

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 57 of 2022

STATE

V

MALAKAI LUVENITOGA

Counsel : Ms. Sheenal Swastika for the State
Ms. Benita Kumari with Mr. Alifereti Waqavakatoga for the Accused

Date of Trial : 5 February 2025

Closing Submissions : 7 February 2025 and 13 February 2025

Judgment : 4 March 2025

JUDGMENT-SPECIAL VERDICT

[1] As per the Information filed by the Director of Public Prosecutions (DPP), the accused, Malakai Luvenitoga, is charged with the following offence:

Statement of Offence

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

Particulars of Offence

MALAKAI LUVENITOGA, on the 14th day of April 2022, at Lautoka, in the Western Division, attempted to murder one **URAIA VOTA**.

[2] The accused pleaded not guilty to the charge and the ensuing trial was concluded within one day. Thereafter, the Learned Counsel for the Defence and the State made their closing submissions in that order.

The Burden of Proof and the Standard of Proof

[3] Section 14 of the Crimes Act No. 44 of 2009 (Crimes Act) stipulates as follows:

In order for a person to be found guilty of committing an offence the following must be proved –

(a) the existence of such physical elements as are, under the law creating the offence, relevant to establishing guilt;

(b) in respect of each such physical element for which a fault element is required, one of the fault elements for the physical element.

[4] Section 57 of the Crimes Act No. 44 of 2009 (Crimes Act) provides that the prosecution bears a legal burden of proving every element of an offence. The Section reads as follows:

(1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.

(2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.

(3) In this Decree (Act) –

"legal burden", in relation to a matter, means the burden of proving the existence of the matter.

[5] Section 58 (1) of the Crimes Act stipulates that a legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

Legal Provisions and the Elements of the Offences

[6] As could be observed the accused is charged with one count of Attempted Murder, contrary to Section 44 (1) and 237 of the Crimes Act. Section 237 of the Crimes Act reads as follows:

"A person commits an indictable offence if –

(a) the person engages in conduct; and

(b) the conduct causes the death of another person; and

(c) *the first-mentioned person intends to cause, or is reckless as to causing, the death of the other person by the conduct."*

[7] Section 44 of the Crimes Act deals with Attempts, which is in effect an extension of criminal responsibility. Sections 44(1) and 44(2) are particularly relevant. The two sub Sections read as follows:

"(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."

[8] Therefore, in order to prove the count of Attempted Murder, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case on the 14 April 2022);
- (iii) At Lautoka, in the Western Division;
- (iv) Engaged in a conduct; and
- (v) The said conduct was an attempt to cause the death of Uraia Vota; and
- (vi) The accused intended to cause the death of the said Uraia Vota; or the accused was reckless as to causing the death of the said Uraia Vota by his conduct.

[9] To further elaborate on these elements in respect of this count.

[10] The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond any reasonable doubt that the accused and no one else committed the offence.

[11] The second element relates to the specific day on which the offence was committed. The third element relates to the place at which the offence was committed. The prosecution should prove these elements beyond reasonable doubt.

[12] The fourth element relates to the conduct of the accused. Section 15(2) of the Crimes Act defines as to what is meant by the term conduct. To engage in a conduct is to do or

perform an act. As per Section 16(1) of the Crimes Act conduct can only be a physical element if that act is voluntary; and as per Section 16(2) of the Crimes Act conduct is only voluntary if it is the product of the will of the accused. The prosecution has to prove beyond reasonable doubt that the conduct of the accused was deliberate and not accidental.

