

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 399 OF 2018

STATE

V

ROMULUSE SENILEBA

Counsel : Ms J.J.M. Fatiaki with Mr. A. Kumar for State
Ms. N. Mishra with Ms M. Chand for Defence

Dates of Hearing : 24, 25 February 2020

Date of Summing Up : 26 February 2020

SUMMING UP

Ladies and Gentleman Assessor,

1. We have now come to the final phase of this trial. It is now my duty to sum up this case to you. I will direct you on matters of law which you must accept and act upon. On matters of fact however, which witnesses to accept as reliable, which version of the evidence to accept, these are matters for you to decide for yourselves. So if I express any opinion to you about

the facts of the case, or if I appear to do so it is a matter for you whether you accept what I say, or form your own opinions. In other words you are the judges of fact.

2. You must take into account the manner in which the witness gave evidence. Was he/she evasive? How did he/she stand up to cross examination? You are to ask yourselves, 'was the witness honest and reliable?'
3. When you have decided the truthfulness and reliability of evidence, then you can use that credible evidence to determine the questions of facts, which you have to decide in order to reach your final conclusion, whether the accused is guilty or not to the charge. You decide what facts are proved and what inferences you properly draw from those facts. You then apply the law as I explain it to you and form your own opinion as to whether the Accused person is guilty or not guilty.
4. A question of fact is generally understood as what actually had taken place among conflicting versions. It should be decided upon the primary facts or circumstances as revealed from evidence before you and of any legitimate inference which could be drawn from those given sets of circumstances. You as Assessors, in determining a question of fact, should utilise your common sense and wide experience which you have acquired living in this society.
5. In determining questions of fact, the evidence could be used in the following way. There are two concepts involved here. Firstly, the concept of primary facts and secondly the concept of inferences drawn from those primary facts. Let me further explain this to you. Some evidence may directly prove a thing. A person who saw, or heard, or did something, may have told you about that from the witness box. Those facts are called primary facts.
6. In addition to facts directly proved by the evidence or primary facts, you may also draw inferences – that is, deductions or conclusions – from the set of primary facts which you find to be established by the evidence. If you are satisfied that a certain thing happened, it may be right to infer that something else also occurred. That will be the process of drawing an

inference from facts. However, you may only draw reasonable inferences; and your inferences must be based on facts you find proved by evidence. There must be a logical and rational connection between the facts you find and your deductions or conclusions. You are not to indulge in intuition or in guessing.

7. You will not be asked to give reasons for your opinions but merely your opinions themselves, and your opinions need not be unanimous but it would be desirable if you could agree on them. Your opinions are not binding on me but I can tell you that they will carry a great weight when I deliver my judgment.
8. As a matter of law, I must direct you that the onus or burden of proof lies on the Prosecution throughout the trial and it never shifts. There is no obligation on the Accused person to prove his innocence. Under our criminal justice system an accused person is presumed innocent until he is proved guilty.
9. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of accused person's guilt before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt, then you must express an opinion that he is not guilty.
10. Your decisions must solely and exclusively be based upon the evidence which you have heard in this Court and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must disregard them and your opinions should only be based on the evidence given in this courtroom.
11. Your duty is to find the facts based on the evidence, apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
12. The evidence is what the witnesses said from the witness box, the documents for example the

medical report, the real evidence (the things received by prosecution as exhibits for example the cane knife) and the scars of injuries you may have observed on a witness and any admissions made by the parties. Statements, arguments, questions and comments by the Counsel are not evidence. A thing suggested by a counsel during a witness's cross-examination is also not evidence of the fact suggested, unless the witness accepted the particular suggestion as true. The opening and closing submissions made by both counsels are not evidence. They were their arguments, which you may properly take into account when evaluating the evidence; but the extent to which you do so is entirely a matter for you.

13. The doctor who had examined the complainant was not called as a witness in this case. However, the medical report prepared by the doctor upon examination of the complainant was tendered as an admitted fact. The doctor's opinion should be considered as expert evidence. The doctor has given her opinion based on examination of the complainant. You may take into consideration the observations the doctor has made and his/her opinions.
14. However, doctor's evidence is not accepted blindly. You will have to decide the issue before you by yourself and you can make use of doctor's opinion if his reasons are convincing and acceptable to you; and, if such opinion is reached by considering all necessary matters that you think fit. In accepting doctor's opinion, you are bound to take into account the rest of the evidence led in the trial.
15. You have been given two sets of agreed facts. You should accept those agreed facts as accurate and truth. The agreed facts are as follows:
 1. Romuluse Senileba is 42 years of age.
 2. Luisa Volau (hereinafter referred to as the 'Complainant') is 46 years of age and at the material time resided at Lovoni Settlement, Mead Road.
 3. Romuluse Senileba and the Complainant have been legally married for the past 9 years and have had 2 children together namely:
 - (i) Romuluse Junior;
 - (ii) Adriu Matagai.

