

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Crim. Case No: HAC 11 of 2023

STATE

vs.

MURITIKEI RASIGA

Counsel: Ms. E. Thaggard for the State
Mr. A. Prakash for Accused

Dates of Hearing: 15th, 16th and 17th September 2025

Date of Closing Submission: 19th September 2025

Date of Judgment: 23rd January 2026

JUDGMENT

1. On 16 May 2024, the Acting Director of Public Prosecution filed this amended Information, charging the Accused, Mr. Muritikei Rasiga, with one count of Act with intent to cause grievous harm, contrary to Section 255(a) of the Crimes Act; one count of Murder, contrary to Section 237 of the Crimes Act; and two counts of Attempted Murder, contrary to Sections 44(1) and 237 of the Crimes Act. The particulars of the offences are:

COUNT ONE

Statement of Offence

ACT WITH INTENT TO CAUSE GRIEVOUS HARM: *Contrary to Section 255 (a) of the Crimes Act 2009.*

Particulars of Offence

MURITIKEI RASIGA on the 27th of January 2023 at Qamea Island, Taveuni, in the Northern Division, with intent to cause some grievous harm to **JONA MAIVUSA** unlawfully wounded the said **JONA MAIVUSA** by striking him twice on the head with the wooden oar.

COUNT TWO

Statement of Offence

MURDER *Contrary to Section 237 of the Crimes Act 2009.*

Particulars of Offence

MURITIKEI RASIGA engaged in a conduct of unlawfully bumping his fiber boat into the fiber boat carrying **JONA MAIVUSA** causing **JONA MAIVUSA** to fall into the sea and drown on the 27th of January 2023 at Qamea Island, Taveuni in the Northern Division where the said conduct caused the death of **JONA MAIVUSA** on the 27th of January, 2023 and by his said conduct, **MURITIKEI RASIGA** intended to cause the death of **JONA MAIVUSA**.

COUNT THREE

Statement of Offence

ATTEMPTED MURDER: *Contrary to Sections 44 (1) and 237 of the Crimes Act 2009.*

Particulars of Offence

MURITIKEI RASIGA on the 27th of January 2023 at Qamea Island, Taveuni in the Northern Division attempted to murder **ILAIISA**

NIUTABUA by unlawfully bumping his fiber boat into the fiber boat carrying ILAISA NIUTABUA.

COUNT FOUR

Statement of Offence

ATTEMPTED MURDER: *Contrary to Sections 44 (1) and 237 of the Crimes Act 2009.*

Particulars of Offence

MURITIKEI RASIGA on 27th of January 2023 at *Qamea Island, Taveuni in the Northern Division attempted to murder, LINDA SUNILA NIUTABUA by unlawfully bumping his fiber boat into the fiber boat carrying LINDA SUNILA NIUTABUA.*

2. Consequent to the Accused's plea of not guilty to all four counts, the matter proceeded to a hearing. The hearing commenced on the 15th of September 2025 in the High Court of Labasa, sitting in Tavueni Island, and concluded on the 17th of September 2025. The Prosecution presented the evidence of five witnesses, and for the Defence, the Accused and three other witnesses gave evidence. Subsequently, the Court heard the closing submissions of the Learned Counsel for the Prosecution and the Defence. Having carefully considered the evidence presented and the respective closing submissions of the parties, I now pronounce judgment in this matter.

Burden and Standard of Proof

3. The Accused is presumed innocent until proven guilty. The burden of proof of the charge against the Accused lies with the Prosecution. This is because the Accused 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 beyond reasonable doubt.

Elements of the Offence of Murder

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

Admitted Facts

5. The Accused tendered the following admitted facts under Section 135 of the Criminal Procedure Act.
 1. *That victim 1 in this matter is Jona Maivusa who is known as the “deceased” and he resided in Dreketi village, Qamea Island, Taveuni.*
 2. *That victim 2 is Linda Sunila Niutabua*
 3. *that Linda Sunila Niutabua was 40 years old at the time of the incident and she resided in Ligaulevu settlement, Qamea Island, Taveuni.*
 4. *That victim 3 is Ilaisa Niutabua.*
 5. *That Ilaisa Niutabua was 48 years old at the time of the incident and he resided in Dreketi village, Qamea Island, Taveuni.*
 6. *That Linda Sunila Niutabua and Ilaisa Niutabua are siblings.*
 7. *That the Accused in this matter is Muritikei Rasiga.*
 8. *That the Accused was 59 years old at the time of the incident and resided in Veianuca settlement, Qamea Island, Taveuni.*
 9. *That the incidents took place out at sea near Qamea Island, Taveuni on the 27th of January 2023.*
 10. *That victim 2 was transporting the Deceased and victim 3 in a white fiber glass boat at the time of the incident.*
 11. *That at all material times victim 2 did not have the proper required licence to operate the said boat.*

