW 25, Mr. Finau, testified that he has known the Accused for several years, as the Accused was his neighbour and is familiar with his walking style. He explained that the Accused has a free-flowing, steady walking style, in which he swings his arms while keeping his body and head upright and straight. He claimed that the taller individual in the crime scene CCTV footage was the Accused, as well as the youth who walked to the bus stand and boarded the bus in the PRB Flat CCTV footage.
30. However, Mr. Finau later admitted in his evidence that the taller individual seen in the crime scene CCTV footage did not swing one of his hands as much as the other, and that both of his hands moved parallel to his body. Nonetheless, it is clear that, in the PRB flat CCTV footage, the youth swings both hands freely away from his body, unlike the individual in the crime scene CCTV footage, who swings his hands parallel to his body. Another discernible difference in their walking styles is the pattern of their strides. The taller individual in the crime scene CCTV walked with a shorter, straighter stride parallel to his hips and body, while the youth in the PRB flat CCTV had a longer stride away from his hips and body.
31. In light of the reasons outlined above, it is apparent that the person in the PRB flat CCTV is not the same taller individual shown in the crime scene CCTV, which raises a doubt about

the credibility and reliability of the identification evidence provided by Mr. Finau, Mr. Tikowale (PW26), and DC Tamani (PW28).

32. Mr. Sedra, the Prosecution witness 27, stated that, based on his observations of the Accused's walking style over the years, the Accused keeps his left hand in front of his trousers while his right arm swings. However, during cross-examination, Mr. Sedra admitted that the taller person in the crime scene CCTV footage did not have a walking style similar to that of the Accused, as he explained (*see page 32 of the 16th day trial transcript*). Therefore, I find that the identification evidence given by Mr. Sedra is neither accurate nor credible.
33. Mr. Finau further explained that he identified the taller person as the Accused based on the individual's facial features in the CCTV footage and his walking gait. However, during cross-examination, Mr. Finau admitted that there was no clear facial identification of the two individuals depicted in the CCTV footage. Nevertheless, he maintained that he still recognized the facial features. I will reproduce the two relevant questions and answers for clarity.

“Mr. Emasi: Now, this point, Now, you'd agree with me that extensively looking through the CCTV footage that there is no clear identification of the face of the two persons being shown on camera, correct?”

Mr. Finau: Correct,

Mr. Emasi: Therefore, you'd agree with me that you cannot clearly identify the facial features that you have explained in comparison to the CCTV footage, correct?”

Mr. Finau: For Akuila, I can clearly identify clearly recognize his facial features”

34. Accordingly, Mr. Finau, although he admitted that the facial features of the two individuals in the CCTV footage were not clear, nevertheless claimed to have recognized the taller person clearly. Likewise, DC Tamani testified that one factor that helped him identify the taller individual as the Accused was the facial features of the taller person. Both witnesses

explained that the person's jawline, cheekbones, forehead, and nose resembled those of the Accused.

35. Under these circumstances, it is important to understand the distinct nature of a person's facial features and facial frame. Anatomical parts of the face encompass the facial features, viz., eyes, nose, lips, etc., while the facial frame refers to the shape and structure of the overall face, such as the cheekbones and jawlines. Considering the quality of the CCTV footage outlined above, it is unsafe to rely solely on the facial frame for identification without clear, unobstructed visuals of the taller individual's facial features.
36. Considering the above weaknesses in the evidence of Mr. Finau and DC Tamani, and the weakness in their respective evidence regarding the comparison of the taller person with the person in the PRB Flat CCTV footage, their testimonies are unreliable.
37. In light of the foregoing reasons, I find the evidence of the four Prosecution witnesses, who testified that they identified the taller person in the crime scene CCTV footage as the Accused, neither credible nor reliable.

Analysis of the DNA Evidence

38. I will now proceed to evaluate the DNA evidence provided by the Prosecution. As previously outlined, the Prosecution collected various crime scene exhibits, including a piece of cloth tied to the right leg of the Deceased, a pink knapsack, and a flip-flop. After conducting DNA analysis, the Prosecution presented evidence so as to establish that the DNA of the Accused was found on all three items as a minor contributor.
39. The Defence challenged the integrity and accuracy of the DNA evidence from multiple angles, viz; the breakdown of the chain of custody, discrepancies in the exhibits collected from the crime scene and tested at the Biology Lab, and the accreditation of the Biology Lab and the reliability of the procedures used, along with the claim of possible secondary transfer of the DNA of the Accused.