- [13] Furthermore, in term of the provisions of Section 44 (2) of the Crimes Act, 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 conduct is more than merely preparatory to the commission of the offence is one of fact.
- [14] When dealing with the fifth element, the prosecution must establish beyond any reasonable doubt that the said conduct of the accused was an attempt to cause the death of Uraia Vota.
- [15] With regard to the final element which concerns the state of mind of the accused, the prosecution should prove beyond reasonable doubt, either, that the accused intended to cause the death of the said Uraia Vota or that the accused was reckless as to causing the death of the said Uraia Vota. The prosecution should prove only one of the two limbs of this element. As stated previously, it is not possible to have direct evidence regarding an accused'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, Court can deduce the state of mind of the accused from the facts and circumstances that it would consider as proved. Intention or recklessness of an accused can be inferred based on relevant proven facts and circumstances.
- [16] Section 19 (1) of the Crimes Act provides that a person has intention with respect to conduct if he or she means to engage in that conduct. In order for Court to conclude that the accused intended to cause the death of the said Uraia Vota, Court should be sure that he meant to bring about the death or that he was aware that death will occur in the ordinary course of events as a result of his conduct. Court will have to consider all the evidence and draw appropriate inferences to ascertain whether the accused had the intention to cause the death of the said Uraia Vota.

- [17] In the event Court finds that the accused did not have the intention to cause the death of the said Uraia Vota or is not sure whether he had that intention, Court will then have to consider whether the accused was reckless as to causing the death of the said Uraia Vota. In terms of the provisions of Section 21 (1) of the Crimes Act, an accused will be reckless with respect to causing the death of the said Uraia Vota, if;
- a. He was aware of a substantial risk that death will occur due to his conduct; and
 - b. Having regard to the circumstances known to him, it was unjustifiable for him to take that risk.
- [18] What Court must to consider with regard to this particular state of mind is whether the accused did foresee or realise that death was a probable consequence or the likely result of his conduct; and yet he decided to go ahead and engage in the conduct regardless of that consequence. The accused must foresee that death was a probable consequence or the likely result of his conduct and after realising that, if he decided to go ahead and engage in that conduct regardless of the likelihood of death resulting, then he was reckless as to causing the death of the said Uraia Vota. In order to constitute the offence of attempted murder by recklessness, actual awareness of the likelihood of death occurring must be proved beyond reasonable doubt by the prosecution.
- [19] It must also be stated that Section 21 (4) of the Crimes Act states as follows: *"If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element."*
- [20] In this case, the accused is taking up the defence of Mental Impairment, pursuant to Section 28 of the Crimes Act. For ease of reference Section 28 of the Crimes Act is reproduced below.

"28. — (1) A person is not criminally responsible for an offence if, at the time of carrying out the conduct constituting the offence, the person was suffering from a mental impairment that had the effect that —

(a) the person did not know the nature and quality of the conduct; or

(b) the person did not know that the conduct was wrong (that is, the person could not reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, was wrong); or

(c) the person was unable to control the conduct.

(2) The question whether the person was suffering from a mental impairment is one of fact.

(3) A person is presumed not to have been suffering from such a mental impairment. The presumption is only displaced if it is proved on the balance of probabilities (by the prosecution or the defence) that the person was suffering from such a mental impairment.

(4) The prosecution can only rely on this section if the court gives leave.

(5) The court must return a special verdict that a person is not guilty of an offence because of mental impairment if and only if it is satisfied that the person is not criminally responsible for the offence only because of a mental impairment.

(6) A person cannot rely on a mental impairment to deny voluntariness or the existence of a fault element but may rely on this section to deny criminal responsibility.

(7) If the court is satisfied that a person carried out conduct as a result of a delusion caused by a mental impairment, the delusion cannot otherwise be relied on as a defence.

(8) In this section —

"mental impairment" includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.

(9) The reference in sub-section (8) to mental illness is a reference to an underlying pathological infirmity of the mind (whether of long or short duration and whether permanent or temporary), but does not include a condition that results from the reaction of a healthy mind to extraordinary external stimuli.

(10) A condition that results from the reaction of a healthy mind to extraordinary external stimuli may be evidence of a mental illness if it involves some abnormality and is prone to recur."

