

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 69 of 2018**

**STATE**

**V**

**OLIVER WHIPPY**

**Counsel** : Miss D.Rao for the State  
Mr. E.Radio with Miss K. Boseiwaqa (L.A.C.)  
for the Accused

**Dates of Trial** : 8, 9 and 10 April 2019

**Date of Summing Up** : 10 April 2019

**SUMMING UP**

1. Ladies and Gentleman assessors. It is now my duty to sum up to you. In doing so, I will direct you on matters of law which you must accept and act on. You must apply the law as I direct you in this case.
2. As far as the facts of this case are concerned, what evidence to accept, what weight to put on certain evidence, which witnesses are reliable, these are matters entirely for you to decide for yourselves. So if I express any opinion on the facts, or if I appear to do so it is entirely a matter for you whether you accept what I say or form your own opinions. In other words you are masters and the judges of facts.

3. Counsel for the prosecution and the defence have made submissions to you about how you should find the facts of this case, they have the right to make these comments because it is part of their duties as counsel. However you are not bound by what counsel for either side has told you about the facts of the case. If you think that their comments appeal to your common sense and judgment, you may use them as you think fit. You are the representatives of the community of this trial and it is for you to decide which version of the evidence to accept or reject.
4. You will not be asked to give reasons for your opinions, but merely your opinions themselves, and you need not be unanimous although it would be desirable if you could agree on them. Your opinions are not binding on me and I can assure you that I will give them great weight when I come to deliver my judgment.
5. On the issue of proof, I must direct you as a matter of law that the onus or burden of proof lies on the prosecution to prove the case against the accused. The burden remains on the prosecution throughout the trial and never shifts. There is no obligation upon the accused to prove his innocence. Under our system of criminal justice an accused person is presumed to be innocent until he or she is proved guilty.
6. The standard of proof is one of proof beyond reasonable doubt. This means that before you can find the accused guilty of the offence charged, you must be satisfied so that you are sure of his guilt. If you have a reasonable doubt about the guilt of the accused, then it is your duty to express an opinion that the accused is not guilty. It is only if you are satisfied so that you

feel sure of the guilt of the accused that you can express an opinion that he is guilty.

7. Your opinions must be based only on the evidence you have heard in the courtroom and upon nothing else. The Court Room is no place for sympathy or prejudice. In this regard you have heard a few references to the accused being known to the Police. I ask you to ignore that and to judge this case on the evidence and not on the fact that he had been escorted previously by the Police.
8. The accused faces one charge of attempted murder.
9. In our law attempted murder is committed when the accused:
  1. Had the intention to kill the victim; and
  2. With that intention he did something which was more than mere preparation to killing her
10. There is no evidence of what was in Oliver's mind that morning and people don't usually write down what they are intending to do, so you must discern his intention from the circumstance established by the evidence. Of course it is a matter for you, but if you believe Mela, then his dragging her around the resort while brandishing the cane knife and telling her multiple times that she was going to die that day would be a very strong indication of his intention to kill her and the beating her with the knife and holding the blade against her neck could certainly be seen as an act more than preparatory in his intention to kill.
11. Having said that Ladies and Sir, it is not for me to say or for you to agree with me, it is entirely your decision on the facts as you find them.

12. The decision of guilty or not guilty in this case relies almost entirely on the circumstances surrounding the factual evidence you have heard.
13. That is evidence, while not direct such as witnessed or heard, is evidence that the circumstances would lead you to make certain inferences.
14. Circumstantial evidence can be powerful evidence, indeed, it can be as powerful as, or even more powerful than, direct evidence, but it is important that you examine it with care — as with all evidence — and consider whether the evidence upon which the prosecution relies in proof of its case is reliable and whether it does prove guilt, or whether on the other hand it reveals any other circumstances which are or may be of sufficient reliability and strength to cast doubt upon or destroy the prosecution case.
15. Finally, you should be careful to distinguish between arriving at conclusions based on reliable circumstantial evidence, and mere speculation. Speculating in a case amounts to no more than guessing, or making up theories without good evidence to support them, and neither the prosecution, the defence, nor you should do that.
16. I now remind you of the evidence that could be classed as circumstantial evidence. You may use this evidence to make reasonable deductions. First and foremost are the threats uttered or even yelled at Mela by Oliver. His threats that he would kill her that day, that she better call her parents and tell them that this is the last time they would hear her voice; his dragging her to a remote bushy part of the resort. These are all

items of circumstantial evidence which may help you in coming to your Decision.

