

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 32 OF 2017**

**BETWEEN** : **STATE**

**AND** : **RITESH MAHARAJ SHARMA**

**Counsel** : **Ms. P. Lata for the State**  
**Mr. M. Anthony for the Accused**

**Hearing on** : **17th – 20th of August 2020**

**Summing up on** : **26th of August 2020**

**Judgment on** : **02<sup>nd</sup> of September 2020**

### **JUDGMENT**

1. The accused, Ritesh Maharaj Sharma was charged with a count of Attempted Murder contrary to section 237 of the Crimes Act of 2009. He pleaded not guilty to the charge and the matter was taken up for trial.
2. The charge was;

#### **COUNT 1**

##### *Statement of Offence*

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

### *Particulars of Offence*

*Ritesh Maharaj Sharma on the 22nd of January, 2017 at Nadi in the Western Division, attempted to murder Ashok Kumar.*

3. The ensuing trial lasted for 4 days. The prosecution called 5 witnesses and the defence did not offer any evidence on their behalf at the trial.
4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors by majority found the accused guilty of attempted Murder and the remaining assessor found the accused guilty to the lesser count of Assault causing actual bodily harm.
5. I direct myself in accordance with the law and the evidence led in this case, inclusive of which I have discussed in my summing up to the assessors.

### **Analysis**

6. When analyzing the evidence I am mindful that PW1, the alleged victim is the most important witness for the prosecution and the prosecution case is basically rested upon him. Though there said to be another 1 or more eye witnesses, the prosecution refrained from calling any of them.
7. Describing the incident, the PW1 affirmed that the accused stabbed him without any reason. There had been no argument or any animosity between them. The alleged victim and the accused had been good friends for more than 10 years. The accused stabbing the PW1 without any provocation or an understandable reason gives a strong signal of the accused suffering from a mental impairment.
8. The next crucial witness was the PW4, Dr. Kiran Balraj Gaikol. He is the Acting Medical Superintendent at the St. Giles Hospital. He is a well experienced psychiatrist with a wealth of experience. He opined that if the accused has

assaulted the alleged victim without any provocation or a reason, it is a positive sign of him having the mental impairment of schizophrenia.

9. Having considered the medical history, though the PW4 stated that there is a strong likelihood of the accused being of stable mental condition at the time of the incident, when considered the above it is quite possible than not, the accused suffering from a mental impairment at the time of the incident.
10. Though the majority of the assessors opined the accused to be guilty of Attempted Murder, I regret that I cannot agree with their opinion. I am convinced that the accused has stabbed the PW1 due to his mental impairment. Therefore, I find the accused not guilty of Attempted Murder because of his Mental Impairment and acquit the accused of Attempted Murder due to his Mental Impairment.
11. In the light of the above, I order the accused to be detained at the St. Giles Hospital until such time it is appropriate for him to be released back to the society, having observed the required legal procedure.
12. This is the Judgment of the Court.



**Chamath S. Morais**  
**JUDGE**

**Solicitors for the State** : **Office of the Director of Public Prosecutions, Lautoka**  
**Solicitors for the Accused** : **A. C. Law**