

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case. No. HAC 088 of 2019

BETWEEN: THE STATE

A N D: MOSESE WAQANISEVULA

Counsel: Mr. U. Lal for the State.
Mr. Filipe & Ms Vuli for the Accused

Dates of Hearing : 23rd, 24th, 25th April, 2024
Closing Speeches : 29th April, 2024
Date of Judgment : 19th June 2024

JUDGMENT

1. The Director of Public Prosecutions charged the accused by filing the following information:

Statement of Offence

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

Particulars of offence

MOSESE WAQANISEVULA on the 17th of April 2019, at Lautoka, in the Western Division, attempted to cause death of REAPI QIO and at the time, intended to cause her death.

2. In this trial, the prosecution called three witnesses and after the prosecution closed its case, this court ruled that there was a case to answer against the accused in respect of one count of **attempted murder** as charged.

3. **Burden Of Proof and Standard Of Proof**

As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no obligation on the accused to prove his innocence. An accused is presumed to be innocent until he or she is proven guilty. The standard of proof is one of proof beyond reasonable doubt.

Elements of the Offence

4. To prove the above count the prosecution must prove the following elements of the offences of **attempted murder** 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 complainants by his conduct.
5. In this case the prosecution is alleging that the accused intended to cause the death of the complainant by his conduct. The first element of the offence of **attempted murder** is concerned with the identity of the person who allegedly committed the offences of **attempted murder**.
6. 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
7. 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.

8. The third element is that the said conduct of the accused was an attempt to cause the death of the complainant.
9. The final element is concerned with the state of mind of the accused that he intended to cause the death of the complainant. 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, one can construe the state of mind of the accused from the facts and circumstances proved.
10. To prove the intention to cause the death of the complainant, this court should be satisfied that the accused intended to kill the complainant as a result of his conduct. In this regard this 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.
11. In this trial the accused has denied committing the offences of **attempted murder**. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had intended to kill the complainant and with that intention he did something which was more than merely preparatory.
12. 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 of the circumstances that surrounds what he or she does. 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. This court will decide intention by considering what the accused did, by looking at his actions before, at the time of, and after the act.
13. The prosecution must also prove that with the intention to kill, the accused did something which was more than merely preparatory. Before this court can find the accused guilty of the offence of **attempted murder** it must be satisfied beyond reasonable doubt of two things: first that the accused intended to commit the offences of **murder** and second, that, with that intention, he did something which was more than merely preparatory for committing that offence.

Admitted Facts

14. In this trial the prosecution and the defense have agreed to certain facts titled as admitted facts. These facts are part of the evidence and I have accepted these admitted facts as accurate, truthful and proven beyond reasonable doubt. The facts are ;
15. It is admitted that the complainant in this case is one Reapi Qio (hereinafter referred as the complainant.
16. It is admitted that Mosese Waqanisevula is charged with one count of attempted murder.
17. That on the 17th of April, 2019 the complainant and Mosese Waqanisevula were in a de-facto relationship.
18. That on the 17th of April 2019 Complainant and Mosese Waqanisevula met each other at the Leon's Night club.
19. That on the 17th of April 2019 Mosese Waqanisevula was drinking with some of his friends at the sea wall before coming to Leon's night club.

Prosecution Evidence

20. The first prosecution witness is Reapi Qio. She is the complainant. She resides in Naviago village, Lautoka with her siblings; Sainivalati Cobo and Milika and she recalled on the 17th April 2019 she was in a defacto relationship with Mosese Waqanisevula and they normally met at the night club. They were in a relationship for about one month. She said that the relationship was prior to 17th April 2019. The relationship was fine at the start but when it proceeds along the accused started to normally punch her in his room at his place. She said she had moved out of Mosese's house because of the assault.
21. The complainant went and reside with her uncle at Paipai Lautoka after leaving the house of the accused. The complainant on the night of the 17th of April of 2019 was with her uncle and cousin sister were drinking inside Leon's night club. After a while the complainant visited the washroom and whilst opening the door after using the washroom, the complainant was confronted by the accused Mosese.
22. According to the complainant she called out the name of the accused saying "Moji". She said she clearly identified the accused as the lights were switched on. The lights were similar to the lights inside the courtroom. She said after

she yelled out the accused name, the accused switch off the lights and pushed her into the restroom and she felt backwards towards the wall. She said the accused got hold of a knife and stabbed the back part of her head. She felt pain coming from back of his head and could feel blood coming out of the back part of his head and she held on to it.

