

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

**Crim. Case No: HAC 25 of 2021**

**STATE**

vs.

**RAMENATABE VUATAUVOLI**

**Counsel:** Ms. A. Vavadakua for the State  
Ms. L. Filipe for the Accused

**Date of Hearing:** 02<sup>nd</sup> to 04<sup>th</sup> August 2022

**Date of Closing Submission:** 05<sup>th</sup> August 2022

**Date of Judgment:** 18<sup>th</sup> August 2022

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**JUDGMENT**

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**Introduction**

1. The Director of Public Prosecutions has charged the accused for the following offences as per the Information dated 01<sup>st</sup> March, 2021 as amended on 03<sup>rd</sup> August 2021:

**COUNT ONE**

*Statement of Offence*

**ATTEMPTED MURDER:** Contrary to Section 44 and section 237 of the Crimes Act, 2009.

*Particulars of Offence*

**RAMENATABE VUATAUVOLI** on the 8<sup>th</sup> day of January 2021, at Nasinu in the Central Division attempted to murder **SEMI NATE**.

**COUNT TWO**

*Statement of Offence*

**ACT WITH INTENT TO CAUSE GRIEVOUS HARM:** Contrary to Section 255 (a) of the Crimes Act, 2009.

*Particulars of Offence*

**RAMENATABE VUATAUVOLI** on the 8<sup>th</sup> day of January 2021, at Nasinu in the Central Division, intended to cause grievous harm to **SOFIA LEI RATU** by striking her hand, head and back with a hammer, resulting in grievous harm to Sovia Lei Ratu.

2. The trial commenced on 09 August 2022 upon reading and explaining the charges the accused pleaded not guilty to both the counts.
3. The prosecution case was closed with the evidence of PW8 D/CPL Wili Naqura, PW3 Eliza Ravi, PW 2 Semi Nate, PW1 Sovia Lei Ratu, Dr. Samuela Nanovu Dr. Kinisimere Marama Serevi and Dr. Joni Tabuya. As it appeared to this court that there was prima facie evidence of the charges, the defence was called for and the rights of the accused were explained. The accused opted to give evidence but did not call any witnesses. This court heard the closing submissions. Accordingly, I will now endeavor to pronounce my judgment.

Elements of the offences

4. To prove the Count No. 1 the prosecution is required to prove the following elements of the offence of Attempted Murder;
  - i. The Accused;
  - ii. Engaged in a conduct, which was more than merely preparatory;
  - iii. With the intention to cause the death of Semi Nate.

5. To establish the charge of attempted murder the prosecution is required to prove that the accused has done whatever he had to do to execute and achieve his intended object of killing the victim and that should be something more than mere preparation. If I may elaborate, the Accused should have passed the stage of preparation and embarked upon the stage of execution but failed to achieve his criminal object due to a reason other than discontinuing on his own volition. Abandoning his pursuit due to reason beyond his control may also be an attempt. I would say that every substantive offence committed is necessarily preceded by an attempt and it is just that such attempt was successful. If not, it will be an Attempt.
6. As I see to prove a charge of attempted murder the evidence should establish that the Accused had done all that he had to in order to commit the substantive offence of causing the death, but due to a cause beyond his control or an intervening cause prevented him from achieving his object. The prosecution is required to prove beyond reasonable doubt all the above and that the accused had an intention to kill the victim.
7. To prove the Count No. 2 the prosecution is required to prove the following elements of the offence of Act with Intent to Cause Grievous Harm;
  - i. The accused,
  - ii. With intent to maim, disfigure, disable or to do some grievous harm to the victim,
  - iii. Caused any grievous harm to the victim by any means.
8. "Grievous harm" as defined under Section 4(1) of the Crimes Act, is as follows;  
*"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 extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense;"*

#### Burden of proof

9. The Accused is presumed to be innocent until he is proved guilty. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to

the Accused. There is no obligation or burden on the Accused to prove his innocence. The prosecution must prove the Accused's guilt, beyond reasonable doubt. If there is a reasonable doubt, so that the court was not sure of the Accused's guilt, or if there be any hesitation in my mind on any of the ingredient or on the of evidence led by of the prosecution the Accused must be found not guilty of the charge and accordingly acquitted. The Accused has a right to remain silent and no adverse inference can be drawn if the Accused opts to be so.

#### Defence of provocation vis-à-vis attempted murder

10. At the close of the case, as evidence of provocation was led, both parties were directed to submit if the defence of provocation is applicable to the offence of Attempted Murder in view of section 44 (6) of the Crimes Act. The learned State Counsel Ms. A. Vavadakua relying on the Supreme Court judgment of **State v Samy** [2019] FJSC 33; CAV0001.2012 (17 May 2019) and the Court of Appeal judgment of **Samy v State** [2012] FJCA 3; AAU0019.2007 (30 January 2012) submitted that the defence of provocation is limited to the offence of Murder and is not applicable to the offence of Attempted Murder except in sentencing. She submitted that this is followed in the High Court and in support cited, the cases of *State v Nasetava* (2021) FJHC 41 and *State v Semi Vucui* HAC 63 of 2016 [summing up – (6 July 2017)]. As opposed to this the learned defence counsel Ms. L. Filipe submitted that by virtue of section 44(6) of the Crimes Act an Accused charged with Attempted Murder is entitled to the special defence of provocation.
11. Section 44 of the Crimes Act is the general provision which has made an attempt to commit any offence an actionable criminal offence which is as follows;

#### Attempt

44. — (1) *A person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.*
- (2) *for the person to be guilty, the person's conduct must be more than merely preparatory to the commission of the offence, and the question whether conduct is more than merely preparatory to the commission of the offence is one of fact.*

- (3) *Subject to sub-section (7), for the offence of attempting to commit an offence, intention and knowledge are fault elements in relation to each physical element of the offence attempted*
- (4) *A person may be found guilty even if—*
  - (a) *committing the offence attempted is impossible; or*
  - (b) *the person who actually committed the offence attempted is found not guilty.*
- (5) *A person who is found guilty of attempting to commit an offence cannot be subsequently charged with the completed offence.*
- (6) *Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of attempting to commit that offence.*
- (7) *Any special liability provisions that apply to an offence apply also to the offence of attempting to commit that offence.*
- (8) *It is not an offence to attempt to commit an offence against section 45 (complicity and common purpose), section 49 (conspiracy to commit an offence) or the offence of conspiracy to defraud.*

12. By virtue of section 44 an Attempt to commit any substantive offence is an actionable criminal act. By virtue of the definitions in section 4 of the Crimes Act of the words, “*offence*” and “*law*”, section 44 will apply to any act or omission punishable by any law of Fiji including the Crimes Act. This is a general provision. However, if specific provision is made for the attempt of any offence such provision will then prevail. Under the Crimes Act Attempted rape- section 203, Attempt to commit arson-section 363, and Attempt to set fire to crops-section 365 are such specific provisions. Of these two forms I will refer to section 44 as the general provision and any other as specific provision. Whatever may be the form the end result is that an attempt to commit an offence is made an actionable crime which is a separate and distinct offence from the substantive offence. As for the substantive offence of Murder, there is no specific provision of Attempt under the Crimes Act of 2009, however by virtue of section 44 (1) the general provision an attempt to commit murder is an offence.

