

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 076 OF 2018LAB

STATE

V

SAIYAD ALI

**Counsels : Ms. A. Vavadakua for State
Ms. K. Boseiwaqa and Mr. J. Prasad for Accused**

Hearings : 16, 17 December, 2019

Summing Up : 18 December, 2019

SUMMING UP

A. ROLE OF JUDGE AND ASSESSORS

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of fact.

2. State and Defence Counsels have made submissions to you, about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsels, in this case. Their submissions were designed to assist you, as the judges of fact. However, you are not bound by what they said. It is you who are the representatives of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.
3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

B. THE BURDEN AND STANDARD OF PROOF

4. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation on the accused to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he is proved guilty.
5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is not guilty.
6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accused or the victim. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

C. THE INFORMATION

7. You have a copy of the information with you, and I will now read the same to you:
“... *[read from the information]*...”

D. THE MAIN ISSUE

8. In this case, as assessors and judges of fact, each of you will have to answer the following question:

- (i) Did the accused, on 13 October 2018, at Seaqaqa in the Northern Division, willfully and unlawfully set fire to Mohammed Alam's farm house?

E. THE OFFENCE AND IT'S ELEMENTS

9. The charge involved the offence of "arson", contrary to section 362(a) of the Crimes Act 2009. For the accused to be found guilty of the offence, the prosecution must prove beyond reasonable doubt, the following elements:

- (i) the accused
- (ii) willfully and unlawfully
- (iii) set fire to
- (iv) any building (whether completed or not)

10. It must be shown that the accused willfully set fire to the building. In other words, it must be shown by the prosecution, beyond reasonable doubt that, the accused intended to set fire to the building i.e. he deliberately set fire to the building. His intention could be inferred from his actions, words, conduct and the surrounding circumstances. In addition to the above, it must be proven by the prosecution, beyond reasonable doubt that, the accused had no legal justification or excuse, to setting fire to the building. A person may lawfully set fire to his own house, but not that of others. He may not set fire to his own house in furtherance of an unlawful purpose, that is, with an intention to injure others, or was reckless in causing others injuries.

F. THE PROSECUTION'S CASE

11. The prosecution's case were as follows. The complainant (PW3) was 62 years old. He was a farmer and businessman by profession. He owns a shop as a businessman. His farm was located at Seaqaqa. The accused (DW1) was 20 years old. He reached class 4 education, and was a labourer by profession. He was first brought to PW3's attention via PW3's 32 year old son. He left PW3's son after a dispute, and stayed in PW3's home for 3 to 4 months. In October 2018, PW3 visited Suva with his family. He allowed the accused (DW1) to reside in his farm house as a caretaker, while he was in Suva.

12. According to the prosecution, DW1 felt that PW3 was not paying him properly and was not looking after him well. DW1 said the farm house was not completed, there was no toilet, and he often got wet when it rained. DW1 said, he complained to PW3 so many times to no avail. DW1 said, he was fed up with PW3's alleged ill-treatment that he decided to burn his farm house down. On 13 October 2018, according to the prosecution, the accused allegedly set the farm house on fire. DW1 admitted he put a lighted cigarette among some clothes on the floor, which later started the fire, that burnt the half completed farm house.
13. Because of the above, the prosecution is asking you, as assessors and judges of facts, to find the accused guilty as charged. That was the case for the prosecution.

G. THE ACCUSED'S CASE

14. On 16 December 2019, the first day of the trial proper, the information was put to the accused, in the presence of his counsels. He pleaded not guilty to the charge. In other words, he denied the allegation against him. When a prima facie case was found against him, at the end of the prosecution's case, wherein he was called upon to make his defence, he choose to give sworn evidence and called no witness. That was his right.
15. The accused's case was simple. On oath, he denied the allegation against him. He said, he did not set the complainant's (PW3) farm house on fire on 13 October 2018. This was so, according to him, despite his alleged admission to police when caution interviewed on 13 and 14 October 2018. He asked you to disregard his alleged confession to the police when caution interviewed because the police forced the same out of him. According to the accused, his alleged confession were given involuntarily and not out of his own free will. He appear to say that the police fabricated his alleged confession.
16. Because of the above, the accused is asking you, as assessors and judges of fact, to find him not guilty as charged. That was the case for the defence.

H ANALYSIS OF THE EVIDENCE

(a) Introduction:

17. In analyzing the evidence, please bear in mind the directions I gave you in paragraphs 4, 5 and 6 hereof on the burden and standard of proof. In the acceptance and/or rejection of the evidence presented at the trial and your role as assessors and judges of fact, please bear in

mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analyzing the evidence, we will first discuss the state's case against the accused; then we will discuss the accused's position in this case, and lastly, the need to consider all the evidence.

(b) The State's Case Against the Accused:

18. The State's case against the accused rested solely on the combined evidence of its three witnesses:
 - (i) DC 4221 Iveri Momo (PW1);
 - (ii) Ms. Viniana Simmons (PW2); and
 - (iii) Mr. Mohammed Alam (PW3).

