

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

**CRIMINAL CASE NO.HAC 247 of 2018**

**BETWEEN** : **STATE**

**AND** : **1. DHARMENDRA KUMAR**  
**2. ACHAL VISHALA RAJ**

*Counsel* : *Ms. B. Kantharia for the State*  
*Mr. K. Prasad for the 1<sup>st</sup> Accused*  
*Mr. A. Nand for the 2<sup>nd</sup> Accused*

*Hearing on* : *25<sup>th</sup> of March 2019 – 03<sup>rd</sup> of April 2019*

*Summing up on* : *04<sup>th</sup> of April 2019*

**SUMMING UP**

Lady and gentleman assessors;

1. It is now my duty to sum up the case to you. I will now direct you on the law that applies in this case. You must accept my directions on law and apply those directions when you evaluate the evidence in this case, in order to determine whether the accused are guilty or not guilty. You should ignore any opinion of mine on the facts of this case, unless it coincides with your own reasoning. You are the Judges of facts.
2. As the representatives of the society, your role is to assist this legal system to serve justice. In doing so, you are guided by two equally important principals of prudence.

To wit;

- i) If a person has committed an offence, he should be meted out with an adequate punishment.

In other words, if you are sure that the accused have committed the alleged offences, then it is your duty to find them guilty. I must remind you that it is the duty of the prosecution to prove all the elements of the alleged offence beyond reasonable doubt. The accused are not required to prove anything as their innocence is presumed by the law.

- ii) An innocent person should never be punished.  
There is a saying that it is better to let 100 offenders go free than to falsely convict one innocent person. That is, unless you are very sure that the accused have committed the alleged offence, you should not find them guilty.

If any of the said principles are violated, it would amount to a failure of the system, thus you have failed in your duty to the society. Having reminded you of your duty let me proceed.

3. Evidence in this case is what the witnesses said from the witness box inside this court room and the admissions made. As I have stated to you in my opening address, your opinion should be based only on the evidence presented inside this court room. If you have heard, read or otherwise come to know anything about this case outside this court room, you must disregard that information.
4. A few things you heard inside this court room are not evidence. This summing up is not evidence. The arguments, questions and comments by the lawyers for the prosecution or for the defense are not evidence. A suggestion made by a lawyer during the examination of a witness is not evidence unless the witness accepted that suggestion. The arguments and comments made by lawyers in their addresses are not evidence. You may take into account those questions, suggestions, arguments and comments when you evaluate the evidence only to the extent you would consider them appropriate.
5. You must not let any external factor influence your judgment. You must not speculate about what evidence there might have been. You must approach the evidence with detachment and objectivity and should not be guided by emotion. You should put aside all feelings of sympathy

for or prejudice against, the accused or anyone else. Your emotions should not influence your decision.

6. You and you alone must decide what evidence you accept and what evidence you do not accept. You have seen the witnesses give evidence before this court, their behavior when they testified and how they responded during cross-examination. Applying your day to day life experience and your common sense as representatives of the society, consider the evidence of each witness and decide how much of it you believe. You may believe all, a part or none of any witness' evidence.
7. When you assess the testimony of a witness, you should bear in mind that a witness may find this court environment stressful and distracting. Witnesses have the same weaknesses you and I may have with regard to remembering facts and also the difficulties in relating those facts they remember in this environment. Sometimes a witness may have other concerns when giving evidence. A witness may be worried that the evidence would incriminate him or reveal a safely guarded secret. Or else he/she might honestly forget things or make mistakes regarding what he/she remembers.
8. In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies in his evidence. That is, whether the witness has not maintained the same position and has given different versions with regard to the same issue. You may also find inconsistencies between the evidence given by different witnesses. This is how you should deal with inconsistencies. You should first decide whether that inconsistency is significant. That is, whether that inconsistency is fundamental to the issue you are considering. If it is, then you should consider whether there is any acceptable explanation for it. If there is an acceptable explanation for the inconsistency, you may conclude that the underlying reliability of the account is unaffected. You may perhaps think it obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you should not expect a witness to have a photographic memory or every detail to be the same from one account to the next.
9. However, if there is no acceptable explanation for the inconsistency which you consider significant, it may lead you to question of reliability of the evidence given by the witness in question. To what extent such inconsistencies in the evidence given by a witness influence your judgment on the reliability of the account given by the witness is a matter for you to decide.

