

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 352 of 2018

BETWEEN : **STATE**

AND : **RAJIV KRISHAN PADYACHI**

Counsel : **Ms. Tivao S. with Ms. Swastika S. and Mr. Prasad Y. for the State**
Mr. O’Driscoll G. for the Accused

Hearing on : **18th of November 2019 – 22nd of November 2019**

Summing up on : **26th of November 2019**

Judgment : **29th November 2019**

JUDGEMENT

[1] The accused, Mr. Rajiv Krishan Padyachi was charged as follows;

Statement of Offence

Attempted Murder: Contrary to sections 44 (1) and 237 of the Crimes Act of 2009.

Particulars of Offence

Rajiv Krishan Padyachi on the 15th day of September, 2018 at Colo-I-Suva, in the Central Division, attempted to murder Arpana Pratap.

- [2] He pleaded not guilty to the Count and it was taken up for trial and the ensuing trial lasted for 5 days. The PW1 Ms. Arpana Pratap, Special Constable Ropate Sivo, Police Constable Rova and Dr. Mitieli Viliasi gave evidence for the prosecution while the accused Mr. Rajiv Krishan Padyachi gave evidence for the defense.
- [3] At the conclusion of the evidence and after the directions given in the summing up, the assessors unanimously found the accused guilty to the count of Attempted Murder.
- [4] I direct myself in accordance with the law and the evidence, inclusive of which I have discussed in my summing up to the assessors.

Analysis

- [5] The evidence of the PW1 was clear. The identity of the accused is never denied or challenged. As far as the monetary transactions are concerned, the admitted documents PE 1 (a), (b) and (c) confirms that such amount is lent. The PW 1 explains how the accused lied/mislead her regarding the repayments. Most of the said evidence has never been challenged by the accused. The accused admits that he never had sufficient funds to repay as undertaken. The said material is substantiated by the document PE 1 (d), the bank statements of the accused.
- [6] On the 15th of September 2018, as for the PW 1, their plan was to go to the bank at 10.00am after the trip to the Colo-I-Suva. The accused too, confirms that in his evidence. However, as for PE 1 (d), by that date, all he had was around \$350.00 in his BSP account. Assuming he was truthful enough in stating that he has another account with the Bred Bank, all he had there too, was less than \$2,000.00. The explanation offered by the accused was that he wanted to ask for further time. If it is so, he need not have planned to go to the bank as confirmed. It clearly allows to infer that, even though he undertook to take her to the bank and pay her on the 15th of September, he had no intention of complying with such.
- [7] On instructions learned counsel for the defense suggests the PW 1,
“..... Mr. Padayachi from what he tells me, he did indeed pushed you into the pool but he says that was a gentle push and you lost your footing.....” (Vide transcripts of Day2, page 66)

However in his evidence, the accused states;

“When we were sitting side by side on the steps, we were having conversation as to how cold the water may be and should we swim or not. And at that point of time she was holding my hand she was standing on left hand side holding my left hand and then I pushed her to the water to take the lead and I followed her afterwards.” (Vide transcripts of day 4, page 32)

It should be noted that these two versions are not exactly the same. Furthermore, as for the accused, they have come there before in the early mornings to swim. In addition the accused has already put his feet into the water just a while before, when he was seated at the pool bank next to the steps to the car park. Therefore the version of the accused lacks consistency and also the credibility.

- [8] Furthermore, when the version of the accused is considered it contains many contradictions with the evidence of the PW2 and PW3 on vital issues. When the two (Accused and the PW1) were in the pool, the first to come there was the PW3. At the time PW3 came there, the accused was looking at him and has also look shocked. The PW2 has come there shortly afterwards. When he came too, the accused was looking at them and has look shocked, and after about 7 seconds has called for help. As for the version of the accused, he has been looking other way and when turned around he has seen many on the pool bank.
- [9] It is obvious that the assessors have accepted the PW1’s evidence as acceptable and reliable and rejected the accused’s stance and his denial. Together with the prosecution proving the all necessary elements of the alleged offence, I see no option for the assessors as well as for this court but finding him guilty of the alleged count.
- [10] From my point of view, the assessor's opinion was not perverse. It was open for them to reach such a conclusion on the available evidence. Therefore, I endorse and agree with the opinion of the assessors.
- [11] I, having seen and heard the testimonies of the witnesses, am satisfied that evidence adduced by the prosecution, is sufficient to establish the elements of the offence of Attempted Murder, beyond any reasonable doubt. Therefore, I am convinced beyond a reasonable doubt that the accused has committed the offence of Attempted Murder.

[12] Therefore, I convict the accused, Rajiv Krishan Padyachi to the alleged count of Attempted Murder.

[13] This is the Judgment of the Court.



At Suva

This 29th Day of November 2019

cc: *Solicitors for the State* - *Director of Public Prosecutions, Suva*
 Solicitor for the Accused* - *Legal Aid Commission, Suva