

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

**CRIMINAL CASE NO. HAC 017 of 2018**

**STATE**

**V**

**ARJUN**

**Counsel:** Ms Latu for the State.  
Ms Nettles / Mr. Kaloulasulasu for the Accused

**Date of Hearing:** 14 December, 2020

**Date of Summing Up:** 15 December, 2020

---

**SUMMING UP**

---

1. The hearing of this case has now reached its conclusion. I have to sum up the case now. As I explained to you before the commencement of the hearing, we have different functions. It is my task to ensure that the trial is conducted according to law. As part of that, I will direct you on the law that applies to this action. You must accept the law from me and apply all directions I give you on matters of law.
2. Your function is to determine the facts of the case based on the evidence that has been placed before you in this courtroom. That involves deciding what evidence you accept or refuse. You will then apply the law, as I explain it to you, to the facts as you find them to be, and in that way, arrive at your opinion.

3. I may comment on the facts if I think it will assist you when considering the facts. However, you are not obliged to accept any comment I make about the facts. Hence, it is entirely upon you to accept or disregard any comment I make about the facts unless it coincides with your own independent opinion.
4. You must reach your opinion on evidence and nothing but on the evidence itself. Evidence is what the witnesses said from the witness box and the exhibits tendered as evidence. This summing up, statements, arguments, questions, and comments made by the parties' counsel are not evidence. The purpose of the opening address by the learned counsel for the Prosecution is to outline the nature of evidence intended to be put before you. Therefore, the opening address of the Prosecution is not evidence. The closing addresses of the counsel of the Prosecution and the Defence are not evidence either. They are their arguments, which you may properly consider when you evaluate the evidence, but the extent to which you do so is entirely a matter for you.
5. If you have heard, read, or otherwise learned anything about this case outside of this courtroom, you must exclude that information or opinions from your consideration. You must have regard only to the testimony put before you in this courtroom. Ensure that no external influence plays a part in your deliberation. You are allowed to talk, discuss, and deliberate facts of this case only among yourselves. However, each one of you must reach your own opinion. You are required to give merely your opinion but not the reasons for your opinion. Your opinion need not be unanimous. I must advise you that your opinion does not bind me, but I assure you that I will give the greatest possible weight to your opinions when I make my judgment.

### **Burden and Standard of Proof**

6. I now draw your attention to the issue of burden and standard of proof. The accused is presumed to be innocent until he is proven guilty. The presumption of innocence is in force until you form your own opinion that the accused guilty of the offence.

7. The burden of proof of the charge against the accused is on the Prosecution. It is because the accused is presumed to be innocent until he is proven guilty. In other words, there is no burden on the accused to prove his innocence, as his innocence is presumed by law.
8. The standard of proof in a criminal trial is "proof beyond a reasonable doubt." It means that you must be satisfied in your mind that you are sure of the accused's guilt. If there is a riddle in your mind about the accused's guilt that means the Prosecution has failed to satisfy you the guilt of the accused beyond a reasonable doubt. If you find any reasonable doubt about the commission of the offence as charged or any other offence by the accused, such doubt should always favor the accused.

#### **Information and elements of the offences**

9. The accused has been charged with one count of Attempted Murder, contrary to Section 44 (1) and 237 of the Crimes Act and one count of Criminal Intimidation, contrary to Section 375 (1) (a) (i) and (iv) of the Crimes Act. The particulars of the offences are before you, hence, I do not wish to reproduce it in my summing up.
10. The main elements of the offence of Attempted Murder are that;
  - i) The accused;
  - ii) Engaged in a conduct, which was more than merely preparatory;
  - iii) With the intention to cause the death of Sashi Kala, or  
With the knowledge or believe that his conduct would cause the death of Sashi Kala.
11. The first element is the identity of the accused. It is the onus of the prosecution to prove beyond a reasonable doubt that it was the accused who committed this alleged offence.
12. The second element relates to the conduct of the accused. The conduct is a product of the will of the accused and it was not accidental. The prosecution has to prove beyond reasonable doubt that the conduct of the accused was deliberate and not accidental. For

the accused to be guilty of **attempted** murder, the accused's conduct must be more than merely preparatory to the commission of the offence. The question whether a conduct is more than merely preparatory to the commission of the offence is one of fact.