10. Therefore, if there is an inconsistency that is significant, it might lead you to conclude that the witness is generally not to be relied upon; or, that only a part of the witness' evidence is inaccurate; or you may accept the reason the witness provided for the inconsistency and consider him to be reliable as a witness.
11. You may also consider the ability and the opportunity a witness had, to see, hear or perceive in any other way what the witness said in evidence. You may ask yourself whether the evidence of a witness seem reliable when compared with other evidence you accept. These are only examples. It is up to you, how you assess the evidence and what weight you give to a witness' testimony.
12. Based on the evidence you decide to accept, you may decide that certain facts are proved. You may also draw inferences based on those facts you consider as directly proved. You should decide what happened in this case, taking into account those proved facts and reasonable inferences. However, when you draw an inference you should bear in mind that, that inference is the only reasonable inference to draw from the proved facts. If there are two or more reasonable inferences to draw, one or more against the accused, as well as one or more in his favour, based on the same set of proved facts, then you should not draw the adverse inference.
13. As a matter of law you should remember that the burden of proof always lies on the prosecution. An accused are presumed to be innocent until proven guilty. This means that it is the prosecution who should prove that the accused are guilty and the accused are not required to prove that they are innocent. The prosecution should prove the guilt of the accused beyond reasonable doubt in order for you to find them guilty. That is, you must be sure of the accused person's guilt.
14. In order to prove that the accused are guilty, the prosecution should prove all the elements of the offence against the accused beyond reasonable doubt. If you have a reasonable doubt on whether the prosecution has proved a particular element of the offence against the accused, then you must give the benefit of that doubt to the accused and find the accused not guilty. A reasonable doubt is not a mere imaginary doubt but a doubt based on reason. I will explain you the elements of the offences in detail in a short while.

15. You are not required to decide every point the lawyers in this case have raised. You should only deal with the offences the accused are charged with and matters that will enable you to decide whether or not each charge is proved against the respective accused.
16. You will not be asked to give reasons for your opinion. In forming your opinion, it is always desirable that you reach a unanimous opinion. But it is not mandatory.
17. Let us look at the Information. The Director of Public Prosecutions has charged the accused of the following offences;

**COUNT 1**

*Statement of Offence*

ACT WITH INTEND TO CAUSE GREVIOUS HARM: Contrary to section 255(a) of the Crimes Act of 2009.

*Particulars of Offence*

Dharmendra Kumar on the 13<sup>th</sup> day of June, 2018 at Lami in the Central Division, with intent to do some grievous harm to RUCI ROKOWATI, unlawfully wounded the said RUCI ROKOWATI by punching her on the head and hitting her head with a cane knife.

**COUNT 2**

*Statement of Offence*

COMMON ASSAULT: Contrary to section 274 of the Crimes Act of 2009.

*Particulars of Offence*

ACHAL VISHAL RAJ on the 13<sup>th</sup> day of June, 2018 at Lami in the Central Division, unlawfully assaulted RUCI ROKOWATI.

18. The following were recorded as admitted facts.  
On behalf of the 1<sup>st</sup> accused;
  - i) It is admitted that the complainant, Ruci Rokowati and 1<sup>st</sup> accused Dharmendra Kumar were living in a de-facto relationship.
  - ii) It is admitted that the 1<sup>st</sup> accused has three children namely, Reshmi, Achal and Donald whilst the complainant has only one son namely Ledua Mocemaiwaiyevo.

- iii) It is admitted that the complainant and the accused together with their children stay together at 6, Nakauvadra Road, Delainavesi.
- iv) It is admitted that the 1<sup>st</sup> accused Dharmendra Kumar was caution interviewed by A/CPL4281 Joji on 14<sup>th</sup> June 2018.
- v) It is admitted that the 1<sup>st</sup> accused Dharmendra Kumar was charged by PC 5270 Ashnit on 14<sup>th</sup> June 2018.

