

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 050 OF 2020

STATE

-v-

AIYAZ ALI

Counsel : Mr S. Seruvatu and Ms S. Swastika for State
: Accused in Person

Date of Hearing : 19 March 2024

Date of Judgment : 11 November 2025

JUDGMENT

1. This case concerns another heinous crime committed in a domestic setting in Fiji. The Accused was the *de facto* partner of the Complainant.
2. The Accused was earlier arraigned on the information dated 04 July 2013 filed by the Director of Public Prosecutions. It alleged that the Accused on 18 April 2013 attempted to murder the Complainant Pritika Kumari contrary to section 44 and 237 of the Crimes Decree 2009 and in the same transaction threatened with intent to cause alarm to Police Constable 3792 Etuate Nasova contrary to section 375 (1)(a) of the Crimes Decree, 2009 and one count of damaging property contrary to section 369 (1) of the Crimes Decree, 2009.

3. On 10 November 2014, the Accused pleaded guilty to the first count of Attempted Murder and not guilty to the other two counts. On 19 November 2014, the Accused filed an application to vacate his guilty plea. The Learned Judge dismissed the application to vacate the guilty plea and proceeded to record a conviction. On 5 March 2015 the Accused was sentenced to life imprisonment with a minimum term of 7 years imprisonment.
4. On 21 March 2015, the Accused filed an appeal in the Court of Appeal against his conviction and the sentence. The Appeal was allowed and the guilty plea was set aside. The matter was sent back to the High Court for the Accused to be arraigned on a fresh information/amended information.
5. The Director of Public Prosecutions filed the following amended information.

Statement of Offence

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

Particulars of the Offence

AIYAZ ALI on the 18th of April, 2013 at Nadi in the Western Division attempted to murder PRITIKA KUMARI by striking her with a cane knife.

6. The Accused pleaded not guilty to the charge. The Complainant presented evidence in chief in the presence of the Accused who was unrepresented at the trial. He had waived his right to be represented by a legal practitioner. At the conclusion of Complainant's evidence-in-chief, the Accused made a request for a postponement saying that he needed a copy of the DVRO, which the Complainant referred to in her evidence, to defend his case. The Accused admitted that he was served with a DVRO by the police and said that it was misplaced. A request for a postponement was granted till 21 March 2024.
7. The Accused was in remand in another matter and was not produced on 21 March 2024. The further trial was fixed on 25 March 2024, on which day, the Accused appeared, but he was

not ready to cross-examine the Complainant. He sought a postponement to retain a private counsel. The trial was thus rescheduled for September 2024 as the Court was fully booked until then.

8. The Accused failed to appear in Court on the date fixed for trial. A bench warrant was issued. The police could not execute the bench warrant. A report was filed by the Prosecution, supported by an affidavit, describing the efforts it took to arrest the Accused, and to show that the Accused was deliberately absconding.
9. Having been satisfied that the Accused had chosen not appear and defend his case, the matter was fixed for further trial *in absentia* on the basis of Section 14(2)(h) of the Constitution. On 19 September 2025, the doctor who examined the Complainant was not available in Court to give evidence. The Prosecution closed its case and requested the Court to enter the judgment considering the evidence already led in Court.

Burden of Proof and Standard of Proof

10. The Accused is presumed innocent until proven guilty. The onus or the burden of proof rests on the Prosecution throughout the trial, and it never shifts to the Defence. The Prosecution must prove the charge beyond reasonable doubt.
11. To establish the offence of Attempted Murder, the Prosecution must prove the following elements beyond reasonable doubt:
 - (a) the accused;
 - (b) engaged in a conduct;
 - (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.
12. The first element of the offence is concerned with the identity of the person who allegedly committed the offence.

13. 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. The prosecution has to prove beyond reasonable doubt that the conduct of the accused was deliberate and not accidental. 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.
14. The third element is that the said conduct of the accused was an attempt to cause the death of the complainant.
15. The fourth element is concerned with the state of mind of the accused that he intended to cause the death of the complainant. 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 cause of events. It is not possible to have direct evidence regarding an accused's state of mind. Since the Court cannot look into the accused's state of mind and describe what it was at the time of the alleged incident, the state of mind should be gathered from the facts and circumstances surrounding the conduct of the accused before, at the time and after the alleged conduct. The Court should consider all the evidence and draw appropriate inferences to ascertain whether the accused had the intention to cause the death of the complainant.
16. I shall now summarise the salient parts of the Complainant's evidence.