4. The Complainant has 3 children from a previous marriage, namely:
 - (i) Merewalesi Brown;
 - (ii) Eider Brown;
 - (iii) Clyde Brown.
5. Prior to the incident on the 13th of October 2018, Romuluse Senileba resided with the Complainant at their matrimonial home. He left their home on the 18th of September 2018.
6. Ms Luisa Vokitira is married to Lovosio Meli and she and her family live at Lovoni Settlement in Mead Road, about 10 meters away from the Complainant's home.
7. Romuluse Senileba had been staying with Luisa and her family at their home since the 4th of October 2018.
8. On the 13th of October 2018 at around 2.30 pm the Complainant was at her home with her daughter Merewalesi Brown. Merewalesi subsequently left out from their home to go to the supermarket, leaving the Complainant home alone.
9. Whilst the Complainant was home alone, Romuluse Senileba entered her home.
10. Romuluse Senileba struck the Complainant with a cane knife which had a wooden handle. He kept chopping at her body several times even though she was shouting.
11. The Complainant was subsequently transported to the Hospital by some of her neighbours.
12. On the 13th of October 2018, Inoke Vasu uplifted from the complainant's house a wooden handled cane knife which he found to have blood stains on it. He handed the same over to SC 4069 Nemani Rokobuli.
13. SC 4069 Nemani Rokobuli then handed the same wooden handled cane knife to PC 5634 Jone Rakale who then placed it in the Southern Division command vehicle which was being used by the Valelevu Operation Team. He then informed PC Rusiate Ramuatiqa that he had placed the said cane knife in the back of their vehicle.
14. PC Rusiate Ramuatiqa having being informed of the above proceeded to the Samabula Police Station. Upon arrival at the said Station he picked up the wooden handled cane knife from the vehicle and handed it over to the Samabula Police Station Charge room where it was subsequently exhibited.
15. On the 14th of October 2018, DC 4960 Shamal Murti uplifted from the complainant's

home (beside the clothes line) a wooden timber which had been pointed out to him by one of the complainant's neighbors', Panapasa Rotakalau.

16. Having uplifted the timber, he took the same to the Samabula Police Station where it was exhibited.
 17. Both the wooden handled cane knife and the wooden timber were photographed by WPC Sabina Miriama of the Fiji Police Forensics Unit on the 14th of October 2018.
 18. The said photographs are tendered by consent as a prosecution exhibit.
 19. Dr Kelera Tabuaniqili was the first Doctor to examine the Complainant Ms Luisa Volau at the Colonial War Memorial Hospital on the 13th of October 2018 at around 2.45 pm.
 20. On the 3rd of December 2018 she filled in the Fiji Police Medical Examination Form containing her initial findings.
 21. The said medical form is tendered by consent as a prosecution exhibit.
 22. On the 25th of January 2020, Dr Kelera Tabuaniqili prepared a detailed statement outlining the injuries she noted during her examination of the complainant, along with the treatment plan that was prescribed.
 23. A copy of her statement (both handwritten and typed) is tendered by consent as a prosecution exhibit.
16. Now I draw your attention to the information the accused is charged with. Please refer to the information. As I said before, the accused is tried only on the 1st count thus you are supposed to express your opinion only on the 1st count. The information reads as follows:

COUNT 1

Statement of Offence

ATTEMPTED MURDER: Contrary to section 44 and 237 of the Crimes Act 2009.

Particulars of Offence

ROMULUSE SENILEBA on the 13th day of October, 2018 at Samabula in the Central Division, attempted to murder **LUISA VOLAU**.

COUNT 2

Statement of Offence

BREACHING A DOMESTIC VIOLENCE RESTRAINING ORDER:

Contrary to section 77 (1) (a) of the Domestic Violence Act 2009.