On behalf of the 2<sup>nd</sup> accused;

- i) It is admitted that the complainant, Ruci Rokowati is the de-facto partner of the 2<sup>nd</sup> accused Achal Vishal Raj's father- Dharmendra Kumar the 1<sup>st</sup> accused.
- ii) It is admitted that the 2<sup>nd</sup> accused together with her father – Dharmendra Kumar, sister Reshmi and brother Donald resided with the complainant and her son Ledua at Lot 6, Nakauvadra Road , Delainavesi.
- iii) It is admitted that the 2<sup>nd</sup> accused Achal Vishal raj was caution interviewed by WDC 3628 Elenoa Sereinagata on 14<sup>th</sup> June 2018 and in presence of Priyanka Narayan.
- iv) It is admitted that the 2<sup>nd</sup> accused Achal Vishala Raj was charged by A/CPL 4281 Joji on 14<sup>th</sup> June 2018.

Irrespective of the version of events which you decide to accept as the truth, you will have to consider the above as already proved facts.

19. Now I will deal with the essential elements of the offences.

#### Count 1

Section 255 of the Crimes Act reads as;

255. A person commits an indictable offence if he or she, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person or to resist or prevent the lawful arrest or detention of any person-
- (a) Unlawfully wounds or does any grievous harm to any person by any means; or..

Accordingly, in this case, to prove the offence of Act with Intent to Cause Grievous Harm the prosecution must prove the following elements beyond a reasonable doubt.

- a) The 1<sup>st</sup> accused
- b) With intent to do some grievous harm
- c) Unlawfully
- d) Wounded Ruci Rokowati.

### Count 2

Section 274 of the Crimes Act reads as;

274. A person commits a summary offence if he or she unlawfully assaults another person.

Therefore, in this case, to prove the offence of Common Assault, the prosecution should prove the following elements beyond a reasonable doubt.

- e) The 2<sup>nd</sup> Accused,
- f) Unlawfully,
- g) Assaulted Ruci Rokowati.

- 20. In order to prove the Count 1, the prosecution should prove all the elements from a) to d) above beyond a reasonable doubt and in order to prove the Count 2, the prosecution must prove all the elements from e) to g) above beyond a reasonable doubt. If the prosecution fails to prove any of the above elements beyond a reasonable doubt, that whole count should fail and you have no choice but to find that particular accused not guilty.
- 21. The first elements (a) and (e) of the offences are concerned with the identity of the person who is alleged to have committed that offence. In this case, the identities of the accused are not disputed. However, the way information is filed in this case; there is no allegation of a joint enterprise. In result the knowledge, the intention or the acts of one accused will have no bearing upon the other accused. Therefore, you will have to take each of the accused separately and consider whether, the 1<sup>st</sup> Count is proved against the 1<sup>st</sup> accused and 2<sup>nd</sup> count is proved against the 2<sup>nd</sup> accused beyond a reasonable doubt.
- 22. Element (b), which is an essential ingredient of the 1<sup>st</sup> Count, is regards to the intention of the accused. Intention of a person has to be inferred from his conduct. In this case you have to consider whether the 1<sup>st</sup> accused, Dharmendra intended to cause grievous hurt to the PW1, Ruci. You will have to analyze the evidence which you may decide to accept and see the whether the conduct of Dharmendra, throughout the incident indicate any such intention to

cause grievous harm to Ruci. The term “grievous harm” as described in section 4(1) of the Crimes Act reads;

“*Grievous harm*” means any harm which-

- (a) Amounts to a maim or dangerous harm; or
- (b) Seriously or permanently injures health or which is likely so to injure health; or
- (c) Extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, member or sense.

- 23. The element (c) of the Count 1 and element (f) of the Count 2 are the same element. To satisfy this, the prosecution should prove that the act of the accused is unlawful. An unlawful act is an act which cannot be justified, under the given circumstances. Therefore, you will have to consider, based on the evidence which you decide to accept, whether there were acts done by the accused and if so whether those acts were unreasonable or unjustifiable under the prevailed circumstances of the case.
- 24. With regard to the element (d) of the 1<sup>st</sup> Count and element (g) of the 2<sup>nd</sup> Count, you will have to analyze the evidence which you decide to accept and consider whether each of the accused did either wound or assault the PW1.
- 25. Having those in mind you should approach and consider the evidence which you decide to accept as the true narration of the events which happened on that particular day.