13. Whilst section 44(1) so creates the offences of attempt, section 44(6) provides that, “*any defences, ..... that apply to an offence apply also to the offence of attempting to commit that offence*”. What this says in plain and simple language is that whatever defences

available to the substantive offence is applicable to the offence of attempt of such offence.

In law, there exist many different types of defences. They *inter alia* include:

- Complete or exculpatory defences: These defences exonerate the accused of any criminal liability.
- Partial or mitigatory defences: These defences have the effect of reducing the charge to a lesser charge.
- General defences: These can be pleaded in relation to all crimes.
- Special defences: These can only be pleaded in relation to the specific crime that it is provided for example, murder carries special defences of provocation and diminished responsibility.

14. Attempt is defined by section 4 of the Crimes Act, as being an "*offence*". General defenses such as mental impairment (insanity), mistake of fact, self defence are applicable to all offences including attempt both under the general as well as specific provision. No further enabling provision is required.
15. However, special defences will apply only to such offence for which such special defence is provided for. The mitigatory defences of provocation (section 242) and diminished responsibility (section 243) are such special defences available only for the offence of Murder. A special defence available to a substantive offence will be not available to the corresponding offence of Attempt which is a different and distinct offence from the substantive offence unless there is an enabling provision. This is what section 44(6) of the Crimes Act provides for.
16. Whilst an attempt to commit murder is made an offence by virtue of section 44(1), all special defences available to the offence of murder are made applicable to the offence of Attempted Murder by virtue of section 44(6). So, to my mind, the mitigatory defence of provocation (section 242) as well as diminished responsibility (section 243) are available to a person charged with Attempted murder and if successfully pleaded such Accused cannot be convicted for Attempted Murder but may be convicted for Attempted manslaughter only.
17. That being so, the learned State Counsel brought to my attention the decision of the Supreme Court in **State v Samy** [2019] FJSC 33; CAV0001.2012 (17 May 2019) and

submitted that their Lordships have held that the defence of provocation is available only for Murder and not Attempted Murder. In **State v. Samy** (supra), and in **Samy v. State** (supra), their Lordships of the Supreme Court and the Court of Appeal respectively have opined that *the defence of provocation is not available to the offence of Attempted Murder*. Their Lordships relied on the Australian decision of **McGhee v R** [1995] HCA 69; (1995) 183 CLR 82 in which it was held that provocation though available to reduce murder to manslaughter, it is not available to defeat a charge of attempted murder and that provocation is not a defence to a charge of attempted murder but is taken into account after conviction in considering the sentence.

18. It is true that, since 2012 this has been followed by all criminal courts in Fiji. However, the said decisions of **Samy** both the Supreme Court as well as the Court of Appeal, have considered a charge of Attempted Murder which prevailed under the Penal Code prior to the Crimes Act of 2009. **Samy** cases considered an offence of attempted murder committed on 07<sup>th</sup> June 2006 and sentenced on 29<sup>th</sup> November 2007. Under the Penal Code the (law as it was prior to 2009) the offence of Attempted Murder was separately provided for by the specific provision of section 214(a) which was as follows:

*CHAPTER XXII-OFFENCES CONNECTED WITH MURDER AND SUICIDE*

*Attempt to murder*

*214. Any person who-*

- (a) attempts unlawfully to cause the death of another; or*
- (b) with intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life, is guilty of a felony, and is liable to imprisonment for life.*

19. As the offence of Attempted Murder under the Penal Code was specifically provided by section 214, in the absence of any provision similar to that of section 44(6) the special defence of provocation for Murder was not available to the offence of Attempted Murder. The provisions of the Tasmanian law which was interpreted in **McGhee v R** was similar to that which prevailed under the pre 2009 Penal Code in Fiji. As **State v Samy** is an interpretation of the provisions of the pre 2009 Penal Code it is certainly not an interpretation of the provision of the Crimes Act of 2009. Accordingly, **State v Samy**

(supra) and *Samy v. State* (supra) have no application and is not a pronouncement of the law it stands today.

20. Apart from the cases of *Samy*, I have not found nor has it been brought to my notice of any other binding authority on this issue except some instances where High Court Judges in the summing up have as a matter of practice, followed the cases of *Samy* (both of the Supreme Court and the Court of Appeal).

21. The rationale for applying the defence of provocation to attempted murder was explained by Mitchell J., in the South Australian Court of Criminal Appeal case of **R v Duvivier** [(1982) 29. SASR 217; 5A Crim.R89 as follows;

*"To attempt to commit murder is to attempt to kill in circumstances which will amount to murder. If a person attempts to kill in circumstances in which he is acting under provocation and does kill, his crime will not be murder but manslaughter. I can see no logical reason for conviction of an attempt to commit murder in such circumstances. Furthermore, the fact that the maximum penalty for a conviction for attempted murder is the same as the mandatory penalty for murder indicates the seriousness of the conviction for attempted murder. It is not, in my view, sufficient to say that provocation can be taken into account in sentencing. In my opinion therefore provocation is a defence to attempted murder."*

22. Her Honour Mitchell J., (at page 94), also held that the defence of provocation applies to charges where an intention to kill is alleged so that it applies not only to a charge of murder but also to a charge of attempted murder. Mitchell J., said:

*"To attempt to commit murder is to attempt to kill in circumstances which will amount to murder. If a person attempts to kill in circumstances in which he is acting under provocation and does kill, his crime will not be murder but manslaughter. I can see no logical reason for conviction of an attempt to commit murder in such circumstances."*

23. Now in view of section 44(6), a person accused of Attempted Murder is, as of right entitled to plead whatever defences available to the offence of Murder. That includes provocation. As such, section 242 would *mutatis mutandis* apply to the offence of Attempted Murder. If there be provocation, the provocative act will necessarily precede the attempt and such evidence certainly will be available for consideration and if such



evidence is accepted then by virtue of section 242(1) the Accused will be guilty of Attempted Manslaughter only.

