

IN THE COURT OF APPEAL, FIJI
[ON APPEAL FROM THE HIGH COURT]

Criminal Appeal No. AAU 078 of 2015
(High Court Case No. HAC 113 of 2012)

BETWEEN : **MOHAMMED SHAHEEN** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Gamalath, JA**
Prematilaka, JA
Bandara, JA

Counsel : **Ms. S. Ratu for the Appellant**
Mr. L. J. Burney for the Respondent

Date of Hearing : **14 May 2019**

Date of Judgment : **6 June 2019**

JUDGMENT

Gamalath, JA

[1] At the leave stage of this appeal, the appellant, relying on the grounds of appeal against his conviction and sentence, sought to canvass the findings in the High Court at Lautoka, where he was convicted for the attempted to commit murder, contrary to Section 44 and 237 of the Crimes Act (Decree) 44 of 2009.

- [2] The particulars of the offence were that on 7 September 2012 at Lautoka, he with intent to cause the death of Rovina Lata, unlawfully wounded Rovina Lata with a kitchen knife.
- [3] At the leave stage, as reflected through the ruling of the learned Single Judge, the timely grounds of appeal had been formulated by the appellant himself. According to the learned Single Judge, the main complaint “pressed on against the conviction” unsuccessfully, was that “the trial judge’s reasons for not agreeing with the unanimous not guilty opinion of the assessors are not cogent”. The learned single Judge refused to grant leave.
- [4] Confining the ground of appeal presently to against the conviction alone, viz. that “ the Learned Trial Judge erred in law and in fact when he convicted the Appellant, as the conviction was unreasonable and cannot be supported by the totality of evidence” , the Legal Aid Commission appearing for the appellant seemed to have subsumed the original grounds of appeal raised before the learned Single Judge into the present single ground and as such this Court, pursuing the course of justice allowed the appellant to prosecute the present appeal based on the present single ground.

The Facts

- [5] At the trial, as contained in the final agreed facts, the appellant and the victim Rovina Lata, before the alleged incident of stabbing, had been living in a de facto relationship that had lasted for almost 4 years. On 4 September 2012, Rovina Lata, due to some estrangement of their relationship, left the house of the appellant and moved into her daughter’s house in Lovu, Lautoka. On 7 September 2012, the appellant had gone in search of Rovina Lata to Lautoka, where he had requested the victim to re-unite with him. The victim refused to accede to this request.
- [6] The remaining part of the narration of the incident comes through the testimony of Rovina Lata; accordingly, on the 7 September 2012, having gone to the town and whilst strolling

down the road with her “new boyfriend” towards one Chilli Tree café , the appellant arrived at that place and inquired “what is this”? In replying Rovina Lata informed the appellant that their relationship was finished and that she was in a new relationship with her new found friend.

- [7] According to Rovina Lata, upon hearing what she had just told the appellant, “he could not control his temper, and started to hit me on my stomach”, making her unconscious. Upon admitted to the hospital, Rovina was found with stab wounds to her chest area.
- [8] However, latterly in the course of her testimony, the prosecution treated the witness hostile to its case, for as transpired from the totality of her evidence, clearly she was testifying in a manner that was favourable to the appellant. Her evidence was that the appellant never intended to stab her; her evidence was that: “we were like playing with each other and it was accidentally I got injured with the knife.” When she was confronted with her statement to the police to highlight the contradictions, her explanation was that since she was still recovering from the wounds and was also “unconscious”, it was impossible for her to remember what exactly she had told the police.
- [9] Answering the cross examination the victim reiterated that the appellant never stabbed her with the knife”; suggesting that there was no intentional inflicting of injuries to her. The witness was categorical when she further stated that, “as I said earlier while playing, I got hit and I shouted and went to the security guard. Security Guard was just beside me”.
- [10] The prosecution witness, the security guard Pita Lota stated in evidence that he saw the appellant firing stabs at the victim, who upon seen his presence, ran up to him . The appellant, while armed with the knife was running behind the victim, until the witness overpowered the appellant by punching him in his head. He managed to pull away the knife from the appellant’s hand.

