

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 63 OF 2016

STATE

V

SEMI VUCUI

Counsels : Mr. L. Fotofili for State
Mr. K. Ratule for Accused

Date of Trial : 03 and 04 July 2017

Summing Up : 06 July 2017

Judgment : 06 July 2017

JUDGMENT

1. The accused is being charged with one count of Attempted Murder contrary to Section 44(1) and Section 237 of the Crimes Act. The particulars of the offence are that;

“Semi Vucui on the 25th day of November 2016 at Labasa in the Northern Division, attempted to murder Mareta Duibale”

2. The accused pleaded not guilty for the offence, hence the matter proceeded to hearing. The hearing commenced on the 3rd of July 2017 and concluded on the 4th of July 2017. The prosecution adduced evidence of three witnesses. Subsequently, the accused gave evidence for his defence. The learned counsel for the prosecution and the defence then made their respective closing submissions on the 5th of July 2017. Thereafter, I delivered the summing up on the 6th of July 2017.
3. The three assessors in their unanimous opinion found the accused is not guilty for the offence of Attempted Murder, but found him guilty for the alternative offence of Act Intended to Cause Grievous Harm.
4. Having carefully considered the evidence adduced during the hearing, the respective closing submissions of the parties, the opinion of the three assessors and the summing up, I now proceed to pronounce my judgment as follows.
5. In view of the evidence presented by the parties and the agreed facts, the main dispute in this matter is whether the accused had an intention to kill the victim when he stabbed her in the night of 25th of November 2016.
6. The prosecution alleges that the accused sent messages via Facebook messenger threatening the victim that he will kill both of them if she refuses to continue their relationship. She then blocked him on Facebook messenger. In a while, the accused came to her house and requested her to give him another chance for him to change. She refused and asked him to leave. She gave him clothes back. At that point of time, the accused stabbed her on her left side of the flank with a knife. The prosecution alleges that the accused brought the knife with him.
7. Meanwhile, the accused denies this allegation and states that he never had any intention to kill her. He said that he did not send any such messages on Facebook messenger. He came to her home and talked to her for a while. She was angry and threw his clothes at him. She then uttered some ugly words, which made him angry and upset. He then wanted to punch and stab her on her arm in order to threaten her. But accidentally he stabbed on her left side of the flank. He then voluntarily went to the Police Station and surrendered himself with the knife.

8. The prosecution is mainly rely on the FB messages sent to the victim by the accused stating that "he will kill both of them" in order to establish the intention of the accused. The accused denies that he sent those messages. Moreover, the accused says that it was the victim who made those messages as she had access to his Facebook account. Having considered the circumstances of this case, I do not find that proposition is probable. Hence I do not accept the evidence of the accused that he did not send those messages.
9. In view of the messages sent by the accused, it appears that he had actually made an attempt to resume or continue his relationship with the victim. Even after that particular message, in which he said that he will kill both of them, he had sent her another message saying that he will love her till he die. I accordingly find that those messages were sent by the accused out of his frustration of losing the victim than his intention of killing her.
10. The evidence adduced by the parties established that the accused and the victim had been in a conversation for more than an hour before this alleged incident took place. According to the evidence given by the victim, the accused neither behaved strangely nor threatened her during that conversation. If he came to her house with the intention to kill her, he had an opportunity to stab and kill her while they were conversing alone outside the house. Moreover, the victim in her evidence agreed with the proposition put to her by the counsel of the defence saying that the accused had an opportunity to stab her more than once, before her mother and the daughter reached to her from the sitting area.
11. There is no specific evidence to establish that the accused brought the knife with him. The victim has not seen the knife until she fell down after the stabbing. The prosecution questioned the accused about a comment made by his mother to the victim. In responding to that question, the accused said that he confronted his mother and she confirmed him that particular knife is still at his house. In view of these reasons, there is a doubt whether the accused actually brought the knife or he picked it on the table when he got up in order to punch the accused.
12. In view of these reasons, it is my opinion that there is a doubt whether the accused had an intention to kill the victim when he stab her on the right side of her flank.

13. I now move to the alternative count of Act Intended to Cause Grievous Harm. The accused in his evidence admitted that he picked the knife from the table and wanted to stab on her arm in order to threaten her. I am satisfied that the accused had the knowledge that if he stab her it could possible cause grievous harm. The medical report confirms the stabbing wound was deep and wide. In view of these reasons, I am satisfied that the accused had an intention as stipulated under Sections 19 and 255 of the Crimes Act.
14. In view of these reasons, I do not find any cogent reasons to disagree with the unanimous opinion of the three assessors.
15. I accordingly hold that the prosecution failed to prove beyond reasonable doubt that the accused is guilty for the offence of Attempted Murder as charged in the Information.
16. However, I am satisfied that the prosecution has successfully proven beyond reasonable doubt that the accused is guilty for the offence of Act Intended to Cause Grievous Harm contrary to Section 255 of the Crimes Act.
17. I accordingly find the accused is guilty for the offence of Act Intended to Cause Grievous Harm contrary to Section 255 of the Crimes Act and convict him for the same.



Thushara Rajasinghe

JUDGE

Solicitor for the State : Office of the Director of Public Prosecution, Labasa
Solicitor for the Accused : Messrs Gibson & Company, Barristers & Solicitors,
Labasa