Evidence for Prosecution

PW1- Pritika Kumari (The Complainant)

17. In 2013, Pritika Kumari (Pritika) was residing at Sonaisali, Nadi, with her *ex-de-facto* partner Aiyaz Ali. They had been in this relationship for 7 years whereby they had produced 2 kids. In 2013, the eldest child was 1 year and 8 months old and the second one 4 months old. She was 2 months pregnant with the third child at the time of the alleged offence.

18. On 18 April 2013, she ran away from home at night after being sexually abused by Aiyaz Ali. She was sitting outside with her 1 year 8 months old baby, waiting for the daylight. When the sunlight came, she ran to the Nawaicoba Police Post where she was advised to go to Nadi Police Station to lodge a report. A private vehicle took her to the Nadi Police Station where she lodged a report. On the same day, she managed to obtain a DVRO against Aiyaz Ali and a court order to have her belongings and the children removed from home.
19. She informed her mother and went to Sonaisali home in a private 7-seater van with a police officer to move her stuff and children from home. The police officer got Aiyaz Ali to sign the Court Order which ordered him to release her belongings. While the police officer was sitting in front of the house with her mother and 4 months old baby, she went into the house. Aiyaz Ali followed her and locked the door. When she was just starting to pack the clothes, Aiyaz Ali came into the room. She thought he was coming to say sorry to her. He went to the dark room and came back with a long cane knife.
20. The police officer, having seen Aiyaz Ali with the knife, started knocking on the door. At the same time, Aiyaz started chopping her with the cane knife all over her face and head. He also tried to chop her neck. When she tried to stop him, he hit her hands with the cane knife. She suffered serious injuries.
21. Pritika showed to Court the scars on her neck, face (chin) and head (a long cut 10" x 3") where she got 10 stitches. She said that Aiyaz Ali hit her 6 to 7 times with the cane knife. She got struck twice on her head, once on her hand, and once on her shoulder. While striking with the cane knife, Aiyaz Ali said in Hindi '*I will finish you off today*'.
22. The police officer broke the door and entered the house. He took out the knife from Aiyaz Ali and told her to run outside. She saw the blood all over her body. She was about to be unconscious. She controlled herself to come out.
23. She was taken to the 7-seater van which brought her to Nadi Hospital. From there, she was transferred to Lautoka Hospital by an ambulance because she had serious injuries. She could

not recall what happened next because she became unconscious. She was admitted in Lautoka hospital for three weeks while her children were with Social Welfare. She had to undergo a surgery and on physiotherapy for a longtime.

24. The Complainant identified the Accused Aiyaz Ali in Court.

Evaluation / Analysis

25. The Complainant was straightforward, consistent and credible. The scars and stitch marks on her body demonstrated to Court were consistent with her evidence.
26. The Accused was present in Court when the Complainant gave evidence. He did not come forward to challenge the Complainant's evidence. There is nothing before this Court to reject the Complainant's evidence. I accept that the Complainant told the truth in Court.
27. The identity of the Accused is not in dispute. The Accused is the Complainant's *ex-de-facto* partner. There was proper foundation for a dock identification which was not objected to.
28. The striking of the cane knife and chopping the Complainant with it constitute the Accused's conduct which is the product of the will of the Accused. It was not accidental. The prosecution proved beyond reasonable doubt that the conduct of the Accused was deliberate and not accidental.
29. The Accused's conduct was more than merely preparatory to the commission of the offence of Murder. The Accused had started chopping the Complainant with the cane knife all over her face and head and tried to chop her neck. When she tried to stop him, he hit her hands with the cane knife. There was blood all over her body.
30. The intention of the Accused is clear. He had a long cane knife which is no doubt a lethal weapon. The Accused had hit the Complainant 6 to 7 times with the cane knife. She got struck twice on her head, once on her hand and once on her shoulder which are consistent

the scars on her neck, face (chin) and head (a long cut 10" x 3"). While striking with the cane knife, the Accused had said 'I will finish you off today'. She suffered serious injuries and was about to be unconscious. She had been hospitalized for three weeks after a surgery.

31. If not for the police officers' timely intervention in snatching the cane knife from the Accused and telling the Complainant to run outside, the Complainant would have been killed on the spot. The timely hospitalisation and transfer of the injured Complainant to Lautoka Hospital saved her life.
32. The weapon used was lethal. She had suffered serious injuries on most vulnerable parts of the body. The Accused's deeds and the words clearly manifest his intention to kill the Complainant. The only inference I could draw from the conduct of the Accused is that he intended to kill the Complainant.
33. All the elements of Attempted Murder are made out. The Prosecution proved the charge beyond reasonable doubt.
34. I find the Accused guilty as charged. The Accused is convicted accordingly.



Aruna Aluthge
Judge

11 November 2025

At Lautoka

Solicitors:

Office of the Director of Public Prosecution for State