

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 143 of 2016

STATE

V

RAKESH NARAYAN

Counsel : Ms. Kimberly Semisi for the State
Accused appears in person

Dates of Trial : 21 July and 24-28 July 2017

Summing Up : 31 July 2017

Judgment : 1 August 2017

JUDGMENT

[1] The accused is charged with the following offences:

FIRST COUNT

Statement of offence

ATTEMPTED MURDER: Contrary to Section 44 and 237 of the Crimes Act No. 44 of 2009.

Particulars of the Offence

RAKESH NARAYAN on the 16th day of March 2016 at Nakasi, Suva, in the Central Division, attempted to cause the death of Sakindra Devi, and at the time, intended to cause her death.

SECOND COUNT

Statement of offence

ACT WITH THE INTENT TO CAUSE GRIEVOUS HARM: Contrary to Section 255(a) of the Crimes Act No. 44 of 2009.

Particulars of the Offence

RAKESH NARAYAN on the 16th day of March 2016 at Nakasi, Suva, in the Central Division, with the intent to do some grievous harm to Rakash Roashan Deo, unlawfully wounded the said Rakash Roashan Deo with a kitchen knife.

- [2] The accused pleaded not guilty to the charges and the ensuing trial was held over 6 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, the three Assessors unanimously found the accused guilty on both Counts of Attempted Murder and Act with Intent to Cause Grievous Harm.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors.
- [5] In support of their case, the prosecution led the evidence of the following witnesses:
 1. Sakindra Devi (the former wife of the accused);
 2. Rakash Roashan Deo (Sakindra Devi's husband);
 3. Payal Preetika Narayan (younger daughter of the accused);
 4. Rakesh Rishi Kapoor (Sakindra Devi's brother);
 5. Jason Kean Autar (who had parked and was waiting in his vehicle at the car park at Shop N Save Supermarket, Nakasi, and an eye witness to the incident);
 6. Joash Herald Prakash (a friend of the accused);
 7. Dr. Amit Sewak (the Medical Officer who had attended to Sakindra Devi on her admission to CWM Hospital);
 8. Dr. Osea Volavola (the Medical Officer who testified to the medical examination conducted on Rakash Roashan Deo);
 9. DC 4791 Jone Tupua (the caution interviewing officer in this case, attached to the Nakasi Police Station);

10. Detective Sergeant 1785 Sakaraia Tuberi (the witnessing officer during the recording of the accused's caution interview, attached to the Nakasi Police Station);
11. DC 4509 Mesulame Narawa (the police officer who recorded the charge statement of the accused, attached to the Nausori Police Station);
12. DC 4344 Amani Bosenawai (the witnessing officer during the recording of the charge statement of the accused, attached to the Nausori Police Station).

[6] The accused gave evidence on his own behalf.

[7] The Assessors were directed that in order to prove the First Count of Attempted Murder, the prosecution must establish beyond reasonable doubt that;

- (i) the accused;
- (ii) on the specified day (in this case the 16th day of March 2016);
- (iii) at Nakasi, Suva, in the Central Division;
- (iv) engaged in a conduct; and
- (v) the said conduct was an attempt to cause the death of Sakindra Devi; and
- (vi) the accused intended to cause the death of Sakindra Devi; or
the accused was reckless as to causing the death Sakindra Devi by the conduct.

[8] Each of the above elements were further elaborated upon in my summing up.

[9] The accused took up the position that the stabbing of Sakindra Devi was accidental and that he had no intention to cause any harm to her.

[10] The fourth element above relates to the conduct of the accused. It was explained to the Assessors that 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. 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 conduct is more than merely preparatory to the commission of the offence is one of fact.

[11] The Assessors were also directed that in the event they found that the accused had no intention to cause the death of Sakindra Devi or they found that the accused was not reckless as to causing the death Sakindra Devi by the conduct, or they have any doubt in that regard; as an alternative, they could consider whether the accused is guilty of the lesser offence of 'Act with Intent to Cause Grievous Harm to Sakindra Devi', though the accused is not formally charged in the information for that offence.

