

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 19 of 2018

BETWEEN: STATE

PROSECUTION

AND: TEVITA RASUAKI

ACCUSED PERSON

Counsel: Mr. I. Rakaria for State
Ms. M. Tuiloma for Accused

Date of Hearing: 18 June 2019

Date of Closing Submission: 19 June 2019

Summing Up: 20 June 2019

SUMMING UP

1. The hearing of this case has now reached to its conclusion. It is my duty to sum up the case to you. As I explained you before the commencement of the hearing, we have different functions. It is my task to ensure that the trial is conducted according to law. As part of that, I will direct you on the law that applies in this action. You must accept the law from me and apply all directions I give you on matters of law.
2. Your function is to determine the facts of the case, based on the evidence that has been placed before you. That involves deciding what evidence you accept or refuse. You will

then apply the law, as I explain it to you, to the facts as you find them to be, and in that way arrive at your opinion.

3. I may comment on the facts if I think it will assist you when considering the facts. However, you are not obliged to accept any comment I make about the facts. Hence, it is entirely upon you to accept or disregard any comment I make about the facts of this case, unless it coincides with your own independent opinion.
4. You must reach your opinion on evidence, and nothing but on the evidence itself. Evidence is what the witnesses said from the witness box and the documents tendered as exhibits. This summing up, statements, arguments, questions and comments made by the counsel of the parties are not evidence. The opening address of the prosecution is not evidence. The closing addresses of the counsel of the prosecution and the defence are not evidence either. They are their arguments, which you may properly take into account when you evaluate the evidence, but the extent to which you do so is entirely a matter for you.
5. If you heard, or read, or otherwise learned anything about this case outside of this courtroom, you must exclude that information or opinions from your consideration. You must have regard only to the testimony put before you in this courtroom. Ensure that no external influence plays a part in your deliberation. You are allowed to talk, discuss and deliberate facts of this case only among yourselves. However, each one of you must reach your own opinion. You are required to give merely your opinion but not the reasons for your opinion. Your opinion need not be unanimous. I must advise you that I am not bound by your opinion, but I assure you that I will give the greatest possible weight on your opinions when I make my judgment.
6. Moreover, I must caution you that you should dismiss all emotions of sympathy or prejudice, whether it is sympathy for or prejudice against the accused, the complainant or anyone else. No such emotion has any part to play in your decision, nor should you allow public opinion to influence you. You must approach your duty dispassionately; deciding

the facts solely upon the whole of the evidence. It is your duty to decide the legal culpability as set down by law and not the emotional or moral culpability of the action.

Burden and Standard of Proof

7. I now draw your attention to the issue of burden and standard of proof. The accused is presumed to be innocent until he is proven guilty. The presumption of innocence is in force until you form your own opinion that the accused guilty to the offence.
8. The burden of proof of the charge against the accused is on the prosecution. It is because the accused is presumed to be innocent until he is proven guilty. In other words there is no burden on the accused to prove his innocence, as his innocence is presumed by law.
9. The standard of proof in criminal trial is “proof beyond reasonable doubt”. It means that you must be satisfied in your mind that you are sure of the accused’s guilt. If there is a riddle in your mind as to the guilt of the accused after deliberating facts based on the evidence presented, that means the prosecution has failed to satisfy you the guilt of the accused beyond reasonable doubt. If you find any reasonable doubt as to the commission of the offence as charged or any other offence by the accused, such doubt should always be given in favour of the accused.

Information and elements of the offences

10. The accused is charged with one count of Attempted Murder, contrary to Sections 44 and 237 of the Crimes Act. The particulars of the offence are before you, hence, I do not wish to reproduce them in my summing up.
11. The main elements of the offence as charged are that;
 - i) The accused,

- ii) Had an intention to kill the complainant,
- iii) With that intention did something which was more than merely preparatory to the killing of the victim,

The Identity of the Accused

- 12. The first element of the offence is involved with the identity of the accused. It is the onus of the prosecution to prove beyond reasonable doubt that it was the accused who allegedly stabbed the complainant with the intention to kill.

Intention to Kill

- 13. The second element concerns about the state of the mind of the accused. It is the duty of the prosecution to prove beyond reasonable doubt that the accused had an intention to kill the complainant when he stabbed the complainant.
- 14. 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.
- 15. In order to conclude that the accused had an intention to kill the complainant, you must be sure that he really had that intention when he stabbed the complainant with the knife. In order to do that you should consider all the evidence and draw appropriate inferences to ascertain whether the accused had the intention to kill the complainant.

Third Element

- 16. I now take your attention to the third element. The prosecution is required to prove beyond reasonable doubt that the accused has done something in order to actually execute

his intention of killing the complainant and not something that amount to mere preparation to execute his intention.

17. Accordingly, the prosecution is required to prove beyond reasonable doubt that the accused, had an intention to kill the complainant and with that intention he stabbed the complainant with a knife. You have to be sure that the accused actually stabbed the complainant with a knife.

