

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 352 of 2018**

**BETWEEN** :

**STATE**

**AND** :

**RAJIV KRISHAN PADYACHI**

*Counsel* : *Ms. Tivao S. with Ms. Swastika S. and Mr. Prasad Y. for the State*  
*Mr. O’Driscoll G. for the Accused*

*Hearing on* : *18<sup>th</sup> of November 2019 – 22<sup>nd</sup> of November 2019*  
*Summing up on* : *26<sup>th</sup> of November 2019*

**SUMMING UP**

Lady and gentleman assessors;

1. It is now my duty to sum up the case to you. I will now direct you on the law that applies in this case. You must accept my directions on law and apply those directions when you evaluate the evidence in this case in order to determine whether the accused is guilty or not guilty. You should ignore any opinion of mine on the facts of this case unless it coincides with your own reasoning. You are the Judges of facts.
2. As the representatives of the society, your role is to assist this legal system to serve justice. In doing so, you are guided by two equally important principals of prudence. To wit;

- i) If a person has committed an offence, he should be meted out with an adequate punishment.  
In other words, if you are sure that the accused has committed the alleged offence, then it is your duty to find him guilty. If an offender goes scot-free, he'll be ridiculing this legal system. It is your duty to not to let that happen.
- ii) An innocent person should never be punished.  
There is a saying that it is better to let 100 offenders go free than to punish one innocent person. That is to say, unless you are very sure that the accused has committed the alleged offence, you should not find him guilty.

If any of the above said principles are violated, it would amount to a failure of the system, thus you have failed in your duty to the society. Having reminded you of your duty, let me proceed.

- 3. Evidence in this case is what the witnesses said from the witness box inside this court room and the admissions made. As I have stated you in my opening address, your opinion should be based only on the evidence presented inside this court room. If you have heard, read or otherwise come to know anything about this case outside this court room, you must disregard that information.
- 4. A few things you heard inside this court room are not evidence. This summing up is not evidence. The arguments, questions and comments by the learned counsel for the prosecution or for the defense are not evidence. A suggestion made by a counsel during the examination of a witness is not evidence unless the witness accepted that suggestion. The arguments and comments made by counsel in their addresses are not evidence. You may take into account those questions, suggestions, arguments and comments when you evaluate the evidence only to the extent you would consider them appropriate.
- 5. You must not let any external factor influence your judgment. You must not speculate about what evidence there might have been. You must approach the available evidence with detachment and objectivity and should not be guided by emotion. You should put aside all feelings of sympathy for or prejudice against, the accused or anyone else. Your emotions should not influence your decision.

6. You and you alone must decide what evidence you accept and what evidence you do not accept. You have seen the witnesses give evidence before this court, their behavior when they testified and how they responded during cross-examination. Applying your day to day life experiences and your common sense as the representatives of the society, consider the evidence of each witness and decide how much of it you believe. You may believe all, a part or none of any witness' evidence.
7. When you assess the testimony of a witness, you should bear in mind that a witness may find this court environment stressful and distracting. Witnesses have the same weaknesses we all may have with regard to remembering facts and also the difficulties in relating those facts they remember in this environment. Sometimes a witness may have other concerns when giving evidence. A witness may be worried that the evidence would incriminate him/her or reveal a safely guarded secret. Or else he/she might honestly forget things or make mistakes regarding what he/she remembers.
8. In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies in his/her evidence. That is, whether the witness has not maintained the same position and has given different versions with regard to the same issue. You may also find inconsistencies between the evidence given by different witnesses. This is how you should deal with inconsistencies. You should first decide whether that inconsistency is significant. That is, whether that inconsistency is fundamental to the issue you are considering. If it isn't, you can disregard that. If it is, then you should consider whether there is any acceptable explanation for it. If there is an acceptable explanation for the inconsistency, you may conclude that the underlying reliability of the account is unaffected. You may perhaps think it obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you should not expect a witness to have a photographic memory or every detail to be the same from one account to the next.
9. However, if there is no acceptable explanation for the inconsistency which you consider significant, it may lead you to question the reliability of the evidence given by the witness in question. To what extent such inconsistencies in the evidence

given by a witness influence your judgment on the reliability of the account given by the witness is a matter for you to decide.

10. Therefore, if there is an inconsistency that is significant, it might lead you to conclude that the witness is generally not to be relied upon; or, that only a part of the witness' evidence is inaccurate; or you may accept the explanation the witness provided for the inconsistency and consider him/her to be reliable as a witness.
11. You may also consider the ability and the opportunity a witness had, to see, hear or perceive in any other way what the witness said in evidence. You may ask yourself whether the evidence of a witness seem reliable when compared with other evidence you accept. These are only examples. It is up to you, to how you assess the evidence and what weight you give to a witness' testimony.
12. The contents of a statement made by a witness to the police are not evidence. A statement to the police, made by a witness cannot be used other than to point out an inconsistency, in regards to that he/she has made a different statement at a different time. If a witness admits a certain portion of a statement to the police, that portion becomes evidence.
13. Based on the evidence you decide to accept, you may decide that certain facts are proved. You may also draw inferences based on those facts you consider as directly proved. You should decide what happened in this case, taking into account those proved facts and reasonable inferences. However, when you draw an inference you should bear in mind that, that inference is the only reasonable inference to draw from the proved facts. If there are many reasonable inferences to draw, some against and some in favor of the accused, based on the same set of proved facts, then you should draw the favorable inference to the accused.
14. As a matter of law you should remember that the burden of proof always lies on the prosecution. An accused is presumed to be innocent until proven guilty. This means that it is the prosecution who should prove that the accused is guilty and the accused is not required to prove that he is innocent. The prosecution should

prove the guilt of the accused beyond a reasonable doubt in order for you to find him guilty. That is, you must be sure of the accused person's guilt.

15. If there is evidence of the previous good character of the accused, you should consider that seriously and decide how it would affect the issue you are to decide. When the accused has been of previous good character, it is relevant and you have to consider in two aspects. Firstly, in weighing the credibility of his evidence when he testifies and secondly, in consideration of the propensity of him having committed the alleged crime.
16. In order to prove that the accused is guilty, the prosecution should prove all the elements of the offence against the accused beyond reasonable doubt. If you have a reasonable doubt on whether the prosecution has proved a particular element of the offence against the accused, then you must give the benefit of that doubt to the accused and find the accused not guilty. A reasonable doubt is not a mere imaginary doubt but a doubt based on reason. I will explain you the elements of the offence in detail in a short while.
17. You are not required to decide every point the learned counsels in this case have raised. You should only deal with the offence the accused is charged with and matters that will enable you to decide whether or not the charge is proved against the accused.
18. You will not be asked to give reasons for your opinion. In forming your opinion, it is always desirable that you reach a unanimous opinion. But it is not mandatory.
19. Let us look at the Information. The Director of Public Prosecutions has charged the accused, Mr. Rajiv Krishan Padyachi of the following offence;

*Statement of Offence*

Attempted Murder: Contrary to sections 44 (1) and 237 of the Crimes Act of 2009.

