

IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Criminal Case No. 538/2022

BETWEEN: **STATE**

PROSECUTION

AND: **RUDHRA NAND**

ACCUSED

Counsel: PC 5647 Pranil Nair for Police Prosecution
 Mr. R. Prakash for the Accused.

Date of Trial – Prosecution's Case: 12 November 2024
Date of Trial – Defence's Case: 13 November 2024
Date of Judgment: 31 December 2024

JUDGMENT

Introduction

1. Mr. Rudra Nand ("the Accused") with another was charged with 1 count of Act with Intent to Cause Grievous Harm contrary to section 255(a) of the Crimes Act 2009. As the offence was indictable, the matter was transferred to the High Court.
2. On 11 May 2023, Information was filed charging the Accused only for 1 count of Act with Intent to Cause Grievous Harm contrary to section 255(a) of the Crimes Act whilst a Nolle Prosequi was filed against the other person charged with the Accused. The Accused pleaded Not Guilty to the charge and the matter was remitted to the Magistrates' Court under extended jurisdiction.
3. After subsequent adjournments, the matter was set for Trial on 12 November 2024. On the date of Trial, Prosecution filed an Amended Charge charging the Accused for 1 count of Assault Causing Actual Bodily Harm contrary to section 275 of the Crimes Act 2009. The particulars of the offence are:

Statement of Offence

Assault Causing Actual Bodily Harm: *Contrary to Section 275 of the Crimes Act 2009.*

Particulars of Offence

Rudra Nand on the 16th day of November, 2022 at Miha Mahajan Road, Yalalevu, Ba in the Western Division assaulted **Anand Abel Nagan** thereby causing him actual bodily harm.

4. The Accused pleaded Not Guilty to the above charge. The Court was then informed that there was no domestic relationship between the Accused and the Complainant, thus, the Court promoted section 154 of the Criminal Procedure Act 2009. The Complainant wanted time to consider his position as such the matter was stood down for about 35 minutes.
5. When the matter was recalled, the Complainant indicated that he was willing to reconcile with the Accused but that he could not estimate his compensation given that he was still

suffering from his injuries and because he may need surgery in the future. Given this explanation, the Court found that there was a degree of aggravation given that the Complainant was still suffering from his injuries, as such the Court no longer invoked section 154 of the Criminal Procedure Act 2009.

6. The matter proceeded to Trial where Prosecution called 3 witnesses and thereafter closed its case. The Medical Report of the Complainant ('PEX1') was tendered by consent. The counsel for the Accused conceded that there was a case to answer and informed the Court that the Accused and 2 witnesses would give evidence.
7. On 13 November 2024, the Accused and his 2 witnesses gave evidence and thereafter Defence closed its case.
8. Both Prosecution and Defence then informed the Court that they would not file any submissions but would instead rely on the Court Record.
9. Having considered the evidence presented by Prosecution and Defence, I now pronounce my Judgment.

Burden of Proof

10. It is imperative to highlight that as a matter of law, the onus or burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no burden on an accused to prove his or her innocence as an accused is presumed to be innocent until proven guilty.
11. It is for the prosecution to prove the accused's guilt beyond a reasonable doubt. If there is doubt, so that the court is not sure of the accused's guilt, or if there be any hesitation in the court's mind on any of the ingredients or on the evidence led by prosecution, the accused must be found not guilty of the charges and accordingly acquitted.

Summary of Evidence

12. It is expected that to arrive at a proper conclusion, the matter ought to be considered in its logical progression with formulated reasons for the ultimate conclusion with the general rule being that a judgment should set out the relevant events and the material evidence in the correct sequence in narrative form with the identifying number of each pertinent witness being incorporated at the appropriate places – vide *Pal v R* [1974] 20 FLR 1 (17 January 1974) as referred to in *Wang v State* Criminal Petition No. GAV 0013 of 2021 (26 October 2023) and *State v Wang* Criminal Appeal No. HAA 30 of 2019 (19 February 2021).
13. On 16 November 2022 at about 11:30pm, the Complainant left his compound and had gone towards the Accused's home to confront the Accused as the Complainant had been under the impression that the Accused and his guests at his home had been talking about him. The Complainant acknowledged that he used abusive language towards the Accused when all of a sudden people from the Accused's house came and started assaulting the Complainant. The Complainant's wife, Priya Nagan confirms this and testified that she had seen the Accused pick a piece of wood, 4x2 and then hit the Complainant with it on his knee which led him to fall down.
14. Prosecution's third witness, Sammi Ravinesh Ram also testified that as he ran from his home to where the alleged assault took place, he had seen the Accused assaulting the Complainant with a piece of stick.

