

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

CRIMINAL CASE NO: HAC 174 of 2019

STATE

V

MEREONI MARAMA

Counsel : Ms. Kimberly Semisi for the State
Ms. Lice Manulevu for the Accused

Dates of Trial : 23-26 and 29-30 June 2020

Summing Up : 3 July 2020

Judgment : 8 July 2020

JUDGMENT

- [1] According to the Information filed by the Director of Public Prosecutions (DPP), the accused, Mereoni Marama, is charged with the following offence:

COUNT 1

Statement of Offence

ACT WITH INTENT TO CAUSE GRIEVOUS HARM: Contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence

MEREONI MARAMA, on the 29th day of April 2019, at Nasinu, in the Central Division, with intent to cause grievous harm to **RACHAEL BOSEIWAQA**, unlawfully wounded the said **RACHAEL BOSEIWAQA**.

- [2] The accused pleaded not guilty to the charge and the ensuing trial was held over 6 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by their unanimous decision, the three Assessors found the accused not guilty of the charge. However, by their unanimous decision the Assessors found the accused guilty of the alternative charge of Assault Causing Actual Bodily Harm.
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.
- [5] During my summing up I explained to the Assessors the salient provisions of Section 255 (a) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [6] In terms of Section 255 (a) of the Crimes Act "*A person commits an indictable offence if he or she, with intent to maim, disfigure or disable any person, or to do some **grievous harm to any person**, or to resist or prevent the lawful arrest or detention of any person—*
- (a) ***unlawfully wounds** or does any grievous harm to any person by any means; or*
 - (b) *.....*
- [Emphasis is mine].*
- [7] In this case the prosecution has charged that the accused intended to cause grievous harm to the complainant; and with that intention unlawfully wounded the complainant.
- [8] Accordingly, I directed the Assessors that in order for the prosecution to prove the charge of Act with Intent to Cause Grievous Harm, they must establish beyond any reasonable doubt that;
- (i) The accused;
 - (ii) On the specified day (in this case the 29 April 2019);
 - (iii) At Nasinu, in the Central Division;
 - (iv) Intended to cause grievous harm to Rachael Boseiwaqa; and
 - (v) Unlawfully wounded the said Rachael Boseiwaqa.
- [9] The above individual elements were further elaborated upon in my summing up in respect of the said charge.
- [10] The word "unlawfully" simply means without lawful excuse or without just cause. The term "wound" has been defined at Section 4(1) of the Crimes Act to mean any incision

or puncture which divides or pierces any exterior membrane of the body, and any membrane is "exterior" for the purpose of this definition which can be touched without dividing or piercing any other membrane. Therefore, to establish this element, the prosecution should prove beyond reasonable doubt that the accused unlawfully wounded the two complainants as defined herein.

[11] Grievous harm has been defined in the same subsection of the Crimes Act as follows:

"grievous harm" means any harm which—

- (a) amounts to a maim or dangerous harm; or*
- (b) seriously or permanently injures health or which is likely so to injure health; or*
- (c) extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense.*

[12] The term 'harm' has been defined in the same subsection to mean: *"any bodily hurt, disease or disorder (including harm to a person's mental health) whether permanent or temporary, and includes unconsciousness, pain, disfigurement, infection with a disease and physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time)."* Whereas, "dangerous harm" has been defined to mean as *"harm endangering life"*.

[13] However, the Assessors were further directed that if they find that the prosecution has proved all elements of the offence beyond any reasonable doubt, except the fourth element, that the accused intended to cause grievous harm to the said Rachael Boseiwaqa; as an alternative, they were then allowed to look at the lesser offence of Assault Causing Actual Bodily Harm, in terms of Section 275 of the Crimes Act, though the accused is not formally charged in the Information for that offence.

[14] In terms of Section 275 of the Crimes Act "A person commits a summary offence if he or she commits an assault occasioning actual bodily harm."

[15] Therefore, the Assessors were further directed that in order for the prosecution to prove the offence of Assault Causing Actual Bodily Harm, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 29 April 2019);
- (iii) At Nasinu, in the Central Division;
- (iv) Assaulted the complainant, Rachael Boseiwaqa; and

(v) Thereby caused actual bodily harm to the said complainant, Rachael Boseiwaqa.

[16] The above individual elements were further elaborated upon in my summing.