24. In the aforesaid circumstances, section 44(6) of the Crimes Act confers a statutory right to a person accused of attempted murder to plead the defence of provocation under section 242 of the Crimes Act and the Accused is entitled to plead the defence of provocation in respect of the charge of Attempted Murder against him. As the Accused has raised and taken up the defence of provocation I will now consider the elements of the defence of provocation.

### Provocation

25. Provocation is not an exculpatory or a complete defence to an attempt to kill. It is a mitigatory or a partial defence. Attempt to kill with provocation will reduce the culpability from attempted murder to attempted manslaughter. Section 242 of the Crimes Act provides for the special defence of provocation to the offence of murder. As section 242 is applicable to the offence of attempted murder, sub section (1) thereof should *mutatis mutandis* be read and applied to the offence of attempted murder which will reduce his culpability to *attempted manslaughter*.
26. Now if may collate and summarise the expositions of the defence of provocation as made in the cases of **Codrokadroka v State [2013] FJSC 15; CAV07.2013 (20 November 2013)**, **Puratake Tapoge v State [2017] FJCA 140; AAU121.2013 (30 November 2017)** and **Masicola v State [2021] FJCA 176; AAU073.2015 (29 April 2021)** the ingredients and the burden of proof will be as follows.
27. In the first instance the prosecution must prove the accused attempted to cause the death of the victim and that he did so with the intention to kill. Then if evidence of provocation comes in, it is for the prosecution to convince Court that it is not a case of provocation and it is not for the accused to establish that it was. This being so, before this court can find the accused guilty of attempted murder only if the prosecution must satisfy this court beyond reasonable doubt that the accused was not ‘provoked’ to do what he did and did it in the heat of passion. The effect is that if the prosecution satisfies this court beyond reasonable doubt that the accused was not provoked to do what he did, then the accused will be guilty of Attempted Murder. If, on the other hand, this court considers either that

he was, or may have been, provoked, then the accused will not be guilty of Attempted Murder, but guilty of the lesser offence of attempted manslaughter. It is not for the accused to prove that he was provoked, but it is for the prosecution to prove beyond reasonable doubt that he was not provoked if evidence of provocation comes in. This is the burden of proof.

The defence of Provocation consists of three elements –

- i. the act of provocation,
- ii. the loss of self-control, both actual and reasonable, and
- iii. the retaliation be proportionate to the provocation.

28. The source of the provocation can be one incident or several. To what extent a past history of abuse and provocation is relevant to explain a sudden loss of self-control and this depends on the fact of each case. So ***cumulative provocation or slow burn provocation*** is relevant and admissible. This was explained by Devlin J in *R v. Duffy* [1949] 1 ALL ER 932, that:

*"Provocation is some act, or series of acts, done [by the dead man to the accused] which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind.*

29. In *R v. Ahluwalia* 96 Cr. App. R. 133, and *R v. Thornton* (No. 2) [1996] 2 Cr. App. R. 108, the English courts considered the relationship between years of violent abuse suffered by the accused in the hands of the deceased and the sudden loss of self-control triggered by a minor incident to find that the jury could hear such evidence to allow the minor incident to be seen in its proper context and the judge should take into account all past acts of provocation and the conduct of the deceased or the victim which is alleged to have contributed that preceded and led to the act of attempt to cause the death. Evidence of such conduct is both relevant and admissible depending on the facts of each case.

30. However, there must be an evidential link between the provocation offered and the assault inflicted. It is necessary that the accused must have been provoked to “suddenly and

temporarily” to lose his self-control. Finally, the force used by the accused must be proportionate to the provocation.

31. There is a general duty on the courts to consider a defence, even if it was not expressly relied upon by the accused at trial. The scope of that duty in relation to provocation was explained by Lord Devlin in **Lee Chun Chuen v R** (1963) AC 220 as follows:

*‘Provocation in law consists mainly of three elements – the **act of provocation**, the **loss of self-control**, both actual and reasonable, and the **retaliation proportionate to the provocation**. The defence cannot require the issue to be left to the jury unless there has been produced a credible narrative of events suggesting the presence of these three elements.’*

32. If, however, this court accepts that the accused was, or may have been provoked and that his loss of self-control was, or may have been, sudden and temporary, then this court must go on to consider a further question, which is whether everything done and said by the deceased was, or may have been enough to make a reasonable person do what the accused did. A “reasonable person” in this context means an ordinary person of the accused age and sex who is not exceptionally excitable or aggressive, but is possessed of such powers of self-control that everyone is entitled to expect that people will exercise in community as it is today. In other words, a reasonable person is a person of ordinary self-control. If this court is satisfied beyond reasonable doubt that the provocation was not enough to make a reasonable person do what the accused did, then this court should find the accused guilty of attempted murder.
33. On the other hand, if this court considers that the provocation was, or may have been, enough to cause a reasonable person to do what the accused did, then the court should find the accused not guilty of attempted murder, but guilty of attempted manslaughter.

#### Admitted Facts

34. The following facts are admitted by the parties.

- (1) *Mr. Semi Nate is 39 years old of 5 miles Tacirua and Mrs. Sofia Lei Ratu is 37 years old of 5 miles Tacirua. Mr. Nate and Mrs. Ratu are married.*
- (2) *Mr. Ramenatabe Vuatauvoli, is a 48 year old student of Calvary Bible*

*School. He is Mr. Semi Nate's older brother.*

- (3) *Mrs. Nancy Vakatawa, 46 year old domestic duties of Tacirua 5 miles is married to Mr. Vuatauvoli and they have four children.*
- (4) *On the 8<sup>th</sup> January 2021 Mr. Nate, Mrs. Ratu and Mr. Ramenatabe with his family lived on the same property at 5 miles Tacirua. They shared common amenities in the house but live separately with their families.*
- (5) *On the 8<sup>th</sup> January 2021 Mr. Nate was at home drinking alcohol, later in the day he had an argument with Mrs. Vakatawa.*
- (6) *Mr. Ramenatabe was arrested and caution interviewed on the 9<sup>th</sup> January 2021 by D/CPL 3835 Wili Naqura in the i-Taukei language.*
- (7) *The caution interview is agreed to be tendered by consent [However the contents of the caution interview are not agreed to].*