12. *That the boat operated by victim 2 was boat number 004466 with an outboard engine of 15 horsepower.*
13. *That the Accused owns the fiber glass boat named “Boela 1” which was involved in the incident and the boat registration no. is 005215 with an outboard engine of 40 horsepower serial.*
14. *That at all material times the Accused held a Boat Master Class 6 licence from the Maritime Safety Authority of Fiji.*
15. *That at all material times the said boat which the Accused was operating was registered under MSAF as required by law.*
16. *That the Deceased’s body was missing and was recovered on the 29th of January 2023 from the bottom of the sea.*
17. *That the Deceased’s postmortem was conducted on the 29th of January 2023 at the Tukavesi Health Centre Morgue.*
18. *That the matter was reported to the Taveuni Police Station on the same day of the incident.*
19. *That the Accused was arrested by Police on the 29th of January 2023 and was escorted to the Taveuni Police Station.,*
20. *That the following documents are tendered by consent:*
 - a) *Survey certificate of Muritikei Rasiga*
 - b) *MSAF survey certificate of Boela 1.*
 - c) *Photographic booklet – Photographic Job no. 36/23*

Evidence of the Prosecution

6. On 27 January 2023, Linda Sunila Niutabua (hereinafter referred to as Linda) travelled to Matei jetty in Tavueni on her boat. On her return to Dreketi village on Qamea Island, she was joined by her brother, Ilaisa Niutabua (hereinafter referred to as Ilaisa), and Jona Maivusa (hereinafter referred to as Jona). Both Ilaisa and Jona had consumed four cartons of long-neck beer with six other men before boarding Linda’s boat. They carried 4 bottles of beer with them to the boat.
7. On their way to Dreketi village, the boat stopped at Linda’s settlement so they could have a meal, as they were hungry. Ilaisa and Jona were drunk, shouting, swearing, and talking

loudly in the boat. Jona was seated on the right-hand side of the front seat, while Ilaisa was sitting on the floor at the front. Linda was the captain of the boat. As they passed near the Accused's house, they saw the Accused at sea, fishing from his boat. Jona swore as they passed the Accused. As outlined by Linda and Ilaisa in their evidence, Jona had been shouting and swearing throughout and did not swear at the Accused in particular.

8. A while later, they found the Accused's boat approaching them; Linda stopped the boat. The Accused was angry and asked Jona whether he had sworn at him. Jona replied in the affirmative. The Accused then stood up, picked up an oar, and hit Jona on the head with it. Both boats were parallel to each other and in deep water. The first blow hit Jona hard. The Accused hit him again. Linda then shouted at the Accused, saying Jona was drunk. Jona said nothing or moved. He remained seated, and Linda noticed That his hands hung motionless. Ilaisa stood up to defend them from the Accused. The Accused then pushed Ilaisa by poking the oar into his chest. Ilaisa fell into the water but managed to get back to the boat quickly. Ilaisa then began throwing beer bottles at the Accused and challenged him to go to the shore for a fair fight on land. The Accused then took the lead towards the land, as his boat had a larger, more powerful engine than Linda's.
9. As Linda and Ilaisa explained in their evidence, the Accused's boat turned to the right when it was about 100 metres ahead of them and then came straight at their boat at high speed. Ilaisa advised Linda to align their boat to face the Accused and to neutralize the engine, as this would reduce the impact of the collision. The Accused's boat approached at high speed, collided with the right side of Linda's boat, and then moved away. Linda testified That she fell forward in the boat as a result of the impact. When she stood up and looked around, she found Jona was not on the boat but in the water. Furthermore, Linda saw blood in the water. She shouted, calling to the Accused That Jona had fallen into the water. Jona drowned, and his body was found a few days later.
10. According to Linda, a boat carrying workers from Laucala Beach Resort approached them about 20 to 30 minutes after the incident. She asked for their help in finding Jona. However, in his evidence, Ilaisa said the Laucala resort boat reached them within about 5 minutes of the incident. Notwithstanding this inconsistency, both Ilaisa and Linda agreed That the Laucala resort boat arrived, and that one of the passengers boarded it. Because they did not

have enough fuel, they returned to the land. Once they had refuelled the boat, they returned to the area where Jona had fallen in and searched for him.