40. The Supreme Court of Fiji in **Chand v State [2012] FJSC 6; CAV0014.2010 (9 May 2012)** discussed the significance of the procedure of testing and the outcome of DNA analysis, where Marsoof JA stated that:

“[54] Since the introduction of the DNA fingerprinting technique, the use DNA of evidence has been widely accepted across the world. For decades, the authority for admissibility of scientific evidence was the case of Frye v United States [293 F. 1013](#) (1923) in which the Court observed that "while Courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.”

*[55] Although DNA evidence has generally been acted upon in judicial decisions since then, it must be stressed that DNA evidence would not always be admissible, especially when a party offers expert testimony challenging the reliability of the procedures or the results. On one side of the line are decisions such as *Spencer v. Commonwealth*, [384 S.E.2d 775 \(Va. 1989\)](#) where the Court held that DNA testing is a reliable scientific technique, the laboratories involved had performed the tests properly, and that there was no challenge as to reliability by the defense, the DNA evidence would be admissible. On the other side of the line are cases such as *State of Minnesota v. Schwartz* N.W. 2d 422 (Minn. S.C., 1989), where the Court emphasized that reliability of the results was crucial, and citing the high error rate of a particular laboratory, the Court asserted that DNA tests were only a reliable as testing procedures used by the laboratory conducting them. It is equally important to establish the chain of custody of the blood samples that produced the DNA evidence. In *Daubert v. Merrell Dow Pharmaceuticals, Inc.* [\[1993\] USSC 99; 509 U.S. 579](#) (1993), the Court held that the Judge would assume the role of 'gatekeeper' and ensure that any scientific evidence that was admitted was not only relevant to the issue at hand but was also reliable.*

41. The Fiji Court of Appeal in **Kumar v State [2023] FJCA 125; AAU132.2018 (27 July 2023)** emphasized the importance of maintaining the chain of custody when handling

physical evidence from its collection at the crime scene to its testing by an analyst, where Prematilaka RJA observed.

[27] In criminal cases, the chain of custody refers to the chronological documentation and control of the physical evidence involved in a case. It ensures that the evidence is properly collected, preserved, handled, and accounted for from the moment it is discovered until tested by an analyst but not essentially until it is presented in court, for the absence of physical evidence in court per se is not a bar to a successful prosecution. The chain of custody is crucial to maintain the integrity and reliability of the evidence and to prevent tampering, contamination, or loss. By maintaining a clear and documented chain of custody, the legal system aims to ensure that the evidence presented in court is admissible, reliable, and has not been compromised or tampered with. It helps protect the rights of the Accused by ensuring that the evidence is handled properly and that its integrity is upheld throughout the investigation and legal proceedings. (emphasis added)

42. As set forth in **Kumar v State (supra)**, the maintenance of the chain of custody, covering the chronological sequence of the movement and handling of the evidence, is materially essential to establish the integrity and reliability of the evidence.

Inconsistencies and Contradictions

43. The Defence pointed out there were discernible inconsistencies both *inter se* and *per se* the Prosecution witnesses who collected the crime scene exhibits and then handed them over to the Biology Lab, as well as with the officers who received and tested those items, particularly regarding the evidence of Mr. Ram and Mr. Vodo concerning the piece of cloth they lifted from the crime scene.
44. I will first address the inconsistencies between the two crime-scene investigators and the officers at the Biology Lab. Mr. Ram and Mr. Vodo testified that they collected a piece of cloth tied to the leg of the Deceased near the ankle. Mr. Ram specifically stated in his evidence that the size of the piece of cloth was similar to that of a face towel. Mr. Vodo demonstrated by extending his hand to indicate the size of the piece, implying that it is

comparable to a face towel. They then packed it into an exhibit cover and recorded it as a piece of cloth.