35. In this trial both prosecution and defence to a great degree agree and are on common ground on the basic incidents of the 8<sup>th</sup> of January. The defence does not dispute and the Accused admits causing injuries to Semi Nate and Sovia. The dispute is whether it was provoked or pre-planned. The prosecution witnesses Semi Nate, Eliza Ravi and Sovia take up the position that Semi Nate was merely seated on the steps and was advising Kiri on keeping the toilet clean and Nancy expressing her displeasure on advising Kiri. They deny any other incident, argument or swearing. They admit that the porch did break and fall and according to them this was broken accidentally as it was old. That being so the prosecution witnesses then say that Accused daughter Lesley went and informed to the Accused and then the Accused came armed with a cane knife and hammer and attacked Semi Nate. In short the prosecution witnesses say that it was an unprovoked and a pre-plan cold blooded attack. As opposed to this the defence position is that the Accused came there to check on the broken porch with the knife and the hammer to repair it and when he so arrived there was swearing between Semi Nate, Sovia and Nancy and the clothes bucket and the water drum had been turned over and thrown and then Semi Nate reacted angrily and jumped at the accused who then acted on the spur of the moment due to provocation. This being the overall position I will now summarise the evidence.

#### Prosecution Case

##### PW8-D/CPL Wili Naqura

36. This witness was called to mark and produce the caution interview of the Accused. The defence did not challenge this evidence. He had recorded the statement on the 9<sup>th</sup> January 2021 and it was recorded in ITaukei Language and an English translation have been prepared. Questions and answers 68, 69, 78, 79, 80 to 85 was read in evidence. The original

interview was marked as exhibit PE1A and the English translation as PE1B. During the interview a knife, part of the handle and a hammer had been shown. The knife was marked as exhibit PE2 with the part of the handle and the hammer PE3. He had uplifted the broken handle from the garden in front of the house. Knife had been in the kitchen and the hammer uplifted from the Accused's wife.

PW3-Eliza Ravi

37. On the 8<sup>th</sup> January, 2021 she had been living in the house where the incident took place. According to her the house had been occupied by the Accused, his wife Nancy, his mother-in-law and father-in-law along with several children including an adopted child. This witness is related to the victim Semi Nate and had come here for a few days. She was cooking in a kitchen annexed to the house and has seen Semi Nate seated on the steps when the stepson of the accused "Kiri", had come by Semi Nate had advised him on keeping the toilet clean. At this moment Eliza had seen the accused coming towards the house from the nearby church. Some argument has erupted and told Semi Nate and Nancy to go back to Rabi with their parents. Nancy had been in her room when this was happening. Accused's daughter also has come by. When the Accused came he had in his hand a cane knife and a hammer.
  
38. The Accused had gone up to the steps where Semi Nate was seated and swung the knife which had knocked on the back of the neck of Semi Nate and the knife had fallen down. As Semi Nate was then trying to get up the Accused had swung the hammer which landed on the forehead with which Semi Nate had fallen on the ground. Sovia had come to stop it when the Accused had thrown the hammer towards Sovia. She had blocked it with her hand then has ran towards the road. At this moment Eliza had gone up to Semi Nate who was on the ground and tried to lift him up, he was unconscious. Sovia had tried to return but was chased by the Accused. Then the accused turned towards Eliza and threatened saying "fuck off from here" she had run a short distance. However, seen the accused repeatedly hitting on the head of Semi Nate with the hammer. At this time Semi Nate was lifeless and unconscious. Someone had come by and had taken the accused away. Thereafter with the help of some neighbours Semi Nate had been taken to the hospital.
  
39. She had identified the knife and the hammer. In cross examination it was suggested that Semi

Nate broke the porch and that Semi Nate was drunk and swearing. These were all denied. It was suggested that this witness could not have seen because the porch roof had fallen and blocked her view. She denied this and said that it was close-by that she could see what was happening. The distance between the kitchen and the place of incident is no more than 2 meters.

PW1 – Sovia Lei Ratu

40. Sovia Lei Ratu is Semi Nate's wife, the accused is her brother-in-law. She to a great extent narrates the same sequence of events as told by Eliza. According to her the adopted child Kirikiri and Semi Nate was having a talk. It was about the cleaning of the toilet. Nancy had come by and started to argue with Semi Nate and she was telling that this was not a good house and the roof was leaking. Semi Nate had gone into the house and come out with the cigarette. Nancy in the meantime has told her daughter to go and see for the accused. Shortly after she left the accused had come with the knife and the hammer. Accused had gone upto Semi Nate and swung the knife and when Semi Nate was trying to get up the accused had struck him with the hammer on the forehead and then also on the back of the head. She had tried to help Semi Nate but the accused had prevented her and thrown the hammer towards her which she had blocked by raising her hands and the hammer had struck her wrist by which she had sustained an injury to the wrist. She had then run-away but seen the accused striking Semi Nate who was on the ground.
41. She had then come back after Penny came and took the accused away. Semi Nate had been bleeding all over his face and was immediately take to the hospital. She herself had been examined by a doctor which report was produced as M11.
42. She said on a previous occasion she had to swear at the accused's father-in-law because he sometimes opens the bathroom door when she is having a bath. She denies having any arguments with Nancy and also denies asking the accused and the family to find another house. She maintains that it was the accused and his family who were bothering her. It was suggested to her that on the 8<sup>th</sup> January, 2021 Semi Nate was drunk and he was shouting at the children and also damaged the porch and at that time the accused was not at home. She denied and said that the porch broke when he Semi Nate leaned against the post. It was also suggested that she was swearing at Nancy and have asked them to move out of the house which was also denied. The position suggested by the defence was that the accused came to

ask why they were threatening and when he came and asked, Semi Nate jumped to attack him. The accused had just swung the knife and it struck which she denied. It was also suggested that the accused did not hit her on the back of her head and that he did not run after her all of which was denied. Finally, she said that after the incident accused's family shifted to the church and that they lived there and it is Semi Nate and his family who lives in that house now. Finally, it was suggested that she was the cause of all these which she denied.