*Particulars of Offence*

Rajiv Krishan Padyachi on the 15<sup>th</sup> day of September, 2018 at Colo-i-Suva, in the Central Division, attempted to murder Arpana Pratap.

20. In regards to identifying what is 'an attempt', it would be important to understand the section 44 of the Crimes Act. The section 44 of the Crimes Act states;
44. — (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.
- (3) Subject to sub-section (7), for the offence of attempting to commit an offence, intention and knowledge are fault elements in relation to each physical element of the offence attempted
- (4) A person may be found guilty even if —
- (a) committing the offence attempted is impossible; or
- (b) the person who actually committed the offence attempted is found not guilty.
- (5) A person who is found guilty of attempting to commit an offence cannot be subsequently charged with the completed offence.
- (6) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of attempting to commit that offence.
- (7) Any special liability provisions that apply to an offence apply also to the offence of attempting to commit that offence.....
21. Accordingly, in this case, to prove the offence of Attempted Murder the prosecution must prove the following elements beyond a reasonable doubt.
- a) The accused;
- b) Engaged in a conduct, which was more than merely preparatory; and
- c) Accused intended to cause the death of Arpana Pratap, or  
Accused knew/believed that his conduct would cause the death of Arpana Pratap.
22. The first element of the offence is concerned with the identity of the person who is alleged to have committed the offence. In this case the defense

does not challenge the identification. It is a fact that none of the witnesses were asked to identify the accused. All the evidence is against a person named Rajiv/Krishan Padyachi. The accused admits that he is the said Rajiv Krishan Padyachi. Therefore you can safely assume the 1<sup>st</sup> element to say, the identity is not contested.

23. In the second element, to engage in a conduct is to do an act which is a product of the will of the accused. The prosecution alleges that in the morning hours of 15<sup>th</sup> of September 2018, the accused pushed her into the pool and later dived in and tried to drown her with the intention of murdering her. In order to prove this, the prosecution has to prove beyond reasonable doubt that the act is deliberate and not accidental. The defense suggests that the accused only pushed the complainant and subsequent incidents were an accident. You should consider all the evidence before you and decide whether the prosecution has proved their stance beyond a reasonable doubt and whether the stance of the accused creates a reasonable doubt in the prosecution version.
24. My directions are, that you need not consider the issue whether the conduct of the accused could have caused the death of the complainant or not. The section 44 (4) of the Crimes Act states;

*44 (4) A person may be found guilty even if —  
(a) committing the offence attempted is impossible; .....*

Therefore irrespective of the fact whether his act could have caused the death of the complainant, the offence of attempted murder could be completed, if the elements are adequately satisfied.

25. With regard to the third element, the prosecution should prove beyond reasonable doubt either,
- (a) the accused intended to cause the death of the complainant, or
  - (b) that the accused knew that his act could cause the death of the complainant.

The prosecution should prove only one of the two limbs of this third element. These two alternative elements require some further explanation.

26. **The accused intended to cause the death of the complainant.**

This deals with the state of mind of the accused at the time of the alleged act. It is not possible to have direct evidence regarding a person'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, you can deduce the state of mind of an accused from the facts and circumstances you would consider as proved.

27. **That the accused knew/believed that his act could cause the death of the complainant.**

It is common knowledge that if drowned a person may die. However, you will have to consider all the circumstances of the incident and decide whether the accused knew that his act would drown the complainant or did he actually try to drown her.

28. If you have a reasonable doubt on the proof of any of the elements set out above you should give the benefit of such doubt to the accused and find him not guilty of the alleged count of attempted murder. But your duty doesn't end there. In case you find the accused not guilty of attempted murder, then you should consider the lesser offense of "Assault Causing Actual Bodily Harm".

29. The Offense of "Assault causing actual bodily harm" is set out in section 275 of the Crimes Act of 2009. It states;

*275. A person commits a summary offence if he or she commits an assault occasioning actual bodily harm.*

30. The essential elements that the prosecution should prove in proof of the offense of Assault Causing Actual Bodily Harm in this case are;

- i) The Accused;
- ii) Assaulted Arpana Pratap;
- iii) As a result of that assault Arpana Pratap received bodily harm.

31. The first element is that the prosecution should prove that the accused is the one who did the alleged act and no one else. You should also take into consideration



the directions given by me before in analyzing the first element for the offense of attempted murder.

32. In compliance of the second element, the complainant should have been assaulted. Using a certain amount of force on a person with intent to commit some harm could be considered as an assault under the given circumstances.
33. The third element is that as a result of that assault Arpana Pratap needs to have received bodily harm. Here you will have to see whether the injuries the complainant received were a natural result of what the accused did, in the sense that it was something that he could reasonably have foreseen as the consequence of what he was doing.
34. In consideration of the lesser count if you consider any of the above elements were not proved beyond a reasonable doubt by the prosecution, you should find the accused not guilty of the lesser count too.

### **The Evidence**

35. The following were recorded as admitted facts. These will not require any further proof and you should consider them as already proved.
  - i. Rajiv Krishan Padyachi is the accused in this matter. He is a 30 year old, Military Officer with the Republic of Fiji Military Force as a Software Engineer.
  - ii. Arpana Pratap is the complainant in this case. The accused and the complainant are known to each other.
  - iii. On the 30<sup>th</sup> April 2018, the accused and the complainant signed a loan agreement letter. (Loan agreement tendered by consent)
  - iv. On the 27<sup>th</sup> of July 2018, the accused and the complainant signed another loan agreement letter. (Loan agreement tendered by consent)
  - v. On the 31<sup>st</sup> July 2018, the accused and the complainant signed another loan agreement letter, other than mentioned in paragraphs iii and iv above. (Loan agreement tendered by consent)
  - vi. The accused owns a bank account in the Bank of the South Pacific (BSP) easy card account number 80119364. (Transaction history tendered by consent)

- vii. On the 15<sup>th</sup> of September 2018, the accused and the complainant were together at Colo-I-Suva, in the Central Division.
- viii. That the medical report dated 15<sup>th</sup> September 2018, of Rajiv Padyachi is agreed to, with the exception of the History as related by the person to be examined in D (10) page 3.

