

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 69 of 2016**

**STATE**

**V**

**SHAHISTA SHEWANI DEVI**

**Counsel** : Mr. S. Shah with Mr. Z. Zunaid for the State  
Mr. A. K. Singh for the Accused

**Dates of Trial** : 14-15 September and 18-21 September 2017

**Summing Up** : 22 September 2017

**Judgment** : 25 September 2017

## **JUDGMENT**

[1] The accused was charged with the following offences:

### **FIRST COUNT**

#### ***Statement of offence***

**CRIMINAL INTIMIDATION:** Contrary to Section 375 (1), (a)(i) and (iv) of the Crimes Decree, 2009.

#### ***Particulars of the Offence***

**SHAHISTA SHEWANI DEVI** on the 2<sup>nd</sup> of February, 2016 at Nasinu in the Central Division, without lawful excuse, threatened **MANDUR LATA** with a knife with intent to cause alarm to the said **MANDUR LATA**.

## SECOND COUNT

### *Statement of offence*

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

### *Particulars of the Offence*

**SHAHISTA SHEWANI DEVI** on the 2<sup>nd</sup> of February, 2016 at Nasinu in the Central Division, attempted to murder **DIVYAN DAKSH PRASAD**.

- [2] The accused pleaded not guilty to the charges and the ensuing trial was held over 6 days.
- [3] At the conclusion of the case for the prosecution, this Court made a Ruling that the accused has no case to answer in respect of count 1 and she was accordingly acquitted of this count. Therefore, the charge that is remaining against the accused is count 2.
- [4] At the conclusion of the evidence and after the directions given in the summing up, the three Assessors unanimously found the accused not guilty of count 2, the charge of Attempted Murder.
- [5] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors.
- [6] In support of their case, the prosecution led the evidence of the following witnesses:
1. Madhur Lata (the mother-in-law of the accused)
  2. Manish Priyant Prasad (the husband of the accused)
  3. Divyan Daksh Prasad (the eldest son of the accused)
  4. Police Sergeant 2110 Pradip Lal
  5. Woman Detective Constable (WDC) 3483 Ana Likulagi and
  6. Detective Corporal (D/Cpl) 3541 Isikeli Rokodreu
- [7] The accused gave evidence on her own behalf.
- [8] During my summing up I explained to the Assessors the provisions of Section 237 of the Crimes Act No. 44 of 2009 (Crimes Act) and Sections 44(1) and 44(2) of the Crimes Act.
- [9] The Assessors were directed that in terms of the provisions of Section 44(2) for the Crimes Act *"For the person to be guilty (of the offence of attempting to commit an*

*offence), 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."*

[10] The Assessors were further directed that in order to prove the Second Count of Attempted Murder, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 2 February 2016);
- (iii) At Nasinu, in the Central Division;
- (iv) Engaged in a conduct; and
- (v) The said conduct was an attempt to cause the death of Divyan Daksh Prasad; and
- (vi) The accused intended to cause the death of Divyan Daksh Prasad;  
or  
the accused was reckless as to causing the death Divyan Daksh Prasad by the conduct.

[11] Each of the above elements were further elaborated upon in my summing up.

[12] The position of the prosecution was that not only did the accused threaten to kill herself and her children, she went on to put her words into action. *"The accused had first started tearing the bed sheet. Thereafter, the accused held her children's hand and went outside (to the terrace). She had said "let's go I am gonna hang you". She had then stood on a chair and tied the bed sheet on the rafter. Thereafter, she was holding onto Divyan's hand and was pulling him towards her."*

[13] The accused took up the position that at no time did she have the intention to kill her son Divyan. She stated that by her actions she was only trying to scare her mother-in-law.

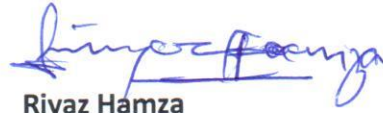
[14] It is clear that the Assessors have believed the evidence of the accused as truthful and reliable, as they have unanimously found the accused not guilty on the Count of Attempted Murder.

[15] In my view, the Assessor's opinion is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the unanimous opinion of the Assessors.

[16] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has failed to prove the charge of Attempted Murder against the accused beyond any reasonable doubt.

[17] In the circumstances, I find the accused not guilty of the Second Count of Attempted Murder.

[18] Accordingly, I acquit the accused of the Second Count of Attempted Murder.



Riyaz Hamza

JUDGE

HIGH COURT OF FIJI



Dated this 25<sup>th</sup> Day of September 2017

Solicitor for the State : Office of the Director of Public Prosecutions, Suva.  
Solicitor for the Accused : Messrs A.K. Singh Law, Nausori.