15. The Accused and his witnesses categorically deny that the Accused had assaulted the Complainant. Rather they all testified that they had been at the Accused's home having grog and playing cards when the Complainant had started swearing and had come into the Accused's compound and calling out to the Accused. The Accused states when he and his guests stood up, the Accused ran away and, in the process, fell into the drain

Evaluation of Evidence

16. For a proper analysis of the evidence, it is imperative for the Court to turn its mind to the elements for assault causing actual bodily harm, which are:
- i. the accused
 - ii. commits an assault causing actual bodily harm
 - iii. to another.
17. From the outset there is no issue with the identification of the Accused as the Accused acknowledges he had been at his home on 16 November 2022 and that the Complainant had received injuries as outlined in the Medical Examination Form which had been tendered by consent as 'PEX1'. Rather, the Court will need to ascertain whether the Accused had assaulted the Complainant which led to him receiving the injuries mentioned in the Medical Examination Form.
18. In State v Prasad Criminal Case No. HAC 72 of 2021 (20 June 2024) His Lordship Justice Rajasinghe referred to the Liberato principle as expounded in Liberato and Others v The Queen [1985] HCA 66; 159 CLR 507 at 515 where Brennan J held that:

"When a case turns on a conflict between the evidence of a prosecution witness and the evidence of a defence witness, it is commonplace for a judge to invite a jury to consider the question; who is to be believed? But it is essential to ensure, by suitable direction, that the answer to that question (which the jury would doubtless ask themselves in any event) if adverse to the defence, is not taken as concluding the issue whether the prosecution has proved beyond reasonable doubt the issue which it bears the onus of proving. The jury must be told that; even if they prefer the evidence for the prosecution, they should not convict unless they are satisfied beyond reasonable doubt of the truth of that evidence. The jury must be told that, even if they do not positively believe the evidence for the defence, they cannot find an issue against the accused contrary to that evidence if that evidence gives rise to a reasonable doubt as to that issue. His Honour did not make clear to the jury, and the omission was hardly remedied by acknowledging that the question whom to believe is "a gross simplification."

19. Prasad [supra] also made reference to the case of Naidu v State [2022] FJCA 166; AAU0158.2016 (24 November 2022) where His Lordship Prematilaka highlighted the importance of modifying the Liberato principle and held:

[29] On the other hand Liberato has not uttered the final word on this issue. In Johnson v Western Australia [2008] WASCA 164; (2008) 186 A Crim R 531 at 535 [14]- [15] Wheeler JA identified one possible shortcoming in using Brennan J's statement in Liberato as a template for the direction: a jury may completely reject the accused's evidence and thus find it confusing to be told that they cannot find an issue against the accused if his or her evidence gives rise to a 'reasonable doubt' on that issue.

*[30] For that reason, it was usefully held in Anderson [2001] NSWCCA 488; (2001) 127 A Crim R 116 at 121 [26] that **it is preferable that a Liberato direction be framed along the following lines (i) if you believe the accused's evidence (if you***

believe the accused's account in his or her interview with the police) you must acquit; (ii) if you do not accept that evidence (account) but you consider that it might be true, you must acquit; and (iii) if you do not believe the accused's evidence (if you do not believe the accused's account in his or her interview with the police) you should put that evidence (account) to one side. The question will remain: has the prosecution, on the basis of evidence that you do accept, proved the guilt of the accused beyond reasonable doubt?

20. His Lordship Justice Rajasinghe in **Prasad** [supra] further stated “if the Court believes the evidence given by the Accused is true or may be true, then the Court must find the Accused not guilty of the offences. Even if the Court rejects the Accused version, that does not automatically imply that the Prosecution has established that the Accused is guilty of the crime. The Prosecution must satisfy that it has established, on the evidence accepted by the Court, beyond a reasonable doubt, that the Accused committed these offences as charged in the information”.
21. Thus, the Court will need to evaluate the evidence by Prosecution whilst keeping in mind the evidence presented by the Accused insofar as they relate to the issue it is considering. The evidence presented by the parties will be evaluated to determine the testimonial trustworthiness of the evidence which will be done by evaluating the credibility – the correctness or veracity of the evidence and the reliability of evidence – the accuracy of the evidence - vide **State v Prasad** Criminal Case No. HAC 72 of 2021 (20 June 2024). In doing this, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide **State v Moroc** Criminal Case No. HAC 161 of 2023 (26 April 2024)).
22. The Accused's evidence is that on 16 November 2022, he had been at home with his brothers who had come from Suva for a funeral. The Accused stated that present at his home with him on the evening of 16 November 2022 were Nilesh Nand, Vikash Nand, Mahend Prasad and Kunal. He testified that he had prepared a bowl of grog and they had started playing cards. Around 8:30pm-9pm, the Complainant started swearing and had come out of his house onto the road and was still swearing. Thereafter, the Complainant went back to his house.
23. The Accused then testified that the Complainant came again and crossed into his compound and started calling the Accused's name and swearing at the Accused. The Accused stated that when he and his guests stood up, the Complainant saw them and started to runaway but instead fell into the drain. The Accused informed the Court that he and his guests did nothing when this happened as he knew they would be blamed for beating the Complainant when they had done nothing.
24. The Accused's witnesses, Vikash Verma and Mahen Prasad both confirmed that whilst they were having grog and playing cards, the Complainant had started shouting and swearing on the road and then went back to his house. They also both testified that at 11pm, the Complainant had entered into the Accused's compound and when they stood up, he ran away and whilst running away, the Complainant fell into the drain. It was then that someone had come to help the Complainant but they did not go as they were told that they could get into trouble/problem.
25. The Court notes the probability of the Accused and his 2 witnesses' versions of events – such as if they did not go to assist the Complainant when he had fallen into the drain as they would be blamed when they had not done anything and if the Accused had been standing at his porch when the Complainant had fallen into the drain, why then would

Sammi Ravinesh an independent witness for Prosecution state that he had seen the Accused when the alleged incident took place and that he had also seen the Accused hit the Complainant with a stick.