PW 2 – Semi Nate

43. According to him this house belongs to their father which had a sitting area and two rooms. He drew a sketch which was produced as PE4. He had come into this house upon his release from prison and he had been living in the first room of the house. Subsequently, the kitchen had been built next to the room and at a later point of time occupied the second room also. The accused is his elder brother and he was using the living room. There had been a partition between the two room and the living room. On the 8<sup>th</sup> January, 2021 he admits been seated on the steps and having Joshke which is alcohol, he says that he was not drunk. He had that morning advised Kiri the adopted son of the accused that the washroom should be kept clean. Apparently, Semi Nate cleans the toilet every morning on that particular day Kiri had used the toilet but have not flushed so he had been advised to flush the toilet when he uses it.
44. At this moment Nancy had come and told him that Semi Nate is not responsible for the child and not to tell him. She had been speaking to him harshly. Then he admits telling her that she should teach him to flush the toilet as no other cleans but him. When this talk took place one of the children of the accused had gone to the church where the accused was. Then he says that he felt and saw someone coming from his behind. On a reflex action he had raised his hands and blocked a blow and as his hand struck other person's hand the knife has fallen. According to him the handle had broken when his hand blocked the blow then the broken part has fallen next to him.
45. He had then tried to get up when a blow from the hammer had struck his forehead between the eyes. He clearly says that blow was dealt with the back of the hammer head the part your remove the nails. He had clearly identified that it was the accused who dealt the blow. He had then fallen and he does not know what happened thereafter and then he remembers regaining consciousness at the hospital. He had undergone surgery and recovered. There was hole in his skull and parts have gone through his brain. Finally he says that his relationship

with the accused and his family was alright and nothing bad except that in 2019 there was an argument about taking down of a partition.

46. In cross-examination he admitted that out of five siblings he is the youngest and the accused is number 2 and the eldest have passed away. In 2018, he admits being released from prison and then he had gone into the house which was occupied by the accused. He admits that initially he occupied the room in front and that his wife also moved in with him. He admits that there was a partition between the two rooms and that it was pulled down and he started using both the rooms. The defence suggested that the partition was removed and belongings of Nancy was thrown into the sitting room. Semi Nate denies this and says nothing was in the room. He admits that when the accused goes to the church to work there only his wife, children and the in-laws are at home. He also admits that in 2020, his wife Sovia did swear at the father-in-law of the accused. However, denies that there was an argument between Nancy, Sovia and himself. The position suggested by the defence is that there were regular arguments and swearing between Sovia, Nancy and Semi Nate and that Semi Nate threatened to stab the accused. He says that the porch broke accidentally that he did not break it.
47. He says that the accused came from behind and that he did not see him coming home. It was suggested to him that he jumped and attacked the accused at which stage the accused had swung the knife and it hit the wall and broke that Semi Nate then punched him when he swung the hammer which hit on his forehead and that it was the end of the handle that struck his head and not the hammer head. These were all denied by the witness. Then it was suggested that upon his wife moving in that trouble started which was denied. His position is that the house had been given to him written on a paper by his father.

#### Medical Evidence

48. Doctor Kinisimere Marama Serevi has examined Semi Nate on 08/01/2021 at 10.30pm at the Emergency of CWM hospital. He had observed injury on the forehead and multiple skull fractures. She had also observed a black eye, laceration below the left eye however as the head was bandaged and had not observed anything further. But according to the CT scan the frontal fractures including the nasal bone have been observed. She said there were very bad fractures and said that it is Doctor Nanovu would be the best to describe the injuries. In cross examination she admitted of noting a cut injury on the back area of the neck and shoulder blade. It was just a linear injury not quite deep and it appears to be inflicted by a knife. She



had then confirmed that the injuries were fresh and there have been inflicted on the same day the 8<sup>th</sup> January, 2021. The injuries on his skull was said to be serious and he was unconscious and was coming in and out of consciousness.

Doctor Samuela Nanovu

49. He is a Neuro Surgeon, he has attended to the surgery of Semi Nate and according to him there were several injuries which he had listed out from 1 to 14. Number 1 which he describes as severe head injury, he had observed a penetrating brain injury in the frontal side, then right colon area some lacerations, number 2 down to 14 are the specific injuries that he had sustained, so there was penetrating brain injuries in front part of the forehead, that would be right side and also the left side penetrating to the brain that is, and the rest of all descriptions, all the different fractures that he had which were involved in the bones, all the bones in face except join bone.
  
50. According to him the most serious injury is the injury on the forehead penetrating the brain which had also involved multiple fractures and parts of bone had been in the brain. He had marked as PE7 photograph taken after the surgery and PE8 photograph taken before the surgery. These photos vividly demonstrate the extensive nature of the external injuries and the scan image shows the multiple fractures in the frontal area of the skull. He went on to explain that the brain tissue was coming out of the forehead and explained that it is visible on the photograph PE8. He was of the view that this injury could be inflicted by the hammer PE 3 and very likely that the blow had been from the hammer head the side with which nails are hammered. Considering the multiple fractures to the skull bone which he said was a very hard bone he was of the view that considerable force have been used. Then considering the multiple fractures and the massive facial destruction has confirmed that this was the forceful blow.
  
51. Commenting on the nature of the injury he said if there was no immediate medical intervention the death would have been most certain. The survival was purely due to immediate medical attention as he was brought to the hospital within a short time. The doctor was shown the hammer and asked if the injuries could be inflicted by the rear end of the hammer (nail removing part), doctor observed that some of the injuries above of the eye the smaller punches on the skull may have been inflicted by that part of the hammer. He excluded the possibility of this injury being caused by the handle of the hammer. In cross-examination

when asked again about the possibility causing the injury by the handle he did exclude however it should have been an extremely strong force if that end of the hammer handle was used. He ruled out any possibility of the effects of the injuries aggravating due to mishandling or transporting the victim. He finally said that to inflict these injuries several blows should have been dealt with and clearly excluded the possibility of this head injury being caused by an accidental blow. He explained that in the normal cause of the event that the head injury would necessarily cause his death if not for the medical intervention. He said that the surgery was successfully however this injury will have long term consequences such as lack of memory, changes in personality, difficulty to pick up things, change of mood and anger.

#### Doctor Joni Tabuya

52. She had examined Sovia Lei Ratu and observed blunt trauma injuries on the front of the wrist which she says a defensive injuries and she had observed minor head injury and considering the nature and the placing of the injuries she said that these may have been caused when she tried to block something and ducking her head to avoid a blow. She had not been admitted in the hospital. She has observed signs of dislocation to Sovia's shoulder. She had observed three injuries, a swelling in the wrist both left and right, abrasion in the right wrist, a swelling in the right shoulder and the laceration on the skull above the right forehead. She identifies these injuries as being defence injuries caused by blocking the hammer that may have been thrown at her. As regards the right shoulder the x-ray had shown a dislocation of the right shoulder. As to the injury on the head she observed it had been caused by some sharp object probably from the hammer. This injury to the head would leave a scar even after healing. This injury had been on the skull towards the forehead.