36. Now I will deal with the evidence given by the witnesses.

37. The 1<sup>st</sup> witness for the prosecution or the PW 1 was the complainant, Ms. Arpana Pratap. Her evidence was that;

- i) She works at the Pacific Islands Development Forum as the head of the Member Capacity Development unit and also leads the Blue Economy Development in the Pacific.
- ii) She has acquired a Bachelor of Science Degree in Marine Science from the University of South Pacific. She also has Post Graduate Diplomas in 'Marine Science' and 'Governance and Public Policy'.
- iii) She has known Mr. Rajiv Padyachi (the accused), since 03<sup>rd</sup> of November 2017.
- iv) Starting from a friendship, she has been deeply in love with the accused and has given him money on loan from time to time.
- v) Describing the way it has happened, the witness states that on the 07<sup>th</sup> of December 2017, the accused has told her that he has fallen in love with her.
- vi) Explaining further, the witness states that when she gave the first loan of \$3000.00 to the accused, they had a long chat and he (the accused) crying in front of her told that he never got this opportunity to grow in life and though he has the skills, never had the money and requested her to lend him more money at intervals to invest in his IT business, saying that it needs huge investment before the profits could be reaped.
- vii) The witness identifies the three loan agreements marked and produced as PE 1 (a) to PE 1 (c) as the agreements signed since the 30<sup>th</sup> of April 2018 to 31<sup>st</sup> of July 2018. The witness when queried as to why did she lend more money when the earlier lend monies were unpaid, explains that the accused told her that all the monies are tied and he needs more money to complete

the job and she thought it wise to lend more money and let him finish the job hoping she would get her money when he is paid.

- viii) The witness when asked of the reason to have PE 1 (c) states that she was getting scared as the accused though did not deny that he owes, told that he has deposited the monies in to her account and lied.
- ix) By the end of August 2018, she has not received any of her monies and she constantly asked the accused to pay her money as she was in need of money and could not afford to pay her rent even.
- x) The total amount lend to the accused was \$82,500.00, inclusive of the amount of \$2,000/ spent for the new phone he bought on her credit account. Explaining further, the witness states that he did not pay any money for the phone and bailiff came in search of her and she directed the bailiff to the accused. Then the accused has paid \$2,000.00 cash to the bailiff.
- xi) The final date given in the agreements for the payment was the 31<sup>st</sup> of August 2018 and the accused did not pay anything by then but on that day, said that he is in Nadi and wanted her to come there. That was a Friday and he agreed to sort out the money issue on Saturday as the BSP Namaka branch is open on Saturdays. While they were waiting in the car to go to the bank on Saturday at 10.00am, the accused has told her that he will call the bank and ask whether they are open. Then the accused has told her that the bank is closed. The witness, not believing him has called the bank herself and was informed that they are open. The accused when confronted for lying, has asked for time till Tuesday the 4<sup>th</sup> of September.
- xii) On the 03<sup>rd</sup> of September 2028, the accused has called her to accompany him to Colo-I-Suva pool. Explaining why she accompanied him, the witness states that she has never been to that and she wanted to see the forest reserve, but mainly due to accused saying that he has been through lots of training and needs to soak his muscles in the pool. However, when they went there, he did not swim but stood on the bank and stared at the water instead. Further the accused did not pay her any money but asked for further time till next Tuesday the 11<sup>th</sup> of September 2018.
- xiii) On the 11<sup>th</sup> of September 2018 too, the accused did not pay her any money but told her that he has deposited \$60,000.00 to her account and sent her

- a photo of the transfer receipt and said that it will clear by the Thursday the 13<sup>th</sup> of September 2018.
- xiv) On the 13<sup>th</sup> of September the accused has taken the witness to a late lunch at Colo-I-Suva. The gate closes at 4.00pm and when they went after 3.00pm, the accused was acting very weirdly. Though he said he wanted to swim, he stood in the bank and stared at the water without talking to her. He has said that he want to figure out how deep the water is. When talking of the money he has said that it would be transferred to her by Friday the 14<sup>th</sup>.
  - xv) On the 14<sup>th</sup> of September 2018 too, the accused has called her and asked her to come to Colo-I-Suva. But she has lied to him that she was at a meeting since it was so boring with him there, him staring at the water without talking to her. The accused has got very angry and told her that she should be there at Colo-I-Suva, sharp at 8.00am on Saturday the 15<sup>th</sup> of September 2018.
  - xvi) On the 15<sup>th</sup> of September 2018, she has met the accused at the MH Super Fresh at 7.44am and got in to his car and they have come to Colo-I-Suva. They have come to the entrance by 08.02am and the gate was closed. They have gone to the forestry office and the accused has gone in and brought a forest guard with him. They have gone into the forest reserve and parked the car at the car park to the lower pool. Having parked the car, the accused has asked her to change as she was in a dress. She has got into a vest and tights while the accused has not changed his clothes.
  - xvii) Thereafter they have walked down to the lower pool and there has been no one when they went there. The issue of debt has not come up that day, as the plan was to go to the bank thereafter at 10.00am.
  - xviii) Describing the lower pool at Colo-I-Suva, the witness states that it was of about 6m in diameter and there are two entrances to the pool. One from the car park side and the other from the other pool's side. As you enter the pool area from the car park side, there are benches on the side. On the opposite side there are man-made steps to sit. Having gone there the accused has stood by the bank and started looking at the water. He has asked her to come and stand beside him and she has refused as it was drizzling and she was scared of the pool. She has been scared of the pool as it looked deep as well as she did not know how to swim.

- xix) Answering a question by the court, the witness states that neither she nor the accused has got into the lower pool in any of their visits before, other than once sitting on the rocks at the waterway where water splashed on them. Answering further, the witness states the accused knew that she cannot swim as she has told him so on many occasions.
- xx) When she refused to come near him, the accused kept looking at the water and after a while he has walked to the other side of the pool, which is apparently the deeper side of the pool, where the man-made steps are and sat on a one closest to the water. She too has gone there and sat two steps behind/above him. After some time as he was still staring at the water, she has stood up and started walking towards the vegetation.
- xxi) Then the accused has called and asked her to come and sit with him. Though she pretended to not to hear initially, after few calls, she has gone towards but has been hesitant to go near him as he was sitting very close to the water. The accused has assured her that she is safe with him and she has gone and sat with him. After a little conversation, he has stood up and she too has stood up beside him.
- xxii) After a few moments he has pulled her by her right hand to be in front of him and pushed her to the water. She has landed in the pool about 1 ½ to 2m away from the bank. First she has gone down in the pool then she has managed to come up and get her head above water. While she has managed to come close to the bank where the accused was. The accused was standing at the same position he was and she has asked him repeatedly to pull her out of the water. He has said nothing and has kept on staring at her without any expression on his face. Then she has realized that this is intentional and panicked a little. She has struggled to reach the bank and her foot has touched a rock and was about to jump to hold on to another rock towards the bank.
- xxiii) Before she did so the accused jumped into the pool and getting hold of her by her hair has dragged her to the middle of the pool. Having dragged her to the middle, he left her there and has gone about 2 meters away and was watching her, while she struggled to keep her head above the water.
- xxiv) While struggling, she has weighed her options and has prayed to Lord Shiva to give her some solution. The witness explains that she prayed because she didn't know how to swim and realized that the accused intended to kill her.