23. She said whilst standing and holding the back part of her head the accused got hold of her two hands and stabbed both of her hands. Again when she turn towards her right. The accused also stabbed the upper part of her neck. She said she did not see the knife but she felt the object was sharp. After stabbing the complainant, the accused fled from the scene, The complainant was crawling on the floor of the washroom and was discovered by a security who had walked into the washroom. The security carried the complainant down to the entrance of the club.
24. Thus, the complainant was made to sit at the security chair outside the night club and blood flowing out from the injuries she sustained and she knew she had serious multiple injuries. There was blood flowing out of her head, neck and both forehands
25. The complainant stated that there were police officers walking outside the night club and the officers were asking her as to who had done this to her and she replied that it was Mosese the accused. She was conveyed to Lautoka Hospital by a van and was admitted into Emergency unit. She was admitted into the hospital for a month.
26. The complainant was discharged from the hospital and was at home resting when the police visited her and questioned her where she continue to mention the name of Mosese Waqanisevula. The police told her that she have to wait for Court. She identified and pointed at Mosese Waqanisevula sitting in Court.
27. In cross examination the complainant confirm her relationship with the accused lasted for about a month. At times the accused used to have arguments with her and the accused mistreats and physically abused her as a result she left the accused and lived with her uncle at Teidamu. During their relationship the two were residing together at the residence of the accused. She stated that the accused was a security officer at Leon's night club.
28. In cross examination she stated that she never had consumed alcohol together with the accused. Further she said that when the accused gets drunk he causes arguments with the complainant. The complainant

maintained that she saw the accused Mosese with her own eyes inside the washroom. She said she called the accused name before the accused switched off the lights and then he pushed the complainant inside the washroom.

29. In cross examination she said that part of the argument was concerning her drinking in the night clubs but she has stopped going to the night clubs after the argument. She confirmed that she did not want to further her de-facto relationship with the accused.
30. In cross examination she agreed that on the 17th of April 2019 she went to Leon's night club with her uncle reaching the club at 9.00pm. She confirmed that she drank 1 pack of Woodstock containing 4 cans. They proceeded to the nightspot soon after that and bought a jug of Woodstock. When questioned on the possibility that she was drunk she said she was not drunk.
31. In cross examination she was asked on the location of the washroom inside the club she describe the same and also confirmed where the lights switches were located inside the washroom. She said she saw Mosese and called out his name before he switched off the light. She confirmed that on that day she was still angry with Mosese.
32. In cross examination he agreed that Mosese pushed her back into the washroom and stabbed the back of her head, her neck and both her hands. She said she put her hand at the back of her head she could feel blood, she said she was shouting and yelling saying "Mosese enough' Mosese than held both her hands and stabbed it and when she wanted to turn to stop him whilst she was turning that was when her neck got injured She said she knew it was a knife that injured her neck.
33. In cross examination she confirmed both her hands were pulled and they were stabbed by the accused. Further she was crawling on the washroom floor when Mosese opened the door. Mosese then fled away from the scene. After a while a security officer walked past the washroom main door and saw the lights switched off and at the same time came into the washroom.
34. In reexamination she said after drinking four cans of Woodstock she was not drunk but it was enough for her. She said at the club they had started with one jug of Woodstock before she left to the washroom. She said she was not drunk because she was chewing P.K. chewing gum.
35. The prosecution called their second witness **D/SGT 49 43 Netava**. He is employed with the Fiji police force for the last 11 years. He recalls in the year

2019 he was based at Lautoka Police Station CID Branch. He recalls on the 26th of April 2019 he was on duty and he was tasked by the operation team to follow up a case of alleged stabbing at Leon's Night Club. He was instructed by his supervisor ASP Belo. The instruction was to follow up the alleged stabbing case and conduct further enquiry.