19. Of the above three witnesses, the most important piece of evidence was that provided by PW1. He was the police officer who caution interviewed the accused on 13 and 14 October 2018 at Seaqqa Police Station. Note that the interview started on the date of the alleged incident. As far as the National Fire Authority Report, which was tendered by PW2 as Prosecution Exhibit No. 2, the fire allegedly started at 9.38 am on 13 October 2018. The accused's caution interview by PW1 started at 2.30 pm on the same day – approximately 5 hours after the alleged fire started. During the caution interview, the accused's right to counsel was put to him, but he waived the same. Please refer to Question and Answer No. 9 of Prosecution Exhibit 1(A) and 1(B).

20. The accused's caution interview statement was tendered in evidence by PW1 as Prosecution Exhibits 1(A) – the handwritten version, and 1(B), the typed version. You must read it closely and carefully. In Questions and Answers 23 to 32, the accused allegedly admitted setting fire to PW3's farm house and that he willfully and unlawfully did the same. If you accept this alleged confession, then you must find the accused guilty as charged.

21. Note however that the voluntariness and fairness in the taking of the above caution interview statements was hotly disputed by the defence. The defence said, in their closing submission and in their line of cross-examination that, the police beat the confession out of the accused and fabricated his answers. They also said the accused did not understand English and thus could not have answer the questions put to him. The State however said, the accused's caution interview statements were given voluntarily by the accused and he gave the same out of his

own free will. PW1, the police caution interview Officer said, the accused and him know each other very well, and they conversed in English. PW1 said, the accused understood English and preferred to be interviewed in English. PW1 said, when given his right to counsel, he waived the same [see Question and Answer 9 in Prosecution Exhibit No. 1(A) and 1(B)]. PW1 said, he asked the questions and the accused answered the same. PW1 said, the accused signed his name on all the pages of the interview statements. PW1 said, neither him or any other police officers assaulted, threatened or intimidated the accused during the interview and while he was in their custody.

22. You have heard PW1 and the accused's evidence on the voluntariness and fairness in the taking of the accused's caution interview statements on 13 and 14 October 2018, at Seaqaqa Police Station. You have watched them give evidence in the courtroom. You had watched their reactions when answering questions from the prosecution's and defence's counsels. You had examined their demeanours. I do not wish to bore you with the details of their evidence, which I am sure are still fresh in your minds. Which of the two's version of events you accept or reject is entirely a matter for you, as judges of fact.

23. In any event, when considering the above alleged confessions by the accused, I must direct you as follows, as a matter of law. A confession, if accepted by the trier of fact – in this case, you as assessors and judges of fact – is strong evidence against its maker. However, in deciding whether or not you can rely on a confession, you will have to decide two questions. First, whether or not the accused did in fact make the statements contained in his caution interview statements? If your answer is no, then you have to disregard the statements. If your answer is yes, then you have to answer the second question. Are the confessions true? In answering the above questions, the prosecution must make you sure that the confessions were made and they were true. You will have to examine the circumstances surrounding the taking of the caution interview statements from the time of his arrest to when he was first produced in court. If you find he gave his statements voluntarily and the police did not assault, threaten or made false promises to him, while in their custody, then you might give more weight and value to those statements. If it's otherwise, you may give it less weight and value. It is a matter entirely for you.

24. If you accept the prosecution's witnesses' version of events, you will have to find the accused guilty as charged. If otherwise, you will have to find the accused not guilty as charged. It is a matter entirely for you.

(c) The Accused's Case:

25. I had summarized the accused's case to you from paragraphs 14, 15 and 16 hereof. I repeat the same here. If you accept the accused's sworn denials, you must find him not guilty as charged. If otherwise, you must still consider the strength of the prosecution's case, and decide accordingly. It is a matter entirely for you.

(d) The Need to consider All the Evidence:

26. The prosecution called 3 witnesses:
- (i) DC 4221 Iveri Momo (PW1);
 - (ii) Ms. Viniana Simmons (PW2); and
 - (iii) Mr. Mohammed, the complainant (PW3).

The defence called one witness:

- (i) The Accused (DW1).

The prosecution tendered the following Exhibits:

- (i) Prosecution Exhibit 1(A) – Accused's handwritten Caution Interview Statements.
- (ii) Prosecution Exhibit 1(B) – Accused's typed Caution Interview Statement.
- (iii) Prosecution Exhibit 2 – PW2's National Fire Authority Report.

The parties also submitted an Agreed Facts, dated 16 December 2019.

27. You will have to consider the above evidence together. Compare them and analyze them together. If I haven't mentioned a piece of evidence you consider important, please take it on board in your deliberation. If you find a witness credible, you are entitled to accept the whole or some of his/her evidence in your deliberation. If you find a witness not credible, you are entitled to reject the whole or some of his/her evidence in your deliberation. You are the judges of fact.

I. SUMMARY

28. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's guilt, you must find him guilty as charged. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty as charged.
29. Your possible opinions are as follows:
- (i) Arson - Guilty or Not Guilty
30. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.


Salesi Temo
JUDGE



Solicitor for the State : **Office of the Director of Public Prosecution, Labasa**
Solicitor for the Accused : **Office of the Legal Aid commission, Labasa**