Particulars of Offence

ROMULUSE SENILEBA on the 13th day of October, 2018 at Samabula in the Central Division, having notice of Domestic Violence Restraining Order 1861/18, by which he was bound, without reasonable excuse contravened the said Order by striking the protected person under the said Order, namely **LUISA VOLAU**, with a cane knife.

17. For the purpose of this trial the accused is charged with one count of Attempted Murder. Before I explain the elements of the offence of Attempted Murder, I must explain the elements of the offence of Murder. A person commits the offence of Murder if:
 - (a) the person engages in conduct; and
 - (b) the conduct causes the death of another person; and
 - (c) the first-mentioned person intends to cause, or is reckless as to causing, the death of the other person by the conduct.”
18. The law in relation to attempt is that 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.
19. To prove the count of Attempted Murder the Prosecution must prove the following elements of the offence beyond reasonable doubt:
 - a) the accused;

- b) engaged in a conduct; and
- c) the said conduct was an attempt to cause the death of the complainant ;and
- (d) the accused intended to cause the death of the complainant by his conduct.

20. In this case, there is no dispute as to the identity of the accused. You can accept this element as proven beyond reasonable doubt.
21. The second element relates to the conduct of the accused. To engage in a conduct is to do an act which is the product of the will of the accused and it was not accidental. The Prosecution has to prove beyond reasonable doubt that the conduct of the accused was deliberate and not accidental. For the accused to be guilty of attempted murder, the accused's conduct must be more than merely preparatory to the commission of the offence. The question whether a conduct is more than merely preparatory to the commission of the offence is one of fact for you to decide.
22. The third element is that the said conduct of the accused was an attempt to cause the death of the complainant.
23. The final element is concerned with the state of mind of the accused that he intended to cause the death of the complainant. This is the only element that is deputed by the Defence in this case. It is not possible to have direct evidence regarding an accused's state of mind since no witness can look into the accused's mind and describe what it was at the time of the alleged incident. However, you can construe the state of mind of the accused from the facts and circumstances you would consider as proved.
24. In order for you to conclude that the accused intended to cause the death of the complainant, you should be satisfied that the accused intended to kill the complainant as a result of his conduct. You should consider all the evidence and draw appropriate inferences to ascertain whether the accused had the intention to cause the death of the complainant.

25. Intention is not something that can be easily proved. It is something that has to be judged by the acts or words of a person or the circumstances that surround what he does or does not do. The law says a person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events. You decide intention by considering what the accused did and he did not do. You should look at his actions before, at the time of, and after the act and the words he had uttered, the weapon used, the number of injuries inflicted, the place of the body where the injuries were inflicted. All these things may shed light on the intention of the accused at the crucial time.
26. Now I draw your attention to the salient evidence led in the trial and remind you of the Prosecution and Defence cases. In doing this, it would not be practical for me to go through the evidence of every witness in detail and repeat every submission made by counsel. I will summarize the salient features. If I do not mention a particular witness, or a particular piece of evidence or a particular submission of counsel that does not mean it is unimportant. You should consider and evaluate all the evidence and all the submissions in coming to your decision in this case.

Case for the Prosecution

PW1 – LUISA VOLAU (The Complainant)

27. Luisa said that, in 2018, she was legally married to the accused for 6 years. She has 5 children, 3 of whom are from her previous marriage.
28. On 13th October 2018 she was living at Lovoni Settlement in Tamavua with her children. The accused was residing at one of her neighbour's house ever since a DVRO was issued against him when he assaulted Luisa and her daughter.
29. On the 13th, Luisa sent her daughter Merewalesi to the supermarket and started folding

clothes, sitting on the floor. She was facing her back towards the main door.

30. She got a shock when something hit her shoulder. She could feel the pain. When she turned around, she saw Romuluse with a cane knife. Romuluse had struck her right shoulder with that cane knife. She shouted at the top of her voice and covered her head with both her hands. He kept on striking her with the knife as she was trying to get to the other door. He dragged her back and struck her again with the cane knife. He did not say anything to her whilst striking with the cane knife.
31. The neighbours heard her shouting and they came to the door. She heard them say “hey what are you doing; she’s not an animal?” After that, she went down as she was weak. He struck the knife again on her neck.
32. Luisa described about an incident that had happened about a week ago. Prior to this incident, about a week ago, Romuluse had assaulted her and her daughter. Before they went to the Police Station, Romuluse had promised that he’ll cut her neck down.
33. Luisa had subsequently been taken to the hospital by some of her neighbours and warded at the ICU until she was transferred to Acute Ward.
34. Ladies and gentleman, you had the opportunity to observe the (scars of) injuries sustained as a result of this attack when she showed us some of them in her hands, neck and a leg. She said that her hands are not properly working, unable to hold anything and do any other work with them.
35. Under cross- examination, Luisa said that she had known Romuluse since the time she started dating him for roughly 11 years now. She was living with Romuluse and her children until the DVRO was issued. She admitted that on 13th October, 2018, Romuluse had been sending her son Junior to her wanting to talk to her but she told Junior that she is unable to talk to