36. Thus, the task was also for him to search for the weapon used on the alleged stabbing case at Leons's night club. He said PC Ratu Meli and PC Peni Cavuilagi accompanied him to the club. Their role was to conduct search and enquiry at Leon's night club.
37. According to the witness they proceeded to the club at around 8.00pm in the evening on the 26th of April 2019. He said they took a walk to the Club and as they reached he spoke to one security at the main entrance and introduce themselves. He then told the security on the purpose of their visit. He said as soon as he mentioned about the alleged stabbing inside the wash room, the Security officer informed him that they have found the knife. The officer said the knife was voluntarily handed over to him.
38. He said the procedure before uplifting any article or weapon from a scene of crime a search warrant should be prepared. According to him a search warrant was prepared for this case. It was shown to the security officer. He said he was the one who prepared the search warrant. Information to obtain and Search Warrant both documents marked as PEX 1A and PEX 1B. The kitchen knife was marked for identification.
39. The witness said that the weapon was shown to them by the security outside of the night club and it was seized by them and packed in a white plastic bag. The witness said he took the weapon and showed it to his colleagues who were standing near the steps. He said he was part of the arresting officers who arrested the accused as well. The witness said the accused was arrested and handed over to the Lautoka Police Station for questioning. He identified the accused Mosese sitting in the gallery.
40. In cross examination the witness confirms that the search warrant was stamped by a justice of peace on the 28th of April 2019. The witness maintains that this was the same date he was instructed to conduct search. He said the bended kitchen knife was voluntarily given by the security officer upon conducting enquiry at Leon's night club. He agreed that the warrant of search would be valid only on the 28th of April 2019.
41. In re-examination the witness said that the search warrant was endorsed by the JP on the same date when they conducted search at night spot with is on

the 26th of April 2024. He said the date could have been overwritten by the JP. He said the search will be lawful if the kitchen knife was given voluntarily. He said in this case the knife was given voluntarily.

42. The 3rd witness for the prosecution was Doctor Apenisa Waqatabu. He is a general practitioner by profession and based at ZEN's medical Clinic. He has been employed as a doctor for the last 14 years. He has graduated with an MBBS in 2010 and completed Post Grad Diploma in Emergency medicine in 2014. He said as a general practitioner he looks after sexual offences or whether it be injuries caused as a result of an accident.
43. The witness said when he came back from Iraq in 2019 he joined Lautoka hospital in March with the emergency department. In 2019 he was one of the senior registrars for the shift. He gets referral form police to conduct examination. He was shown the medical report of the complainant. He confirms that he was the doctor examining Reapi Qio on the 17th of April 2019.
44. According to him the complainant said she was hit with a knife at the Leons night club. He confirms that the incident happened on the 17th of April 2019. The patient was brought to him at 11.32 pm He prepared the medical report. He confirms the doctor's signature on the medical report to belong to him. He tendered the medical report of Reapi Qio marked as PEX 2. He said history relayed to him by the patient was she was stabbed by an I taukei male at the night club First impression was she was soaked with blood.
45. He said she can't remember the clothes she was wearing that night. Doctor said in column D12 it says 3cm laceration on occipital area. Basically it means the length of the wound. It would be very difficult to comment on the depth. He said laceration means a cut going through the skin so in simple terms it's a cut as compared to when we say it's a bruise which is just a swelling or discoloration. Laceration could result from a sharp object being used.
46. The doctor said there is a great amount of force is required to piece of the skin and causing laceration. It could be a knife, a glass or anything sharp. MFI 1 shown to the doctor and doctor confirm it is possible. He said a great amount of force means putting so much weight if I am using my hand will have to swing my hand really hard holding an object and hurting someone.
47. He said the skull have a lot of blood vessels just piercing through the skin going in no matter what thickness it will cause a lot of bleeding. He explains that the 1.5 m laceration on the right side posterior aspect of the neck is on

the area of the neck. He said great amount of force is needed on the neck for a 1.5 cm to occur. This could occur through a sharp object penetration through a skin. He said blood vessels exist along the neck and pierces through it would causer greater amount of blood loss.