### Summary of the evidence

- 26. The 1<sup>st</sup> witness for the prosecution or the PW1 is Ms. Ruci Rokowati. Her evidence is that;
  - i) The 1<sup>st</sup> accused, Dharmendra was her *de-facto* partner, with whom she has been living for about 2 and half years.
  - ii) The 2<sup>nd</sup> accused is a daughter of Dharmendra, who lived with them at Lot 6, Nakauvadra Road, Delainavesi.
  - iii) The witness was living at the 1<sup>st</sup> accused’s house together with her 3 year old son, 1<sup>st</sup> accused Dharmendra and his daughters (Achal the 2<sup>nd</sup> accused, and another) and also his son Donald Vishal.
  - iv) On the 13<sup>th</sup> day of June, 2018, she has returned home from shopping with the 1<sup>st</sup> accused, Dharmendra (A1) and her son. When they returned, there has been A1’s son Vishal and daughter Achal (A2) at home. A1 has asked his children ‘why, there was no



cooking done?' Then Vishal has retorted that it was her (Ruci's) duty. Thereafter Vishal has sworn at her and she and Vishal has had an argument.

- v) Then she has gone to the back of the house to remove her shoes and has heard her son crying, and came back to the sitting room and asked Vishal, 'what happened' because her son was crying and Vishal has started shouting at her saying that 'who are you? You do not own anything here.' Then the PW1 has got angry and picked up a charger and threw it at Vishal. At that moment the A1 has punched her on the back of her head. While the witness was defending herself A2 has hit her with the hair clipper. The hair clipper has hit her on her left leg.
- vi) Thereafter, she has tried to run outside and since all the doors were closed she has gone for the back door. While trying to open the back door grill she has heard lifting of heavy metal and when looked at, has seen the A1 hitting her with the cane knife. She was hit on the right side of her head towards the back. Then she has managed to push him away and open the grill and get out of the house. The witness identified the cane knife which was marked and produced as PE1 as the knife used by the A1.
- vii) Having gone out she has heard her son crying and has come back for him and taken him also out and has run to the road to call for help as she was bleeding. Her neighbor has come to help her and having comforted her, has taken inside his house, has put a wet cloth to the injury to stop the bleeding, and called the police.
- viii) The police has come about an hour later and taken her to the nearest health center, which is the Lami health center. She was taken into the emergency unit and having shaved a part of her hair they have stitched the wound. From there she was taken to the police station to record her statement.
- ix) Having recorded her statement, since she bled still she was taken to the CWM hospital and admitted at the emergency unit. She has fainted there and was put to an observation room. She was operated on the following morning at about 10.00 am. Altogether she has been in the hospital for 5 days and was asked to attend the clinic on every Thursday for a time.

27. Answering the cross examination on A1's behalf, PW1 says that;

- i) The A1's house which they were living in had two bedrooms and the living area and the kitchen were to the front of the house and the bedrooms were at the center adjacent to each other and the washing area was towards the back of the house. The house had three entry exit points to the outside and two were in the living kitchen area, one to the front and another to the side, and the other was at the back from the washing area.

- ii) The witness admitted that she has been charged in Suva Magistrate's Court on a cross report regarding the same incident and the charge sheet containing three counts of common assault against the witness was marked and produced as DE-A1-1.
- iii) The witness further admitted the Caution Interview in respect of the above charges and marked and produced a copy of the said caution interview record as DE-A1-2. In referring to questions 33, 34 and 36 of the said caution interview the witness admitted them to be true and correct. She conceded that she was the 1<sup>st</sup> to throw things at Vishal. She further conceded that a ceramic doll which she threw at Vishal hit him and A2 told her that she shouldn't have hit Vishal. Then she, the witness responded to it by saying that 'who is she (A2) to talk to her like that'. Thereafter, there has been a scuffle between the PW1 and A2 with pulling of hair and punching. Then A1 has taken her to his bedroom and closed the connecting door, however arguments have continued between the PW1 and A2.
- iv) She further admitted that she pushed the door connecting A1's bedroom and A2's bedroom and it came out and fell on the A2's face. Thereafter, the fight between the PW1 and A2 has recommenced and continued into the A1's bedroom. In the middle of the fight things on the bedside cupboard has fallen on to the floor and PW1 has grabbed the hair trimmer and pinning A2 to the bed has sat on her. Further, PW1 concedes to have tried to strangle her neck using the hair trimmer wire. Then A2 has cried for help.
- v) At that moment A1 has come and grabbed her by the shoulders and pulled the PW1 off from A2. When it was suggested that she slipped on and knocked her head on the door frame, which was a sharp edge, and got herself injured, the witness denied. She admitted that the door edge was 90 degrees.
- vi) When it was suggested that all this time, until she stepped out of the house, A1 was trying to calm her down saying "buna – Calm down", the witness admitted it. Further, when suggested that A1 simply saved A2 from the PW1, the witness admitted it.