The witness further explains that the realization was due to the facts that he intentionally pushed her into the pool, knowing that she could not swim, he dragged her to the middle, when she was about to save herself, and was watching her struggle without trying to save her and when she asked him to take her out, he watched without any expression.

- xxv) After a while, when she managed to keep her head above the water, the accused has come to her again and holding her by her hair above the head has tried to push her in. She has fought with him and while fighting to push him away, she has scratched his face with her right hand. The struggle has been going on for some time and she has managed to grab his shirt and rise herself over him. Then the accused has tried to push her away and while doing that he has scratched her chest.
- xxvi) Though the accused tried to push her away, she has held tightly on to his shirt, without letting it go. Then she has pushed him away with all her strength and shouted for help at the top of her voice. Then the accused has come back to her, holding her from her hair on the top of her head, and covering her mouth with his other hand has pushed her back into the water. While underwater she has been desperate for breath and struggling with him, she has managed to come to the surface again. The accused has tried to keep her underwater using his feet to thump on her back and the neck area.
- xxvii) When she managed to come up, the accused grabbed her by the hair as before and pushed her back into the water and thumped his foot on her back to keep her underwater. By that time she has lost most of her energy to keep on fighting and lost all her hope and was mentally preparing herself for her death. She has prayed to Lord Shiva and was waiting for the white light. Though she cannot be exact of the time she was held underwater, she has felt it like ages. She has felt his foot on her back and was almost unconscious.
- xxviii) The next thing she knew was two men holding her from her arms and bringing her to the surface. As soon as her head came up, above the water she was scared that the accused would be there behind her. When she managed to speak, she has told them that the accused was trying to kill her and pleaded them to save her. They told her that they are police officers and she is safe with them. But she has kept on telling them to save her. They

pulled her out of the water and made her sit at a bench. Thereafter many of the police officers surrounded her and asked whether she is OK. Though she was scared that the accused could be behind, she did not have the strength to turn her head and look whether the accused is still there.

- xxix) Thereafter she was taken up to the car park by the police officers. When she was taken there she has seen the accused quietly seated at the roundabout in the car park facing away from her towards the forest side. (At this point when the prosecution wanted to go for a dock identification, it was informed on behalf of the accused that they do not dispute and admit the person referred to by the witness is the accused.)
- xxx) The witness was taken for a medical examination later having given a statement to the Nasinu police Station. She identified the Medical Certificate issued to her and produces it marked PE 2. She had received physical injuries on her toes chest and knees and they were visible. Her toes were bleeding. Her neck and back were aching but there were no visible injuries.
- xxxi) The witness states that she has filed a civil case for the recovery of her money and that case was settled at the mediation for \$70,000.00 in July 2019, and an upfront amount of \$20,000.00 was paid by the accused and the rest to be paid in instalments. Accordingly a total of \$35,000.00 has been paid so far and there remains another \$35,000.00 to be paid by the accused.

38. Answering the cross examination, PW 1 says that;

- i) The first time he met the accused was the 03<sup>rd</sup> of November 2017. When queried as to whether she could remember it because of her bank statement, the witness denies and states that they have talked over the phone before and she gave the money for the first time on that day when they met.
- ii) The witness denies that she gave money to the accused on the same day he was introduced. She states that they have been talking over the phone before giving him \$3000.00 on the first day they met.
- iii) The witness states that the accused was introduced to her by her cousin. When queried as to whether that introduction was as a potential marriage

partner, the witness denies that and states that the accused has taken money from her cousin before and this time her cousin asked her to loan money to the accused.

- iv) The witness states the accused told her that he has fallen in love with her on the 07<sup>th</sup> of December 2017. During the time between the 3<sup>rd</sup> of November and 7<sup>th</sup> of December they (witness and the accused) has met on about 30 times.
- v) The witness admits that the accused has told her of Monisha, with whom he had a relationship for 7 years.
- vi) The witness when asked of the time she fell deeply in love with the accused, states that after he told her that he has fallen in love with her, she began to think of it and thought it was quite alright to do so. The witness admits that she has given around \$38,000.00 to the accused within the first five weeks they have met.
- vii) At the time she met the accused, she was about 35 years old. She has never been married and had never lived with a man before. She has been staying with her sister and the brother-in-law at the time. She admits renting alone some times in her life. The witness admits of being about 7 years older than the accused.
- viii) She admits giving \$3,000.00 to the accused on the 7<sup>th</sup> of December. The witness further admits that there being 2 loan agreements prior to PE 1 (a), which were dated 13<sup>th</sup> February and 20<sup>th</sup> March 2018. She admits preparing all the loan agreements herself. The witness states that when she initially lend money, the accused promised to settle it within a week. Though the initial amount was not settled she has given about \$26,000.00 altogether to the accused within a week. When she inquired the accused of the jobs he did with her money, she was told to not to interfere.
- ix) She works for Pacific Islands Development Forum as the head of Member Capacity Development and Blue Economy Development and draws a salary of about \$2000.00 every fortnight. She has not lend money to anyone else apart from the accused.
- x) She has started asking for her money constantly around 6<sup>th</sup> of July 2018. Explaining that further, the witness states that by that date she has returned from her holiday in India. Before Leaving for India she has asked the accused for the money, and was promised that he will deposit in her account. When



she asked him while in India was told that he has already deposited the money into her account. When the money was not in her account when asked the accused has asked her to check her account every hour. Thereafter on the 5<sup>th</sup> of July when she was transiting in Hong Kong he has called her and proposed marriage to her. Therefore when arrived here on the 6<sup>th</sup> of July, she was very concerned of the money.