26. Further, there was nothing to suggest an ulterior motive with respect to the evidence of Sammi Ravinesh, who was an independent witness to the incident. The counsel for the Accused did not even suggest or point out why the Complainant made such a complaint, especially if there had been an ulterior motive considering the Accused's and his witnesses' version that the Accused had done nothing to the Complainant.
27. Thus, the Court finds that Accused's evidence as well as the evidence of Vikash Verma and Mahen Prasad is not true and may also not be true hence Defence has failed to create a reasonable doubt in Prosecution's case.
28. I now turn my mind to Prosecution's case. The Complainant testified that in the early hours of the evening of 16 November 2022 he had been drinking and had been under the impression that the Accused who was his neighbour with his guests had been talking about him. The Complainant acknowledged that he became confrontational. The Complainant's wife, Priya, Nagan who was Prosecution's second witness also confirmed this. She testified that she had sat with the Complainant to calm him down and then afterwards she had gone back into the house.
29. The Complainant stated that he still led himself to believe that the Accused and his guests were talking about him and that he became confrontational again. Around 11pm, the Complainant being under the impression that the Accused and his guests were talking and laughing about him, left his compound and stood on the road near the Accused's home and started yelling out and swearing at the Accused when all of a sudden people came out of the Accused's property and assaulted him – the Complainant.
30. The Complainant's wife, Priya testified that she had gone out to see where her husband was going and then had stood near the gate in front of their house when the Complainant had gone in front of the Accused's house and called out to and had sworn at the Accused. She then testified that she was about 4-5 meters away from her husband when 4 people came running out including the Accused, who had grabbed a 4x2 wood and hit her husband on his knee which made him fall down. She stated that her husband – the Complainant had been hit on the chest and that they kept hitting him until he fell into the drain.
31. Priya further testified that Master Ram, another neighbour, who had seen the incident came over and helped her stop the people from assaulting the Complainant. Sammi Ravinesh Ram, who was Prosecution third witness also confirmed that he had seen the Complainant had been provoking the Accused and that when he saw them arguing that he rushed out of his home and ran to where the Complainant was. He testified that as he reached where the Complainant was, he saw 3 people assaulting the Complainant and he saw the Accused with a piece of stick and that he saw the Accused hit the Complainant twice with the stick and then the Accused threw the stick into his compound. Mr. Ram stated that when he reached the Complainant, he saw that the Complainant had injuries at his knee and chest
32. The Medical Examination Report which had been tendered by consent establishes that the Complainant had multiple small abrasions noted on his right mid-back, with an abrasion measuring 2cm x 15cm noted on the anterior abdomen, with a superficial abrasion and deformity noted on the Complainant's right knee leading to the patient being

unable to extend right knee and a small abrasion measuring 1cm x 1cm on the medical aspect of the left ankle.

33. The evidence of Priya and Mr. Ram is consistent with respect to what had transpired when the Accused and others had rushed over to where the Complainant was and that the Accused had a piece of stick/wood which had been used to assault the Complainant.
34. The Complainant's evidence that when a group of people had rushed out of the Accused's property and attacked him by assaulting him on his chest and leg which caused him to fall down is consistent in conjunction with Priya's evidence that the Accused had used a piece of wood and hit the Complainant on his knee which led the Complainant to fall over.
35. Moreover, the Doctor's professional opinion in the Medical Examination Form was that the knee trauma was likely to have been inflicted by blunt force trauma of high force. This is consistent with the evidence of the Complainant, Priya Nagan and Sammi Ravinesh Ram that the Complainant had been assaulted.
36. Thus, considering the above, the Court finds that the Complainant's evidence as well as the second and third Prosecution witnesses' evidence as being credible and reliable and therefore truthful, especially in conjunction with medical findings and professional opinion of the Doctor as reflected in the Medical Examination Form. Thus, Prosecution has proven beyond a reasonable doubt that the Accused had assaulted the Complainant on 16 November 2022 by using a piece of wood/stick which then caused injuries to the Complainant as reflected in the Medical Examination Form.

Determination

37. I find that Prosecution has ^{discharged} its burden in proving all the elements of ~~the~~ Assault causing Actual Bodily Harm beyond reasonable doubt.
38. I, therefore, find the Accused, Rudhra Nand, guilty as charged.



N. Mishra
Resident Magistrate