

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 29 OF 2020

BETWEEN: **NIRMAL CHANDRA** **APPELLANT**

A N D: **THE STATE** **RESPONDENT**

Counsel: Appellant In Person
 Mr. R. Kumar for Respondent

Date of Hearing: 28th January 2021

Date of Judgment: 26th November 2021

J U D G M E N T

1. The Appellant had been charged in the Magistrate's Court at Nasinu for one count of Unlawful Wounding, contrary to Section 261 of the Crimes Act. The particulars of the offence are that:

Charge

(Complaint by Public Officer)

Statement of Offence (a)

UNLAWFUL WOUNDING: *Contrary to Section 261 of the Crimes Decree
No. 44 of 2009.*

Particulars of Offence (b)

NIRMAL CHANDRA on the 22nd day of September, 2016 at Nasimu in the Central Division unlawfully wounded SAIRA BIBI with a tea cup.

2. The Appellant had pleaded not guilty of this offence; hence, the matter had proceeded to the hearing. The Prosecution had presented the evidence of the Complainant, who is the wife of the Appellant. The Appellant had given evidence for the Defence. Subsequent to the hearing, the learned Magistrate had found the Appellant not guilty of Unlawful Wounding but guilty of Common Assault, contrary to Section 274 of the Crimes Act. The Appellant was then sentenced to a period of six months imprisonment and suspended for a period of 36 months. Aggrieved with the said conviction, the Appellant filed this Appeal on the following grounds, *inter alia*;
 - (a) *That the learned Magistrate did not evaluate the submission for No Case To Answer as per the charge of Unlawful Wondering on the charge sheet of copy Records page 2.*
 - (b) *That the Prosecution has not proven at any time that any offence took place in hearing day and I only acted in self-defence to protect myself from getting killed by the Complainant trying to get hold of knife on the table and I only tried to stop and she hit her face on the cup I was holding at that particular moment.*
 - (c) *That the learned Magistrate did not consider that the Complainant was charged and pleaded guilty and was convicted and the son was charged and pleaded guilty and was bound over.*
 - (d) *I assumed and presumed that I should have been acquitted of all the charges against me on the grounds of prosecution have not provided any one of the evidences of those in the Court.*

3. The Appellant filed this grounds of Appeal in person. Having considered the above four grounds of Appeal filed by the Appellant, I could summarize them into two main grounds; they are that:
 - (a) The learned Magistrate had not correctly evaluated the submission of No Case to Answer.
 - (b) The learned Magistrate had failed to consider the defence of self-defence, raised by the Appellant during the hearing.
4. The learned Counsel for the Respondent, in his written submissions, conceded that the learned Magistrate had failed to properly evaluate the submission of No Case to Answer as well as the defence of self-defence raised by the Appellant; hence, this Appeal should be allowed.
5. I now proceed to determine the first ground that the learned Magistrate had failed to evaluate No Case to Answer submissions properly.
6. The learned Counsel for the Respondent submitted in his written submissions that the learned Magistrate had taken into consideration some facts that were not relevant to this matter in paragraph 13 of her ruling. The said paragraph 13 says that:

"At the trial proper, the prosecution led the evidence of 2 witnesses. The Defence Counsel relied on one of the limbs of the test of whether there is a case to answer i.e. there has been no evidence led by the prosecution to prove an essential element of the offence of obstructing Police officer in due execution of his duty."

7. According to the record of the Magistrate's Court proceedings, the Prosecution had only adduced the Complainant's evidence. The accused was charged with Unlawful Wounding. Hence, it appears that paragraph 13 of the ruling is not relevant to this matter.