- xi) Explaining the 3 week delay in drafting the loan agreement PE 1(c) thereafter, the witness states that since he proposed marriage to her they were discussing their lives together and the accused promised to repay her money soon. She states though the accused didn't pay as undertaken she did not feel fooled as she was in love with him.
- xii) When queried of her knowledge of the accused's relationship with Monisha, the witness states that accused told her that he has had a relationship with Monisha for 7 years and there is no relationship now, but helping her to get a job at the AG's office, before he can completely cut off the ties with her.
- xiii) On the 01<sup>st</sup> of September 2018, she has gone to Nadi and was with the accused in the morning. After several hours of drinking the accused has put her on a taxi and she has come back to Suva. The accused has paid for the taxi.
- xiv) The witness admits going to the Colo-I-Suva Park with the accused before the 03<sup>rd</sup> of September. The first time she went there was in August 2018.
- xv) The witness states that the accused has sent a receipt of a bank transfer of \$60,000.00 saying that he deposited the money to her account. That receipt was similar to the receipt she used to get in transferring money online. The accused has said that it would clear in 2 days' time. Answering further the witness states though he promised to pay \$100,000.00 she did not claim such in her civil case as regardless of the promise she doesn't want any of his money other than hers. She admits that the civil case was settled at \$70,000, to be the amount payable by the accused and by this date the accused has settled \$35,000.00 and there remains another \$35,000.00 to be settled to her by the accused.
- xvi) On the 15<sup>th</sup> of September, she has got into the accused's car at MH Super Fresh at 7.44am. By the time they came to the Colo-I-Suva Forest Park, the gate was still closed. They went to the forestry office and a forest guard

- came with them and opened the gate. Before that day she has been there on 4 times with the accused.
- xvii) On that day the accused was wearing a grey T-shirt and shorts. The witness admits that there was no necessity for him to change his clothes. By the time they reached the pool area, it could have been around 8.15am. Apart from the couple who jogged past, no one else came into the pool area until the alleged incident happened. The distance between the two entrances to the pool area was about 9 meters.
  - xviii) The witness states that from the time they came in the accused went to the pool bank and was staring at the water and that made her scared. The man-made steps close to the other entrance to the pool were about ½ m wide and quite narrow. Just before the accused pushed her into the water, they were standing on the bottom steps, the steps that were closest to the water.
  - xix) It is suggested on instructions that though the accused pushed her, it was a gentle push and she lost her footing and fell. The witness denies this and states that it wasn't a gentle push. The witness denies being panicked as soon as she went in to the water and explains that she panicked while struggling in the water when she saw the face of the accused which had no reaction. The witness explains that what she meant by panicking was that she had felt fear in her heart.
  - xx) She states that she is 173cm tall and admits, from the middle of the pool, it is only about 3m to reach the bank. When queried of the time she was in the pool, the witness states that she wouldn't know, but she felt it like ages.
  - xxi) When the accused came in to the pool and made contact with her, it is suggested that he was trying to help her out and she vehemently denies. The witness states that accused has been gentle only in covering her mouth and not been gentle with her in pulling her from her hair and pushing her in. Though the accused thumped her back and the neck with his feet, there are no visible injuries on them, she agrees.
  - xxii) It is suggested that due to the panic situation she was in, she has given a different interpretation to what someone else might give and the witness totally disagrees with that.
  - xxiii) When she was taken up to the car park, she has seen the accused being surrounded by 3-5 police officers. The accused was facing away from her.

The witness admits giving her statement at Nasinu Police Station starting from 10.15am till 1.15 pm and being taken for her medical examination thereafter.

39. In re-examination the witness states that she was pushed by the accused with lots of force as she landed about 1 ½ m into the pool. Answering a question by the court the witness explains that the water level was about 30-50 cm below from the last step they were standing on.
40. The PW 2 was Mr. Ropate Sivo. He is a Special Constable presently attached to Special Response Unit of the Fiji Police Force. His evidence was that;
- i) He has been a police officer for 10 years. He is the Boxing Coach for the Fiji Police Boxing Team.
  - ii) On the 15<sup>th</sup> of September 2018, the Fiji Police Boxing Team, led by him were heading to the Olympic Pool for training. While on the way, he felt to go to the Colo-I-Suva and asked the driver to take them there instead of the Olympic pool. They reached the Park, went inside and got down from the vehicle at the roundabout next to the car park to the lower pool of the Colo-I-Suva forest reserve and started walking towards the lower pool.
  - iii) While about halfway down, the heard a female voice shouting for help from ahead and he has asked PC Rova, who was there with him to run ahead and give them a green light. They have followed PC Rova at a short distance and when PC Rova waived them a green leaf indicating that it is safe for them to come down, they have gone to the pool bank. When he went there, he has seen a male in the middle of the pool looking at them as he is shocked. When the witness saw the man at the pool, that man wasn't doing anything and after few seconds, he started to call for help.
  - iv) Then the witness has instructed SC Rova and SC Juta to jump in and help the man. Answering a question raised by the court, the witness states that though he cried for help, it doesn't seem that he was in need of, as he was in the surface and seems to be managing himself. When SC Rova and SC Juta, bringing the man to the pool bank, he has seen a female head coming up and going down again at the same place where the man was.
  - v) The witness, together with PC Mosesse, have jumped into the pool and brought the girl up by holding her from her hands. He has felt her like

somebody already dead. The top she was wearing was torn and there had been scratch marks all over her chest. They have taken her to the surface and she has told him that the accused tried to kill her. Describing the depth of the lower pool the witness says that it is very deep, may be more than 20 m, and one cannot reach the bottom of the pool.

- vi) The witness identifies the female they rescued as Ms. Arpana Pratap and the man there was in the pool as Krishan Padyachi, the accused.

41. Answering the cross examination, the witness states;

- i) On the morning of 15<sup>th</sup> September 2018, the whole Police Boxing Team, consisting of 23 member went to Colo-I-Suva in a truck.
- ii) At the pool, when the accused called for help, two officers were asked to help him, not because he needed any but since he called for help, states the witness.
- iii) The distance from the car park to the Lower Pool was about 100m, and it was a narrow downhill steps. The path is not straight, somewhat circular. Though the sides are covered with vegetation, they are not very thick as one can see a little through the vegetation.
- iv) One cannot see the pool until he come about 3m from the pool. When he saw the accused first, the accused was facing them and looking at them. Describing the time gap between the accused seeing them and shouting for help, the witness states that it was about 7 seconds.
- v) When queried as to the accused shouted for help not for himself, but for some other purpose, the witness states that he felt that the accused shouted for help because, he was shocked by seeing them.
- vi) The witness admits recording of his own statement after the incident. He admits that he has omitted to mention that he too jumped into the pool with Mosesse. The witness admits that they were together at the Nasinu Police Station at the time of writing the statement, but denies that they were in the same room or given the statements collectively.
- vii) The witness states that he did not notice any construction work going on inside the Forest Park, and did not see anyone other than the two on the pool apart from his team.
- viii) The defense manages to create a doubt as to the shout for help they heard while they were half way to the pool as to whether it was from a male or

female. However, in re-examination, the witness confirms it to be from a female.