13. In respect of the third element, the prosecution should prove beyond reasonable doubt either,
  - i) the accused intended to cause the death of the complainant, or
  - ii) that the accused knew/ believe that his act could cause the death of the complainant.
14. The prosecution has to prove only one of the two limbs of this third element. This element involves the state of mind of the accused at the time of the alleged act. It is not possible to have direct evidence regarding a person's state of mind as no witness can look into the accused's mind and describe what it was at the time of the alleged incident. However, you can deduce the state of mind of an accused from the facts and circumstances you would consider as proved.
15. Having considered all the evidence, if you find that the prosecution has proven beyond a reasonable doubt that the accused had assaulted the complainant with a knife and caused the injuries as claimed by the prosecution, but you are not satisfied or not sure whether the accused had an intention to kill the complainant or knowledge/ believe that his such assault could cause the death of the complainant, you must then consider the alternative offence of "Acts Intended to Cause Grievous Harm" though this offence is not charged in the information.
16. The main elements of the offence of "Acts Intended to Cause Grievous Harm" are that;
  - i) The accused;
  - ii) with intent to do some grievous harm;
  - iii) unlawfully does grievous harm to the complainant by any means.

17. In law grievous harm means any harm which—
  - i) amounts to a maim or dangerous harm; or
  - ii) seriously or permanently injures health or which is likely so to injure health; or
  - iii) extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense.
18. The first element of the offence of Acts Intended to Cause Grievous Harm is concerned with the identity of the accused.
19. The second element relates to the intention of the accused that he intended to do some grievous harm to the complainant.
20. The final element relates to the conduct of the accused that he did some grievous harm to the complainant by any means.
21. As I mentioned earlier, you have to decide the intention of the accused by considering what the accused did, you should look at his actions before, at the time of, and after the act. Furthermore, unlawful means without lawful excuse and grievous harm mean any dangerous harm to the body of another person.
22. Suppose you are satisfied that the prosecution has proven all the above elements of the offence of act intended to cause grievous harm beyond a reasonable doubt. In that case, you must find the accused guilty of the alternative offence of "Acts Intended to Cause Grievous Harm". However, if you have a reasonable doubt with respect to any element of the offence of act with intent to cause grievous harm, then you must find the accused not guilty of the alternative offence.

23. The main elements of the offence of Criminal Intimidation are that;
- i) The accused,
  - ii) Threaten Ashna with any injury,
  - iii) with the intention,
  - iv) to omit to do any act which Ashna is legally entitled to do,
24. The prosecution alleges that the accused threatened Ashna with the knife with the intention to prevent her helping the complainant.

**Separate Consideration**

25. The accused is charged with one count of Attempted Murder and one count of Criminal Intimidation. You have to consider each of these two counts separately. If you find the accused guilty of one count that does not automatically make him guilty of the remaining count. Likewise, if you find the accused not guilty of one count that does not automatically make him not guilty of the remaining count.

**Admitted Fact**

26. I now request you to draw your attention to the Agreed Facts, which are before you. They are the facts that the Prosecution and the Defence have agreed without dispute. Hence, you are allowed to consider them as proven facts by the Prosecution beyond a reasonable doubt.