[21] Section 28 (2) of the Crimes Act provides that the question whether the person was suffering from a mental impairment is one of fact. In terms of the provisions of Section 28 (3) a person is presumed not to have been suffering from such a mental impairment. The presumption is only displaced if it is proved on the balance of probabilities (in this instance by the defence) that the person was suffering from such a mental impairment.

Therefore, it is incumbent on the defence to establish on the balance of probabilities that the accused was suffering from such a mental impairment at the time of the offending and as such is not criminally responsible for the offence.

The Admitted Facts

[22] Section 135 of the Criminal Procedure Act No. 43 of 2009 (“Criminal Procedure Act”), deals with “Admission of facts”. The Section is reproduced below:

135. — (1) An accused person, or his or her lawyer, may in any criminal proceedings admit any fact or any element of an offence, and such an admission will constitute sufficient proof of that fact or element.

(2) Every admission made under this section must be in writing and signed by the person making the admission, or by his or her lawyer, and—

(a) by the prosecutor; and

(b) by the judge or magistrate.

(3) Nothing in sub-section (2) prevents a court from relying upon any admission made by any party during the course of a proceeding or trial.

[23] Accordingly, the prosecution and the defence have consented to treat the following facts as “Agreed Facts”:

1. That the complainant in this matter is Uraia Vota aged 25 years at the time of the alleged offence.
2. That the alleged incident happened on the 14th day of April 2022 at Captain Withers Street, Lautoka.
3. That Malakai Luvenitoga is charged with one count of Attempted Murder contrary to Section 44 (1) and 237 of the Crimes Act 2009.
4. That Malakai Luvenitoga resides at Captain Withers Street, Lautoka.
5. That on the day of the alleged incident, the complainant was consuming rice wine and rum with his friends namely Usaia, Simeli and Nacanieli.
6. That on the day of the alleged incident Malakai Luvenitoga and the complainant got into an argument.

7. That Malakai Luvenitoga does not dispute being present at Captain Withers Street, Lautoka with the complainant on the 14th of April 2022.
8. That Malakai Luvenitoga was interviewed under caution on the 15th of April 2022 by Interviewing Officer PC 5957 Tomasi and PC Joela was the Witnessing Officer.
9. That Malakai Luvenitoga had undergone psychiatric evaluation on the 9th of June 2022, 25th of July 2022 and on the 19th of August 2022.
10. That Malakai Luvenitoga does not dispute the existence of the Psychiatric Evaluation Report dated 28th September 2022.
11. That Malakai Luvenitoga's Psychiatric Evaluation Report dated 28th September 2022 is tendered by consent [Has been tendered to Court as Prosecution Exhibit **PE1**].

[24] In addition to the above, the prosecution and the defence have consented to treat the following facts as "*Further Agreed Facts*":

1. That on the 14th April 2022, the complainant was consuming rice wine and rum with his friends namely Usaia, Simeli and Nacanieli, when Malakai Luvenitoga approached them.
2. That Malakai Luvenitoga and the complainant then started fighting with each other.
3. That Malakai Luvenitoga was holding on to a kitchen knife when he had approached the complainant and his friends.
4. That Malakai Luvenitoga and the complainant got into a physical fight where both parties exchanged punches.
5. That Malakai Luvenitoga then chased the complainant which resulted in him falling into a drain.
6. That Malakai Luvenitoga then jumped into the drain and stabbed the complainant five times.
7. That the complainant then walked towards the road and fell on it.
8. That Malakai Luvenitoga then ran to the complainant again and sat on his chest.