[17] In terms of the provisions of Section 135 of the Criminal Procedure Act No. 43 of 2009 ("Criminal Procedure Act"), the prosecution and the defence have consented to treat the following facts as "*Admitted Facts*" without placing necessary evidence to prove them:

1. The complainant is Rachael Boseiwaqa, 19 year old student of Caubati, Lot 15, Kuruva Road and Mereoni Marama is a 29 year old female of Vunaniu Village, Serua.
2. The complainant and Mereoni Marama are related, the complainant is Mereoni Marama's sister in law.
3. Mereoni Marama is married to the complainant's brother.
4. On the 29th April 2019, at approximately 10.00 p.m., the complainant was at home with her family, including Mereoni Marama.
5. After a while, Mereoni Marama and her husband started to have a heated argument.

[18] I directed the Assessors that since the prosecution and the defence have consented to treat the above facts as "*Admitted Facts*" without placing necessary evidence to prove them they must, therefore, treat the above facts as proved beyond reasonable doubt.

[19] The prosecution, in support of their case, called the complainant, Rachael Boseiwaqa, her mother Kalesi Vasu, her cousin's wife Taraivina Rika, her brother Lenaitasi Boseiwaqa and Dr. Salome Daunivalu. The Medical Examination Report of Rachael Boseiwaqa was tendered to Court as Prosecution Exhibit **PE1**.

[20] The accused testified on her own behalf. She also called a witness, Dr. James Danford, in support of her case. The Medical Examination Report of the accused was tendered to Court as Defence Exhibit **DE1**.

[21] I have summarized the evidence of all the witnesses in my summing up.

[22] The complainant is the accused's sister in law. The accused is married to the complainant's brother.

[23] The complainant clearly testified as to the incident which took place in the evening of 29 April 2019, at her home in Kuruva Road, in Caubati, and as to how the injuries were

caused to her right forehead. At the time of the incident the complainant was 19 years old, and the accused was 29 years old.

[24] The relevant portion of the complainant's evidence relating to the incident is as follows:

.....
Q. *Then what happened?*

A. *I walked towards her (meaning the accused). Before I reached her, I touched the utensils rack. I touched the utensils rack before I started walking towards her. It (the utensils rack) was on the shelf in the kitchen. I touched the utensils rack just to make a sound from it.*

Q. *Why did you do that?*

A. *I was a bit upset when she said the words whatever, bony arse.*

Q. *Then?*

A. *I didn't take anything but I walked towards her.*

Q. *When you say her?*

A. *I am referring to Mereoni – she was standing at the front door of the house.*

Q. *Then?*

A. *I walked towards her. I threw the first punch but it didn't reach her. That punch didn't land on her.*

Q. *Why not?*

A. *Because she dodged. [The witness demonstrated as to how the accused had dodged the punch].*

Q. *What do you mean by punch?*

A. *I wanted to punch her with my right hand.*

Q. *To which part of Mereoni's body were you throwing this punch?*

A. *To her face.*

Q. *Why did you throw this first punch?*

A. *I was really upset because she said those words to me.*

Q. *Then what happened?*

A. *Before I threw another punch, I can clearly see her face, she looked angry; and I saw her hand – she swing her hand*

towards me. Because she is taller than me. I wanted to dodge to the left when I saw her hand swing towards me. I saw her hand forced towards me with a bottle and landed on my right forehead. [The witness demonstrated as to how this happened].

Q. What do you mean?

A. The reaction on her face and her action showed like she was angry [The witness demonstrated].

Q. At which point did you see the bottle?

A. When she swung her hand [Witness demonstrated with her right hand] the bottle was on her left hand. I'm sure it is her left hand because she was standing at the front door facing me and I was facing her. This was at the time she was holding the bottle/at the time she swung her hand. Then she bashed the bottle on my right forehead. I tried to dodge onto my left side. I could feel the bottle cracked on my head – my right forehead.

Q. Then what happened?

A. Well I was still trying to punch her.

Q. And what did she do?

A. She was still trying to punch me. I can still see her hand swing towards me – towards my face.

Q. Did she hit your face?

A. No.

Q. Why not?

A. Because by that time my brother came from outside to the front door.

Q. After she cracked the bottle on your right forehead, what happened?

A. It was broken into small pieces and fell on the floor.

Q. Was she holding onto the bottle?

A. I don't know, I can't remember.

Q. What about the pieces that fell to the floor?

A. It was broken and still on the floor.

Q. *After she was still trying to punch you and you were still trying to punch her – was she still holding the bottle?*

A. *No.*

Q. *Where was the broken bottle?*

A. *I couldn't see it.*

Q. *And how were you feeling at that point in time?*

A. *I can feel my head was numb and heavy – it felt heavy and numb.*

Q. *Did you see your brother come in to the front door?*

A. *Yes.*

[25] In this case, the accused takes up the position that she acted in self-defence and also that the glass bottle struck the complainant by accident. She testified that during the time of the incident (at the time the complainant was hit on her forehead) her husband Lenaitasi was holding onto her or hugging onto her and that the complainant was still throwing punches at her.