**Evidence of the Prosecution**

27. Let me now remind you of the evidence presented by the Prosecution during the hearing. This is a very short hearing, where the Prosecution adduced the evidence of three witness. I trust that you have heard those evidence and still could recall them.
28. The first witness of the prosecution is Shashi Kala. She is the complainant of this case. She was having a relationship with the accused during the month of January 2018. On the 12th of January 2018, she had met the accused and then went to his home. During the night, the accused had assaulted her. On the following morning that was on the 13th of

January 2018; the accused had gone out to buy bread, stating the complainant, not to run away. However, the complainant had gone to the neighbor's house. That was the house of Bina and Ashna. Bina was not at home, as she had gone to the town, while Ashna, the daughter of Bina was at home with her sick and bedridden father. The complainant had told Ashna what happened to her.

29. At about 8 a.m. the accused had come to Ashna's house to hand over the phone of the complainant. He had just left the phone with Ashna and left. The accused had come again between 11 a.m. to 12 p.m., while the complainant was in the kitchen, making her tea. The accused had brought her biscuits and juice. When she turned around, the complainant had felt the first strike of the knife on her head. The accused had struck her with a knife on her head. After the first strike, the complainant had fallen on the floor. She had shouted for help, asking to save her. The accused had struck her on her neck and hands, leaving scars. The complainant had not seen the knife. The accused had told the complainant while attacking her with the knife that he will kill her and he is not scared of the police. Ashna, who saw the complainant bleeding with wounds, had screamed for help. At that time, Bina had arrived from the town in a vehicle. Bina had then taken the complainant to Ba Mission Hospital in the same Vehicle. From there, the complainant was taken to Lautoka Hospital in an Ambulance, where she had an operation. You have seen the complainant identified the accused as the person who struck her with a knife on the 13th of January 2018.
30. During the cross-examination, the complainant said that she usually goes to Bina's house and spend the night when she is alone at home. On the day of this alleged incident took place, she was still having a relationship with the accused. The complainant said that she did not hit the accused with a beer bottle on the night of the 12th of January 2018. She further denies the proposition put to her by the learned counsel for the defence, that she was lying and the injuries were self-inflicted. The knife belonged to Bina, and it was left outside the kitchen.

31. The complainant further said during the cross-examination, that she did not report to the police about the incident of assault that occurred during the night of the 12th of January 2018, because the accused had told her not to do that.
32. The second witness of the prosecution is Ashna. According to her evidence, the complaint had come to her house on the morning of the 13th of January 2018. Ashna's mother had gone to town while her sickly bedridden father was at home. The complainant had told her that the accused had assaulted her during the night. Ashna had advised the complainant to go and report the matter to the police. She had then gone to her room, while the complainant went to the kitchen. She then heard the accused was coming with some biscuits and juice. She heard the accused, and the complainant was talking about the reconciliation. Ashna had told them that she does not want any issues at home. The accused had then left the place.
33. Between 11.30 a.m. and noon, while she was in the room, Ashna heard the complainant was screaming from the kitchen. She ran to the kitchen and found the complainant had fallen on the floor. The accused was standing next to her, holding a knife. He was striking the complainant with the knife. Ashna was scared to go and help the complainant as she feared that the accused might hurt her as well. When she entered the kitchen, the accused was holding the knife up. The complainant was screaming, asking for help. She was bleeding. Ashna had run out and shouted for help. The accused left at that time. The complainant came out and asked Ashna to take her to the hospital. The face and hands of the complainant were wounded, and she was bleeding.
34. Ashna had seen the knife used by the accused as a knife belonged to them. It was a long knife. You have seen that she identified the knife in court and tendered it in evidence.
35. During the cross-examination, Ashna said the complainant used to come to her place sometimes and stay with them. When Ashna told the complainant to go and report the police about the assault that happened during the night of the 12th of January 2018, the complainant responded saying that it was a good suggestion. However, she has no such close relationship with the complainant. The accused too used to come to her house, but



he usually stays outside and talks to them. The knife used by the accused is normally placed behind the door of the kitchen.