11. The incident was reported to the police, and a few days later, Jonas's body was found. The post-mortem was conducted by Doctor Temo. According to Doctor Temo's evidence, Jona was still alive and breathing when he fell into the water, and the cause of death was drowning. He found a 3 cm injury on Jona's head, probably caused by an assault with a blunt object.

Evidence of the Defence

12. The Accused denied the allegation and, in his evidence, explained his version of the incident. The Accused's account of the events leading to his approaching Linda's boat largely aligned with the Prosecution's version. He explained That Jona's swearing made him angry, and this was further aggravated when he found they were drunk and had beer bottles on the boat, which was in violation of the village bylaws. He wanted to smack Jona, so he swung the oar at him, but it never hit. Jona did not move or say anything, but Ilaisa stood up, picked up an oar, and charged towards him. The Accused had to defend himself with his oar, and in the process, Ilaisa's oar broke into two pieces, one of which fell into the water. His own oar was also broken, but it did not break into two pieces. Jona then stood up and tried to get hold of the piece of the oar That Ilaisa was holding, and during That struggle, it hit Jona's head. The Accused had to push Ilaisa away from attacking him with the oar by poking his oar on his chest. Ilaisa fell into the water when he pushed him but managed to get back onto the boat quickly. Ilaisa then started to throw beer bottles at him. According to the evidence from Ilaisa and Linda, there were four beer bottles on the boat.
13. The beer bottles landed and cracked inside the Accused's boat. Ilaisa then challenged the Accused to return to land for a fair fight. Linda's boat took the lead and sailed ahead of the Accused towards the shore. Suddenly, Linda's boat turned and came closer to the Accused, with the Accused's boat almost alongside. Ilaisa again threw beer bottles at the Accused. To avoid injury and get away from Ilaisa, the Accused had to turn his boat to the right in front of Linda's boat and sail towards deep water. The Accused explained That if he had turned left and moved away, he would still have been close to Ilaisa, who could easily hit him with

beer bottles. He waited for Ilaisa to throw a bottle at him, then quickly turned his boat to the right and moved towards deep water. As he turned the boat, the right side of the top frame of the bow of Linda's boat touched the front right side of the bottom hull of his boat, leaving a black scratch mark.

14. While the Accused was moving towards deep water, he saw a boat carrying workers from Laucala Beach Resort nearby, and one of them shouted to Linda, informing her That someone from Linda's boat had jumped into the water. The Accused initially thought That Jona might have jumped into the water and swum back to land, as he was a good diver. However, later he found That Jona was missing. He went back to land to get his diving gear, then returned and began searching for Jona.
15. The second witness for the Accused was Mr. Meli Sukanavere, the Enforcement Officer of the Maritime Safety Authority of Fiji on Taveuni Island. He was requested by the Police to investigate the two boats involved in this incident. Mr. Sukanavere testified That, based on his experience as a Maritime Safety Enforcement Officer, a 40 ft fiberglass boat with a 40 hp engine travelling at high speed and colliding with a 23 ft fiberglass boat would have caused more damage to both boats, and the people in the 40 ft boat would have been the first to be injured. Based on the damage to the two boats, Mr. Sukanavere further testified That there was no possibility of a collision, as Linda and Ilaisa had explained. Most likely, the two boats touched during That incident.
16. The last two Defence witnesses, Mr. Viliame Batinisavu and Mr. Sanaila Dretivoli, were on the boat That came from Laucala Island Beach Resort. Mr. Batinisavu gave evidence That he saw the two boats from a distance and recognized the people on the boat as it came closer. The Laucala Resort boat was about 40 metres away from Linda's and the Accused's boat. Mr. Batinisavu saw That Linda, Ilaisa and the Accused were arguing and shouting at each other. The Accused's boat then set off towards the land, then suddenly turned and came straight towards the side of Linda's boat. Jona then stood up and jumped out of the boat as the Accused's boat approached Linda's boat. The Accused made a sudden diversion to the left as he approached Linda's boat and ended up placing his boat facing Linda's. Mr. Batinisavu emphasized That he clearly saw Jona standing up and jumping into the water as the Accused's boat approached. Mr. Dretivoli explained in his evidence That Jona stood up

when the Accused's boat was coming straight towards Linda's boat and jumped into the water from the right side of the boat.