48. He said he really can't comment whether a blood vessel was pierced or not because they need to see the depth of the wound in order to comment. He depending on the structure the depth of the wound. If it cuts through into a big vessels yes its life threatening if the depth of the wound is just on the muscle or the fat layer then there could be less bleeding compared to cutting onto a blood vessel or even a nerve.
49. According to the doctor it comes down to a few things that we needs to be looked at. One definitely if this injuries were not attended to immediately yes it can cause death and can be life threatening. There are other factors that needs to be look at when we see that particular patient. One is their health status if they already have high risk say they have clotting problems say they have low blood falling already before having the injury they are anemic or have heart issues. They have more risks even with less bleeding being life threatening if compared to someone who is healthy.
50. The witness confirmed that any sharp object is possible to cause the injuries. Sharp objects would include small knife, big knives and a glasses. He said injuries caused to the complainants body there is a danger or risk of bleeding or infection would occur. The doctor said that he would not be able to comment on how long the complainant will be admitted for her injuries to heal.
51. The doctor said from seeing the complainant his conclusion was this is a trauma case who has multiple injuries secondary to an alleged stab wound from sharp object, the wound needed to be exploit for the wound exploitation. And for that she needed further care.
52. The Doctor said given the injuries sustained by the complainant and if she was not taken to hospital immediately it is possible that her injuries could be life threatening.
53. In Cross Examination the doctor maintained that he cannot comment on whether the injuries sustained by the complainant was life threatening as he was not aware of the depth of the injuries and what structures it has.

54. At the end of the prosecution's case. Defence counsel made an application for no case to answer under section 231 of the Criminal Procedure Act. The Court after considering the evidence so far presented by prosecution and taking note of the tests for No case to Answer finds that there is a case to answer against the accused. The Accused has decided to give evidence of behalf of his case.

Defence Evidence

55. The accused Mosese Waqanisevula gave evidence and said that in 2019 he was residing in Naikabula with his father and brother. He said he recall on the 17th of April 2019 he was drinking with his friends at the Lautoka seawall.
56. The witness said they were drinking Bounty Rum, two coke and one bottle methylated spirit. He cannot remember the time they started drinking. He said after the drinking party with his friends at the sea wall he blacked out. He said the mixture of the two drinks was very strong and he was smoking suki at the same time and resulted to black out.
57. He denies that he knew about attempting to cause the death of the complainant. He denies that he was in Leon's night club on the 17th of April 2019.
58. The accused said when he woke up he find himself at home, he had lost his bag his singlet and pair of canvas. Despite the agreed facts put to the accused by his counsel he continues to say that he was blacked out.
59. The accused continues to maintain that he was not at Leon's night club on the 17th of April 2019 however in the admitted facts by both the accused and prosecution he had submitted that on the 17th of April 2019 the Complainant and Mosese Waqanisevula met each other at the Leon's Night club.
60. In cross examination he agreed that he was in a de-facto relationship with the complainant. During their relationship they normally had arguments. Copy of the admitted facts were shown to him and he identified his signature.
61. In cross examination when asked about the admitted fact where he admitted that he met the complainant at Leon's night club of the 17th of April 2019. He said he was told to sign the admitted fact. He said his lawyers were still explaining whilst the correction officers were rushing him telling him just to sign quickly so that he can go and complete his duties.

62. He said his evidence this morning is the correct versions. He said none of his friends that were drinking together with him at the seawall on that date is living in Fiji they have passed on and went abroad.
63. The witness continues to deny that he met the complainant Reapi Qio in Leon's Night club on the 17th of April 2019 and stabbed her with the kitchen knife as the result she sustained serious injuries despite agreeing to the same in the admitted facts.

Analysis

64. The prosecution submits that on the 17th of April 2019 the accused Mosese Waqanisevula had intended to kill the complainant by stabbing the back part of her head, her neck and both her forearms with a sharp object causing her injuries. The accused then left the complainant crawling on the floor soak with blood in the washroom at Leon's night club and fled away.
65. The prosecution are saying complainant and the accused are known to each other for more than a month as the two were de- facto partners. Therefore the identification made by the complainant over the accused at the door of the restroom inside the night club could be regarded as a recognition rather than an identification. In *R v Turnbull* [1977] QB 224 (CA), the court observed that

"recognition may be more reliable than identification of a stranger; but, even when the witness is purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made"

66. Hence, prosecution are saying that the quality of the identification by the complainant are of high quality. The complainant knew the accused Mosese as the two were in a de-facto relationship for the one month and therefore seeing the accused for a little while before the light is switch off is sufficient to establish his identity.
67. Thus, prosecutions submits that the complainant identified and recognized that it was the accused was standing at the front of the door of the restroom when opened was made possible by the light in the restroom which was switched on an at the same time the complainant called the name "Moji" her ex-partner before the accused switches of the main light.