9. That Malakai Luvenitoga was still holding on to the knife whilst sitting on the complainant's chest when one Usaia Cula went and held Mr Luvenitoga.
10. That Malakai Luvenitoga then threw the knife at Usaia Cula when he tried to approach him.
11. That Usaia Cula then kicked Malakai Luvenitoga's face.
12. That Malakai Luvenitoga then ran away from the scene.
13. That the complainant was then assisted by the bystanders and his friends in transporting him to the hospital.
14. That the complainant was medically examined by Dr. Atul Lal and admitted at the Lautoka Hospital (Emergency Department).
15. That according to the medical report prepared by Dr. Atul Lal, the complainant sustained 3 stab wounds on the posterior chest, 1 stab wound on the left deltoid (shoulder), 1 stab wound on the left posterior neck and an abrasion over right knee.
16. That the medical report dated 14th April 2022 is tendered by consent [Has been tendered to Court as Prosecution Exhibit **PE6**].
17. That the Psychiatric Evaluation Report dated 22nd August 2024 is tendered by consent [Has been tendered to Court as Defence Exhibit **DE3**].

[25] Since the prosecution and the defence have consented to treat the above facts as "*Agreed Facts*" and "*Further Agreed Facts*" without placing necessary evidence to prove them, the above facts are proved beyond reasonable doubt.

[26] Furthermore, both parties have consented to have the following documents tendered and admitted in evidence.

1. Police Statement of Uraia Vota dated 18th April 2024 [Has been tendered to Court as Prosecution Exhibit **PE2**].
2. Police Statement of Usaia Cula dated 18th April 2024 [Has been tendered to Court as Prosecution Exhibit **PE3**].
3. Police Statement of Watisoni Koroi dated 14th April 2024 [Has been tendered to Court as Prosecution Exhibit **PE4**].

4. Police Statement of PC 7232 Henry dated 17th April 2024 [Has been tendered to Court as Prosecution Exhibit **PE5**].
5. Medical (Examination) Report dated 14th April 2022 [Has been tendered to Court as Prosecution Exhibit **PE6**].
6. Psychiatric Evaluation Report dated 22nd August 2024 [Has been tendered to Court as Defence Exhibit **DE3**].

[27] This is the case for the prosecution. The prosecution did not lead the evidence of any witnesses in Court. The prosecution is solely relying on the *Agreed Facts, Further Agreed Facts and the Agreed Bundle of Documents* which have been tendered to Court.

[28] At the end of the prosecution case Court decided to call for the defence. The accused was then explained his legal rights. I explained to him that he could address Court by himself or his Counsel. He could also give sworn evidence from the witness box and/or call witnesses on his behalf. He could even remain silent. He was given these options as those were his legal rights. I explained to the accused that he need not prove anything. The burden of proving his guilt rests entirely on the prosecution at all times.

[29] The accused exercised his right to remain silent. However, the defence called Dr. Kiran Gaikwad, the Principal Medical Officer of the St. Giles Hospital, in support of the accused's case.

Case for the Defence

[30] Evidence of Dr. Kiran Gaikwad

- (i) *The witness testified that he is 53 years old and is the Principal Medical Officer of the St. Giles Hospital. He has been serving in that capacity for 3 years. He has been working at St. Giles Hospital since 2011 (over 13 years).*
- (ii) *Dr. Gaikwad had completed his MBBS Degree at Pune University, India, in 1997. He is also the recipient of a Post Graduate Diploma in Mental Health from Fiji National University (FNU), in 2013 and an International Diploma in Mental Health, Human Rights and Law from Indian Law Society (ILS), Pune, India, in 2015.*
- (iii) *The witness said that he recognizes the accused since he has examined and treated him on several occasions at the St. Giles Hospital. The last time he had met the accused was on 10 January 2025, at the Lautoka Remand Centre.*