17. You will add to that mix the direct evidence that you have heard from the prosecution witnesses that Oliver was being reckless in his brandishing of the cane knife and most importantly from three witnesses that saw him holding the blade against her bare neck at the final stages of the continuous assault that day.
18. You have heard the evidence just in the last few days and I don't intend to go into detail reminding you of it.
19. The lady victim whom I shall call Mela works as a Manager at the Koro Sun Resort some 20 minutes out of Savusavu town. She had been in a de-facto relationship with Oliver a relationship that was "hot and cold". They had one child, a daughter, of the relationship. They finally separated in 2017 and thereafter according to Mela, he pestered her on weekly visits, often becoming violent or swearing at her in front of her work colleagues or even in the town.
20. In the time leading up to the 25<sup>th</sup> August he was threatening her with phone calls, that he would burn her parents' house down and that he was coming to the office to cut her head off
21. You know well the events of 25 August 2018. He arrived unexpectedly in Mela's office with the knife. He was angry, grabbed her by the collar and said today will be your last day. He was very aggressive. He pulled out a cane knife from behind his back. He hit her back and head with it. She thought she was going to die. He was swinging the blade at her. She stopped that swing with her hand which caused her the serious upper palm and finger injury that she was hospitalized for. That was an

upwards swing to her neck which she fended off. He then dragged her out of the office and through the resort. You have seen the map of the resort and followed the route of their struggle. You have also seen the video, which is also evidence for you to take into account in the normal way. On the way he was saying: “You are seeing other boys. So today is your final day. If I can’t have you, no one else can. Tell your Dad that this is the last day he will ever hear from you. “

22. Mela tried to calm him down by reminding him of his children.
23. Her colleague Ally was following them and filming it on her phone as you know. Mela was feeling weak because she was bleeding. The Police arrived and at that stage he put the blade of the knife against her neck. She fainted.
24. Ally was the second witness. In essence she backed up the story told by Mela. She is not a fluent Fijian dialect speaker but she did hear the words for death and today. She arranged for the Police to be called. She filmed the struggle through the resort grounds. He threatened her to stop filming. She tried to get Oliver to focus on the children. She stayed there until the Police arrived. She didn’t have a clear view but at that time he appeared to have the knife at Mela’s neck. The Police quickly diffused the situation. Mela’s hand was bleeding.
25. In cross-examination, Ally confirmed that at the end, Oliver was holding the blade of the knife up against her neck.
26. We heard from Inspector Singh. He was the first at the scene. He saw Mela in a blood stained top, covered in blood from her hands to her feet. Oliver said that if they came any closer he would kill her. He put the blade of the knife against her bare

neck. He remained threatening in his behaviour but eventually he surrendered and dropped the knife. Mela was loaded into a vehicle and sent to hospital and Oliver was arrested and also taken to hospital.

27. The final witness for the Prosecution was the medical officer from Savusavu Divisional hospital. She examined Mela on the 25<sup>th</sup> August at about midday. She had multiple hand injuries on her left hand. The lacerations were deep and required surgery. Savusavu hospital was not equipped to deal with such a serious case so she was stabilized and transferred to Labasa Hospital. It was a fresh injury. She also examined Oliver who had a superficial injury to his left eyebrow. It was not bleeding.
28. That was the end of the prosecution case and you heard me explain to the accused what his rights are in defence. He could remain silent and say that the State had not proved the case beyond reasonable doubt or he could give sworn evidence from the witness stand. In either case he was entitled to call witnesses. As you know he elected to give sworn evidence from the witness stand .You must consider his evidence in the normal way and give it the weight that you think fit. Even if you don't believe him it doesn't necessarily make him guilty. The prosecution must still prove to you so that you are sure that he committed the crimes.
29. You will recall the thrust of his evidence that he was acting in response to what he perceived to be provocation from Mela.
30. Let me immediately direct you now that while provocation is a limited defence in cases of murder, it is totally irrelevant to cases of attempted murder.
31. In addition to that the matters that he gave in evidence relating to Facebook and indecent photographs were not put to Mela

and that evidence must be put to one side and not considered by you. He interrupted his intended visit to the farm to confront her. He went into her office carrying the cane knife wrapped in a garbage bag. He assaulted her with the wooden handle. There was a scuffle and she grabbed the knife where the handle meets the metal blade. They struggled and at one point the knife bounced back, injuring his eye. He dragged her outside. He still loved her. He admitted the threatening words evidenced earlier but he had no intention of killing her, just to teach her a lesson. He doesn't recall holding the sharp edge to her bare neck in the final stages of the struggle. The Police arrived and soon after that he surrendered.

32. Well Ladies and Sir that was all the evidence and you will consider it ALL when reaching your verdict. Your possible opinions will be guilty or not guilty.

33. However there is still another opinion available to you. If you conclude that he is not guilty of attempted murder it is open to you to find him guilty of the alternative count of an act to cause grievous harm. By swinging the knife at Mela and her fending it off, she was quite seriously wounded. That wound is grievous harm and if you find that it was caused by an act of Oliver, then you are entitled to find him guilty of that alternative offence. But that is only if you find him not guilty of attempted murder.

34. You will be first asked for your opinion on the count of attempted murder and if you find him not guilty, then you will be asked for your opinion on the crime of causing grievous harm.

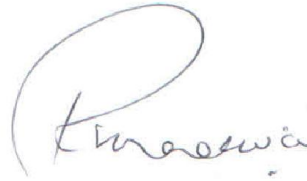
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1. s.258

35. You may leave us now, but first I will ask counsel if they wish



me to add or alter any direction on the law in this summing up.  
The facts of course are for you to decide.



**P. K. Madigan**

**Judge**

At Labasa

10 April 2019