68. Furthermore, prosecution are saying that after the accused had switched off the light, the accused stabbed the back of the head or occipital area of the head of the complainant with a sharp object. The accused also stabbed the neck of the complainant as well as both complainants' forearms before leaving the complainant on the floor of the rest room crawling.
69. The injuries indicated in the complainant's medical report are consistent to the evidence of the complainant where the medical report has indicated 3cm laceration on occipital area part of the head. 1.5 cm laceration on the side of the neck 5cm laceration on the left proximal forearm extending to the elbow. Superficial laceration on the left 4th webspace and bruises on the neck.
70. Prosecution submits that given the injuries sustained by the complainant and if she was not taken to hospital immediately it is possible that her injuries could be life threatening. However, the doctor cannot comment on whether the injuries sustained by the complainant was life threatening as he was not aware of the depth of the injuries and what structures it has.
71. The defence all along in their defence are saying that the accused was not in Leons night club on the 17th of April 2019. According to the defence the accused was drinking rum and coke with methylated spirit at the sea wall near the wharf with his friends and never been to Leon's night club.
72. Interestingly, to note that the accused had signed admitted facts where he has admitted that he met the complainant at Leon's Night Club of the 17th of April 2019. The later denial of the accused that he was not at Leon's night club on that said date does not augur well with his case. As it surely show that the accused is unstable and is likely to be misleading the court or telling lies.
73. The defence admitted that previously he had a relationship with the complainant and used to have arguments with the complainant regarding the complainant drinking habits and frequently going to night clubs. He said that he no longer resides together with the complainant as she has already left his home a long time back after those arguments.
74. I believe that there were ill feelings between the accused and the complainant which had resulted from the arguments that existed between them concerning the complainants drinking habits and frequent visits to night clubs.

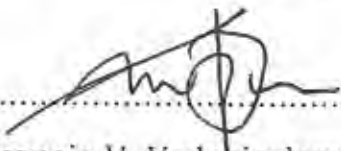
75. I accept the evidence of the complainant that she saw the accused at the night club on that evening as the lights were switched on that time before it was switched off by the accused.
76. I also accept the evidence the complainant that she was stabbed by the accused with a sharp object resulting to laceration on the back of head, neck and both forearms and other injuries on her body. I also believed that the accused fled from the scene after stabbing the victim in the washroom.
77. I accept the medical report which was tendered in as part of prosecution evidence to be consistent and corroborating the to the complainants evidence.
78. I reject the evidence of the accused where he had stated that he was not present in the Leon's night club on the 17th of April 2024 as he has agreed in the admitted facts that he was at the Leon's Night Club on 17th of April 2024. The admitted facts were signed by the court, his counsel and himself including the State counsel during pretrial conference stage.
79. I refuse to accept the denial by the accused and I had observed his demeanor whilst giving evidence he was evasive untruthful and had fabricate part of his evidence to favor his position.
80. I accept the doctor's opinion that the nature of the injuries could be life threatening if the complainant was not immediately taken to the hospital for medical treatment. The doctor's evidence on his initial impression of the complainant that her clothes were soaked with blood, including evidence the accused by using a sharp object had targeted to stab the vital areas of the body of the complainant which includes on the back of the complainant's head, the complainant's neck and both of her forearms.
81. I accept that the evidence of the complainant that she was weak and was crawling on the floor of the washroom after the attack by the accused who was discovered by the security officer who had carried her from inside the night club to the outside before she was conveyed to the hospital by a passing van.
82. I accept the evidence of prosecution that the accused intended to kill the complainant by his conduct and what he did was more than merely preparatory. The evidence of complainant that she saw and recognize the accused at the washroom before the accused stabbed her with a sharp object at the back part of her head, on the side of her neck and on both of her forearms. The evidence in the medical report which corroborates the complainant's evidence and the opinion of the doctor in stating that the

injuries could be life threatening if the complainant was not taken to the hospital immediately after the stabbing for treatment was sufficient to prove the same.

Conclusion

83. Upon considering the evidence adduced by the prosecution and the defence this court is satisfied beyond reasonable doubt that the accused Mosese Waqanisevula on 17th April, 2019, had **attempted to murder** Reapi Qio by stabbing her severely on her head, neck and forearms and left her crawling on the floor of the washroom and fled away was more than merely preparatory.
84. For the reasons given in this judgment, the accused is found guilty for the one count of **Attempted Murder** as charged and he is convicted accordingly




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Sekonaia V. Vodokisolomone
Acting Puisne Judge

Solicitors:

Director of Public Prosecution for the State
Legal Aid Commission for the Accused