[26] The accused testified as follows:

"Lenaitasi was holding me and Rachael was throwing punches. After that I tried to free myself from him because Rachael was punching my face. When I was struggling I felt that he (Lenaitasi) had punched the left side of my rib. At that time my left hand was free where I was holding the bottle – the bottle that had the mixed drinks inside."

"I then swung my hand to stop Rachael's punches [witness shows how], because she was still punching me at that time and to stop her right hand which she threw at me."

"When I swung my hand to stop her I felt that the bottle broke and I thought it broke at her elbow. I thought it struck her right elbow because I was trying to stop her right hand."

[27] Section 42(1) of the Crimes Act sets out: *"A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence."*

[28] In terms of Section 42(2) of the Crimes Act:

"A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:

(a) to defend himself or herself or another person; or

(b) to prevent or terminate the unlawful imprisonment of himself or herself or another person; or

- (c) *to protect property from unlawful appropriation, destruction, damage or interference; or*
- (d) *to prevent criminal trespass to any land or premises; or*
- (e) *to remove from any land or premises a person who is committing criminal trespass —*
and the conduct is a reasonable response in the circumstances as he or she perceives them."

[29] I now turn my attention to Section 59 of the Crimes Act. For ease of reference, the Section is reproduced below:

- "59. — (1) Subject to section 60, a burden of proof that a law imposes on a defendant is an evidential burden only.*
- (2) A defendant who wishes to deny criminal responsibility by relying on a provision of this Decree (other than section 28) bears an evidential burden in relation to that matter.*
 - (3) A defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter.*
 - (4) The exception, exemption excuse, qualification or justification need not accompany the description of the offence.*
 - (5) The defendant no longer bears the evidential burden in relation to a matter if evidence sufficient to discharge the burden is adduced by the prosecution or by the court.*
 - (6) The question whether an evidential burden has been discharged is one of law.*
 - (7) In this Decree —*
"evidential burden", in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

[30] As per Section 59 (3) of the Crimes Act an accused who wishes to deny criminal responsibility by relying on self-defence bears what is known as an evidential burden in relation to that matter. An "evidential burden", in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

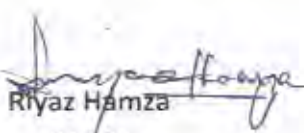
[31] Furthermore, in terms of section 57 (2) of the Crimes Act when self-defence is taken up by the accused, the prosecution also bears the burden of disproving any matter in relation to which the accused has discharged an evidential burden of proof. And this burden must also be discharged beyond reasonable doubt.

[32] Considering all the evidence elicited in this case, I am of the opinion that the prosecution has disproved the defence of self-defence taken up by the accused. Accordingly, the defence of self-defence taken up by the accused is rejected.

- [33] I am also of the opinion, considering all the facts and circumstances of this case, that the position taken up by the accused that the glass bottle struck the complainant by accident cannot be accepted.
- [34] However, I am also of the opinion, considering all the evidence in this case, that the prosecution has failed to establish beyond reasonable doubt that the accused had the intention to cause grievous harm to Rachael Boseiwaqa, at the time she caused the injuries to the complainant.
- [35] It is clear from the evidence that the injury to the complainant had been caused during the course of an argument between the complainant and the accused, arising from a family dispute. In fact, the complainant herself has testified that she threw the first punch at the accused. Furthermore, the accused was already carrying in her hand the glass bottle at the time the argument began. She was in the process of clearing her belongings since her mother-in-law had asked her to leave the house that night.
- [36] Therefore, in my view, the unanimous opinion of the Assessors in finding the accused not guilty of the charge of Act with Intent to Cause Grievous Harm was justified. It was open for them to reach such a conclusion on the available evidence. I concur with the unanimous opinion of the Assessors in respect of the said charge.
- [37] In the circumstances, I find the accused not guilty of the charge of Act with Intent to Cause Grievous Harm.
- [38] However, considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved beyond reasonable doubt the alternate count of Assault Causing Actual Bodily Harm by adducing truthful and reliable evidence satisfying all elements of the said offence.
- [39] In the circumstances, I find the accused guilty of the alternate count of Assault Causing Actual Bodily Harm.
- [40] Accordingly, I convict the accused of Assault Causing Actual Bodily Harm.



AT SUVA


 Riyaz Hamza
 JUDGE
 HIGH COURT OF FIJI

Dated this 8th Day of July 2020

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
 Solicitors for the Accused : Office of the Legal Aid Commission, Suva.