[12] The Assessors were directed that in order to prove the Second Count of Act with Intent to Cause Grievous Harm to Rakash Roashan Deo, the prosecution must establish beyond reasonable doubt that;

- (i) the accused;
- (ii) on the specified day (in this case the 16th day of March 2016);
- (iii) at Nakasi, Suva, in the Central Division;
- (iv) intended to maim, disfigure or disable Rakash Roashan Deo or to do some grievous harm to the said Rakash Roashan Deo; and
- (v) unlawfully wounded or did any grievous harm to Rakash Roashan Deo by any means.

[13] Each of the above elements were further elaborated upon in my summing up.

[14] In this case, the accused has stated that he acted in self-defence against Rakash Roashan Deo.

[15] As such, the provisions of Section 42(1) and 42(2) of the Crimes Act were explained to the Assessors. Section 42(1) of the Crimes Act sets out: *“A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.”*

[16] In terms of Section 42(2) of the Crimes Act:

“A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:

- (a) to defend himself or herself or another person; or*
- (b) to prevent or terminate the unlawful imprisonment of himself or herself or another person; or*
- (c) to protect property from unlawful appropriation, destruction, damage or interference; or*
- (d) to prevent criminal trespass to any land or premises; or*
- (e) to remove from any land or premises a person who is committing criminal trespass —*

and the conduct is a reasonable response in the circumstances as he or she perceives them.”

[17] The position of the Prosecution was that there was no necessity for the accused to act in self-defence, because there was no threat emanating from the complainant Rakash Roashan Deo at the given time.

- [18] In the circumstances, it was a matter for the Assessors to decide based on all the facts and circumstances of the case. The Assessors had to decide whether the conduct of the accused, in the given circumstances, was necessary and a reasonable response to the circumstances as perceived by him.
- [19] Although certain witnesses for the prosecution testified that the accused was drunk and his eyes were red etc; the accused in his evidence testified that although he had consumed beer prior to the incident, he was not in a state of intoxication and he was well aware as to what he was doing at the time.
- [20] In the circumstances, I did not deem it necessary to direct the Assessors on the elements of intoxication.
- [21] In this case the prosecution was also relying on the admissions made by the accused in his caution interview statement and charge statement. Accordingly, the Assessors were directed that any admission made by an accused in his caution statement and charge statement is admissible and sufficient evidence to prove his guilt to a charge. However, there are some applicable principles of law in relation to this evidence. The prosecution must prove that the caution interview statement and charge statement were made by the accused voluntarily. The prosecution must establish this fact beyond a reasonable doubt.
- [22] The Assessors were directed that if they believe that the accused gave his caution interview statement and charge statement without force or fabrication, and in their view it set out a version of the evidence which will assist them in deciding on the guilt or otherwise of the accused, they could do so. However, the truthfulness of the statements and the question of what weight they can put on the admissions made in the said statements was a matter of fact for them to decide.
- [23] The Assessors have found the evidence of prosecution as truthful and reliable, as they unanimously found the accused guilty on both Counts of Attempted Murder and Act with Intent to Cause Grievous Harm. Therefore, it is clear that the Assessors have rejected the evidence of the accused.
- [24] In my view, the Assessor's opinion is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the unanimous opinion of the Assessors.
- [25] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond a reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the offences of Attempted Murder and Act with Intent to Cause Grievous Harm with which the accused was charged.
- [26] In the circumstances, I find the accused guilty as follows:
- First Count- Attempted Murder-Guilty
 - Second Count- Act with Intent to Cause Grievous Harm-Guilty

[27] Accordingly, I convict the accused on both counts.



Riyaz Hamza

JUDGE

HIGH COURT OF FIJI



Dated this 1st Day of August 2017

Solicitor for the State : Office of the Director of Public Prosecutions, Suva.
Solicitor for the Accused : Accused appears in person.