

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 271 of 2022

STATE

v

BI BAODANG

Counsel: Mr. M. Vosawale & Ms. T. Sharma for the State
Ms. B. Malimali and Mr. P. Pranesh for the Accused

Date of Judgment: 26 July 2024

JUDGMENT

1. Bi Baodang, the accused, is indicted with the offence of *Attempted murder* laid out as follows in the Information by the Director of Public Prosecutions dated 6 September 2022:

COUNT 1

Statement of Offence

ATTEMPTED MURDER: Contrary to sections 44(1) and 237 of the Crimes Act 2009.

Particulars of Offence

BI BAODANG on the 2nd day of August, 2022, at Suva in the Central Division, attempted to murder **QU GUANG QING**.

2. Bi Baodang pleaded ‘not guilty’ and tried for the aforesaid offence, and this is the Court’s judgment.
3. The prosecution bears the burden to prove all elements of the offence of *Attempted murder* beyond reasonable doubt pursuant to sections 57 and 58 of the Crimes Act 2009.

Physical and fault elements of Sexual Assault

4. *Attempted murder* is contrary to sections 44(1) and 237 of the Crimes Act 2009 which state, and included are sections 44(2), (3), (6) and (7):

Attempt

44.-(1) A person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.

(2) For the person to be guilty, **the person’s conduct must be more than merely preparatory to the commission of the offence**, and the question whether conduct is more than merely preparatory to the commission of the offence is one of fact.

(3) Subject to sub-section (7), for the offence of attempting to commit an offence, **intention and knowledge are fault elements in relation to each physical element of the offence attempted**.

(6) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of attempting to commit that offence.

(7) Any special liability provisions that apply to an offence apply also to the offence of attempting to commit that offence.

Murder

237. A person commits an indictable offence if –

(a) the person engages in conduct; and

(b) the conduct causes the death of another person; and

(c) the first-mentioned person intends to cause, or is reckless as to causing, the death of the other person by the conduct.

5. The physical and fault elements for the offence of *Attempted murder* are:

- i) A person i.e. the accused Bi Baodang;
- ii) Engaged in conduct [see Crimes Act 2009, s. 44(2)];
- iii) The accused's conduct was an attempt to cause the death of Qu Guang Qing; and
- iv) The accused Bi Baodang intended and/or knew that he attempted to cause the death of Qu Guang Qing [i.e. *mens rea* – see Crimes Act 2009, ss. 44(3) & 237(c); In Nath v State [2024] FJCA 48; AAU71.2022 (8 March 2024) at paragraph 20, Prematilaka, JA held, '[20] *Intention and knowledge are the two fault elements in relation to physical element of the offence of attempted murder whereas intention to cause death, or being reckless as to causing death of the other person are the two fault elements for the offence of murder*'.]

Admitted facts by prosecution and defence

6. The *Admitted facts* by the prosecution and defence was filed on 4 October 2023, and the following facts are agreed:
 - 1) The complainant in this matter is Qu Guang Qing, 57 year old Chinese national from Shangdong Province, his passport number is EE5480329.
 - 2) The accused in this matter is Bi Baodang, a 46 year old Chinese national, his passport number is EB7999017.
 - 3) The complainant has been working for Zong Fei shipping as the company representative for Shangdong Lidao Marine Technology Limited.
 - 4) The accused was one of the crew members for Lu Rong Yuan Yu #138.
 - 5) On 2 August 2022, the complainant had gone to Muaiwalu Jetty to see the crew of Lu Rong Yuan Yu #138.
 - 6) On the same evening, whilst the complainant was speaking to the Captain Shenjun Liu and another staff, the accused and Wen Hao, a coworker, had come back from drinking beer.
 - 7) The complainant confronted the accused and the coworker angrily, asking them where they had been.
 - 8) The accused and Wen Hao did not respond and made their way onto the boat.