Evaluation of Evidence

17. As per the evidence presented at the hearing, it is apparent That the Prosecution and the Defence presented three versions of the event explaining how Jona fell and drowned in the sea.
18. The Prosecution alleged That the Accused's boat approached Linda's boat at high speed and collided with the front right side of Linda's bow. As a result of the collision, Jona, already drunk, fell into the water and drowned.
19. The Accused claimed That he tried to avoid being hit and injured by the beer bottles thrown at him by Ilaisa, and That he wanted to turn his boat to the right, just in front of Linda's boat, to sail into deep water. As he turned his boat to the right, the bottom of the right-hand front hull of his boat touched the black rubber on the top of the right-hand bow of Linda's boat. As he moved away from Linda's boat, he heard someone from the Laucala Island Resort boat shouting at Linda, saying That someone from her boat had jumped into the water.
20. The two Defence witnesses who were on the Laucala Resort boat gave a version of events That contrasted with the Accused's account. According to them, the Accused initially headed towards land in his boat, but then suddenly turned and came straight towards Linda's boat. As the Accused's boat approached, Jona got up and jumped into the water. The Accused changed the direction of his boat at the last minute, turning it to the left so That it ended up facing Linda's boat.
21. I now turn to the evaluation of the evidence presented before the Court to determine whether the Prosecution has proven beyond reasonable doubt That the Accused committed the four offences charged in the Information. In evaluating the evidence, the Court must consider two aspects in assessing its testimonial trustworthiness: the credibility of the witness's testimony and the reliability of the evidence. Credibility concerns the correctness or veracity of the evidence, while reliability concerns its accuracy. 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).***

22. There is no legal burden on the Accused to prove his innocence by adducing evidence. The archaic yet highly distinguished passage of Lord Reading C.J. in **Abramovitch (1914) 84 L.J.K.B. 397** states:

"If an explanation has been given by the Accused, then it is for the jury to say whether on the whole of the evidence they are satisfied That the Accused is guilty. If the jury think That the explanation given may reasonably be true, although they are not convinced That it is true, the prisoner is entitled to be acquitted, inasmuch as the crown would then have failed to discharge the burden impose upon it by our law of satisfying the jury beyond reasonable doubt of the guilt of the Accused. The onus of proof is never shifted in these cases; it always remains on the Prosecution."

23. Consequently, if the Court believes That the evidence presented by the Accused is true or may be true, it must find the Accused not guilty of the offence. Even if the Court rejects the Accused's account, that does not automatically imply That the Prosecution has proven the Accused's guilt. The Prosecution must demonstrate, on the evidence accepted by the Court, beyond a reasonable doubt, That the Accused committed the offence specified in the information (*vide Naidu v State [2022] FJCA 166; AAU0158.2016 (24 November 2022), Liberato and Others v The Queen ((1985) 159 CLR 507 at 515), Abramovitch (1914) 84 L.J.K.B 397).*

24. The Accused stated That Ilaisa challenged him to return to the land for a fair fight, and then Linda's boat took the lead and headed for the land. He followed them in his boat. As he had a more powerful engine, he drew closer to them. Linda's boat turned and came close to him, and Ilaisa began throwing beer bottles at him. As the Accused asserted, both boats were parallel to each other, facing the shore. As outlined before, he wanted to go to deep water to

avoid being hit by the beer bottles. He explained That if he turned left to move away, he would still remain closer to Ilaisa; hence, he had to turn right, which was in front of Linda's boat, to reach deep water.