Alternative Count

18. If you do not find the accused guilty of attempted murder, you are then allowed to consider a lesser offence of “Act with Intent to Cause Grievous Harm” though it is not formally charged in the information. The main elements of the offence of “ Act with Intent to Cause Grievous Harm” are that;

i) The accused,

ii) With intent to maim, disfigure, disable or to do some grievous harm to the complainant

iii) Unlawfully wounds or does any grievous harm to the complainant by any means,

19. I now draw your attention to the definition of “grievous harm” as stipulated under Section 4(1) of the Crimes Act, where it states that;

"grievous harm" means any harm which—

i) amounts to a maim or dangerous harm; or

- ii) seriously or permanently injures health or which is likely so to injure health; or extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense;”*
20. Grievous harm simply means serious, dangerous or permanent harm to someone. Accordingly, you have to determine whether the accused stabbed the complainant with an intention to cause such a grievous harm and in doing that unlawfully wounded the complainant.

Evidence of the Prosecution

21. Let me now take your attention to the evidence presented by the prosecution. This is a very short hearing. Therefore, I trust that evidence still fresh in your mind.
22. The complainant was at home with his family when the accused came to his place and called him out on the night of the 2nd of December 2018. The time was around 10 p.m. The wife of the complainant was at the bathing area, which is about ten meters away from the house. The complainant went out and met the accused. According to the complainant, the accused is his own brother. The accused had confronted him asking whether the complainant took his marijuana. The complainant denied the allegation. The accused looked angry and also sad at that time. There was a drinking party taking place beside the house of the complainant and the accused came from there. The accused was carrying a camouflage backpack. The accused confronted the complainant about the missing marijuana in the kitchen shed which is situated next to his house. The complainant said, that after the confrontation, he was stabbed on the right side of his chest by the accused with a knife. It was a cooking knife with pointy edge. It had a long handle about 30 cm and the blade was about 10 to 15 cm long. The complainant said that he saw the knife and felt that something sharp went inside his chest. The accused stabbed the complainant from the right side using his right hand. The accused was just 1/2 meter away from the complainant when he stabbed him. The knife was inside the bag that was

carried by the accused. The accused stabbed only once. According to the complainant the accused had not tell him that the accused was carrying a knife.

23. When the accused stabbed the complainant, he went back to his house and took a knife thinking of to do something to the accused. When he came out with a knife, the accused ran away. The complainant tried to chase after the accused, but he was weak as he lost lot of blood. He then ran to his uncle's place to go to the hospital. When he ran to the vehicle to get to the hospital, his wife was standing outside the bathing area.
24. At the health centre, he was just laying down and a cloth put to stop the bleeding. According to the complainant a medical examination report was not filled out.
25. You have heard that the learned counsel for the defence cross examined the complainant. The complainant said the wall of the kitchen shed was made with bamboos and it was never made by roofing iron. The height of the wall is about 8 feet. Neither the kitchen shed nor the bathing area had light on that night. However, there was moonlight on that night. The complainant said that he did not fell down on to the roofing iron as the wall of the shed was made with bamboos. Moreover, he said that the accused never went to the toilet to relive himself and he did not open the bag of the accused while he went to the toilet. The complainant further said that the accused never talked about missing money b before this incident.
26. You have heard the evidence of the wife of the complainant, Ms Betty Maria. On the evening of 2nd of December 2018, she had gone to have a bath when this incident took place. While she was at the bathing area, which is about 10 to 15 meters away from the house, she saw the accused was coming towards her. He asked Ms. Maria, where is the accused. He had then walked to the kitchen shed. There was no light at the bathing area. Neither at the kitchen shed. However, she could see the accused through the moonlight. The accused had called the complainant while standing at the kitchen shed. The complainant came out and invited the accused into the house to have dinner. Ms. Maria then heard the accused, telling the complainant that he came to have a talk and confront

the complaint and he is carrying his weapon. Maria then heard the complainant was replying, saying that he cannot do such a thing to the accused. At the same time, she heard something bang in the kitchen shed and accused ran away.

27. Ms. Maria said that she saw the accused who was facing the opposite side to her and her husband, the complainant was facing toward her in the kitchen shed. She did not see what the accused did inside the kitchen shed. When she heard the sound of the bang, she saw the accused was running out. She then saw the complainant was also running out but he was staggering. The complainant was calling out for his aunt. Ms. Maria saw the blood on the complainant and it came out from the chest. The complainant had told her that he was going to his uncle Sakaria as he wanted to go to hospital in his car. However, the complainant could not make it as he dropped down alone the way. Ms. Maria went to him and then another uncle of the complainant came and brought uncle Sakaria.
28. Ms Maria in her evidence said the kitchen shed has a wall made with bamboos and not with roofing iron.
29. The last witness of the prosecution is Doctor Penijamini Naicani. He had conducted the medical examination of the complainant on the 2nd of December 2018. You have heard Doctor Naicani was explaining the medical finding that he found on the complainant. He then explained the injury which he has stated in the appendix I of the medical examination report.