- 9) The accused was caution interviewed on 3 August 2022.
- 10) The following documents are agreed to be tendered in by consent as prosecution exhibits:
- a) Video caution interview of Bi Baodang (4 discs)
 - b) Transcript of video caution interview of Bi Baodang
 - c) Charge statement of Bi Baodang
 - d) Scene reconstruction transcript
 - e) Medical examination form of Qu Guang Qing
 - f) Work permit of Qu Guang Qing
 - g) Passport biodata page of Qu Guang Qing
 - h) Passport biodata page of Bi Baodang
 - i) Wan Tong Company certificate
 - j) Consent form of DNA collection of Bi Baodang
 - k) Crew list of Lu Rong Yuan Yu #138
 - l) Photographic booklet dated 3 August 2022
 - m) Search warrant of Food City Supermarket dated 3 August 2022
 - n) Search list of Food City Supermarket
 - o) Search warrant of Suva Ports Office dated 4 August 2022
 - p) Search list of Bi Baodang dated 3 August 2022
 - q) CCTV footage from Sea Quest uplifted on 3 August 2022
 - r) CCTV footage from Food City uplifted on 3 August 2022
 - s) Scene reconstruction footage.
7. At trial, prosecution called six (6) witnesses namely: PW1: Samuela Tikoivavalagi; PW2: PC.6430 Mohammed Rasasa; PW3: Qu Guang Qing; PW4: Dr. Akash Biman Prasad; PW5: PC.7577 John Musudroka; and PW6: Detective Inspector Asipeli Waqa.

Prosecution also tendered the following exhibits:

- PE1 – Medical report form of Qu Guang Qing dated 2 August 2022;
- PE2a – Transcript of the video recording of the caution interview of Bi Baodang; and
- PE2b – 5 discs of the video recording of the caution interview of Bi Baodang.

8. Defence called one (1) witness, that is, the accused DW1: Bi Baodang who gave sworn testimony.

Prosecution case via PW1, PW2, PW3, PW4, PW5 and PW6

PW1: Samuela Tikoivavalagi

9. PW1 Samuela Tikoivavalagi testified in examination-in-chief that on 2 August 2022 he was selling food in front of Hot Bread opposite the Suva bus station, and between 8pm and 8.30pm he saw a black twin cab vehicle stop in the middle of the main road just in front of where he was selling food approximately 6 to 7 meters away, and the driver who was a Chinese man wearing a vest got out of the vehicle and was touching his ribs which was bleeding and walked a bit ahead. Then a crowd gathered outside the black twin cab vehicle and some tried to pull out the Chinese man sitting at the back of that vehicle. PW1 also moved closer to the black twin cab vehicle and noticed that the same Chinese man sitting at the back seat of the vehicle looked lost and bewildered. There were only two occupants of the said vehicle, that is, the injured Chinese man and the other Chinese man who sat at the back seat and subsequently taken to the Suva municipal market police post.
10. PW1 was not cross-examined by defence counsel.

PW2: PC.6430 Mohammed Rasasa

11. PW2 PC.6430 Mohammed Rasasa testified in examination-in-chief that he has been a police officer for four years having initially joined on 17 July 2019, and on 2 August 2022 he was on the afternoon shift for 8 hours from 3pm to 11pm. At around 8.50pm on 2 August 2022, PW2 and PW5 Constable John Musudroka attended to an incident report along Rodwell Road in Suva city near the traffic light opposite terminal 2 of Suva bus station. PW2 saw that there were a crowd of people gathered at a black twin cab vehicle registration number HJ676. As they got to vehicle HJ676, PW2 saw that the left passenger door was open and a Chinese man wearing a pint t-shirt with blue jeans shorts was standing on the road outside the vehicle appearing frightened, and another Chinese man was seated on the driver's seat wearing a white vest with blood stains on the left side of his chest and was trying to move the vehicle forward as he seemed to be afraid of something and managed to park it in front of the Suva

municipal market police post. PW2 then took the other Chinese man who wore a pink t-shirt with blue jeans shorts and did not understand English to the Suva municipal market police post, and while doing so an individual then gave PW2 a knife covered with blood stains. At the said police post, PW2 informed PW5 Constable John Musudroka to convey the injured Chinese man the driver of vehicle HJ676 to the hospital. PW2 then called his superior informing him that the Chinese man that he had brought to the police post wearing a pink t-shirt with blue jeans shorts was suspected of stabbing another Chinese man the driver of vehicle HJ676 who had been taken to the hospital by PW5 Constable John Musudroka. PW2 was with the Chinese man suspect for about 15 to 30 minutes, PW2 could smell liquor from that Chinese man's breath when he talked to PW2, and he was kept in the cell. PW2 identified the accused Bi Baodang in court via dock ID as the same Chinese man that he had escorted to the police post on 2 August 2022 wearing a pink t-shirt with blue jeans shorts and suspected of stabbing another Chinese man the driver of vehicle HJ676 with a knife.

12. When cross-examined, PW2 stated that the duration of when they attended to the incident report at Rodwell road and escorting the Chinese man suspect to the police post was 20 minutes, and the lighting condition was bright enough enabling him to identify the said suspect.
13. In re-examination, PW2 maintained what he had stated in cross-examination including examination-in-chief.