25. While turning right, the bottom right side of the Accused's boat touched the top right side of the bow of Linda's boat. As he moved away, he heard shouting from the Laucala Resort boat, which told Linda That someone from her boat had jumped into the water, indicating That the Laucala Resort boat had already moved closer to the scene. Hence, the Accused did not dispute That the Laucala Resort boat was in close proximity, and the two Defence witnesses were able to witness the event That occurred during this incident.
26. The two Defence witnesses who were on the Laucala Resort boat gave a version of events That contrasted with the Accused's account. According to them, the Accused initially headed towards land in his boat, but then suddenly turned and came straight towards Linda's boat. As the Accused's boat approached, Jona got up and jumped into the water. The Accused changed the direction of his boat at the last minute, turning it to the left so That it ended up facing Linda's boat.
27. Although the two Defence witnesses' evidence was strikingly different from the Accused's, it was more consistent with the evidence of Ilaisa and Linda. The only difference was That the two Defence witnesses said the Accused's boat turned left at the last minute as it approached Linda's boat, whereas Linda and Ilaisa said it came straight and collided with their boat. Both Linda and Ilaisa affirmed That they did not see how Jona fell into the water. The two Defence witnesses affirmed That they clearly saw Jona get up and jump into the sea as the Accused's boat approached Linda's boat.
28. As the evidence unfolded, it appears this incident occurred in the open sea, and witnesses observed it from different directions under varying circumstances. Ilaisa and Linda were in a situation where their lives were in danger due to an imminent collision, they expected from the Accused's approaching boat, while the two Defence witnesses were in a boat about 40 metres away, observing the incident as it unfolded rapidly. It is not unusual to find inconsistencies in the evidence given by such eyewitnesses, recalling a rapid, sudden event

observed from different locations and directions. The Court must consider whether, irrespective of those inconsistencies, the witnesses are, in substance, telling the same story. (*vide; Lord Pearson in Mohan and Another v Regina (1967) 2 All ER 58*)

29. Despite certain inconsistencies, the two Defence witnesses and the two Prosecution witnesses told the same story, testifying That the Accused initially took the lead in returning to land, then suddenly turned his boat and came straight towards the side of Linda's boat. It turned left at the last moment as it approached Linda's boat.
30. On the contrary, as outlined earlier, the Accused's account of the event is significantly at variance with the evidence of these four witnesses. Although the Accused had no onus of proving his account, he still chose to present the evidence of these two Defence witnesses, which the Court is entitled to consider in reaching its judgment. They were independent observers of the incident from close proximity and had no motive to fabricate or give false evidence. Neither Linda nor Ilaisa saw how Jona fell into the water, as they were focusing on the Accused's boat approaching at high speed. The two Defence witnesses affirmatively testified That they saw Jona stand up and jump into the sea as the boat approached.
31. Accordingly, I find the evidence of the two Defence witnesses credible and reliable and therefore constitutes the true account of the event that occurred at sea involving the Accused's boat and Linda's boat, which ultimately led to the drowning of Jona. Accordingly, I find the Accused's evidence is not true, or may not be true, and thus failed to create any reasonable doubt in the Prosecution's case.
32. The evidence of Linda and Ilaisa, That the Accused took the lead in going to the land, then suddenly turned his boat to the right and came towards their boat at high speed, is consistent with the evidence of the two Defence witnesses. However, they further testified That they then aligned their boat to face the approaching boat of the Accused, and That the Accused's boat then collided with their boat, which is inconsistent with the two Defence witnesses.
33. Mr. Sukanavere's evidence is particularly important, as he observed the two boats after the incident. He specifically testified That if the Accused boat had approached at high speed and collided with Linda's boat, there would have been more severe damage to both boats and to

the persons on board. Based on the minor damage observed on both boats, he assessed That the Accused boat might have touched the right side of Linda's boat's front bow. This assessment is more probable in the context of the evidence of the two Defence witnesses, who saw the Accused turn his boat to the left at the last minute as he approached Linda's boat, ending up facing Linda's boat.

34. Under these circumstances, having already accepted the evidence of the two Defence witnesses as credible and reliable, I find That there is reasonable doubt about the evidence of Linda and Ilaisa regarding whether the Accused's boat actually collided with their boat. Applying the principle of divisibility of credibility, I disregard this part of Linda's and Ilaisa's evidence but accept their evidence That the Accused's boat approached their boat at speed.

Causation

35. Having concluded That Jona jumped into the water when the Accused's boat approached Linda's boat, I now turn to determine whether the Accused's conduct, i.e., approaching Linda's boat at speed, caused Jona's drowning.
36. The element of causation is a key component of result offences. In **Nacagilevu v State [2016] FJSC 19; CAV 023.2015 (22 June 2016)**, the Supreme Court of Fiji held That the relationship between the unlawful conduct and the resulting outcome of the act constitutes causation, forming part of the *actus reus* of the offences of Murder and Manslaughter. The Learned Authors of Archibold set out a four-step approach to determining causation, which states:
- i) Factual causation,
 - ii) Legal causation,
 - iii) Whether the cause was a more than minimal cause,
 - iv) Whether there was a *novus actus interveniens* (*vide: Archbold 2025 17A-8 at 2149*)