- (iv) *As per the order made by this Court on 14 February 2023, Dr. Gaikwad had conducted a psychiatric evaluation on the accused. Pursuant to the said psychiatric evaluation, the Doctor had tendered a comprehensive Psychiatric Evaluation Report, dated 25 May 2023. The said Report was tendered to Court as Defence Exhibit DE1. The Report is signed by Dr. Gaikwad and counter-signed by Dr. Balram Pandit, Medical Superintendent, St. Giles Hospital.*
- (v) *The witness confirmed that the accused, Malakai Luvenitoga, has a well-established history of mental illness, namely schizophrenia, since 2014. He has had 6 admissions at St. Giles Hospital since then. The first admission was on 1 May 2014.*
- (vi) *The Doctor stated that for the purpose of this examination and report, the accused was admitted to the St. Giles Hospital for observation from 3 May 2023 to 22 May 2023.*
- (vii) *Dr. Gaikwad testified that as per the Report the accused has been diagnosed with mental illness, namely schizophrenia and has been commenced on medications. Schizophrenia is the most chronic and disabling of the severe mental disorders, associated with abnormalities of brain structure and function, disorganised speech and behaviour, delusions, and hallucinations. It is sometimes called psychotic disorder or a psychosis. Medications are the mainstay of treatment for schizophrenia. Drug therapy for the disorder, however, is complicated by several factors: the unpredictability of a given patient's response to specific medications, the number of potentially troublesome side effects, the high rate of substance abuse among patients with schizophrenia, and the possibility of drug interactions between antipsychotic medications and antidepressants or other medications that may be prescribed for the patient. Most symptoms do get alleviated by medications and in some cases there is residual symptoms.*
- (viii) *The Doctor continued that as per the Report the accused is aware of his actions and nature and quality of conduct. When asked about legal proceedings, he did not seem to understand the role of a Judge. He stated that he has a Lawyer from Legal Aid but he has already won the case. He is not fully aware of how to conduct himself in a Court room. The accused may not have the ability to appraise the legal defences available to him or to plan legal strategy in Court.*
- (ix) *Therefore, in his opinion, Dr. Gaikwad stated that the accused lacks the mental capacity to participate in his Court proceedings at present. He lacks the capacity to comprehend the legal proceedings. He may not be able to plan legal strategy. He has limited capacity to challenge prosecution witnesses realistically. He will not be able to answer questions during examination and cross examination in a reasonable manner.*
- (x) *Dr. Gaikwad concluded that at the time of the said Examination and Report:*

(1) That the accused is not fit to plead at present because he is in a relapsed state of his mental illness with delusional thoughts.

(2) It is highly likely that he acted under the influence of mental illness. However, he was also under the influence of alcohol at the time of the alleged criminal offence.

(3) He cannot be said completely fit to stand trial as he may answer during examination and cross-examination based on his delusional ideas which are not realistic.

(4) He needs to keep taking his medications and further improvement is possible but cannot be guaranteed.

(5) He can be a threat to other in the community in current state of his mind and needs to be kept in controlled environment.

- (xi) The above conclusions were based exclusively on the history/information available, current observations made during the accused's stay in hospital, current examination, personal interviews and assessment of the accused's mental state.*
- (xii) Based on the said conclusions, on 7 September 2023, Court had made order for the accused to be confined at St. Giles Hospital for medical treatment and supervision for a period of 4 months.*
- (xiii) Dr. Gaikwad testified to a further Psychiatric Evaluation Report, dated 7 January 2024, which was tendered to Court as Defence Exhibit DE2. This Report was pursuant to the accused been confined at St. Giles Hospital for a period of 4 months as per the order of Court. The said Report is signed by Dr. Afia Zahin, Senior Medical Officer, St. Giles Hospital and counter-signed by Dr. Balram Pandit, Medical Superintendent, St. Giles Hospital.*
- (xiv) The findings of the said Report was similar to the findings of the previous Report. It reiterated that the accused has been diagnosed with mental illness, namely schizophrenia. It is highly likely that he acted under the influence of his mental illness. However, he was also under the influence of alcohol at the time of the alleged criminal offence. He needs to continue taking his medications and further improvement is possible but cannot be guaranteed. The Report states that the accused is not fit to plead at present and is not fit to stand trial.*
- (xv) Based on the findings of the above Report, this Court had made a further order on 26 February 2024, for the accused to be further confined at St. Giles Hospital for medical treatment and supervision for a period of 6 months from the date of the order.*
- (xvi) Dr. Gaikwad testified to a further Psychiatric Evaluation Report, dated 22 August 2024, which was tendered to Court as Defence Exhibit DE3. This Report was pursuant to the accused been confined at St. Giles Hospital for a period of 6 months as per the order of Court. The Report is signed by Dr. Gaikwad and counter-signed by Dr. Balram Pandit, Medical Superintendent, St. Giles Hospital.*
- (xvii) This Report further confirmed that the accused has a history of mental illness, namely schizophrenia. He was also under the influence of alcohol at the time*