PW3: Qu Guang Qing

14. PW3 Qu Guang Qing in examination-in-chief testified that he has been in Fiji for about 14 years having initially arrived in 2010, and currently employed as local representative and manager of the Shandong Lidao Marine Technology Limited, which role includes managing and overseeing the unloading of fish stock from fishing vessels owned by the said company, and replenishing them with fuel, goods and other resources including the crews operations and wages. PW3 stated that Bi Baodang whom he identified in court via dock ID as the accused, was a crew member of the fishing vessel Lu Rong Yuan Yu #138 and he was

earmarked to be the captain of that vessel having been a captain in China prior, but because of COVID-19 he was not appointed captain, but placed in that vessel to learn and familiarise himself with the captain's role and rules of operation in Fiji and associated region outside China, which Bi Baodang was reluctant initially but then agreed to do so later. On the evening of 2 August 2022, PW3 was conversing with Captain Shenjun Liu when Bi Baodang and a co-worker arrived in a taxi after drinking beer, and PW3 confronted them as to whether they had sought permission to go out drinking while the other crew members remained on the vessel. Bi Baodang did not respond when confronted by PW3 but remained standing on the wharf next to the ship. After instructing Captain Shenjun Liu, PW3 then drove off to his home in a black pickup vehicle HJ676 and it was also raining at that moment. From the wharf PW3 drove towards Suva city and when he reached the road along the Suva bus stand, he was shocked to notice Bi Baodang suddenly getting up from behind the back seat and telling PW3 that he has not been good to him while concurrently putting a knife in front of PW3's chest. Bi Baodang then stabbed PW3 in the area around his heart and PW3 was shocked and covered the stabbed/wounded area with his right hand and at the same time tried to open the vehicle door to get off while the vehicle was still moving. PW3 then got out of the moving vehicle and ran shouting that somebody wants to kill him thinking that Bi Baodang was also pursuing him. While running PW3 looked back and saw two police officers, and then went back to his vehicle to put off the engine and in doing so saw the police holding Bi Baodang, and PW3 told the police to take him to the hospital as he was bleeding due to the stab wound on his body, and blood would come out each time he spoke. PW3 was then taken to the hospital and on the way he was feeling breathless. At the hospital, PW3's friend who is an agent of Shandong Lidao Marine Technology Limited assisted in terms of conversing in English with the doctor and nurses since PW3 does not speak English, and insisting that PW3's wound be treated promptly. PW3 was first scanned to determine the seriousness of the wound and then later underwent surgery. After surgery, PW3 was taken to the ICU for continued observation for about 2 to 3 days before being discharged. PW3 identified the accused Bi Baodang in court via dock ID.

15. When cross-examined, PW3 stated that on the evening of 2 August 2022 he did not see anyone get into vehicle HJ676, and he would not have been able to hear the opening and

closing of the vehicle door mainly because of the loud noise emanating from the vessel engine. PW3 left the wharf after 8pm and drove home via the Suva bus stand. Near the lights at the Suva bus stand, PW3 got a shock when he was suddenly hit from behind by Bi Baodang who then told PW3 that he was not treating him right, to which PW3 responded that he has been treating everyone equally. PW3 was also nervous at that moment as Bi Baodang was also holding a knife, which knife then came down stabbing him prior to braking, and not due to him pressing the brake. PW3 could not recall Bi Baodang telling him that he does not want to hurt him. PW3 and Bi Baodang have never argued before the stabbing incident in vehicle HJ676. When PW3 got stabbed by the knife, he started bleeding and held onto his wound and at the same time tried to open the vehicle door to get off.

16. In re-examination, PW3 stated that Bi Baodang was the person that he saw at the back of his vehicle with the knife in his hand, and Bi Baodang was held down by the police when he returned to stop the engine of his vehicle soon after the stabbing.

PW4: Dr. Akash Biman Prasad

17. PW4 Dr. Akash Biman Prasad in examination-in-chief testified that on 3 August 2022 at about 12.30am he conducted surgery termed *Exploratory Laparotomy* on PW3 Qu Guang Qing. PW4 found an incision or a clean break in the skin on PW3's left nipple area which extended into the chest up to one of the ribs after which point its trajectory had changed downwards into the abdomen cavity. The exit wound was found on the left side of the diaphragm. The abdominal fat was found stuck in the exit wound and there was active bleeding from small vessels in this abdominal fat. The tract that was formed from the entry to the exit wound was at least 12cm long and was adjacent to the heart, the spleen, and the left lobe of the liver. Because the tract had gone through the chest, it had injured the left lung and the lining of the left lung called the *Pleura* causing *Haemopneumothorax* which is the collection of air and blood in the cavity surrounding the lung which in turn can cause the patient to experience shortness of breath and chest pain. PW4 noted his findings in the Medical report form of Qu Guang Qing dated 2 August 2022 tendered as prosecution exhibit 'PE1' concluding that the stab wound sustained by PW3 was potentially life threatening and

most likely inflicted by a sharp knife.