37. Factual causation concerns whether the outcome would not have occurred but for the Accused's alleged conduct. Consequently, the Accused's conduct is *a sine qua non* of the result. This is commonly referred to as "the but for test." In this instance, the onus is on the Prosecution to prove beyond reasonable doubt That the Deceased's death would not have occurred but for the Accused's conduct in approaching Linda's boat at speed at sea.
38. The Prosecution must then establish That the alleged action of the Accused is legally blameworthy. The Learned Authors of Archbold state That the element of fault is the determining factor in legal causation (*vide Archbold 2025 17A-10 at 2150*). Blackstone states That not every factual cause is a legal cause. Blackstone suggests a subjective, common-sense approach to determining legal causation, stating That:

"The isolation of a legal cause from amongst a possible multitude of factual causes is a process involving subjective common sense rather than objectively measurable criteria, but when seeking to apportion possible criminal responsibility in this way, one must, in practice, look for some kind of abnormal and culpable behaviour" (Blackstone's Criminal Practice 2023, A1.27 at 11)

39. The Accused's liability persists if his conduct is one of the causes of the outcome. It need not be the sole or immediate cause, provided it is a substantial and operative cause of the result. Therefore, the alleged conduct is sufficient to remain a substantial and operative cause, rather than being referred to as "the substantial and the operative cause" (*see R v McKinnon (1980) 2 NZLR 31, R v Kuka (2009) NZCA 572*). Thus, the liability arising from the Accused's alleged conduct is not diminished by other actions taken by the same Accused or by another person who contributed to the outcome, provided the alleged conduct remains substantial and operative rather than an insubstantial or insignificant cause.
40. The Accused is not responsible for the result if the causal link between the Accused's alleged conduct and the result is broken by an intervening act That becomes a substantial and operative cause of the result, thereby exhausting or spending the causative effect of the Accused's conduct. This is known as "*novus actus interveniens*". The intervening act could be a third party's act, the victim's act, or an unforeseeable natural event, sometimes referred to as an act of God. (*vide; Baba v State [2023] FJCA 149; AAU113.2020 (2 August 2023)*)

41. Thus, a free, deliberate, and informed act of intervention by the victim himself could sever the chain of causation from the first act, thereby diminishing the legal liability of the initial person, even though his act remains a substantial and operative cause of the result. Such an intervening act must be a substantial and operative cause of the result and must effectively transform the previous conduct into part of the history.
42. The two Defence witnesses testified That Jona stood up when the Accused's boat approached Linda's boat from the side, and that he jumped into the sea because of the approaching boat. Jona's conduct, jumping into the sea, was the close proximate cause of his drowning and eventual death. However, it was not a free, deliberate, informed, and independent act on the part of Jona, as he was forced to jump into the sea due to the imminent danger posed by the Accused's conduct.
43. Another factual factor That contributed to Jona's decision to jump into the sea was Linda's failure to move her boat away from the path of the Accused's approaching boat. Linda explained That her boat was smaller in size and engine power than the Accused's boat, making it impossible for her to move away rapidly from the Accused's boat. Hence, I find That Linda's said failure has not broken the substantial and operative effect of the Accused's conduct on the eventual result of Jona's drowning and death.
44. Considering the foregoing reasons, I find That the Accused's conduct remained a substantial and operative cause of Jona's decision to jump into the sea, which led to his drowning and death. Thus, I conclude That the Accused's conduct in taking his boat straight towards Linda's boat, where Jona was on board, at high speed, was a substantial and operative cause of his drowning and death.

Fault Element

45. I now turn to determine whether the Accused intended to cause the death of Jona and others or was reckless as to causing Jona's death by his conduct.
46. It was established That the Accused changed the direction of his boat, which was approaching Linda's boat at high speed, at the last minute. This indicates That he had no

intention of colliding with Linda's boat, which could have caused substantial damage to the boat and the people on board. The Accused became involved with Jona, Ilaisa and Linda because Jona was swearing as they passed the Accused's boat. The Accused claimed That he was angry and wanted to smack Jona for being drunk and coming to the village in such a drunken state. The commotion then led to Ilaisa challenging the Accused to return to the shore and fight fairly. Though the Accused initially agreed and took the lead in taking his boat back to the shore, he changed direction and came back towards Linda's boat at high speed.