8. Be that as it may, I shall now proceed to examine the rest of the No Case to Answer ruling in order to determine whether the learned Magistrate had evaluated the evidence relevant to this matter with the applicable law correctly.
9. The learned Magistrate had correctly identified the applicable law and the test relevant to the application of No Case to Answer in the Magistrate's Court proceedings. She has then correctly identified the main elements of the offence of Unlawful Wounding and the evidence presented by the Prosecution. In paragraphs 14, the learned Magistrate applied the evidence presented by the Prosecution to determine whether the Prosecution has presented the evidence to prove the elements of the offence. She had then considered whether the evidence of the Prosecution had been discredited or manifestly unreliable that no reasonable tribunal could safely convict on it.
10. In view of the reasons discussed above, I find the learned Magistrate had properly and correctly evaluated the submission of No Case to Answer in her ruling irrespective of paragraph 13. Hence, I do not find any merits in the first ground.
11. The second ground of Appeal is founded on the contention that the learned Magistrate had failed to consider the defence of self-defence raised by the Appellant. The learned Counsel for the Respondent conceded this ground as well, stating that the learned Magistrate had not considered the defence of self-defence raised by the Appellant in her judgment.
12. Section 42 of the Crimes Act has defined the defence of "self-defence". Defence of self-defence is a circumstance that involves external factors. Section 42 of the Crimes Act states that:
 - i) *A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.*
 - ii) *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.*

13. The Privy Council in *Sigismund Palmer v The Queen (Jamaica) [1970] UKPC 31 (23 November 1970)* has defined the scope of the defence of self-defence in an inclusive manner, where Lord Morris held that:

“The defence of self-defence is one which can be and will be readily understood by any jury. It is a straightforward conception. It involves no abstruse legal thought. It requires no set words by way of explanation. No formula need be employed in reference to it. Only common-sense is needed for its understanding. It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may do, but may only do, what is reasonably necessary. But everything will depend upon the particular facts and circumstances. Of these a jury can decide. It may in some cases be only sensible and clearly possible to take some simple avoiding action. Some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack it would not be common-sense to permit some action of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril then immediate defensive action may be necessary. If the moment is one of crisis for someone in imminent danger he may have to avert

the danger by some instant reaction. If the attack is all over and no sort of peril remains then the employment of force may be by way of revenge or punishment or by way of paying off an old score or may be pure aggression. There may no longer be any link with a necessity of defence."

14. In order to rely on the defence of self-defence, the accused must have carried out the alleged conduct constituting the offence. The accused can then claim that he carried out that alleged conduct in exercising his right of self-defence. If the accused denies that he had carried out the alleged conduct that constituted the offence, he cannot rely on the defence of self-defence.
15. In this case, the Prosecution alleged that the Appellant had thrown a cup at the Complainant, and it got smashed on her face, causing her injuries. (*vide page 51 of the Record of the Proceedings*). The Appellant and the Complainant had an altercation, which led her to hit the Appellant with a shoe. The Appellant then hit her with the cup. In his defence, the Appellant had categorically denied that he had thrown the cup at her or assaulted her. (*vide; page 58 of the Record of the Proceedings*). According to the evidence given by the Appellant, the Complainant had hit him with a shoe and then she scratched him with her fingernails. The Complainant had then tried to grab the knife, which he tried to stop. He was holding the cup. In that process, the Complainant had hit the plate of the cup, breaking the handle of the cup. The Appellant had tried to hold and pull her away, then the Son came and punched him. (*vide page 58 of the Record of the Proceedings*).
16. According to the evidence adduced by the Appellant in the Magistrate's Court, he had denied the alleged conduct, stating that he did not throw the cup or assault her. Hence, he had not raised the defence of self-defence, claiming that he neither threw the cup nor assaulted her in self-defence. His defence was the denial of any form of assault. Therefore, the learned Magistrate was not required to consider the defence of self-defence in her judgment. She had correctly stated evidence adduced by the parties and come to her conclusion. Therefore, I do not find any merit in the second ground as well.

17. In conclusion, I make the following orders.

(i) The appeal is dismissed.

18. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

26th November 2021

Solicitors

Appellant In Person.

Office of the Director of Public Prosecutions for the Respondent.