18. In cross-examination, PW4 stated that PW3 consented to the surgery i.e. *Exploratory Laparotomy* via his agent and translator, which surgery occurred on 3 August 2022, and discharged from hospital on 5 August 2022. PW4 maintained his findings noted in PE1 and also clarified certain points relative to his findings during cross-examination.
19. In re-examination, PW4 stated that PW3 was taken to Oceania Hospital to undergo X-ray since the X-ray machine at CWM Hospital could not be used at that time due to it being overheated and needed to be cooled.

PW5: PC.7577 John Musudroka

20. PW5 PC.7577 John Musudroka in examination-in-chief testified that on 2 August 2022 he started his shift at 3pm and went on foot patrol with PW2 PC.6430 Mohammed Rasasa. While having refreshment at the Suva municipal market police post, someone was calling for help from outside and PW5 ran out to find out and saw a crowd gathered opposite Food City along Rodwell road. PW5 then approached the crowd and saw a Chinese man held by PW2 and surrounded by the crowd, and another Chinese man sitting inside a black twin cab Chevrolet vehicle registration HJ676. At that moment, PW5 then found out about the alleged stabbing. PW5 then opened the door to vehicle HJ676 and saw the Chinese man sitting inside bleeding from his chest and then conveyed him to the Emergency department at CWM Hospital in vehicle HJ676 accompanied by PC Emosi. At the Emergency department, PW5 handed over the injured Chinese man and informed the medical personnel that he had been stabbed and cannot respond properly.
21. In cross-examination, PW5 stated that he had assisted PW2 in escorting the suspect Chinese man to the market police post, and then he returned to vehicle HJ676 to attend to the injured Chinese man seated in that vehicle. When conveying the injured Chinese man to the CWM Hospital accompanied by PC Emosi, PW5 saw that the said Chinese man was losing a lot of blood as blood was coming out from his hand that was on the wounded area on his chest.

PW5 later handed over vehicle HJ676 to the Totogo Police Station as part of the police investigation.

22. PW5 was not re-examined by the prosecution.

PW6: Detective Inspector Asipeli Waqa

23. PW6 Detective Inspector Asipeli Waqa in examination-in-chief testified that he interviewed under caution the accused Bi Baodang whom he subsequently identified in court via dock ID, and tendered the following prosecution exhibits: (i) **PE2a** – Transcript of the video recording of the caution interview of Bi Baodang; and (ii) **PE2b** – 5 discs of the video recording of the caution interview of Bi Baodang.
24. In cross-examination, PW6 stated that Bi Baodang was interviewed under caution for two days, and there was no transcribed Chinese version of the caution interview. PW6 also stated that during his interview, Bi Baodang stated that he did not intend to kill PW3 Qi Guang Qing, but only tried to threaten Mr. Qing with suicide.
25. PW6 was re-examined by the prosecutor and provided clarification on Bi Baodang’s response during the caution interview.

Defence case via DW1: Bi Baodang

26. DW1 Bi Baodang in examination-in-chief testified that he is 46 years old and was born on 26 September 1977 in Rongcheng province, Shandong, China. He is married with a 10 year old daughter. He neither speaks, reads nor writes in English. He is a fisherman by profession and started about 20 years ago. He came to Fiji via a vessel belonging to Shandong Lidao Marine Technology Limited, which company is managed locally by PW3 Qi Guang Qing. On 2 August 2022, after unloading the fish from the vessel at about 1pm, DW1 had his lunch and then bought 5 bottles of beer from the shop, drank 3 bottles and gave a bottle each to the Captain and Finance Officer. DW1 then went with a Wen Hao to buy more beer and they drank them, and upon finishing the beer they then bought and consumed some more beer.