of the alleged criminal offence. However, it is highly likely that he acted under the influence of his mental illness. He needs to continue taking his medications to remain in a stable state of mind.

(xviii) However, as per this Report, it is stated that the accused is fit to plead at present and is fit to stand trial.

(xix) Dr. Gaikwad further testified that the accused has had a total number of 8 admissions at St. Giles Hospital up to date. In the year 2022, he had been admitted to St. Giles Hospital from 5 March 2022 and obtained in-house treatment until 31 March 2022. The incident the accused is charged with had taken place 2 weeks after his released from the hospital. The doctor said that the accused could have been relapsing, as it is not clear whether he was taking his medications. Therefore, it is highly likely that he acted under the influence of his mental illness at the time of the incident.

(xx) In cross-examination the witness said if released under the care of a guardian, that the accused would not be a threat. However, he would need constant supervision as he needs to continue taking his medications to remain in a stable state of mind.

Analysis

[31] In this case the prosecution did not lead the evidence of any witnesses in Court. To prove their case, the prosecution is solely relying on the *Agreed Facts, Further Agreed Facts and the Agreed Bundle of Documents* which have been tendered to Court.

[32] The accused exercised his right to remain silent. However, the defence called Dr. Kiran Gaikwad, the Principal Medical Officer of the St. Giles Hospital, in support of the accused's case.

[33] The burden of proving each ingredient of the charge of Attempted Murder rests entirely and exclusively on the prosecution and the burden of proof is beyond a reasonable doubt. Therefore, it is incumbent on the prosecution to prove the elements of the charge beyond reasonable doubt. I have made reference to the elements that the prosecution has to prove in respect the charge of Attempted Murder, at paragraph 8 of this judgment. I have further elaborated on those elements in respect of the charge.

[34] Accordingly, in this case, the prosecution has to prove beyond a reasonable doubt that the accused, Malakai Luvenitoga; on 14 April 2022; at Lautoka; engaged in a conduct; and the said conduct was an attempt to cause the death of Uraia Vota; and that the

accused intended to cause the death of the said Uraia Vota or the accused was reckless as to causing the death of the said Uraia Vota by his conduct.

- [35] As I have stated before, in this case it has been agreed by the prosecution and the defence to treat certain facts as agreed facts and further agreed facts without placing necessary evidence to prove them. Therefore, those facts are considered as proved beyond reasonable doubt.
- [36] Based on the said agreed facts and further agreed facts and also the statements made to the Police of Usaia Cula and Watisoni Koroï, who are eye witnesses to the incident, I find that the prosecution has proved all ingredients of the charge of Attempted Murder beyond reasonable doubt. The aforesaid Police statements have been tendered to Court with consent and as such form part of the evidence before this Court.
- [37] Furthermore, the Medical Examination Report of the complainant, Uraia Vota, dated 14 April 2022, which has been tendered to Court as Prosecution Exhibit PE6, clearly depicts the injuries that had been caused to the complainant. According to that Medical Report prepared by Dr. Atul Lal, the complainant sustained 3 stab wounds on the posterior chest, 1 stab wound on the left deltoid (shoulder), 1 stab wound on the left posterior neck and an abrasion over right knee.
- [38] In this case, the accused is taking up the defence of mental impairment (insanity), pursuant to Section 28 of the Crimes Act. In support of their contention the defence relies on the testimony of Dr. Kiran Gaikwad, the Principal Medical Officer of the St. Giles Hospital.
- [39] During the course of his evidence, Dr. Gaikwad tendered to Court 3 Psychiatric Evaluation Reports (Defence Exhibits DE1, DE2 and DE3). As per the Reports it is stated that the accused, Malakai Luvenitoga, has a well-established history of mental illness, namely schizophrenia, since 2014. He has been admitted to St. Giles Hospital on 8 occasions for examination and treatment for the said condition.
- [40] Schizophrenia is the most chronic and disabling of the severe mental disorders, associated with abnormalities of brain structure and function, disorganised speech and behaviour, delusions, and hallucinations. It is sometimes called psychotic disorder or a psychosis. It is stated that medications are the mainstay of treatment for schizophrenia. However, drug