Romuluse because of the DVRO. She denied that she had agreed to speak to Romuluse after she had cleaned the home. She denied that Romuluse had knocked on the door and he, without entering into the house, informed her that he wanted to reconcile with her.

36. Luisa admitted that she had informed Romuluse that she did not love him anymore. She denied that Romuluse had seen a love bite on her neck and that is why he got angry and picked up the cane knife. She admitted that the cane knife was in her home. She agreed that the cane knife is usually kept behind the main door of the house.
37. Luisa admitted that she was moving around trying to protect herself, when Romuluse was swinging the cane knife and that is how she had sustained injuries at the back of her head.
38. Under re-examination Luisa said that she had told Romuluse that she no longer loved him when he came back to ask for forgiveness after he had assaulted her and her daughter.

PW2 : PANAPASA RATOKALAU

39. Panapasa said that on 13 October 2018 he was visiting his elder brother Inoke Vasu at Lovoni Settlement, Tamavua. After 2 pm, while he was having tea with his brother Inoke Vasu at home, they heard screams of a woman asking for help. Inoke told him to run outside and look where that shout is coming from.
40. When Panapasa came out he saw a lady sitting down and a man striking a knife and the lady was covering her head. The witness demonstrated how she was covering her head.
41. He turned around, picked a wood used to push the clothes line up and poked the man's stomach. While striking the lady with the knife, this man was saying "all this time, you've been doing this". After he poked this man's stomach with this timber, he saw the lady was

weak. He struck the lady again 3 times before he put the knife down. He called out to this man whom he had known as Naita that 'she is a human being, not an animal'. That's when he calmed down. Naita ran to the right of his house and left the knife there and ran to the house that he was staying in.

42. He wanted to do something to Naita, but then he realised that he had to come and check on the lady. He saw her injuries with blood all over her; so he brought a mat and with the assistance of others the injured was taken to the hospital. On the next day, some police officers came and he showed them the piece of timber which he used. When this was exhibited, Panapasa recognized it in court.
43. Under cross-examination Panapasa said that Inoke's house is about 20 meters away from the house of the incident. He said he was standing outside the main door looking inside the house when the incident happened. He denied that the accused had stopped striking when he poked him.

PW3 –INOKE VASU

44. Inoke said that when he and Inoke were having lunch at home at around 2 pm, on 13 October 2018, they heard Luisa screaming in i-Taukei "oilei, oilei". He sent his younger brother Panapasa to go and see what is happening there. When Panapasa had gone, he heard Panapasa shouting "murder, murder". He then stood up and ran to where Panapasa was to check what had happened. He saw Luisa's husband Romuluse exiting from their house; Panapasa was holding the clothes line pole and was poking Luisa's husband to prevent him from striking Luisa.
45. Inoke then ran straight inside the house. When he saw Luisa's condition he was shocked. He pulled a mat into the house and sought assistance of other people to take Luisa to the hospital. They put Luisa in the police ambulance and returned to where the incident happened. When

the police officers came he handed over the knife to the police officers. In Court, Inoke recognized the cane knife.

