

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

**Crim. Case No: HAC 286 of 2021**

**STATE**

vs.

**SANJAY MISTRY**

**Counsel:** Mr. E. Samisoni for the State  
Mr. W. Navuni for Accused

**Dates of Hearing:** 07<sup>th</sup> December 2023

**Date of Closing Submission:** 08<sup>th</sup> December 2023

**Date of Judgment:** 26<sup>th</sup> January 2024

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**JUDGMENT**

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1. The Acting Director of Public Prosecution, on the 28th of April 2023, filed this Amended Information, charging the Accused, Mr. Sanjay Mistry, with one count of Attempted Murder, contrary to Section 44(1) and 237 of the Crimes Act. The particulars of the offence are the following;

**COUNT 1**

*Statement of Offence*

**ATTEMPTED MURDER:** Contrary to Section 44 (1) and 237 of the Crimes Act 2009.

*Particulars of Offence*

**SANJAY MISTRY** on the 4<sup>th</sup> day of December 2021 at Nabua, Suva in the Central Division, attempted to murder **YOLANDA MEREANNE AITCHESON** by striking her with a knife.

2. The accused pleaded not guilty to this offence; hence, the matter proceeded to the hearing on the 07<sup>th</sup> of December 2023. The Accused attended to this matter during the pre-trial stages but failed to do so during the hearing. Having satisfied that the Accused was aware of the requirement of his attendance at this hearing but has chosen not to attend, the Court proceeded with the hearing in his absence. However, the learned Counsel for the Accused was present during the hearing.
3. The Accused is presumed to be innocent until he is proven guilty. The presumption of innocence is in force until the Court finds him guilty of the offence. The burden of proof of the charge against the accused is on the Prosecution. The standard of proof in a criminal trial is "proof beyond a reasonable doubt." It means that the Court must be satisfied that the accused is guilty of the offence.
4. The Prosecution presented the evidence of four witnesses during the hearing, including the Complainant. Subsequently, the learned Counsel for the Prosecution filed his written closing submissions. The learned Counsel for the Accused informed the Court that he has no instruction to file any closing submissions.
5. The Prosecution alleges that the Accused had attempted to kill the Complainant by striking her on her back, hand and chest with three knives on the 04<sup>th</sup> of December 2021. Accordingly, the main elements that the Prosecution is required to prove beyond reasonable doubt are:
  - i) The Accused,
  - ii) Engaged in a conduct,
  - iii) The said conduct was an attempt to cause the death of the Complainant,

- iv) The Accused intended to cause the death of the Complainant by his conduct.
6. The alleged conduct is striking the Complainant with three knives. The Complainant and the Accused were in a relationship and living with her aunt on the 4th of December 2021. The Accused was unhappy with the church meeting they had that afternoon and the conversation about it. The Accused went and got three knives from the kitchen drawer and first struck the Complainant on her back. He then tried to attack her on her front, which she blocked with her hand. That assault wounded her hand. She then fell on the floor, and the Accused sat on her stomach and tried to stab her. She retaliated while she was losing her strength and consciousness. However, she managed to stop him from stabbing her chest, but still, the Accused managed to strike her breast. In the meantime, the Complainant's aunt, who was present in the house, shouted, asking her daughter and the Complainant's daughter not to come out. The sound of this commotion alerted the neighbour, Mr Lotawa who came to the Complainant's house with his son and managed to stop the Accused from assaulting the Complainant further.
  7. The evidence of Doctor Jope Makutu confirmed the injuries sustained by the Complainant during this assault. He explained the severity of the injuries and the treatment given to the Complainant.
  8. The Complainant heard that the Accused was saying, "*Now you gonna see, you gonna die, you gonna die*", while assaulting her with knives.
  9. This evidence established that the Accused struck the Complainant intending to kill her. I accordingly satisfied that the Prosecution proved beyond reasonable doubt that the Accused attempted to murder the Complainant on the 4th of December 2021.

10. In conclusion, I find the Accused guilty of Attempted Murder, contrary to section 44 (1) and 237 of the Crimes Act and convict him of the same accordingly.



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Hon. Mr. Justice R. D. R. T. Rajasinghe

**At Suva**

26<sup>th</sup> January 2024

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.