DW1 recalls having drunk 11 big bottles of beer costing \$10 each. After drinking beer with Wen Hao, they then caught a taxi and went on a tour around Suva and returned to the wharf where their vessel was docked at about 7pm. At the wharf, PW3 Qi Guang Qing queried DW1 as to why he was still down at the wharf and not with the other crew in the vessel, to which DW1 did not respond and walked towards the vessel. DW1 then got into PW3's vehicle HJ676 without PW3 knowing, having intended to then ask PW3 if there is any captain's position available, and if not, then he would like to return to China. Being drunk and having waited for a long time for PW3 to get into vehicle HJ676, DW1 then fell asleep in that vehicle. DW1 stated that he woke up because the road condition was not too good while the vehicle was moving and did not know where he was at that moment. Once awake, DW1 who was at the back seat then started looking for his belongings that had fallen inside the vehicle, and that is when PW3 was shocked to see him in the vehicle. PW3 then asked DW1 as to why he is in his car and told DW1 to get off. DW1 was reluctant to get off because he saw a lot of people around and became scared. DW1 then took hold of a knife and wanted to scare PW3 so that he does not stop the car to make him get off. When he saw the knife, DW1 started shouting 'help, help, murder, murder', which made DW1 more terrified. Due to being terrified at that moment, DW1 then told PW3 not to stop the car and he will not hurt or kill him. At this juncture DW1 had also put his hand on PW3's shoulder, and felt that PW3 had slightly pressed on the brake but continued to drive, and DW1 thinks that at that moment he may have hurt him as his hand had drawn backwards. DW1 then loosened his hand because he was scared, by then PW3 pressed on the brakes and got off the car. When PW3 got off the car, at that moment DW1 felt terrified and he knew then that he had hurt PW3 so he wanted to know how bad it was. DW1 then got off the car as well still holding onto the knife, and saw PW3 running ahead so DW1 shouted to PW3 not to run and that he never meant to hurt him and then threw the knife aside. When he threw the knife aside, people then gathered around DW1 and PW3 also returned. When PW3 came closer, DW1 then saw a wound on PW3 cut-open shirt. DW1 stated that he wanted to use the knife to threaten PW3 that if he does not let him return to China then he will commit suicide. DW1 also stated that he did not attempt nor intended to murder PW3.

27. In cross-examination, DW1 stated that he had the knife with him when he got into PW3's

vehicle HJ676, and did not even think of hurting PW3 with that knife.

28. DW1 was not re-examined by his counsel.

Analysis of the prosecution vis-à-vis defence evidence

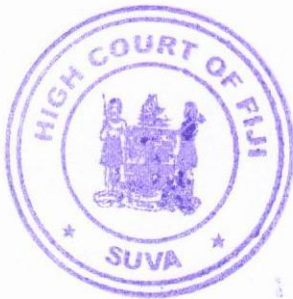
29. In analyzing the entire evidence, I have found that:

- (a) The identification of the accused Bi Baodang is well substantiated and a non-contentious issue in this case.
- (b) Bi Baodang had the knife with him when he secretly got into PW3's vehicle HJ676 at the wharf on the evening of 2 August 2022.
- (c) Bi Baodang was present in vehicle HJ676 with the complainant PW3 Qu Guang Qing on Rodwell road, Suva, on 2 August 2022.
- (d) Bi Baodang stabbed PW3 Qu Guang Qing's over his left nipple with the said knife.
- (e) PW4 Dr. Akash Biman Prasad noted his findings in the Medical report form of Qu Guang Qing dated 2 August 2022 tendered as prosecution exhibit 'PE1' concluding that the stab wound sustained by PW3 Qu Guang Qing was potentially life threatening and most likely inflicted by a sharp knife.
- (f) The testimonies of PW1, PW2, PW3, PW4, PW5 and PW6 are consistent, and any discrepancy does not, in my view, render the prosecution evidence incredible and unreliable. In Nadim v State [2015] FJCA 130; AAU0080.2011 (2 October 2015) at paragraph 15, Prematilaka, J. stated:

[15] It is well settled that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be discredited or disregarded. Thus, an undue importance should not be attached to omissions, contradictions and

discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witnesses. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of incidents, minor discrepancies are bound to occur in the statements of witnesses.

30. Having carefully considered the entire evidence adduced by the prosecution and defence, I find that the testimonies of PW1, PW2, PW3, PW4, PW5 and PW6 including the prosecution exhibits are credible and their probative value outweigh DW1 Bi Baodang's testimony, to the effect that the prosecution has proved beyond reasonable doubt that Bi Baodang attempted to cause the death of Qu Guang Qing by stabbing him with a knife, and did so knowingly and intentionally.
31. For the reasons stated above, I therefore find Bi Baodang guilty of the charge of *Attempted murder* in the Information by the Director of Public Prosecutions dated 6 September 2022.
32. Bi Baodang is hereby convicted accordingly of the aforesaid charge.
33. Thirty (30) days to appeal to the Fiji Court of Appeal.



Pita Bulamainaivalu

Hon. Mr. Justice Pita Bulamainaivalu
PUISNE JUDGE

At Suva

26 July 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

Pacific Chambers for the Accused