

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 143 of 2016

STATE

V

RAKESH NARAYAN

**Counsel** : Ms. Kimberly Semisi for the State  
Accused appears in person

**Dates of Trial** : 21 July and 24-28 July 2017

**Summing Up** : 31 July 2017

**Judgment** : 1 August 2017

**Ruling** : 29 September 2017

## RULING

### [APPLICATION FOR ARREST OF JUDGMENT]

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

#### FIRST COUNT

##### *Statement of offence*

**ATTEMPTED MURDER**: Contrary to Section 44 and 237 of the Crimes Act No. 44 of 2009.

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

**RAKESH NARAYAN** on the 16<sup>th</sup> day of March 2016 at Nakasi, Suva, in the Central Division, attempted to cause the death of Sakindra Devi, and at the time, intended to cause her death.

### **SECOND COUNT**

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

**ACT WITH THE INTENT TO CAUSE GRIEVOUS HARM:** Contrary to Section 255(a) of the Crimes Act No. 44 of 2009.

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

**RAKESH NARAYAN** on the 16<sup>th</sup> day of March 2016 at Nakasi, Suva, in the Central Division, with the intent to do some grievous harm to Rakash Roashan Deo, unlawfully wounded the said Rakash Roashan Deo with a kitchen knife.

- [2] The accused pleaded not guilty to the charges and the ensuing trial was held over 6 days.
- [3] The accused waived his right to legal counsel and appeared in person during the trial.
- [4] At the conclusion of the evidence and after the directions given in the summing up, the three Assessors unanimously found the accused guilty on both Counts of Attempted Murder and Act with Intent to Cause Grievous Harm.
- [5] On 1 August 2017, this Court concurred with the unanimous opinion of the Assessors and found the accused guilty of both counts. Accordingly, the accused was convicted of both Counts of Attempted Murder and Act with Intent to Cause Grievous Harm.
- [6] On 22 August 2017 (the day on which this matter was fixed for sentencing hearing), the accused filed an Application for Arrest of Judgment, purportedly pursuant to Section 239(1) of the Criminal Procedure Act No. 43 of 2009 (Criminal Procedure Act).
- [7] Section 239 of the Criminal Procedure Act reads as follows:

*“(1) The accused person may, at any time before sentence, whether on a plea of guilty or otherwise, move in arrest of judgment on the ground that the information does not, after any amendment which the court has made*

*and had power to make, state any offence which the court has power to try.*

*(2) The court may, in its discretion, either hear and determine the matter during the same sitting, or adjourn the hearing of it to a future time to be fixed for that purpose.*

*(3) If the court decides in favour of the accused he or she shall be discharged from that information.”*

- [8] I am guided by the decision of my brother Judge, His Lordship Justice Sunil Sharma, where he held in the case of **James Anthony Naidu v. State** [2016] FJHC 994 (2 November 2016); that

*“The discretion given to the court under section 239 of the Criminal Procedure Decree (Act) is only applicable where the information filed does not state any offence which the court has power to try.....*

*..... After the Court delivered its judgment on Friday 28<sup>th</sup> October, 2016 the only jurisdiction left for the court is to proceed with sentencing. The Court is now functus from hearing any application except for an application under section 239 of the Criminal Procedure Decree (Act).”*

- [9] I have carefully examined the application filed by the accused. The Information filed by the Director of Public Prosecutions (DPP) in this case clearly sets out the statement of offence and particulars of offence in respect of both offences for which the accused is charged.
- [10] At the commencement of the trial, on 11 July 2017, both charges in the Information were read out to the accused and they were duly explained to him in the language of his choice (the Hindi language). Having understood the two charges, the accused pleaded not guilty to both the charges.

- [11] Section 4(1) of the Criminal Procedure Act stipulates as follows:

*“4.—(1) Subject to the other provisions of this Decree—*

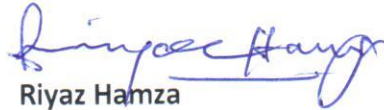
*(a) any indictable offence under the Crimes Decree 2009 shall be tried by the High Court;*

*(b) any indictable offence triable summarily under the Crimes Decree 2009 shall be tried by the High Court or a Magistrates Court, at the election of the accused person; and*

*(c) any summary offence shall be tried by a Magistrates Court.”*

[12] It is abundantly clear that this Court has the power (jurisdiction) to try both the charges that have been brought against the accused by the DPP.

[13] Therefore, I find that this application made by the accused has no merit. Accordingly, the application is dismissed.



Riyaz Hamza

JUDGE

HIGH COURT OF FIJI



AT SUVA SUVA

Dated this 29<sup>th</sup> Day of September 2017

Solicitor for the State : Office of the Director of Public Prosecutions, Suva.  
Solicitor for the Accused : Accused appears in person.