47. These facts raise a reasonable doubt as to whether the Accused intended to cause the deaths of Jona and two others or was reckless in causing Jona's death by sailing his boat towards Linda's boat at high speed, or whether he wanted to scare them off and avoid a fight with them at the shore. Accordingly, I find That the Prosecution failed to prove beyond reasonable doubt the fault element of the offence of Murder.
48. Notwithstanding the above finding, I am satisfied That the Accused was aware of a substantial risk That his conduct would cause serious harm to the people on board when he was approaching Linda's boat at high speed in his own boat, even though he planned to divert at the last minute. With such awareness of a substantial risk, the Accused was reckless in continuing his conduct, which ultimately drowned and killed Jona. Therefore, I am satisfied That the Prosecution established beyond reasonable doubt the existence of the fault element of the offence of Manslaughter as stipulated under Section 239 of the Crimes Act.
49. Consequently, I find That although the Prosecution failed to prove the offence of Murder as charged under Count 2 of the Information, it has proven beyond reasonable doubt That the Accused committed the lesser alternative offence of Manslaughter contrary to Section 239 of the Crimes Act.

Third and Fourth Counts

50. Section 44 (1) of the Crimes Act states:

“A person who attempts to commit an offence is guilty of the offence of attempting to commit That offence and is punishable as if the offence attempted had been committed.

51. As concluded earlier, the Prosecution failed to prove beyond reasonable doubt That the Accused had the necessary fault element to commit the offence of Murder; accordingly, the Prosecution failed to prove beyond reasonable doubt That the Accused committed the third and fourth counts of Attempted Murder as charged in the Information.

First Count

52. The main elements of the Acts intended to cause grievous harm under Section 255(a) of the Crimes Act are:

- i) The Accused,
- ii) With intent to maim, disfigure, or disable any person or to do some grievous harm to any person,
- iii) Unlawfully wounds or does any grievous harm to any person,
- v) by any means.

53. This offence exhibits characteristics of both conduct and result offences. However, the defining element is the intention rather than the outcome of That intention. The Court of Appeal of England, in **R v Frank Purcell (1986) 83 Cr App R**, outlined the appropriate approach to determining the intention to cause grievous bodily harm, where the Lord Chief Justice stated:

“The direction which the judge would have given on intend had he had the opportunity (which the judge in this case did not) would have been as follow: “You must feel sure That the defendant intended to cause serious bodily harm to the victim. You can only decide what his intention was by considering all the relevant circumstances and in particular what he did and what he said about it”.

54. In their respective evidence, Linda and Ilaisa specifically testified That the Accused hit Jona on the head twice with a wooden oar. The Accused admitted That he was angry upon finding That Jona had sworn at him and that he was drunk with Ilaisa. He explained That he wanted to smack Jona and swung his oar, but it did not hit Jona.
55. Doctor Temo, in his evidence, explained That he found a remarkable laceration on the top of Jona's head, about 3 cm long, during the post-mortem. In his opinion, such an injury could have been caused by an object striking the head at high velocity. It is apparent That the oar hit Jona on the head when the Accused swung it. Considering the nature of the injury and the reasons for the assault, it is my view That there is reasonable doubt as to whether the Accused intended to maim, disfigure, or disable Jona or to inflict grievous harm on him when he assaulted him with his oar.
56. Accordingly, I find That the Prosecution failed to prove beyond reasonable doubt That the Accused committed the offence of Act with intent to cause grievous harm, but That it proved beyond reasonable doubt That he committed the offence of Assault causing actual bodily harm by hitting Jona on the head with the oar.
57. In conclusion, I make the following orders:
- i) The Accused is not guilty of the offence of Act with intent to cause grievous harm contrary to Section 255(a) of the Crimes Act but is guilty of Assault causing actual bodily harm contrary to Section 275 of the Crimes Act. I convict the Accused of the same.
 - ii) The Accused is not guilty of the offence of Murder contrary to Section 237 of the Crimes Act but is guilty of Manslaughter contrary to Section 239 of the Crimes Act. I accordingly convict the Accused of Manslaughter.

- iii) The Accused is not guilty of two counts of Attempted Murder contrary to Sections 44 (1) and 237 of the Crimes Act and is acquitted of those counts.



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

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

At Suva

23rd January 2026

Solicitors

Office of the Director of Public Prosecutions for the State.

Alvin Prakash Lawyers for the Accused.