#### Credibility of the witnesses

53. Out of the three eye witness Eliza's evidence as regards the details and the manner of the attack is somewhat different from Semi and Sovia. As far as Semi is concern he had been drunk at that time and suffered a severe head injury. According to the doctor he suffers from memory loss. In these circumstances Semi's evidence as to the details of the attack during the last moments may not be accurate and reliable. However, Sovia in her evidence tries to downplay and denied what is favourable to the accused. Considering her demeanour I am of the view that her evidence is not reliable as she tries to suppress some details. It is not that she is lying but more of suppressing what is favourable to the Accused. However, Eliza appears to be a truthful witness. She to some extend is a disinterested witness as she is related

to both the Accused and Semi thou was there on the invitation of Semi. The demeanour of Eliza as I observed was consistent with that of a truthful witness. Accordingly, I would accept and consider the evidence of these there witnesses subject to the above observations and caution.

### The Defence Evidence

#### The Accused- Ramenatabe Vuatauvoli

54. The Accused giving evidence did admit much of the prosecution story. His position is that on this day he had being in the church nearby when his daughter has come and told that the porch had been broken by Semi Nate. The Accused had been cutting fish and preparing food for the pastor at that time and while cutting fish the handle of the knife have broken. This knife and hammer he had taken it from home. With this message he had returned with the knife and the hammer to bring it back to the house. He said that he brought the hammer as the porch was broken and he wanted to repair it. As he arrived near the house he had seen a bucket of clothes turned over, another drum also was turned over and the porch was broken as he reached home. Semi Nate was seated in their extension to their room and when the Accused went to the porch to repair the damage Semi Nate has told him 'what are you doing here it is not your house'. The Accused had asked him why he is threatening him and his family and this is the fourth time. Then Semi Nate jumped towards him and punched him. At this moment the Accused had thrown the knife at him, the handle was already broken. The knife had fallen nearby. Semi Nate had come towards the Accused when the Accused had jabbed Semi Nate with the handle end of the hammer. He says he hit him only twice when Semi Nate fell down. He says that Nancy and Sovia were both there. The position of the Accused is that though he hit him with the hammer he did not intend to kill but only wanted to defend only his family. He admits throwing the hammer towards Sovia and admits that it hit her wrist. According to him this was the fourth such incident between Sovia and them. He says that there was swearing at each other and that he did not plan it all of a sudden this happen. Under cross-examination he said his relationship with the brother was good but turned sour when Sovia came. Before his brother was respectful but after the marriage he was not. Semi Nate had been rude to Accused's children. This had been very disturbing. Further, Semi Nate had removed a part of the house without telling him. This had been the fourth incident and it had all been in his mind what Semi Nate did. What Semi Nate did had been frustrating and the children had been crying. His action had been humiliating to the Accused. All these things have gone through his mind that day. He says that when he

returned with the knife and the hammer Semi Nate and wife were swearing. On the previous day too Semi Nate's wife have been swearing. It was suggested that he was making up the stories which he denied. He admits that due to his act his brother was hospitalized for three weeks and if not for medical intervention that he would have died. He admits that Sovia is the root cause of all these trouble. He admits throwing hammer at her. That was his evidence.

55. However upon being further questioned he admits that Semi Nate and his wife were unarmed. He admits that he was the only one holding a knife. As done earlier he admitted that the injuries were caused by the blows dealt by him. His position is that he was provoked to do that. Finally he said that this was happening for a long time. He narrated the earlier incidents and they are:

- 1) In 2019 around Christmas time on a Sunday when they returned from church his daughters have told that Semi Nate and the wife had gone into the house and was insulting Nancy. That day the Accused had talk to them.
- 2) On the next occasion that also in 2019 when the Accused and the wife were away Semi Nate has opened and removed a partition between the rooms.
- 3) When Semi Nate and his wife were drunk in the room they swear at his father-in-law and mother-in-law.
- 4) And the last incident that has been the fourth.

#### Evaluation of the Evidence

56. The prosecution called 3 witnesses in respect of the incident they were Eliza, Semi and Sovia. All three claimed to have witnessed the series of events that day. According to Semi he had advised Kiri and when Nancy had come and told him in an angry tone that boy is not owned by you, you are not responsible, meaning not advice the boy he is not yours. Apart from this exchange of words and conversation nothing else happened until the accused suddenly came and attacked him. According to Semi, he had not seen the accused coming and says that he walked in from a rear path surreptitiously. Sovia admits that Nancy and Semi argued but says that the accused just walked in and without any talk between Semi and Accused the blow was dealt. These two witnesses take up the position that the Accused just came by and without any argument or exchange of words assaulted Semi. However, according to Eliza after Semi advised Kiri there had been a serious argument and swearing between Semi and Nancy. Semi had told her to take the in-laws and go back to the village. When these heated arguments were on she had seen the accused coming from the church which was about 20

meters away. She had seen him walking from the church up to where Semi was. She does not say that the accused came secretly. This is contrary to what Semi and Sovia said. Apart from that Eliza clearly says that when the accused came close to Semi, Semi had asked him “what are you here for”. Now this is completely different and it contradicts the evidence of Semi and Sovia who try to say that the attack was unprovoked and, stealthily carried out. Eliza version is in line with what the accused had said and suggested by the defence. Therefore, in these circumstances the victim and Sovia seem to be down playing and concealing certain incidents that took place. However, Eliza appears to be truthful as her version is more probable. In any event as there is a difference an inconsistency the version of the prosecution witnesses and Semi and Sovia does not seem to be reliable.

57. What is unique about this case is that both the prosecution and the defence admit that the accused did assault Semi that day and in the first instance he did swing the knife and then the injuries were inflicted using the hammer. The accused in his evidence clearly admit that he did cause these injuries to Semi and Sovia and he also admits that the injuries caused to semi are extremely serious. However, the difference and the matter in issue is whether it was an unprovoked attack to take revenge or was it an attack due to sudden provocation. As for the evidence of the prosecution on this issue it is inconsistent. Therefore, on a consideration of the totality of the evidence especially in view of Eliza’s the evidence of the accused is more probable then that of the prosecution on the issue of provocation.