28. In answering the cross examination on A2's behalf, the witness said;

- i) A2 came out of her room only when she heard the commotion between the PW1 and Vishal and having come out A2 tried to calm down her brother Vishal, to not to fight with the PW1.
- ii) When queried whether the A2 went back to her bedroom after Vishal leaving the house, though the witness answered in the negative initially, when confronted with question 36 and her answer in DE-A1-2, the witness admitted so.

- iii) When queried by the Court of the number of doors in A1's bedroom the PW1 said one. Further, though the witness claimed that A1, A2 and Vishal ganged up against her, she contradicts herself later by conceding that while she was fighting with A2, Vishal was not at home and A1 did not do anything.
- iv) The witness further concedes that while she threw things at A2 what A2 did was only defending.

29. In re-examination, the witness stated that;

- i) She saw A1 hitting her with the cane knife, when she was trying to open the grill door, at the back of the house in the washing area.
- ii) The witness explaining a question by the Court earlier, stated that as soon as she looked at A1, that very moment she saw the knife hitting her. It is up to you to decide using your common sense and the experiences of life, regarding the possibility of such.

30. The PW2 was Mr. Paulo Kafoa. His evidence was that;

- i) Presently he is living in Ba and has been living there for two years.
- ii) Prior to coming there, he has been living in lot 6, Nakauvadra, Delainavesi, for about 6 months, from March 2018 to August 2018. A1 was his landlord and he was living as a tenant in a room adjacent to the A1's house. His room was separated from A1's house by a single wall.
- iii) On the 13<sup>th</sup> of June, 2018 while at his room, he has heard A1 having an argument with his wife, the PW1. The tone of the argument has gone up and he has heard the PW1 calling for help. Then he has left his room and gone to back side of the A1's house. There he has seen them (A1 and PW1) exchanging words. Thereafter, he has seen A1 swing a knife at PW1, and her coming out of the house bleeding. Then he has seen her running back into the house and coming out with her son.
- iv) Thereafter the witness has taken her to a neighbor's house and PW1 has fainted there. Within 20-35 minutes police has come and taken her to the Lami Hospital.
- v) When you analyze the evidence of this witness, please be mindful of the many inconsistencies. Firstly, even as for the PW1's evidence there has never been an argument between A1 and PW1. Secondly, PW1 never stated that she cried for help at any time, while she was inside the house. Thirdly, when the witness came out of the room he has said to have seen A1 and PW1 having an exchange of words. This does not tally with the PW1's version of events. Fourthly, the witness says that PW1 fainted at the neighbor's place. As for the PW1's version she has fainted only at the CWM hospital.

Furthermore, as for the witness he has escorted the PW1 to the neighbor's place as soon as she came out with the child. However, as for the PW1, she has come out of the house with the child and ran to the road before crying for help. If you assume that the version of events narrated by PW1 is correct, you have to reject the PW2's version and vice versa. In result, you should not consider PW2's evidence as corroborative of the PW1's evidence.

- vi) In cross examination, the witness states that in between him and the A1, there was the closed grill door, and half opened wooden door, and PW1, yet he managed to see from a distance of about 6 meters, A1 picking up the cane Knife from the wash basin, which was about 2 meters away from the door and swing it at the PW1.

