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IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 365 of 2013

STATE

v.

JOSATEKI TABUA

Counsel: Mr. M. Vosawale for State
Mr. P. Tawake for Accused

Hearing: 21st, 22nd and 23rd September 2015

Summing Up: 25th September 2015

Judgment: 28th September 2015

JUDGMENT

1. The accused is charged with the following offence:

Count One

Statement of Offence

ATTEMPTED MURDER: Contrary to section 44 and section 237 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JOSATEKI TABUA on the 27th day of October, 2013 at Toorak, Suva, in the Central Division, attempted to cause the death of TIMAIMA VATUBUA, and at the time, intended to cause the death.

2. After full trial with 3 assessors, assessor No. 1 and 2 opined that the accused is guilty of Attempted Murder as charged. Assessor No. 3 opined that the

accused is not guilty of Attempted Murder, but guilty of the lesser alternative offence of Act with Intent to Cause Grievous Harm. I adjourned to consider my judgment.

3. I direct myself in accordance with my summing up and the evidence adduced at the trial.
4. There is no dispute that the accused stabbed the victim with a kitchen knife. Accused in his evidence admitted that he stabbed the victim with the kitchen knife. However the accused says that he did not intend to kill the victim but wanted to frighten her. Therefore the element which is disputed is the intention of the accused to kill the victim.
5. The intention of the accused when he stabbed the victim who was her defacto partner can be decided by considering the circumstances of the incident. Actions of the accused before, at the time, and after the stabbing, the number of the injuries caused and the place where the injuries were inflicted can be considered to decide on the intention of the accused at the crucial time when he stabbed the victim.
6. In his own evidence the accused said that he got very frustrated and it was painful when the victim told him to look for another woman, after they had an argument. He had gone to the kitchen, took the kitchen knife, forcefully opened the bedroom door which was locked from inside and stabbed the victim. According to his own evidence their relationship had been not so good as she was seen with another man at home before. He also said that everything had built up to that moment. In his examination in chief when he was asked as to why he struck the victim with the knife, the accused said, he

struck her because of the anger and the pain he was going through and that he had no peace.

7. The Complainant received 3 stab injuries on her chest according to the medical report and doctor's evidence. They were, 1st one on her right upper chest just below the right collar bone. 2nd injury was on the left breast and the 3rd stab injury was on the lower chest wall between the 10th and 11th rib space. The Surgeon who treated her said that the stab injuries were of very serious nature and that she was very lucky to survive with all the injuries and the complications.
8. Although the accused had been remorseful after stabbing the complainant, the above evidence proved beyond reasonable doubt that the accused intended to kill the victim at the time he stabbed her chest 3 times causing serious injuries.
9. Hence I find that the prosecution has proved all the elements of the offence of Attempted Murder beyond reasonable doubt.
10. Therefore I agree with the majority opinion of the assessors that the accused is guilty of Attempted Murder as charged.
11. I convict the accused accordingly.




Priyantha Fernando
Judge

At Suva

28th September 2015

Solicitors

Office of the Director of Public Prosecution for State
Office of the Legal Aid Commission for Accused