Right to Remain Silence

30. At the conclusion of the prosecution case, the accused was explained about his rights in defence. The accused opted not to give evidence on oath and exercised his right to remain silent. The accused does not have to give evidence. You must not assume that he is guilty because he has not given evidence. The fact that he has not given evidence proves nothing. It does nothing to establish his guilt.

Analysis and Directions

31. As I explained you before, it is your duty to determine whether the accused had the intention to kill the complainant. He then went on to execute his intention by stabbing complainant on the right side of the complainant chest. In order to determine it, you have to evaluate the evidence presented by the prosecution.

Evaluation of Evidence

32. I now take your attention to the directions of the evaluation of evidence.

Reliability of Evidence

33. You must be satisfied that you can rely on the evidence as true, reliable, and credible evidence. In order to do that, you have to be satisfied that evidence is free from mistakes, errors and inaccuracies. If you find the evidence is free from such mistakes, errors and inaccuracies, you can take the evidence into consideration as reliable evidence.

Credibility of Evidence

34. The assessment of credibility of evidence is focused on the lies or inaccurate facts that are intentional and motivated attempts to deceive. The credibility depends on the individual who gives evidence, his/her motivations, his/her relationship to and the reaction to the particular situation.
35. Evaluation of the reliability and credibility of evidence will assist you to determine what evidence you may accept and what part of the evidence you may refuse. In doing that, you may accept or reject such parts of the evidence as you think fit. It is for you to determine whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified.

36. In assessing evidence of the witnesses, you must consider whether the witness had the opportunity to see, hear and or feel what the witness is talking in the evidence. You should then consider whether the evidence presented by the witness is probable or improbable considering the circumstances of the case. Apart from that you are required to consider the consistency of the witness not only with his or her own evidence but also with other evidence presented in the case.
37. It is your duty to consider the demeanour of the witnesses, how they react to being cross examined and re-examined and were they evasive, in order to decide the credibility of the witness and the evidence. In doing that you have to keep in your mind that some witnesses are not used to giving evidence in court and may find the different environment in the court house distracting.
38. Moreover, you must bear in your mind that a witness may tell the truth about one matter and lie about another; he or she may be accurate in saying one thing and not accurate in another thing.

Directions on Elements of the Offence

39. In order to determine the first element, that is the accused, you could take into consideration the evidence of the complainant and his wife, Ms Maria. The complainant said the accused is his own brother. Ms. Maria said the accused is the son of the brother of the complainant's father. If I put it more precisely the accused is a cousin of the complainant.
40. If you are stratified the identity of the accused, you could then proceed to determine whether the accused had an intention to kill the complainant. In order to do that you could consider the evidence of the complainant, where he said that the accused did not tell him that he had a knife with him when the accused came and confronted the complainant about the lost marijuana. However, Ms. Maria in her evidence said that she heard the accused was telling the complainant that he has his weapon with him.

41. You could then take your attention to consider whether the accused actually stabbed the complainant and caused the wound on the right side of his chest. According to the evidence of the complainant, he had felt that something sharp entered into his chest. He did not specifically mention at what time he saw the knife. Whether it was after he felt something sharp entered into his chest or before that. Moreover, the complainant said that the knife was in the bag of the accused. However, you may recall that the complainant did not say whether he saw the accused was taking the knife out of the bag. You have to take into consideration the lighting condition of the kitchen shed as well. Moreover, you have heard the evidence of Maria, where she said that she heard a sound of bang in the kitchen and then saw the accused was ruing away. However, the complainant in his evidence did not state about such a sound coming from the kitchen.
42. You are allowed to take into consideration the medical examination report and the evidence of the Doctor. According to the medical examination report, there was one wound on the right side of the chest of the complainant. It is 5 cm long. Apart from the complainant's explanation about the knife, there is no evidence before the court to determine the size and the nature of the knife. Moreover, neither the medical examination report nor the evidence of doctor explained the dimension of the wound. You can take them into consideration when you consider whether the wound found on the chest of the complainant was actually caused by the stabbing with a knife or not.

Final Directions


43. Upon consideration of whole of the evidence adduced during the course of the hearing, if you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Attempted Murder as charged, you can find the accused guilty of the said offence.
44. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Attempted Murder as charged, you must find the accused not guilty of Attempted Murder.

45. If you find him not guilty of Attempted Murder, you are then allowed to consider the alternative count of Act with Intend to Cause Grievous Harm. If you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Act with Intend to Cause Grievous Harm, you can find him guilty of the said alternative offence.
46. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Act with Intend to Cause Grievous Harm, you must find the accused not guilty of Alternative count.

Conclusion

47. Madam and Gentleman assessors, I now conclude my summing up. It is time for you to retire and deliberate in order to form your individual opinions. You will be asked individually for your opinion and will not require to give reasons for your opinion. When you have reached to your opinion, you may please inform the clerks, so that the court could reconvene.
48. Learned counsel of the prosecution and the accused, do you have any redirections to the assessors?




R.D.R.T. Rajasinghe
Judge

At Labasa
20 June 2019

Solicitors
Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused