

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 40 of 2018

STATE

V

MOHAMMED FAIYASH

Counsel : Mr. A. Singh for the State.
: Ms. S. Ravai for the Accused.

Dates of Hearing : 28, 29, 30, 31, May, 03 June, 2019
Closing Speeches : 04 June, 2019
Date of Summing Up : 05 June, 2019
Date of Judgment : 06 June, 2019

JUDGMENT

1. The Director of Public Prosecutions charged the accused by filing the following information:

FIRST COUNT
Statement of Offence

ATTEMPTED MURDER: contrary to section 44 (1) and 237 of the Crimes Act of 2009.

Particulars of Offence

MOHAMMED FAIYASH, on the 15th of February, 2018 at Lautoka in the Western Division attempted to murder **SITAL SHIVNALI LATA**.

SECOND COUNT
Statement of Offence

DAMAGING PROPERTY: contrary to section 369(1) of the Crimes Act of 2009.

Particulars of Offence

MOHAMMED FAIYASH, on the 15th of February, 2018 at Lautoka in the Western Division willfully and unlawfully damaged Telecom Fiji Limited Telephone booth valued at \$3,000.00 the property of Telecom Fiji Limited.

2. The three assessors had returned with a unanimous opinion that the accused was not guilty of the offence of attempted murder but guilty of the lesser offence of act intended to cause grievous harm by a majority of two is to one. In respect of the offence of damaging property the assessors returned with the opinion that the accused was guilty by a majority of two is to one.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with the summing up and the evidence adduced at trial.
4. The prosecution called nine (9) witnesses whereas the accused gave evidence for the defence.
5. The complainant informed the court that in the afternoon of 15th February, 2018 she went to the Lautoka Police Station, after about 10 minutes the accused came in his car.
6. At about 4.50 pm the complainant came out of the police station, since it was raining she went into the bure which was outside the police station. The complainant then went to the telephone booth which was about half a minute walk from the bure. Inside the

telephone booth the complainant was talking to a friend on her mobile phone.

7. Whilst the complainant was on the phone, she heard a loud sound and was thrown out of the booth, at this time she saw the booth falling, for a while she was shocked, then she heard someone say, "*get her inside*". The complainant was then taken inside the police station.
8. The complainant received injuries on her right hand, few scratches on her left leg and knee. When the complainant was lifted from the ground, she saw the accused's blue car after a while she was told that she had an accident with the accused car she panicked and saw blood coming out of her hand. The complainant and the accused were friends she was taken to the hospital for a medical checkup the same afternoon.
9. The second witness was Sgt. Silio who informed the court on 15th February, 2018 he was outside the Lautoka Police Station car park ready to cross the road when he heard a loud sound outside the police station fence.
10. The witness saw a blue hybrid vehicle had bumped the telephone booth just outside the police station fence. The telephone booth fell off from its basement beside the complainant and the car got stuck in the cement basement. The front bumper of the car got damaged, however, the accused managed to get the vehicle released from the basement, he reversed it onto the main road and headed towards town.
11. The witness got into a police vehicle and followed the car towards town. The accused drove his car inside the RB Patel car park and

walked towards the taxi stand. The witness parked the police vehicle and ran after the accused he then arrested the accused and took him to the police station in the police vehicle. The accused was fine, but shivering, at the police station the accused was handed over to the charge room for further investigation.

12. The third witness was Nakumilevu Nailatikau the Caretaker of the Lautoka Police Station, on 15th February, 2018 at about 5.00 pm he was on his way to sign off from work, in the police station he saw the accused seated. After signing off he went to the bure, on his way out he was followed by the complainant she made her way to the telephone booth.
13. After a while the witness saw the accused rushing out of the Police Station, he sat in his car reversed it and drove it towards the telephone booth and bumped it. The telephone booth fell with the complainant in it. The witness ran to pull the complainant out, he saw the complainant was injured on her left arm with blood coming out. At this time the car was stuck on the side of the sewer chamber beside the telephone booth. The witness saw both the air bags in the car had inflated.
14. The fourth witness was D/Sgt. Josateki Seuseu, on 15th February, 2018 he was instructed to take photographs of the crime scene after familiarizing himself with the scene, he started taking photographs and then drew a rough and fair sketch plan.
15. The fifth witness was Dr. Mohammed Shaheel who obtained his MBBS Degree from the Fiji School of Medicine in 2015. On 15th February, 2018 the doctor had examined the complainant at the Lautoka Hospital

16. In the opinion of the doctor, the injuries were caused by blunt force trauma secondary to fall.
17. The sixth witness was Esava Mateboto the former Team Leader from Telecom Fiji Limited, he informed the court that as a team leader, he was looking after all the telephone booths of Telecom Fiji Limited.
18. The telecom booth had two posts in front of about 100 mm in diameter and two at the back of about 50 mm in diameter. All the posts were made of light steel, and the walls were made of hard plastics of 20 mm thickness (about an inch) which were imported from China. The four posts were welded on chrome or silver plate with bolts and studs or nuts screwed on top.
19. The booth was meant to provide the user some safety but it was not designed to withstand a speed of 50 kilometers. The materials for the booth were worth \$3,000.00 except for bolts, nuts and cement for the concrete basement.
20. The witness had visited the scene, after the accident he saw the hard plastic wall had broken into two and as a result of the impact all the posts were uprooted from the plate.
21. The seventh witness was Det. Insp. Simione Ralovo, on 15th February, 2018 the complainant who was the defacto partner of the accused was at the police station, he informed the other police officers that she was about to leave after a while the accused who was also in the police station ran outside, went to his car, made a U-turn and drove across the road towards the telephone booth. The defacto partner of the accused was standing inside the telephone booth at this time.

22. As a result of the impact, the telephone booth fell and the complainant flew about a few meters from the telephone booth. The witness went to the complainant to make her stand up and took her inside the station.
23. The eighth witness was Sgt. Salen Kumar the investigating and the interviewing officer in this case. On 15th February, 2018 the witness had commenced the caution interview of the accused at 2040 hrs. The witnessing officer was Det. Insp. Simone.
24. The interview was conducted in the English language, when he met the accused, the accused appeared normal he did not complain about anything also he had not complained of being physically or verbally abused by the police officers. All his rights were given and he did not complain that he was not mentally stable for the interview. The accused was given sufficient breaks, meals, and he was allowed to meet his lawyer. His lawyer had visited him on the 16th of February, which was the second day of the interview.
25. The lawyer of the accused did not lodge any complaints that the accused was unstable mentally for the caution interview or had been physically and verbally abused by police officers. The interview had concluded on 17th February, 2018.
26. The witness further stated that the accused after the conclusion of the interview did not complain about anything and to date he had not lodged any official complaint against the witness or another police officers.
27. The final witness was Aman Singh, a Motor Vehicle Examiner employed by the Land Transport Authority, after completing his

apprenticeship, the witness did Trade Certificate in Heavy Commercial Vehicle Mechanic. He has been employed by the Land Transport Authority for the past 5 years.

28. The witness had examined the car of the accused registration number JG 380 on 16th February, 2018 belonging to the accused.
29. In the opinion of the witness the damages sustained were caused from the impact of the accident and there were no defects found which may have contributed to the accident. The witness stated that the damages sustained to the car were severe damages.
30. The accused informed the court on 15th February, 2018 at about 1.30pm he was called to the Lautoka Police Station. At the police station he saw the complainant, after a while a police officer took his car keys, money and other things. Shortly after a police officer by the name of Salen came and informed him that he had parked his car very near to the roadside. This police officer gave him the car key to move the car to the other side of the road.
31. It was raining, when he started the car the windscreen of the car was not clear. When he drove his car he saw a car coming from the opposite direction, he panicked and then all of a sudden he bumped into the telephone booth.
32. The air bag hit his nose and he blacked out he did not see anyone in the telephone booth he was scared so he reversed the car and left the scene. The car suddenly stopped at RB Patel car park he left the car and walked to the taxi stand.
33. Two police officers came and arrested him, he was taken to the police station in the car. The male police officer started to assault him in

the car saying that he had bumped a girl. The accused denied the allegation and told them if he had intended to bump her, there was a cane knife lying in front of him at the police station he would have used this knife to hit her.

34. He was taken into the police station through the back door, the other police officers also came and assaulted him, at this time Insp. Simione was also swearing at him and said that he wanted to hit the accused with a stone.
35. He was punched on his back, both sides and everywhere they could. He was also punched on this hip where he had a surgery, he told the interviewing officer of what the police officers had done to him the reply was not to worry. The interviewing officer was asking questions in Hindi and he responded in Hindi but the typing was done in English on the computer. The accused is educated up to Class 5 only.
36. During the caution interview there were two Indo Fijian Police Officers present. Insp. Simione was not present throughout the caution interview, the accused was not given any opportunity to contact his family members, solicitor or counsellor before his interview. He was asked if he needed medical assistance and he told the police officers he wanted tablets since he was having headache after the assault. He was not given any tablet, but was told to sit and rest.
37. The caution interview was read to him, he did not agree with some of the answers written. In respect of the answer to question 96 the accused stated that he did not say that he wanted to kill the complainant.

38. The accused also confirmed that answers to questions 108,109,111 and 136 were also not given by him. The accused stated that the answers were fabricated by the interviewing officer he did not give those answers because he had saved the complainant's life three times from other men.
39. The accused stated his answers were that he had no intention to kill the complainant he signed the caution interview because he was told he can go home after signing.
40. He had parked his car opposite the police station facing Nadi on the side of the road.
41. The accused stated that he has been a motor vehicle driver for the past 33 years. The inflated air bag did not injure his nose, he blacked out but he did not go to the hospital. The reason why he went towards RB Patel Supermarket was because he was scared.
42. The accused agreed his counsel had visited him on the second day of the caution interview but he did not tell his counsel that he had been assaulted by the police officers since he was scared of the police. When he appeared in the Magistrate's Court and the High Court he also did not tell the court that he was assaulted by the police officers. The accused also did not tell his counsel that he wanted to be interviewed in Hindustani but the police officers had interviewed him in English. The accused did not also raise this issue in the Magistrate's Court or the High Court.
43. After carefully considering the evidence adduced by the prosecution and the defence I accept the evidence of all the prosecution witnesses as truthful and reliable. They gave a coherent account of what had happened on 15th February, 2018. The prosecution witnesses were

cross examined at length, they were able to withstand cross examination and were not discredited. I have no doubt in my mind that the prosecution witnesses told the truth in court.

44. On the other hand, the accused was evasive and not forthright in his evidence, particularly when cross examined by the State Counsel it was obvious that the accused was trying to avoid answering questions put to him by the State Counsel. The accused did not tell the truth in court his evidence was unbelievable and unreliable.
45. The evidence given by the accused was also implausible, for a motor vehicle driver of 33 years' experience it is unbelievable that he drove his car whilst the windscreen of his car was not clear and he panicked when he saw a car coming from the opposite direction as a result he bumped the telephone booth. The telephone booth was more towards the corner of Drasa Avenue and M. N. Naidu Road at a spot away from the highway.
46. It is also unbelievable that the accused had blacked out after the air bag in his car had hit his nose yet the accused immediately reversed his car and fled the scene by going towards Lautoka City.
47. I do not accept the accused had not seen the complainant in the telephone booth before he drove his vehicle towards the telephone booth.
48. I accept the accused had given his answers in his caution interview voluntarily and on his freewill. The accused counsel had visited the accused on the 16th February, 2018 at the police station being the second day of the caution interview yet he did not tell his counsel about the assault by police officers.

49. Another important thing to note is that the accused had not made any confessions before consulting with his lawyer since the interview process had started on the 15th. The accused had appeared in the Magistrate's Court and the High Court yet he did not raise any complaints of impropriety by the police. I also reject the evidence of the accused that he did not tell his counsel about police assault because he was scared of the police.
50. This court is satisfied beyond reasonable doubt that the answers given in the caution interview were given by the accused and they were the truth. I reject the defence suggestion that the answers were obtained by the police as a result of fear, assault, oppression, false promise, verbal abuse, intimidation or were a fabrication by the interviewing officer. I also add that the accused was noticed in court to be able to understand and communicate in English language.
51. The following answers given by the accused during his caution interview are worthy of belief:

“Q.96: Then what did you do?”

A: As I was sitting down and was watching her doing actions and same time I thought of her causing trouble to me during early morning and making false report on me, which all made me anger and I could not control my temper and whilst sitting it came into my mind to kill her.

Q.108: Then what did you do when you heard Sital swearing at your sister in law?

A: I got more angry and could not control my temper and I was thinking of killing Sital.

Q. 109: Later were you able to control your temper?

A: Just because of high temper I closed my eyes for a while and still I could hear Sital swearing to my sister in law

and whilst closing my eyes I decided to end her life and when I opened my eyes I saw Sital walking towards M. N. Naidu Road.

Q. 110: *Then what happened?*

A: *I could not control my temper and I ran out to my car and quickly got on to driver's seat and drove the car and made a U-turn.*

Q. 111: *Why you went to your car instead of going direct to Sital?*

A: *I saw her going towards the road so I made it in my mind to kill her with the car.*

Q. 136: *Why you drove the car towards the telecom booth?*

A: *I wanted to bump and kill Sital with my car.*

Q. 137 *After bumping the telecom booth what did you do?*

A: *I reversed the car and drove it towards the city.*

Q. 138 *After bumping the telecom booth did you see Sital?*

A: *I did not see her.*

Q. 139 *Why you drove off after bumping the telecom booth?*

A: *I got frightened and tried to run away.*

Q. 146 *The damage you caused by bumping the telecom booth number 6663268 with your car on 15/02/18 is \$3,000.00. What can you say about this?*

A: *I agree to it."*

52. The defence that the accused had no intention to kill the complainant and that he had accidentally bumped the telephone booth is untenable considering the totality of the evidence.

53. The defence has not been able to create any reasonable doubt in the prosecution case in respect of both counts.

54. This court is satisfied beyond reasonable doubt that the accused on the 15th February, 2018 attempted to murder the complainant by engaging in a conduct which was more than merely preparatory as opposed to intending to cause her grievous harm. This court is also satisfied beyond reasonable doubt that on the 15th of February, 2018 the accused willfully and unlawfully damaged Telecom Fiji Limited telephone booth valued at \$3,000.00 the property of Telecom Fiji Limited.

55. For the above reasons, I overturn the unanimous not guilty opinion of the assessors that the accused is not guilty of the offence of attempted murder. In respect of the offence of damaging property this court accepts the majority opinion of the assessors that the accused is guilty of this offence.

56. In view of the above this court finds the accused guilty for one count of attempted murder and one count of damaging property and I convict him accordingly.

57. This is the judgment of the court.



Sunil Sharma
Judge

At Lautoka
06 June, 2019

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs Fazilat Shah Legal for the Accused.