36. Ashna further said that she did not see the whole incident, but only saw the events that took place after she came to the kitchen. At that time she saw the accused was holding the knife. The complainant had never given her money. Neither had she conspired with the complainant about this allegation.
37. The last witness of the prosecution is Doctor Mereoni Solei. She had conducted the medical examination of the complainant at the Ba Mission Hospital on the 13th of January 2018. Doctor Solei explained in her evidence the medical findings that she found during the medical examination. She had found laceration on the right side of the head of the complainant, which was 8-9 cm in length and 3cm deep. The wound was bleeding continuously. There was a deep cut on her right side of the chin and another cut on the fingers. Both the wounds were bleeding.
38. You may recall that Doctor Solei explained that such a deep cut could have caused by a sharp-edged object, such as a sharp blade, knife. The complainant was not admitted to the hospital as they were not able to stop the bleeding. There was arterial bleeding as well. Hence, the complainant needed surgical intervention. Otherwise, the bleeding might have caused her death. Therefore, the complainant was transferred to Lautoka Hospital for surgical intervention.
39. During the cross-examination, Doctor Solei explained the force used by the assailant to cause the laceration on the head could be scaled at seven if you scale the force from 1 to 10. Other two cuts could be scaled as 6. According to the angle of the wounds, the assailant may have stood in front of the complainant, when he attacked her. She came to such conclusion on the basis that most of the wounds were inflicted on the right side of the complainant. Therefore, there is a possibility that the assailant might be a right-handed person. However, there is no possibility for the complainant to self-inflicted, such wounds on her body.

**Right to Remain Silent**

40. At the conclusion of the prosecution case, the accused was explained about his rights in defence. The accused opted not to give evidence on oath and exercised his rights to remain silent. The accused does not have to give evidence. You must not assume that he is guilty because he has not presented evidence. The fact that he has not presented evidence proves nothing. It does nothing to establish his guilt.

**Analysis and Directions**

41. According to the evidence presented by the prosecution, the accused had assaulted the complainant with a knife with intent to kill her. While he was assaulting the complainant in that manner, he had threatened Ashna, who came to help the complainant, with the knife, preventing her helping the complainant.
42. The defence through the cross examination, suggested to the witnesses of the prosecution that the injuries of the complainant were self-inflicted, which the witnesses of the prosecution denied.
43. Accordingly, you have to determine whether this alleged incident actually took place. To do that, you have to determine the reliability and credibility of the Prosecution's evidence.

**Evaluation of the Evidence**

44. I now take your attention to the direction of evaluation of the evidence. The evaluation of evidence consists of two main steps, the determination of the reliability and the credibility of the evidence.

**Reliability of Evidence**

45. You must be satisfied that you can rely on the evidence as reliable evidence. To do that, you have to be satisfied that evidence is free from mistakes, errors, and inaccuracies. If you find the evidence is free from such mistakes, errors, and inaccuracies, you can consider the evidence as reliable evidence.

### **Credibility of Evidence**

46. The assessment of the credibility of evidence does not concern the unintended inaccuracy, mistakes, or errors. It focuses on the lies or inaccurate facts that are intentional and motivated attempts to deceive.
47. Evaluation of the reliability and credibility of evidence will help you determine what evidence you may accept and what part of the evidence you may refuse. In doing that, you may accept or reject such parts of the evidence as you think fit. It is for you to decide whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified.
48. In assessing evidence of the witnesses, you must consider whether the witness had the opportunity to see, hear, and or feel what the witness is talking in the evidence. You then considered whether the witness's evidence is probable or improbable, considering the circumstances of the case. Apart from that, you are required to consider the witness's consistency not only with his or her evidence but also with other evidence presented in the case.
49. It is your duty to consider the witnesses' demeanour, how they react to being cross-examined, and re-examined and were they evasive to decide the witness's credibility.
50. Moreover, you must bear in mind that a witness may tell the truth about one matter and lie about another; he or she may be accurate in saying one thing and not accurate in another thing.