45. Conversely, the officer who examined and documented the crime scene exhibits at the Biology Lab stated that she found a long-sleeved blue T-shirt, not a face-towel-sized piece of cloth. It was this long-sleeved T-shirt, not a face-towel-sized piece of cloth, that underwent DNA testing and analysis, ultimately detecting the presence of the Accused's DNA as a minor contributor. The officer, who opened the exhibit bag and inspected its contents, identified the long-sleeved T-shirt as the exhibit. However, neither Mr. Ram nor Mr. Vodo identified the same long-sleeved T-shirt as the piece of cloth they had lifted from the crime scene.
46. Leaving aside this inconsistency for the moment, I will now examine the other inconsistencies in the evidence given by Mr. Ram and Mr. Vodo. Mr. Ram, after discovering a piece of cloth tied to the Deceased's leg near the ankle, explained in his testimony that he changed his gloves and then untied it. Having done so, he placed it in an exhibit bag, labelled it, and sealed the bag. Conversely, Mr. Vodo, who was also present at the crime scene with the Crime Scene Investigators, claimed in his testimony that he was the person who untied and removed the piece of cloth from the Deceased's leg and placed it in the exhibit bag. Unlike Mr. Ram, he did not specify the safety measures he employed to prevent contamination of the cloth. This inconsistency between Mr. Ram and Mr. Vodo raises a reasonable doubt as to who actually untied the cloth and packed it as an exhibit for further forensic testing, and whether the person who collected it properly followed safety procedures to prevent contamination or interference with the cloth's integrity.
47. Additionally, Mr. Ram testified that he took the crime scene exhibits to the Crime Scene Lab, where he found that the officer responsible for receiving them was absent. As a result, he left the exhibits on the table and placed the swab he collected from the crime scene in the refrigerator. There was no proper handover of the exhibits to the Crime Scene Lab, nor any documentation of such a handover. According to Mr. Ram, he held responsibility and control over the exhibits to ensure their safety, protecting them from contamination, tampering, or interference. The exhibits stayed in the Crime Scene Laboratory for nearly 13 hours. Mr. Ram stated that only officers involved in the investigation are permitted to enter the premises.

48. Mr. Ram stated that the refrigerator was empty of swabs from other investigations when he placed the crime scene swab inside. Similarly, the table had no exhibits from other crime investigations when he placed the exhibits from this investigation. However, the Prosecution did not present any inventories or records from the Crime Scene Lab to confirm this, as Mr. Ram was not the officer in charge of the laboratory. He also mentioned that CCTV cameras recorded individuals entering and leaving the laboratory. Nonetheless, he had not checked the CCTV footage for 13 hours to see if anyone had accessed the exhibits, leaving them unattended and unsupervised during that time.
49. Once again, Mr. Vodo presented conflicting evidence regarding the retention of the exhibits at the Crime Scene Lab. According to Mr. Vodo, he went to the Crime Scene Lab and placed the exhibits there. He stored the swab from this investigation in the refrigerator, as it must be kept at a specific temperature, while the other exhibits were left on the table. Only four officers had access to the lab *via* the biometric door, and Mr. Vodo kept the key to the entire building. During the period the exhibits were kept at the Crime Scene Lab, Mr. Vodo physically checked the exhibits whenever he visited the building.
50. Another major contradiction between the accounts of Mr. Ram and Mr. Vodo concerns who transported the crime scene exhibits to the Biology Lab on 22 April 2023. Mr. Ram stated that he took them there and handed them over to Mr. Thompson Daurewa, whereas Mr. Vodo claimed that he took them from the Crime Scene Lab to the Biology Lab on 22 April 2023 and handed them over to Salome Apole.
51. These inconsistent versions provided by Mr. Ram and Mr. Vodo regarding the placement of the crime scene exhibits at the Crime Scene Lab and leaving them there for 13 hours without any documentation and supervision before moving them to the Biology Lab, raise reasonable doubt as to whether the crime scene exhibits were handled and transported correctly, preventing any contamination, tampering, or exposure to interference.
52. The inconsistencies and contradictions between Mr. Ram and Mr. Vodo's testimonies, combined with the contradictory evidence provided by Mr. Ram, Mr. Vodo, and the Biology Lab officers concerning the long-sleeved T-shirt, clearly cast doubt on the timeline of the movements and handling of the exhibits, particularly the three items with the Accused's

DNA, from the crime scene to the laboratory testing. This, therefore, undermines the integrity and reliability of the DNA analysis and the evidence regarding the DNA test results.

Non- Accreditation

53. The Defence submitted that the accuracy and correctness of the DNA analysis and testing were further undermined due to the non-accreditation of the Biology Lab. Mataitoga P in **Bale v The State [2025] FJCA 59; AAU0040.2024 & AAU0044.2024 (10 April 2025)**, expressed his concern about the non-accreditation of the Biology Lab under the Trade Standard & Quality Control Act 1992, where Mataitoga P observed;

“[21] It is a fact that the Forensic Laboratory used to process the DNA sample evidence and related exhibits is not formally accredited. It is a requirement of the law in Fiji for it to be accredited: section 49 Trade Standards & Quality Control Act 1992. This was not done. There is no reference to a Police Standard Operating Procedures that guides Police forensic investigators to follow.

[22] Accreditation of laboratories is critically important in ensuring the competency and reliability of results of investigation it produces. In this regard and especially with regard to DNA evidence for use in prosecution at a criminal trial, the high standards of beyond reasonable doubt will be difficult to meet without an independent verification process that is certified by the government.

54. It was confirmed that the Biology Lab has not been accredited under the Trade Standards and Quality Control Act. The Prosecution’s witnesses, involved in DNA testing at the laboratory in this case, specifically stated that the operating procedures they followed adhered to the SWGDAM guidelines established by the Scientific Working Group on DNA Analysis Methods. However, both Ms. Paulini Saurogo and Mr. Nacanieli Gusu acknowledged that SWGDAM guidelines are not intended to serve as operating procedure or minimum standards for forensic DNA laboratories, but rather to offer additional guidance to the DNA community on current, relevant topics.

55. The witnesses involved in the DNA testing admitted that no independent peer reviews were carried out, nor was any independent verification process undertaken during the DNA analysis and testing in this case. I will now proceed to determine whether the absence of accreditation as required under the Trade Standards and Quality Control Act, the lack of standard operating procedures, and the absence of an independent peer review or verification process have undermined the accuracy, competency, and reliability of the DNA analysis and testing conducted by the Biology Lab in this matter.

56. Mataitoga P in **Bale v the State (supra)** raised his concern about this issue, where Mataitoga P said:

“[24] The above problem may be avoided if the Fiji Police Forensic Laboratory is accredited according to the relevant laws of Fiji, and Standard Operating Procedures are developed for forensic Police investigators which capture international best practices and continuing training. The lack of accreditation will pose problems if it is not addressed.

57. As outlined above, the Prosecution does not need to prove every link in the chain of circumstances beyond a reasonable doubt; instead, it must establish the element of the offence beyond reasonable doubt. In cases relying on circumstantial evidence, the Prosecution depends on the cumulative effect of multiple strands of evidence or circumstances to prove guilt beyond a reasonable doubt. However, the Defence may challenge each strand to test the overall strength of the circumstantial evidence (*see Webb v R (2013) NZCA 66 at paragraph 22*).

58. Following the finding that the evidence from crime scene CCTV footage regarding identification is neither credible nor reliable, the only evidence available for the Prosecution is the Accused’s DNA found at the crime scene. The Court of Appeal in New Zealand, in *Scott Watson v R (supra)*, discussed the approach to assessing circumstantial evidence in such a context.

“[479] There will be exceptional cases where a disputed fact, which is not an element of the offence, is so significant in the context of the particular case that, unless it is proved beyond reasonable doubt, the Crown will have

insufficient evidence to prove the charge. For example, in Fitzgerald v R, DNA evidence found at the crime scene appears to have been the only evidence upon which the prosecution relied to prove the conviction. It was therefore necessary to prove beyond reasonable doubt the origins of the DNA evidence and to exclude the possibility of secondary transfer. As the prosecution failed to do so, the conviction was quashed. (emphasis added)

[480] McLaughlin v R, is an example of a case dismissing the same argument as advanced by Mr. Chisnall on broadly comparable facts. There this Court said:

This is not one of those rare cases where the Crown had to prove beyond reasonable doubt that Mr. McLaughlin's DNA had been deposited under Jade's fingernails by direct transfer in order to secure a conviction. In Milner v R this Court affirmed the observations of Turner J in Thomas v R that, where a disputed circumstance is not an element of the offence charged, there must be some exceptional reason, particular to the case, to justify a direction that a particular fact must be proved beyond reasonable doubt. In the present case, the Crown relied on a substantial body of evidence to prove that Mr. McLaughlin was the assailant. We canvass this evidence later in this judgment. In context, the DNA evidence was simply one strand of evidence the proof of which did not need to be established beyond reasonable doubt."