PW4 : LUSIANA VOKITIRA

46. In 2018, Lusiana was residing at Mead Road Nabua. Luisa is her neighbour. She and her husband met Romuluse in town. He asked if they could go together so he could go to his wife's place to bring his stuff and to apologise to her, so they took him with him that day. Romuluse was residing at her house since then.
47. Romuluse went to see his wife on that Thursday. The wife never accepted him; that's when her husband brought Romuluse home and he was staying with them.
48. On the following Saturday, that was on the 13 October 2018, after 2.00 pm., she was making lunch. Romuluse was sending his eldest son Junior to go and ask the mother if he could talk to her. The son came and told the father that his mother asked if he could wait because she's cleaning the house. After 5 minutes he sent his eldest son to his mother again. Junior returned and said that the mother wanted to know what wanted. Romulus was laying down in the sitting room for a while. When they were sitting in the sitting room, they saw Romuluse's step-daughter Mere going up to the shop. Then Romuluse told her that he's going to see his wife and he left home. He did not have anything in his hand at that time.
49. When Lusiana was watching TV at home; she heard Luisa shouting, calling for help from another neighbour. She thought that Romuluse was just punching the wife; but when she looked through the window, she saw Romuluse holding a cane knife and chopping his wife. Luisa was running outside trying to get help, but Romuluse was blocking her way and the lady was down. She saw another man holding one long bitu (bamboo) and trying to poke Romuluse to put the knife away from Romuluse's hand. They were all shouting at Romuluse to stop chopping the wife. But Romuluse kept on chopping her wife till they couldn't hear her voice. When Luisa was at the door lying down unconscious, Romuluse dropped the cane

knife down, and he came outside. He came straight home. She heard him saying he's satisfied now that the wife is dead. He was just talking to himself. She was scared. She called her husband who is a police officer at Central Police Station. Romuluse wore his canvas and sat on the verandah. He said he's waiting for the policemen.

50. Under cross-examination, Lusiana agreed that Romuluse and Luisa were having problems and that's why Romuluse was staying with her. She agreed that she knew that Romuluse wanted to reconcile with Luisa. She agreed that Romuluse was mumbling some words as opposed to talking and these mumbling words could have been anything because he was talking to himself.
51. That was the case for the Prosecution.
52. At the close of the Prosecution's case you heard me explain to the accused what his rights were in defence and how he could remain silent and say that the Prosecution had not proved the case against him to the requisite standard or he could give evidence in which case they would be cross-examined.
53. The accused elected to give evidence under oath although he is under no obligation to prove his innocence. Now I must tell you that the fact that an accused gives evidence in his own defence does not relieve the Prosecution of the burden to prove their case to you beyond reasonable doubt. Burden of proof remains with the Prosecution throughout. Accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

Defence Case

DWI – ROMULUSE SENILEBA

54. Romuluse said that he met Luisa at her workplace, at Pizza King, Harbor Centre roughly 11

years ago. Luisa got married to him when she was pregnant with his second child. Up until June 2018 his relationship with Luisa was normal and there was no problem.

55. His relationship with her children from her previous relationship was sometimes not normal. They used to talk to him in a harsh way and it didn't sound nice to him; so he always told Luisa to talk to her children. Luisa always told him, just leave them, they will reap what they sow by the time they get married.
56. Romulose was staying with one police officer by the name of Meli and his wife Lusiana after a DVRO was issued to him by Magistrate Court.
57. On 13th October 2018, when he was talking to Lusi's kids, his son Junior came. He inquired about whereabouts of his mother because he wanted to reconcile with her. He wanted to go and seek forgiveness from Luisa because he had assaulted her. Junior came and said that Luisa is still folding the clothes. After a few minutes, he sent Junior again to check whether his mother was done with what she was doing. Junior came back and said that his mother said for him to wait for a while because she wasn't done with what she was doing. He stood up and went to the wife because it was taking so long for her to agree to him to come and reconcile with her.
58. When he reached Luisa's house, the door was open so he went inside. He greeted her saying 'bula'. Luisa was sitting sideways inside the house and folding clothes. She looked at him and then looked back. He started telling her that he wanted to apologise to her. Luisa then told her that she did not want him; He also spotted a love bite on her neck. When she told him that, he was not angry. But when he spotted the love bite he got really angry because she was his wife married to him.
59. He stood up and got hold of the knife. His thought was to just injure her. The knife was just behind the door. That was his knife. He normally placed it behind the door. She was sitting

by that time. He got hold of the knife; went straight for her and then he started striking her with the knife. Luisa stood up and ran towards the door. Then he cut her leg. Then she slipped and she lay down just beside the door. He felt someone poking him with a stick, and it was Panapasa. He left the knife there and came outside of the house. He came straight to Meli's house where he was staying.