31. The next witness, PW3 was the police officer, PC3406 Tinolevu. His evidence was that;

- i) He has been in the police service for 14 years and was on duty on the 13<sup>th</sup> of June 2018, attached to Lami police station.
- ii) In the evening while driving a patrol car, he has received a call to attend to a report at Delainavesi. When he reached Delainavesi, he has met the victim at a neighbor's house. He, together with two other police officers has taken the PW1 to the Lami Health Center as it was the closest and she has been bleeding.
- iii) Once the hospital staff attended to the PW1, he has taken her to the Lami police Station to record a statement from her. Having handed over the PW1 to the officer in charge of the Lami Police station he has continued on his patrol. Then he has received another call from the station, informing that the PW1 has further bleeding and needs to be admitted to the CWM hospital. The witness having come back to the station and having picked up the PW1, has proceeded towards the CWM hospital. While on the way the PW1 has informed him that she wanted to pick some clothes from her house and accordingly he has taken her to her house at Delainavesi.
- iv) While at her house the PW1 has told him that a knife was used and having showed him the knife, he has picked it from a place near the bathroom. The witness concedes of not following the proper procedure in collecting the case exhibits though he is aware of such procedure. His explanation for it was that he is only a police driver and not an investigating officer.
- v) When he was queried by the Court 'whether he happened to observe any stains of blood on the floor of the house' the witness stated that he did not observe such and when queried 'if there were stains of blood, should he have observed them?', the witness answered in the negative.

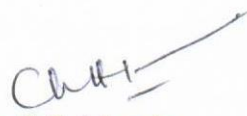
32. PW4 was Dr. Pauline Clip. She has examined the PW1 on the 14<sup>th</sup> of June 2018 at 01.30 hrs. at the CWM hospital. She states that;
- i) She is a MBBS qualified doctor and having obtained her qualifications in 2010, has about 9 years of experience. She works in CWM hospital since 2015 and is presently attached to the Neuro Surgical Unit at the CWM hospital.
  - ii) The witness having identified a medical examination form filled in respect of PW1, as a document prepared by her, marked and produced the same as PE2.
  - iii) The witness states that her findings are consistent with the history given by the patient. However, when queried whether a similar injury could occur by PW1, hitting her Head on the 90 degree door frame edge, the witness affirmed such.
33. With the leading of the above evidence prosecution closed their case and the Court being satisfied that the prosecution has adduced sufficient evidence covering the elements of the offence, decided to call for a defense, acting under the virtue of section 231(2), of the Criminal Procedure Decree, explaining the rights of the accused.
34. The 1<sup>st</sup> accused having understood his rights, elected to give evidence on his behalf. His evidence is that;
- i) He was having a *de-facto* relationship with PW1 and she and her 3 year old son lived with him and his two daughters and the son.
  - ii) on the 13<sup>th</sup> of June 2018, having gone out, he returned home together with his partner, Ruci (the PW1) and her son, Ledua at around 7.15pm. When they came home, his son Vishal and daughter Achal was at home. As soon as they came in Ruci has gone into the bedroom and A1 having kept the groceries has gone to the kitchen to see whether rice is cooked or not. Having seen the rice cooker empty he has gone to A2's room. She was on her bed and when asked why she didn't cook the rice, has replied that she is tired and he should tell the buna (his wife) to cook the rice.
  - iii) Then A1 has gone back to the kitchen and asked his son who was there frying a sausage, to put the rice in the rice cooker. His son has called buna to come and cook the rice. Buna was changing her clothes and has replied that she cannot do it and an argument has taken place between Vishal and the PW1.
  - iv) PW1 having come to the living room, picked up a charger and has thrown it to Vishal. Again she has picked up a ceramic doll and thrown it at Vishal. It has hit the Vishal's

- head and broken into pieces. By that Vishal has got angry, however, A1 has managed to send him out of the house.
- v) Thereafter when A1 tried to take Ruci to the bedroom, while going through the A2's bedroom, A2 has told Ruci that she should not have hit Vishal like that. Then there commenced an argument between A2 and the PW1, which culminated in punching and pulling of hairs between the two. A1 has come between them and has managed to separate the two and take Ruci to her bedroom.
  - vi) Once Ruci is inside the bedroom, A1 has closed the door, however the argument between his daughter and the buna has continued. After a while Ruci has brushed the A1 aside and kicked the connecting door. The door has come out and fallen on the A2 who was on her bed. Then Ruci has gone into the A2's room and started fighting again with the A2. While fighting A2 has picked up an extension cord and Ruci has picked up the hair trimmer. A2 has thrown the extension cord wire at Ruci while Ruci has held the hair trimmer by the plug and thrown the machine at the A2.
  - vii) The witness, (A1) had seen the hair trimmer hitting the A2 and bouncing back hitting PW1 on her leg. While fighting the things they fought with has got entangled with themselves and both has ended up in PW1's bedroom. There PW1 has pushed A2 on to her bed and when fell down in to the bed sat on the A2 and has tried to strangle the A2 with the hair trimmer wire.
  - viii) Then A2 has cried for help and A1 has come and pulled PW1 off A2 with force, holding her from the shoulders. There have been many things scattered on the floor of the bedroom due to the earlier scuffle and PW1, having slipped off something, fell down hitting her head on the edge of the door frame. The witness describes the door frame made of wood to be of 90 degree angle and sharp.
  - ix) As for the witness, thereafter he has helped the PW1 to stand up and asked the A2 to go out. He has had a discussion with the PW1 for about 15 minutes and she has alleged him of taking his daughter's side. He has seen PW1 bleeding and has offered to take her to the hospital, which the PW1 has refused. Then the PW1 has got few of her things packed into a small black bag and having her son also got dressed went out of the house.
  - x) In cross examination, when the A1 was confronted with the evidence of PW1 and asked whether he punched the PW1 on her head when she threw things at Vishal, A1 states that if he did so, PW1 would have fought with him. You assessors, using your life experiences, common sense and the facts of this case, should be in a position to evaluate the accuracy of this statement together with the subsequent incidents.