59. The DNA evidence is the only evidence now available to the Prosecution to establish the Accused's guilt. Therefore, considering the combined effects of the contradictions and inconsistencies in the testimonies of Mr. Ram, Mr. Vodo, and the Biology Lab witnesses regarding the nature and type of the cloth on which they found the Accused's DNA as a minor contributor, as well as the possibility of secondary transfer of the Accused's DNA, which I discuss below, I find that the discrepancies in the testing process at the Biology Lab, which I outlined above, undermine the accuracy and reliability of the DNA evidence presented in this case.
60. If the Prosecution relies solely on DNA evidence to establish the Accused's guilt, then conclusions about the lack of accreditation, the absence of standard operating procedures,

and the unavailability of an independent peer review or verification process become critically important in assessing the accuracy and reliability of DNA analysis and testing.

Secondary Transfer

61. Mr. Nacanieli Gusu and other Prosecution witnesses who provided evidence regarding the DNA analysis and testing acknowledged the possibility of secondary transfer of the Accused's DNA to the three items they found at the crime scene. These witnesses explained that the DNA detected on these three items was trace DNA, meaning it could have originated from skin cells that a person naturally sheds. One limitation of trace DNA is the potential for secondary transfer to the object or surface where it is discovered. In **Scott Watson v R (supra)**, the New Zealand Court of Appeal defined primary and secondary transfer of DNA, as well as direct and indirect transfer of DNA, stating:

"[298] The terminology was clarified. The term "primary transfer" is hair from a person's head or their clothing coming into contact with either another person or object and leaving that hair behind, usually through contact. At trial, the term "secondary transfer" was used to mean a situation where a person's hair, for example on clothing, is transferred to an intermediary person or object and from there onto another person or object.

[299] The term "direct transfer" refers to where hair is taken directly from the head and transferred to another person or object, whereas "indirect transfer" can still be a primary transfer because the head hair could fall from the head onto the shoulder of the garment for example, and from there be transferred to another surface. Persistence, in turn, simply describes how long a hair may remain on an item until it is transferred or lost.

62. In **Scott Watson v R (supra)**, two hairs belonging to one of the Deceased were found on the blanket inside the yacht owned by the Accused. The above definition could be adopted *mutatis mutandis* to the facts of this case. There is no onus on the Accused to prove the probability of transference. The Prosecution's witnesses acknowledged the possibility of transference. Hence, the Prosecution needs to satisfy the Court that the presence of the

Accused's DNA at the crime scene was due to his presence at the location, and not transference. (*see: Scott Watson v R (supra at p 453)*)

63. It appears from the crime scene CCTV footage that the smaller of the two individuals entering the compound was holding what appeared to be a piece of cloth and was wearing flip-flops. When leaving the compound, CCTV footage showed he was not carrying a cloth-like object and was only wearing one flip-flop. Therefore, there is a strong possibility that he was the person who introduced the piece of cloth or the long-sleeved T-shirt that was tied to the Deceased's leg, as well as the flip-flop found at the crime scene, thus creating reasonable doubt that the smaller individual may have carried the Accused's DNA as an intermediary and placed it on the three objects recovered from the scene.
64. In view of the reasons outlined above, I have reasonable doubt regarding the credibility and reliability of the evidence concerning the presence of the Accused's DNA at the crime scene. Furthermore, considering the discredited and unreliable nature of the identification and DNA evidence, the combined effect of both sources failed to prove beyond a reasonable doubt that the taller person seen in the crime scene CCTV footage was the Accused.
65. In conclusion, I find that the Prosecution failed to prove beyond a reasonable doubt that the Accused committed the offence as charged in the Information. Therefore, I find him not guilty of the offence of murder as charged and acquit him accordingly.
66. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe".

.....
Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

17th December 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.