#### Proof of Charges

58. On the consideration of the totality of the evidence following facts are not in dispute and they are common ground.
1. That Semi Nate was attacked by the Accused with a hammer.
  2. Semi Nate sustained serious multiple fractures to his skull and facial bones, serious injury to the forehead that penetrated the skull and went into the brain. These injuries were so serious if not for immediate medical attention Semi Nate’s death would have been certain and if not for the medical intervention he would have certainly died due to the said injuries.
  3. Sovia sustained injuries to her wrist, head and shoulder during this incident.
  4. It was the Accused who inflicted these injuries with a hammer both to Semi Nate and Sovia.

### Count No.1-Attempted murder of Semi Nate

59. In view of the aforesaid, the evidence proves that the Accused did cause the injuries on Semi Nate. As to the intention of the Accused the following evidence is available. That a hammer had been used; and extremely high degree of force had been used to fracture a hard bone such as the skull bone. The nature and the place of the injury, it was on the forehead between the eyes which damaged the skull and penetrated into the brain. In the normal course of events a person is presumed to intend the probable and necessarily foreseeable consequences of one's conduct. Thus, when a person inflicts such an injury by a lethal weapon on a critical part of the body the only and necessary inference is that it was caused with an intention to kill Semi Nate. However, due to quick medical intervention Semi Nate's death was prevented. However, as far as the Accused was concerned he had done everything necessary to cause the death of Semi Nate but due to the medical intervention he did not achieved his object. This evidence proves all the ingredients of attempted murder of Semi Nate.
60. This being so the position taken up by the defence and the Accused in his evidence is that he was provoked and when he inflicted the blow he was suffering from the loss of self-control.

### Evidence of Provocation

61. The attack takes place around 3 o'clock on that day. Semi and Nancy were swearing and in an argument where Semi had told them to go back to her village. The porch on the side of the house occupied by the accused was broken. It was broken by Semi either accidentally or deliberately. Semi had been drunk that day according to Nancy. When the accused came Semi had asked him why he had come. When the accused was at the church his daughter Lesley had come twice and informed of swearing by Semi and his wife and of the broken porch. These are the events immediately on that day.
62. Prior to that there had been three other incidents and the following facts become relevant to the issue of provocation. They are:
- In 2020 when both the accused and Nancy were out of the house, a partition between the two rooms had been removed and the belongings of the accused and Nancy were thrown into the sitting area.

- On another occasion Semi and Sovia have been swearing and abusing Nancy.
- Both Semi and Sovia get drunk and swear at the mother-in-law and the father-in-law of the Accused.

63. Apart from these specific events the following become relevant. In 2019 the Accused had allowed Semi to come into the house and has given him a room to live in. the Accused had been living in this house for almost 20 years and by 2020 there were almost 7 of them including his children, wife, and the in-laws who were living in the second room and the living area. Semi has at some point brought Sovia into the room and then there has been some displeasure and disagreements developing. Then suddenly the second room had been forcibly annexed by Semi and Sovia. Sovia admits that they did break the partition and threw belongings of the Accused to the sitting area. Both Semi and Sovia take up the position that the house belongs to them and so they did that. The disputes and swearing had always being connected to the occupation of the house. Eliza confirms that even on the day of the incident Semi had told Nancy that they with the parents should go back to Rabi. It is obvious that Semi and Nancy was desirous of evicting the accused and the family out of the house. Between January 2020 and somewhere in to 2021 this dispute has been brewing. It has being a very sensitive and a regular occurrence. The toilet has been common to both parties. There is evidence of Sovia swearing at the Accused's father-in-law on a matter arising out of the use of the toilet. On the day of the incident the arguments have been triggered on a similar matter where Semi had found fault with Kiri on the use of the toilet. There have been at least two prior incidents of swearing at each other due to the occupation and the use of this house.
64. When one objectively considers this evidence it is clear that Semi and his wife Nancy have been gradually expanding their area of occupation and acquiring portions of the house that was hitherto occupied by accused and his family. The use and ownership of a residential house is by itself is a sensitive issue and especially if you have been in occupation for almost 20 years qua owner. Being so when you are being gradually deprived of your occupation that will most certainly affect any person especially this will be further compounded when the Accused himself has invited and allowed Semi to come in.
65. Then on the day of the incident the accused had been in the church when arguments and swearing between Semi and the accused's children has erupted. He is informed of this and then Nancy who was in the church returns to the house and she too gets into an argument

with Semi. The accused having being informed of this and also of the breaking of the porch returns to the house. The accused is informed of swearing at his children, he sees swearing at his wife Nancy and then the porch at the entrance to his part of the house was broken by Semi. Prosecution witnesses admits that the porch broke and fell down and that Semi had accidentally caused this but the result is that due to some reason apart of the house occupied by the accused had come down because of Semi. According to the accused when he returned the clothes basket and the water drum were thrown to the ground and Semi was swearing at Nancy. In view of the series of precious events and the happenings of the day it is natural and extremely probable that the accused would be in a state of agitation. When a person and his family is threatened to be deprived of their dwelling this agitation naturally becomes extremely serious. In the present case this is more so because the accused and the family is been threatened by a person to whom the accused himself granted permission to live in. As heard by Eliza, Semi whilst swearing has told Nancy and her in-laws to go back to the village Rabi. This is a clear indication that Sami was keen to have the Accused and his family evicted from the house.

66. Eliza confirms that when the accused came there Semi had asked him, “*what are you here for*”. The accused says that Semi tried to jump at him. Both Eliza and Sovia admit that Semi was drunk. Semi admits that he was drinking that day. Considering these circumstances and that Semi was in an argument with Nancy his disposition towards the accused certainly would have been aggressive. This is the trigger incident of the provocation. This considered together with the fact that the porch was broken in the back drop of the cumulative events certainly will and be sufficient to cause the accused or any other reasonable person in those circumstances to be provoked and lose his self-control. It is in this heat of passion that the accused had attacked Semi. Therefore, the evidence is sufficient for this court to be satisfied that the accused was provoked by the utterance of Semi which is the trigger incident and it did in fact cause the deprivation of the self-control.
67. It was submitted by the prosecution that the Accused came armed with a knife and a hammer with a pre-plan to take revenge from Semi and that it negates the inference of provocation. According to the evidence the knife and the hammer are that of the accused and it has been in his house. That morning the accused and the wife have gone to the church and was there until 3 p.m. He says that the knife and the hammer was taken to cut the fish to cook in the church and that day they used it for that purpose. What the Accused says is that when he



returned he brought these because had had to return it back to his house. He also says that as he was informed that the porch was broken he wanted to repair that too. The fact that the knife and hammer belongs to the accused and they were utensils that were in his house is not disputed. It is also in evidence that the return of the accused was prompted by Lesley informing of the broken porch and swearing by Semi. The prosecution witnesses admits that the porch was broken and that the front entrance to the accused's house was somewhat blocked. In these circumstances it is natural and probable for the accused to return with the object of restoring or repairing the said porch and for that purpose bringing the hammer would not be out of the ordinary or unusual. As considered earlier if the accused returned with the sole purpose and intent of killing Semi, the large cane knife by itself would have been sufficient and it is unlikely that he would saddle himself with a hammer in this process. It is not probable to assume that the accused anticipated that the knife would break and he will need a second weapon. Hence, it is more probable not, than that the accused returning with the weapons was not with a pre-conceived intention to kill or attack Semi.

