

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

**Criminal Case No. HAC 69 of 2018**

**STATE**

**V**

**OLIVER WHIPPY**

**Counsel** : Miss D Rao for the State  
Mr. E. Radio with Miss K. Boseiwaqa (L.A.C.)  
for the Accused

**Dates of Trial** : 8, 9 and 10 April 2019

**Date of Summing Up** : 10 April 2019

**Date of Judgment** : 15 April 2019

**JUDGMENT**

1. The accused was charged with one count of attempted murder and two counts of criminal intimidation. On the first day of trial he entered pleas of guilty to the two intimidation counts and not guilty to the attempted murder.
2. He was tried before this Court with three assessors, and following my summing up, the assessors returned with a majority opinion of not guilty on the attempted murder and a majority opinion of guilty of the lesser charge of causing grievous harm, contrary to section 258 Crimes Act, an alternative lesser offence the Court left with them to consider.

3. The charges arose out of a violent attack on a young lady by her former de facto partner in August 2018. He was already the perpetrator in a Domestic Violence Order made in 2016 to protect her. After what appeared to be a very tempestuous relationship, they finally separated in 2017.
4. Thereafter the accused constantly harassed the victim with abusive and threatening telephone calls and visits to her workplace.
5. The victim whom I shall refer to as Mela told the Court of the day she will never forget. She works as a Manager in a well know resort near Savusavu. In the days leading up to August 25<sup>th</sup>, the accused was constantly calling her (sometimes as often as 20 times a day) and making murderous threats to her and to her parents.
6. On the 25<sup>th</sup> August he suddenly and unexpectedly presented himself at her workplace and in her small and confined office he produced and brandished a cane knife. He was very aggressive and told her that this was her last day on earth. He swung the blade up towards her neck/shoulder area and Mela in trying to fend the blow off received injuries to her palm and lower fingers.
7. He then proceeded to drag her out of her office into the grounds of the resort dragging her at least 500 metres towards an area of bushy undergrowth. All the time while dragging her he was beating her all over with the flat side of the cane knife. He was shouting threats continuously alleging that she was “seeing other boys so today must be your last day”. He told her to call her father and tell him that he would never hear her voice again.

8. Mela said that she was bleeding heavily and feeling weak.
9. The Police arrived and at this stage the accused had her on the ground with the cutting edge of the blade against her bare neck. She was taken to hospital and eventually transferred to CWM for surgery where she spent a month recovering.
10. Mela's colleague Ally gave evidence that largely confirmed Mela's description of the horrific events of that day. She heard the accused in the office talking about "death" and "today" two words in Itaukei dialect that she knew. It was she who arranged for the Police to be called.
11. When the accused was dragging Mela through the resort grounds Ally followed behind filming the progressive attack on her mobile phone.
12. The film was shown in Court and the most memorable part of that film was the noise of the blows that were being landed on Mela by the cane knife. They must have been struck with considerable force and violence. She too saw the accused place the sharp edge of the knife on Mela's neck when the Police arrived.
13. The third prosecution witness was a Senior Police Officer from Savusavu. He was first at the scene. The accused told them that if he got any closer to him he would kill Mela. The Inspector saw him put the knife against the victim's neck and he feared the worst. This experienced officer somehow managed to defuse the situation and persuaded the accused to surrender. He arranged for Mela to be sent to Savusavu hospital and for the accused to be detained.

14. The final witness for the prosecution was the medical officer who examined Mela at Savusavu Hospital. The patient had multiple left hand injuries. These lacerations were fresh and deep and needed surgery. Savusavu has a small hospital and is not equipped to deal with such a serious case, so Mela was stabilized, the wound dressed, given antibiotics and transferred to Labasa Hospital.
15. In finding a case to answer, the accused was told of his rights in defence. He elected to give sworn evidence but called no witnesses.
16. He admitted his violent actions and words that day but he said he was acting in response to what he perceived to be acts of provocation from the victim. He said he was in a relationship with another lady and thought that Mela was trying to interfere in that relationship. He could not remember placing the blade of the knife to Mela's neck.
17. He claimed that on that day, he was still in love with the victim; he had no intention to actually kill her, he was just trying to teach her a lesson.

### **Discussion**

18. The crime of attempted murder is extremely difficult to prove. There has to be evidence of very violent action, and/or very life threatening injury not resulting in death to make the presumption that the actor had murderous intent.
19. The circumstances and evidence in this case could not lead to that conclusion beyond reasonable doubt.

20. Of course the actions were violent; of course the threats were alarming; of course the final deed of holding the sharp blade across her bare neck was terrifying; but is that all enough to find beyond reasonable doubt that he intended to kill her? The majority of the assessors thought not, and I agree with them. Put simply, one just cannot be sure and that uncertainty must go to the benefit of the accused.
21. There can be no doubt however that Mela suffered grievous harm. She had surgery and spent a month in hospital. She showed me her hand and it is still scarred. This injury I find was directly caused by the action of the accused and I agree with the majority of the assessors that he is guilty of the lesser charge of causing grievous harm (s.258 Crimes Act.)

**This then is the Judgment of the Court**

1. The accused is found not guilty of the offence of attempted murder and acquitted of that count.
2. Pursuant to section 160 of the Criminal Procedure Act and in following the FCA case of ***Hari Prasad & Bhawar Singh v the Queen*** (1981)27FLR80 the accused is found guilty of the lesser count of causing grievous harm contrary to section 258 of the Crimes Act 2009 and convicted of that count.



A handwritten signature in blue ink, appearing to read 'P. K. Madigan'.

**P. K. Madigan**  
**Judge**

At Labasa  
15 April 2019