- xii) In reference to the evidence of the PW2, the A1 states that PW2 has complained against him to the rent board, while he was in prison and also was in arrears of rent for 3 months. His assertion is that PW2 had never been there watching the alleged incident. Ultimately, the witness, A1 vehemently denies assaulting the PW1 with a knife.
  - xii) In responding to the cross examination by the State, the witness admits that the way his son, Vishal spoke to Ruci was wrong and that angered her and prompted an argument between Vishal and Ruci.
35. The 1<sup>st</sup> accused decided to not to call any other witnesses on his behalf and close his case with the leading of the above evidence.
36. The 2<sup>nd</sup> accused decided to remain silent and neither to give evidence herself nor to adduce any other evidence on her behalf. That is her constitutional right and you should refrain from drawing any adverse inference from it as she bears no burden to prove her innocence. Her innocence is presumed by the law and the prosecution must prove her guilt beyond a reasonable doubt.
37. That is a summary of the evidence given by the witnesses. Please remember that I have only referred to the evidence which I consider important to explain the case and the applicable legal principles to you. If I did not refer to certain evidence which you consider important, you should still consider that evidence and give it such weight you may think appropriate. As I have already explained, which evidence you would accept and which evidence you would not accept is a matter for you and you alone to decide.
38. Remember that you should first decide on the credibility and reliability of the witnesses who gave evidence in this case and accordingly decide what facts are proven and what reasonable inferences you can draw from those proven facts. Then you should consider whether the elements of the offence have been proven beyond reasonable doubt. You should take into account my directions where relevant, in deciding whether the prosecution has proved all the elements
39. The Accused have indicated their stances through their cross-examination done from the PW1 and the other witnesses; A1's stance is that he did neither hit the PW1 with a knife nor wound the PW1 deliberately. The injury to PW1 was caused by her head knocking against the sharp door frame edge, when he pulled the PW1 from top of the A2, in order to save the A2 from

strangulation by the PW1. The stance of the A2 is that she did not assault the PW1, but acted to defend herself from the assault of the PW1.

40. With the submission of the accused's stance, one of the three situations given below would arise;
- (i) You may accept their stances and, if so your opinion must be that the accused are 'not guilty'.
  - (ii) Without necessarily accepting their stances you may think, 'well what they suggests might be true'. If that is so, it means that there is reasonable doubt in your mind and therefore, again your opinion must be 'not guilty'.
  - (iii) The third possibility is that you reject their stance. But, that itself does not make the accused guilty. The situation would then be that you should still consider whether the prosecution has proved all the elements beyond reasonable doubt.
33. Any re-directions?
34. Madam and Gentlemen Assessors, that is my summing up. Now you may retire and deliberate together and may form your individual opinion on the charges against the each of the accused. You have copies of the documents tendered as the exhibit "PE 2", "DE-A1-1" and "DE-A1-2". "PE 1" is the cane knife allegedly used by the A1. When you have reached your separate opinion, you will come back to court and you will be asked to state your opinion.
35. Your opinion should be whether;  
The 1<sup>st</sup> accused is guilty or not guilty to the 1<sup>st</sup> Count, and  
The 2<sup>nd</sup> accused is guilty or not guilty to the 2<sup>nd</sup> Count.

  
Chamath S. Morais  
JUDGE



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