therapy for the disorder is complicated by several factors: the unpredictability of a given patient's response to specific medications, the number of potentially troublesome side effects, the high rate of substance abuse among patients with schizophrenia, and the possibility of drug interactions between antipsychotic medications and antidepressants or other medications that may be prescribed for the patient. Most symptoms do get alleviated by medications and in some cases there is residual symptoms.

- [41] Based upon the findings of the Psychiatric Evaluation Report, dated 25 May 2023 (Defence Exhibits DE1), on 7 September 2023, this Court had made order for the accused to be confined at St. Giles Hospital for medical treatment and supervision for a period of 4 months.
- [42] At the conclusion of the 4 months period, a further Psychiatric Evaluation Report, dated 7 January 2024, was submitted to Court (Defence Exhibit DE2). Based upon the findings of the said Report, on 26 February 2024, this Court had made a further order for the accused to be further confined at St. Giles Hospital for medical treatment and supervision for a period of 6 months from the date of the order.
- [43] At the conclusion of the 6 months period, a further Psychiatric Evaluation Report, dated 22 August 2024, was submitted to Court (Defence Exhibit DE3).
- [44] Dr. Gaiwad has testified that the accused had been admitted to St. Giles Hospital from 5 March 2022 and obtained treatment until 31 March 2022. The date of offending as per the Information is 14 April 2022, which is 2 weeks after his release from the hospital. Therefore, it is highly likely that he acted under the influence of his mental illness at the time of the incident.
- [45] In terms of Section 28 (8) of the Crimes Act "*mental impairment*" includes *senility, intellectual disability, mental illness, brain damage and severe personality disorder*. Schizophrenia with which the accused has been diagnosed with is one such mental illness.
- [46] Having considered all the evidence in its totality, I am of the opinion that the accused has established and discharged on a balance of probability that he was suffering from a mental impairment, namely schizophrenia, on 14 April 2022, and as a result that he was not criminally responsible for his actions at the time.

- [47] In terms of the provisions of Section 28 (5) of the Crimes Act, I am satisfied that the accused is not criminally responsible for the offence due to his mental impairment. Accordingly, I make a special verdict that the accused, Malakai Luvenitoga, is not guilty of the offence he is charged with due to his mental impairment.
- [48] Section 105 of the Criminal Procedure Act reiterates that where Court has made a finding that the accused was suffering from a mental impairment at the time of the offending, the Court shall make a special finding (special verdict) that he is not guilty of the offence by reason of the said mental impairment (insanity).
- [49] In the circumstances, I find the accused not guilty of the charge of Attempted Murder by reason of his mental impairment.
- [50] Accordingly, Court will issue further orders in accordance with the provisions of Section 105 of the Criminal Procedure Act and the Mental Health Act No. 54 of 2010 (Mental Health Act).



Riyaz Hamza
Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT LAUTOKA

Dated this 4th Day of March 2025

Solicitors for the State: Office of the Director of Public Prosecutions, Lautoka.
Solicitors for the Accused: Office of the Legal Aid Commission, Lautoka.