68. Other aspect is Semi states that the accused came through the rear of the house in a concealed manner. However, according to Eliza who was just close to where Semi was. She had seen the accused coming out of the church with the knife and the hammer and walking towards the house. The accused himself says that he came from the front of the house. Eliza confirms this. Therefore, the position taken up by Semi is improbable and appears to be false.
  
69. In view of the above analysis this court is satisfied that the accused was provoked and he reacted in the heat of passion and this was not a pre-planned attack for revenge. Now let me consider if the attack was proportionate. According to the medical evidence and eye witnesses there is one extremely serious blow to the forehead. It had penetrated the skull and smashed up the facial bones. Several blows have been dealt. The accused has prevented Sovia and Eliza from coming to help Semi. When considering it this conduct was proportionate it is necessary to consider the series of events that preceded this day. When a man is threatened to be thrown out and denied of his only place of residents that by itself is sufficient for him to react in an extreme manner. In view of this cumulative nature when a person is deprived of his self-control and is in passion it is not possible for him to rationalize and limit his actions. An allowance will have to be made. He had in his hand hammer and a blow from the hammer will certainly cause this type of serious injury. He did act in a violent manner immediately after the attack chasing Sovia and Eliza but shortly thereafter with the

arrival of a neighbor and a relation he leaves the scene. In these circumstances though the injury was serious I am unable to conclude that it was not proportionate to the cumulative or slow burn provocation which the accused was subjected to. Accordingly, the evidence has proved to the satisfaction of this court that the accused was suddenly provoked and acted in the heat of passion when he caused the injuries to Semi Nate.

Count No. 2- Act with intent to cause grievous injuries to Sovia

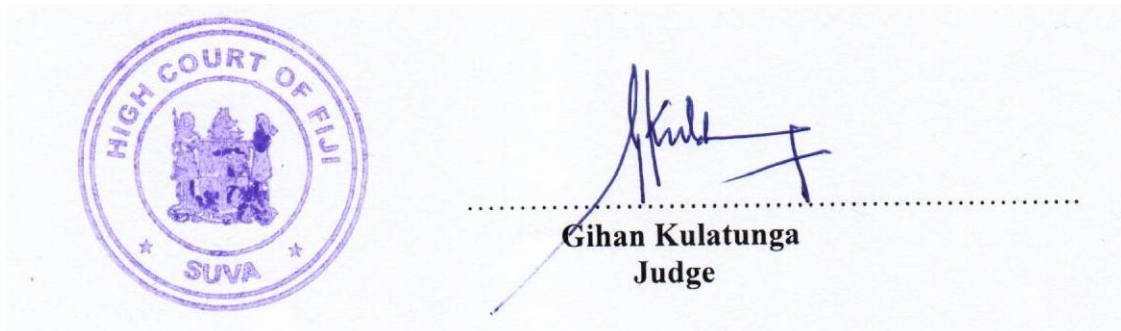
70. According to the medical evidence Sovia has sustained bruises and contusions to the wrist, side of the head and shoulder. This is due to the hammer thrown at her by the accused. Accused admits that he was angry with Sovia and that Sovia was the root cause of all these problems. In this background even though the accused was acting in the heat of passion throwing a hammer at a person in this manner had been done with the intent to disfigure or do some grievous harm to Sovia. This inference can be drawn by the fact that Sovia had avoided the hammer from hitting her head or face directly by blocking with her hands and ducking or dodging. Despite this evasive action the hammer has struck the wrist, side of the head and the shoulder. There is a dislocation of the shoulder. This demonstrated the velocity and the aggression with which the hammer had been thrown at her. A person is presumed to intend natural and probable consequences which are forcible with certainty Section 19 (3) incorporates this principle and clearly states that a person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events.
71. The central issue of a charge of an act with intent to cause grievous injuries is the intention and not the result. In the present case the accused throwing the hammer with a great velocity by itself will prove that he intended to cause grievous harm. As to the injuries actually caused, is a dislocation of the shoulder this considered with the head injury of the scalp towards the forehead which will result in a permanent scar will be a permanent disfigurement. These injuries come within the meaning of grievous harm as defined by Section 4 (1) of the Crimes Act. Accordingly, I am satisfied that the charge of act with intent to cause grievous harm has been proved beyond reasonable doubt by the prosecution.

Conclusion

72. In the aforesaid circumstances this court is satisfied that the prosecution has proved beyond reasonable doubt that the accused did attempt to kill Semi Nate and he did so with the

intention of causing his death as alleged by count No. 1. However, the evidence has also established that this act was committed in the heat of passion caused by sudden provocation when the accused has lost his self-control and therefore the accused cannot be found guilty of attempted murder but only of attempted manslaughter.

73. Accordingly, I hold that the prosecution has proved beyond reasonable doubt that the Accused had committed the lesser offence of count No. 1, namely attempted manslaughter punishable under Section 44 and section 239 of the Crimes Act.
74. This court is satisfied that the prosecution has proved beyond reasonable doubt that the accused acted with the intention to cause grievous harm to Sovia as alleged in count number 2 and did cause grievous injuries to her and I hold that the prosecution has proved beyond reasonable doubt the offence of act with intend to cause grievous harm contrary to Section 255 (a) of the Crimes Act as charged by count number 2.
75. Accordingly, the Accused is found guilty of attempted manslaughter punishable under Section 44 and Section 239 of the Crimes Act being the lesser offence of count No.1 and the Accused is found guilty of the offence of act with intend to cause grievous harm contrary to Section 255 (a) of the Crimes Act as charged by count number 2. Accordingly, the Accused is convicted for the said offences separately.



**At Suva**  
18<sup>th</sup> August 2022

**Solicitors**  
Office of the Director of Public Prosecutions for the State.  
Legal Aid Commission for the Accused.