- [11] In his caution interview statement, the admission of which in evidence at the trial was unchallenged, the appellant admitted to have stabbed the victim out of anger. He had stated that he was 'really' upset and "I really want to stab her." These words are significant for what emanates from them is his intention to inflict harm to the victim. The appellant and the victim had struggled for the knife until the security guard Pita Lota intervened and overpowered him. Prior to that he had continued to fire more stabs at the victim.
- [12] In the caution interview he was questioned as to what motivated him to stab the victim and he responded by stating that she had a habit of lying to him 'every time'. Earlier in the statement he stated that he begged of her to come back to him, but the request was turned down for she had by then found another boyfriend. There is an unclear streak of material coming from his caution statement, which is suggestive of the fact that the victim had been engaged in certain unconventional activity by "taking clients" and the triggering of the appellant's anger had been attributed to that fact as well.
- [13] The medical evidence showed, "multiple lacerations about 1 cm long around the scapular area, posterior chest wall, left umbilium and middle of finger" of the victim. These were agreed facts.
- [14] The prosecution witness DCPL 20161 Salen stated that the weapon used was a kitchen knife with a small blade affixed to a wooden handle.
- [15] At the trial, the appellant elected to remain silent, nor had he called any witnesses on his behalf.
- [16] This, in effect is the sum total of the evidence in the trial.
- [17] At the conclusion of the trial, the assessors were unanimous that the appellant was not guilty as charged.

[18] The learned High Court Judge disagreed with the opinions of the assessors. He, after reasoning, convicted the appellant for attempted murder and sentenced him to serve life imprisonment, the mandatory sentence as stipulated by law, with a 8 years non-parole period.

[19] The opinions of the assessors to acquit the appellant is clearly erroneous, for at no stage in the trial was there any challenge to the fact that the appellant stabbed the victim. Especially in the case of Pita Lota, there was not even a suggestion made to the effect that the appellant did not stab the victim. As can be discerned from the summing up and the judgement of the learned Trial Judge, he had quite correctly directed the assessors on the possible alternative verdict that could also be considered, having regard to the evidence. Nevertheless, for a reason that is incomprehensible, the assessors seemed to have opined that the appellant should be absolved of any liability. That is clearly an erroneous opinion in the backdrop of the evidence as unfolded at the trial.

[20] One important aspect to this case is that, negating any possibility of attributing spontaneity to the actions of the appellant, there is clear evidence to show that the appellant had pre-planned an attack on the victim when he admitted in his caution interview that he bought the knife with the intention of stabbing the victim. It unfolds as follows;

“Q : Why did you bought the knife [sic]?”

A : to use it to stab Rovina;

Q : Why you want to stab Rovina?

A : Because every time she always tell lies to me”.

In the caution statement the appellant had further admitted that if not for the timely intervention of the witness Pita Lotu, he would have continued to stab the victim;

“Q : how did you stop stabbing Rovina?

A : One Fiji man came and punched me on my mouth and then pull Rovina and that Fijian man then pull the knife from my hand”.[sic].

[21] As regards the totality of the evidence and the reasons given by the learned Trial Judge in the summing up as well as in his judgment, I am unable to uncover any material that is seriously objectionable and supportive of the sole ground of appeal advanced by the Appellant.

[22] In the circumstances, the leave for the ground of appeal is denied.

Prematilaka, JA

[23] I have read in draft the judgment of Gamalath, J and agree with the reasons and orders proposed.

Bandara, JA

[25] I concur with the judgment of Gamalath, J and agree with the reasons given and orders proposed.

The Order of the Court:

Leave to appeal is refused.



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Hon. Justice S. Gamalath
JUSTICE OF APPEAL

Handwritten signature of Justice C. Prematilaka in blue ink.

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Hon. Justice C. Prematilaka
JUSTICE OF APPEAL

Handwritten signature of Justice N. Bandara in blue ink.

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Hon. Justice N. Bandara
JUSTICE OF APPEAL