60. Before this incident happened, when he was at home with Luisa, he could always hear her calling on a mobile phone and she was talking to a man.
61. Under cross-examination, Romulose admitted that in October, 2018 he got very sick and in order to take care of him, Luisa left work and stayed home. He denied that he got angry because he was remanded. He denied having threatened to cut her neck when she was going to report him to the police. He agreed that the main reason why he could not go back home, was the DVRO obtained by Luisa. Romulose denied that he was ashamed when he had to go to Meli and his wife. He admitted that when he reached Luisa's home, he picked up the cane knife and went directly to where she was sitting. But he could not recall if he had stabbed Luisa in the back and struck the cane knife on different parts of her body. He agreed that the only reason why he had stopped striking Luisa was because Panapasa came and stopped him with a wood. He denied striking 3 final blows on Luisa even after he was stopped by Panapasa. He admitted that he did not assist to take Luisa to the hospital. He denied that he had intended to kill Luisa. He denied saying "I am now satisfied that she is dead".
62. That is the case for Defence

Analysis

63. The only issue before you in this case is whether the accused intended to kill his wife Luisa Volau. The Prosecution says that the accused intended to kill his wife when he struck a cane knife several times on several places of complainant's body including her neck and the head.

64. The Defence on the other hand takes up the position that the accused was frustrated at her refusal to reconcile and angry at seeing a love bite on her neck and, his intention was not to kill her but only to injure her.
65. You heard evidence of four prosecution witnesses and that of the accused. The Prosecution also tendered the medical report and the weapon alleged to have been used by the accused on the complainant. The prosecution says that the prosecution witnesses are reliable and you should act upon their evidence. You had the opportunity to observe the scars of the injuries alleged to have been left behind as a result of the injuries caused. You decide if they told truth in court.
66. If you are satisfied as to the credibility of the witnesses for prosecution you decided if the accused intended to kill the complainant. The State Counsel drew your attention to certain pieces of evidence that may be of assistance to you in coming to your conclusion. I would like to summarise some of those points for your easy reference.
- The accused had assaulted the complainant and her daughter approximately a week prior to this incident and when the complainant was about to go to the police station the accused had promised to cut complainant's neck down.
 - The complainant had obtained a DVRO from the Magistrate's Court against the accused preventing him from coming home thus leaving him homeless and embarrassed. The State suggests that the accused had a motive to kill the complainant as she had become a problem for the accused.
 - A cane knife has been used and it has been struck several times all over the complainant's body, including vulnerable parts like the neck and the back of the head. According to the complainant, she had received injuries on her hands when she was covering her head. The medical report that was tendered as an admitted fact shows the injuries she sustained.
 - The accused's admission that the only reason why he had stopped striking Luisa was because Panapasa came and stopped him with a wood.

- Panapasa's evidence that the accused struck three times even after the accused was interrupted by him with a stick on his stomach.
 - Lusiana's evidence that the accused continued to chop the complainant till she couldn't hear her voice despite her shouting to stop chopping the wife.
 - Lusiana's evidence that she heard accused say that he's satisfied now that the wife is dead.
 - Accused's admission that he did not assist for the complainant to be taken to the hospital despite her critical condition.
67. The accused in his evidence denied that he intended to kill his wife. The Defence says that the accused only intended to injure the complainant. They say that the accused went to complainant's house empty handed to reconcile and when the accused spotted a love bite he was angry and that prompted him to strike the complainant with a cane knife. That cane knife was kept in complainant's house. They suggest that this attack is not premeditated.
68. Having considered all the evidence led in the trial and drawing reasonable inferences from the proved facts, you decide what accused's intention was when he struck the complainant with a cane knife.
69. It is up to you to decide whether you could accept the version of the Defence and that version is sufficient to establish a reasonable doubt in the prosecution's case. If you accept the version of the Defence, you must not find the accused guilty. Even if you reject the version of the Defence still the Prosecution should prove its case beyond reasonable doubt. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the Prosecution throughout the trial, and never shifts to the accused, at any stage of the trial.
70. That concludes my summing up of the law and the evidence in this particular trial. We have now reached the stage where you must deliberate together and form your individual opinions on whether the charge has been proved against the accused. On your return, you will be asked

to separately state in Court your opinion whether the accused is guilty or not guilty of attempted Murder as charged.

71. Would you please now retire to consider your opinions? When you have made your decisions would you please advise the Court Clerk and the Court will reconvene to receive your opinions?

72. Any redirections?



At Suva

26 February 2020

A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge

Judge

Counsel: Office of the Director of Public Prosecution for Prosecution
Legal Aid Commission for Defence