42. The next witness, PW 3 was Police Constable Rova. His evidence is that he is 21 years old and has joined the Fiji Police force on the 08<sup>th</sup> of August 2018. He has joined as a Special Police Constable and at around 08.30 in the morning of the 15<sup>th</sup> of September 2018, he has been at Colo-I-Suva. After the training in the morning they have gone there for a swim. While they were walking down to the lower pool, halfway down the path, they have heard a scream for help. The scream has sounded like from a female. Then his trainer SC Sivo has asked him to run ahead and give them a green light which he has done accordingly. When he came to the pool area, he has seen a man in the middle of the pool and when he saw the witness, he has looked like he was shocked. Thereafter he has started tapping on the water as he was drowning. Then, as instructed by SC Sivo, he has jumped into the pool with SC Juta to save the man. Together they have managed to get the man to the bank. The man has been quiet and has not said a thing while being saved and brought up. When the witness looked back into the pool, he has seen a motionless body floating. He has heard SC Sivo ordering SC Mosesse to jump in and try and save the woman. The man just saved has said nothing. The witness also has jumped back to the pool with SC Juta as SC Mosesse was small made and could not manage it himself. When she was brought up, as soon as she managed to speak she has told that the man tried to kill her. The witness has seen bruises on her chest and scratches on her knees and toes. The name of the female they saved was Ms. Pratap and the name of the man was Rajiv. She has told 3 times, that the man tried to kill her. The body of the woman has surfaced from the same place where the man was rescued from, by him.
43. In answering the cross examination, the witness states, that he is a member of the Fiji Police Force Boxing Team. On the morning of 15<sup>th</sup> of September 2018, there were about 28 of them travelling in a truck. They were dropped off at the Forest Reserve. The witness and about 6 others have taken the lead whereas the others have followed. There was a car parked near the roundabout on the road to the lower pool. When they heard the shout for help, he was ordered to run ahead. The others have followed him at a slower phase. When he reached the pool, he has

seen the man in the middle of the pool and that man was facing him. He did not hear the man shouting for help. When suggested that the man said 'leave me, save her' when he was rescued, the witness denies. The witness states the clothes that the man and the woman wore doesn't seem to be swimming clothes. He confirms that the shout they heard halfway to the pool was from a female. He admits giving a statement to the police at the Nasinu Police Station.

44. PW 4, the final witness called by the prosecution was Dr. Mitieli Viliasi. The defense admitted that he is a qualified doctor and that he has examined the PW 1, and had prepared the document PE 2. His evidence was that;  
He has been a Doctor since 2002 and is familiar with the Fiji Police Force Medical Examination Form. The witness identifies the document PE 2 as a medical form filled by him in respect of Ms. Arpana Pratap. On examination of her, he found out that she was in some pain and obviously distressed. She has complained of pain all over her body and was also suffering from a headache. The bruises on her chest were quite extensive and the rest of the injuries were small wounds. He has prescribed some painkillers or sedatives to make her sleep well and has asked the nurse to do some dressings for the wounds. The witness states that the appendix 1 of the PE 2 shows the visible injuries suffered by the PW 1. The witness explains to the court how drowning could cause the death of a person.
45. In cross examination, the witness admits that he is a general practitioner and has not obtained any specialist qualifications. He has conducted around 500 police medical examinations. The witness admits that neither was he asked to decide how close to the death she came nor whether she had nearly drowned. The witness further admits that the alleged incident may have happened about 5 hours before the examination. He has not observed any injury on her chin and has not noted any injury at the back of her neck. The witness rejects the possibility of the injuries on the chest being caused by grabbing her by her clothes and pulling her out of the pool. The bruises on the chest were of moderate in severity. Though the defense has proceeded to cross examine this witness on the behavior of a person in a panic situation, it is apparent that it is beyond the expertise of this witness.

46. With leading of the above evidence, prosecution closed their case. The Court being satisfied that the prosecution has adduced sufficient evidence covering the elements of the offence, decided to call for defense, acting under the virtue of section 231(2), of the Criminal Procedure Act, explaining and giving his due rights to the accused.
47. The accused elected to give evidence. The learned counsel for the accused addressed the court and the assessors in opening the defense case and thereafter proceeded to call the accused to give evidence.
48. The accused's evidence was that;
- i) He knows Arpana Pratap since the early November of 2017. He has come to know her through a friend of his, who is also a cousin of hers.
  - ii) He has met her to obtain a loan of \$3,000.00 for settling his personal owing's. Though he doesn't recall exact dates of meeting her after the 3<sup>rd</sup> of November 2017, he recalls meeting her in the following week for the purpose of obtaining more loans.
  - iii) Thereafter they have started meeting very often and has become good friends. She has told him how bored she is and that she has fallen in love with him. He was bit shocked and surprised when he heard that since she knew that he is already in a relationship as he has told her of his feelings towards someone else at the early stages of their meetings and chatting.
  - iv) He has an ongoing relationship with Ms. Monisha Singh for about 9 years. He has described her as his fiancé to Ms. Arpana Pratap. The accused further says that there were meetings with Arpana and Monisha together.
  - v) The accused states that initially, Arpana did not record the loans given to him. But once she expressed her feelings towards him and he said that he cannot continue to feel the same for her, she started recording them. Explaining further, the accused states that during the January 2018, he was on leave and was in Nadi for a period of over 2 weeks. During that time, he was barely in contact with Arpana and when he returned back, she called him to her office and got that agreement dated 13<sup>th</sup> February signed.
  - vi) The accused states that he was a Software Engineer attached to Royal Fiji Military Force (RFMF) working at Watuwaqa Officers Training Center. He has passed his recruit in 2013 and has started his regular force duty in

Strategy Headquarters on the 10<sup>th</sup> of April 2017. He holds a Trade Diploma Certificate in Electronic Engineering from Fiji Institute of Technology and Bachelor's degree in information Systems from Fiji National University. The salary of the accused varies from \$20,000.00 to \$23,000.00 per annum.

- vii) The accused states that he is 29 years now and does not have any charges against him. Therefore in absence of any material in contradiction of that, you must treat and consider this evidence of the accused's good character as for the directions given to you before.
- viii) Apart from his job at the RFMF the accused has no other business that he does. He denies that he has told Ms. Arpana that he need the loans towards his business and states that all the loans were obtained for his personal use.
- ix) The accused agrees that the agreement PE 1 (c) dated 31<sup>st</sup> of July 2018, indicates that he has got \$78,700.00 by that date. However, he states that the entirety of it was not for his personal use alone as it contains the expenditure incurred by her on his behalf. He explains the reason for her to get it signed as the frustration towards him, for him objecting to have a relationship with her.
- x) The accused admits that Arpana filed a civil case against him for the recovery of money towards the end of 2018. Though the claim was for \$82,000 something, it was settled at the Mediation for \$70,000.00. Out of the said agreed amount he has already paid \$35,000.00 to her.
- xi) He has gone to Colo-I-Suva with Ms. Pratap (Arpana) for the first time, somewhere in August 2018. He took her there for swimming in the early morning and dropped her back at home thereafter. On that day she has swam in the pool. He clearly recalls that it was a weekday as they have gone back to work on that day.
- xii) By the end of August 2018, the accused admits that he has not paid her anything as for the agreements. On the 1<sup>st</sup> of September, he was in Nadi and she has come there to meet him. As for the agreement, he was supposed to pay her on that day. But he could not pay and needed more time. The accused states that he talked it over with her and came to a mutual understanding. On that day they have had wine and some beer together and Ms. Arpana has tried to persuade him to stay at the hotel with her. He has disagreed with her and persuaded her to come with him and



dropped her at the Nadi taxi stand, hired a vehicle to take her to Suva and has paid the taxi fare.

- xiii) On the 3<sup>rd</sup> of September 2018, he has gone to Colo-I-Suva with her. He has met her after 1.00pm at the Super Fresh, bought lunch from there and has gone to Colo-I-Suva to have lunch. Thereafter, on the 13<sup>th</sup> of September, towards the afternoon he has gone with her to Colo-I-Suva for swimming. Accused states that altogether he went to Colo-I-Suva on 5 occasions, being thrice for swimming and twice for lunch.
- xiv) On the 15<sup>th</sup> of September he has gone for training early in the morning at 6.00am. He has planned to go for a swim at the Colo-I-Suva pool. After he came to his car from the training, there has been several missed calls from Arpana and as soon as he came she has called him again and asked to pick her up from the MH Super Fresh on his way to Colo-I-Suva. Accordingly, he picked her up and they have gone to the Colo-I-Suva. They have reached there by 8.00am and the gate was closed. He has driven to the office and asked them to open the gate. An Officer has come with them and opened the gate.
- xv) At the car park the accused has asked her to change her clothes and she has changed into a loose t-shirt and a black tights. Thereafter she has followed him down the steps and while on the way she has got behind a little and the accused has stopped and let her go in front. When at the poolside, the accused has sat beside the pool putting his legs to the water. Ms. Pratap has been there with him at that time. They were talking to each other and were sitting at the edge of the pool by the entrance from the car park. They were talking of the relationship they had. The accused goes on to say that Arpana knew very well that he was in a relationship.
- xvi) The learned counsel, when queried as to why did he go to Colo-I-Suva with her, the accused states that she was a close friend and they used to meet and since she asked him to take her to Colo-I-Suva, he picked her up. When queried of the discussion of the relationship, the accused states that he was opposing her that he cannot continue to have a physical relationship with her. He further states that he was uncomfortable and always hesitated when she used to touch him. That morning when at the poolside she had put her hands on him and was getting close to him.

- xvii) He hesitated there too at the pool side and she stood up and started walking on the side of the pool. When asked of his earlier statement of non-continuation of a physical relationship, the accused says that he never had any physical relationship with her but she always wanted to have it and it was manifested by her being used to kiss and touch him in a very uncomfortable way.
- xviii) His Counsel queried him as to why he didn't simply leave her, if that was the case. The accused says that he tried to do so and she used to fight, argue and threaten him if he denied any relationship. He further says that she would put his and his girlfriend's work at risk because she knew people at their work places. When asked as to why he didn't stop seeing her, the accused says when he tried to do so, she continued to drop messages and tried calling.
- xix) At the poolside on that morning, while she walked beside the pool, he has moved to the other side of the pool where man-made steps are and sat on the lowest step. After some time, Arpana has come and sat few steps above him. Sometime later, Arpana has come and sat next to him and at that moment a European couple has gone jogging past them. He was conversing with her as to how cold the water may be and whether they should swim or not.
- xx) Having conversed with her, they have stood up and he has pushed her into the water to take the lead and he has followed her afterwards. Describing the way he pushed her the accused states that they were standing very close to the water and it was a light push when she was facing the water. The accused further states that they have swam at the same place before. When pushed in, she went in the water and looked back at him. He has asked her to get to a side for him to jump and she has done so. The accused having jumped in, has swam across to the other side where the car park entrance is. Then he turned around, sitting back on the rocks on the side of the pool at that point Arpana was nearly close to the middle of the pool. Within seconds she called for help and he quickly dived in the water to provide support to her. As soon as he reached her, she tried to put her hand on his head and since he tilted his head a little bit, her finger nails struck across his face.

- xxi) At that point of time, Arpana was underwater facing towards the steps from the car park and he was facing towards the manmade steps. He was holding on to her shirt while she grabbed on his shirt. He was holding on to her shirt to provide some support for her to come up. Then he turned back to see some people standing by the car park entrance and he has asked for help with his hand and at the same time has called out 'help'.
- xxii) As soon as he called for help some people out of the ones who were there had dived into the water and tried to drag him towards the bank of the pool. The accused identifies one of them to be PW 3, PC Rova. While they were pulling him towards the bank, the accused has asked them to 'leave me and save the girl, there's a girl in the pool'. The accused states that Arpana was not to be seen by that time. The accused further states that he let her shirt go thinking that the rescuers saw her, but when he noted that they haven't, he informed them.
- xxiii) The accused states that Arpana was underwater for a short time like 30 seconds. When he told them, one of them went back and another jumped into the water and brought Arpana to the surface. Just as she was brought to the bank of the pool, the head of the team has asked other to take him from there. He was taken to the car park and was informed at there that Arpana has told them that he tried to kill her.
- xxiv) Thereafter he was taken to the Valelevu Police Station and later taken to Nasinu Police Station and later having interviewed him later taken for a medical examination. The accused identifies the medical certificate issued to him as the document PE 1 (e). The accused denies that he tried to kill Ms. Arpana Pratap by drowning her.

49. In answering the cross-examination, the accused states that;
- i) He has gone through the military training and as a part of it he can swim and can face any emergency situation that would come up.
  - ii) He is ranked private in the RFMF and that was the lowest rank in the regular force though there are lower ranks in non-regular forces.
  - iii) The relationship between the accused and Ms. Pratap was a non-existent relationship. After he met her on the 3<sup>rd</sup> of November, they were in contact mainly through the text messages and the viber messages.

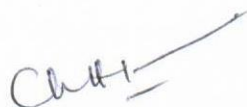
- iv) The accused denies constantly texting her or contacting her through viber every day. He admits meeting Ms. Pratap often for lunch, but not every day. He admits other than texting and meeting for lunch, they met for drinks in the afternoon, after work sometimes. While admitting that even though he had a relationship with Monisha, he used to text, have lunch and drinks with Ms. Arpana, the accused states that she knew of his relationship with Monisha.
- v) The accused states that his relationship with Monisha is over 9 years and he is yet to marry her. When suggested that he was cheating on both, Arpana and Monisha, the accused denies it. The accused when asked of the meaning of the word 'Babba', a word which he is familiar with, states that it is a polite way of addressing anybody in Hindi. The witness denies that it would mean 'my beloved'.
- vi) The accused admits that he owed Ms. Pratap \$80,500.00 in total. However, he denies that by the end of July 2018, he owed Ms. Pratap a sum of \$78,700.00. The accused explains that it contains an amount spend by her with him. However, he concedes that he has signed those agreements, willingly. He concedes that he has not paid any money to Ms. Pratap as for the agreements.
- vii) The accused while admitting that Ms. Pratap has constantly asked him to pay her money, states that she used to pressure him when he refused to meet her. The accused admits that he could not pay her as agreed when the deadline arrived. Furthermore he admits that he did not have sufficient funds with him to repay her by the deadlines.
- viii) The accused admits that when he met Ms. Pratap on the 15<sup>th</sup> of September, the plan was to go to the bank thereafter to pay her. He further admits that he promised to pay her money on the 15<sup>th</sup> of September. But later states that he didn't have sufficient funds by then and Ms. Pratap knew about it.
- ix) Between the 3<sup>rd</sup> to 23<sup>rd</sup> of November 2017, the accused was given more than \$23,000.00 in cash and he admits that. The accused admits that Ms. Pratap made him uncomfortable, she threatened him and his girlfriend and their work was at risk, he could not block her as he owed her money and he was helpless. He denies the proposal that as a solution to all these issues he decided to kill Ms. Pratap.

- x) The accused denies that he planned to take her to Colo-I-Suva to drown her. He admits taking Ms. Pratap to Colo-I-Suva, at least on 4 occasions. He denies the proposal that she never swam at the Colo-I-Suva pool. He further denies that she could not swim and states that as **far as he knew**, she could swim.
  - xi) The accused admits that on the 15<sup>th</sup> of September 2018, they were the only ones in that area, apart from the couple who jogged past. He denies that he took the advantage of the opportunity and tried to kill her.
  - xii) He admits the pool being about 6 meters in diameter and also being very deep. He also admits that he pushed her in from her back, while standing on the man-made steps with him.
  - xiii) The accused explains that he was trying to save Ms. Pratap from drowning. He denies that he was trying to drown her. He admits that by the time the Police boxing Team came in, Ms. Pratap was under the water, right behind him. He further admits that his head was above the water at the time. He denies that he managed to keep his head above the water by thumping Ms. Pratap on her neck and the back, with his feet.
50. In re-examination, the accused states that he was not in contact with Arpana constantly, but there were gaps of a day or two when they used to say hello to each other. He states further, that out of the amount mentioned in PE 1 (c), he has taken on loan about \$60,000.00 probably. As for the accused, Ms. Pratap has started asking for her money constantly since May 2018. He agrees that he did not have any money in the bank by the 15<sup>th</sup> of September 2018. When queried as to why he did arrange to go to the bank, his explanation was that he did not arranged it but asked Arpana for more time.
51. That was a summary of the evidence given by the witnesses. Please remember that I have only referred to the evidence which I consider important to explain the case and the applicable legal principles to you. If I did not refer to certain evidence which you consider important, you should still consider that evidence and give it such weight you may think appropriate. As I have already explained, which evidence you would accept and which evidence you would not accept is a matter for you and you alone to decide.

52. Remember that you should first decide on the credibility and reliability of the witnesses who gave evidence in this case and accordingly decide what facts are proved and what reasonable inferences you can draw from those proven facts. Then you should consider whether the elements of the offences have been proved beyond a reasonable doubt. You should take into account my directions where relevant, in deciding whether the prosecution has proved all the elements.
53. The Accused has indicated his stance through his evidence and the cross-examination done from the prosecution witnesses. The accused's stance is that he never attempted or intended to kill Ms. Arpana Pratap.
54. With the submission of the accused's stance, one of the situations given below would arise;
- (i) You may accept the stance of the accused, if so your opinion must be that the accused is 'not guilty' of Attempted Murder.
  - (ii) Without necessarily accepting the accused's stance you may think, 'well what he suggests might be true'. If that is so, it means that there is a reasonable doubt in your mind and therefore, again your opinion must be 'not guilty' of Attempted Murder.
  - (iii) In any of the situations above, then you should consider whether the prosecution has proved the lesser count of Assault Causing Actual Bodily Harm. If you have any reasonable doubt as to the proof of necessary elements of the said offence of Assault Causing Actual Bodily Harm, then you should find the accused not guilty of that as well.
  - (iv) The final possibility is that you reject his stance. But, that itself does not make the accused guilty. The situation would then be that you should still consider whether the prosecution has proved all the elements beyond a reasonable doubt.
55. Any re-directions?
56. Madam and Gentlemen Assessors, that is my summing up. Now you may retire and deliberate together and may form your individual opinion on the charge against the accused. You have copies of the document tendered as the exhibits "PE 1" and

“PE 2”. When you have reached your separate opinion, you will come back to court and you will be asked to state your opinion.

57. Your opinion should be whether the accused is guilty or not guilty of;
- i) Attempted Murder.
  - ii) In the event you decide not guilty, then you should decide whether the accused is guilty or not guilty of the offence of Assault Causing Actual Bodily Harm.

  
Chamath S. Morais  
JUDGE



***Solicitors for the State*** : ***Office of the Director of Public Prosecutions, Suva***  
***Solicitors for the Accused*** : ***O'Driscoll & Co.***