### **Expert Evidence**

51. It is the general rule that witnesses usually are not allowed to give an opinion and only allow to provide evidence on what they have seen, heard, or felt by their physical sense. However, the exception is that the evidence of expert witnesses. Expert witnesses are those who are learned and experts in a particular subject or field with relevant experience. Such witnesses are allowed to give evidence of their opinion.

52. In this case, you have heard the evidence of Dr Solei. She is a medical doctor and works at the Ba Mission Hospital. She has conducted the medical examination of the complainant and made the Fiji Police Medical Examination Report. She gave her professional opinion about the injuries that she found on the complainant and the possible causes of such injuries. It is for you to decide whether the expert opinion given by Dr Solei is relevant to the matter that you have to determine. If you decide it is relevant, then you have to determine what the weight you give to this expert evidence is. If not, you can disregard it.

### **Contradiction and Inconsistencies**

53. You have heard that the complainant said during the evidence in chief that the accused came around 8 a.m. to Ashna's house to hand over her mobile phone. He had just left the phone with Ashna and left without talking to the complainant. He then came around between 11.30 a.m. and noon with biscuits and juice. During his second visit, the accused had committed this alleged crime. According to Ashna, the accused came in the morning around 8 a.m. with biscuits and juice and talked with the complainant. Ashna told them that she does not want to have any issues at her home. The accused then left. Between 11.30 a.m. and noon, Ashna had heard the screaming of the complainant while she was in her room. She then went to the kitchen and found the accused was assaulting the complainant with a knife. You need to consider these contradictions when you evaluate the evidence given by the Complainant and Ashna.
54. You are allowed to take into consideration such inconsistencies when you consider the credibility and reliability of the evidence given by the witnesses. It is obvious that the passage of time will affect the accuracy of memory. Memory is fallible, and you might not expect every detail to be the same from one account to the next.
55. If there is an inconsistency, it is necessary to decide firstly, whether it is significant and whether it affects adversely to the reliability and credibility of the issue that you are considering. If it is significant, you will next need to consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, you may then conclude that the underlying reliability of the evidence is unaffected. If the

inconsistency is so fundamental, then it is for you to decide as to what extent that influences your judgment of the reliability of such witness.

### **Final Directions**

56. Upon consideration of whole of the evidence adduced during the course of the hearing, if you are satisfied that the Prosecution has proven beyond reasonable doubt that the accused has committed the offence of Attempted murder as charged under count one, you can find the accused guilty of the said offence of Attempted Murder.
57. If you are not satisfied or have doubt whether the Prosecution has proven beyond reasonable doubt that the accused has committed the offence of Attempted Murder as charged under count one, you must find the accused not guilty of the said count of Attempted Murder.
58. You can then consider the alternative offence of Act with Intent to Cause Grievous Harm. If you are satisfied that the Prosecution has proven beyond reasonable doubt that the accused has committed the offence of Act with Intent to Cause Grievous Harm, you can find the accused guilty of the said alternative offence.
59. If you are not satisfied or have doubt whether the Prosecution has proven beyond reasonable doubt that the accused has committed the offence of Act with Intent to Cause Grievous Harm, you must find the accused not guilty of the said alternative offence.
60. If you are satisfied that the Prosecution has proven beyond reasonable doubt that the accused has committed the offence of Criminal Intimidation as charged under count two, you can find the accused guilty of the said offence of Criminal Intimidation.
61. If you are not satisfied or have doubt whether the Prosecution has proven beyond reasonable doubt that the accused has committed the offence of Criminal Intimidation as charged under count two, you must find the accused not guilty of the said count of Criminal Intimidation.

**Conclusion**

62. Madam and Gentleman assessors, I now conclude my summing up. It is time for you to retire and deliberate in order to form your individual opinions. You will be asked individually for your opinion and will not require to give reasons for your opinion. When you have reached to your opinion, you may please inform the clerks, so that the Court could reconvene.
63. Learned counsel of the Prosecution and the accused, do you have any redirections to the assessors?



R. D. R. T. Rajasinghe

JUDGE



**Solicitors;**

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused