

IN THE HIGH COURT OF FIJI

AT LABASA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 48 of 2018

STATE

V

ISOA BOSEYACO

Counsel : Ms. Amelia Vavadakua with Mr. Inia Rakaria for the State
Mr. Amrit Sen for the Accused

Dates of Trial : 30 September & 1-3 October 2019

Summing Up : 4 October 2019

Judgment : 4 October 2019

JUDGMENT

[1] According to the Amended Information filed by the Director of Public Prosecutions (DPP), the accused, Isoa Boseyaco, is charged with the following offences:

COUNT ONE

Statement of Offence (a)

ACT WITH INTENT TO CAUSE GRIEVOUS HARM: Contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence (b)

ISOA BOSEYACO, on the 23rd day of June 2018, at Tarven Night Club, in Savusavu, in the Northern Division, with intent to do some grievous harm to **TANIELA DELAI**, unlawfully wounded the said **TANIELA DELAI**, with a knife.

COUNT TWO

Statement of Offence (a)

ACT WITH INTENT TO CAUSE GRIEVOUS HARM: Contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence (b)

ISOA BOSEYACO, on the 23rd day of June 2018, at Tarven Night Club, in Savusavu, in the Northern Division, with intent to do some grievous harm to **SAVENACA RATUDUGUCA**, unlawfully wounded the said **SAVENACA RATUDUGUCA**, with a knife.

- [2] The accused pleaded not guilty to the two charges and the ensuing trial was held over 4 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by an unanimous decision, the three Assessors found the accused guilty of Count One. In respect of Count Two, by an unanimous decision, the three Assessors found the accused not guilty of the charge. However, by a majority decision the Assessors found the accused guilty of the alternative charge of Assault Causing Actual Bodily Harm.
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.
- [5] During my summing up I explained to the Assessors the salient provisions of Section 255 (a) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [6] In terms of Section 255 (a) of the Crimes Act “*A person commits an indictable offence if he or she, with intent to maim, disfigure or disable any person, or **to do some grievous harm to any person**, or to resist or prevent the lawful arrest or detention of any person—*
- (a) **unlawfully wounds** or does any grievous harm to any person by any means; or*
(b)
- [Emphasis is mine].*
- [7] In this case the prosecution has charged that the accused intended to do some grievous harm to the two complainants; and with that intention unlawfully wounded the complainants with a knife.
- [8] Accordingly, I directed the Assessors that in order for the prosecution to prove the first count of Act with Intent to Cause Grievous Harm, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 23 June 2018);
- (iii) At Tarven Night Club, in Savusavu, in the Northern Division;
- (iv) Unlawfully wounded Taniela Delai, with a knife;
- (v) With the intention to do some grievous harm to the said Taniela Delai.

[9] Similarly, I directed the Assessors that in order for the prosecution to prove the second count of Act with Intent to Cause Grievous Harm, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 23 June 2018);
- (iii) At Tarven Night Club, in Savusavu, in the Northern Division;
- (iv) Unlawfully wounded Savenaca Ratuduguca, with a knife;
- (v) With the intention to do some grievous harm to the said Savenaca Ratuduguca.

[10] The above individual elements were further elaborated upon in my summing up in respect of both counts.

[11] The word “unlawfully” simply means without lawful excuse or without just cause. The term “wound” has been defined at Section 4(1) of the Crimes Act to mean any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is “exterior” for the purpose of this definition which can be touched without dividing or piercing any other membrane. Therefore, to establish this element, the prosecution should prove beyond reasonable doubt that the accused unlawfully wounded the two complainants as defined herein.

[12] Grievous harm has been defined in the same Subsection of the Crimes Act as follows:

“grievous harm” means any harm which—

(a) amounts to a maim or dangerous harm; or

(b) seriously or permanently injures health or which is likely so to injure health; or

(c) extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense.

[13] The term ‘harm’ has been defined in the same Subsection to mean: *“any bodily hurt, disease or disorder (including harm to a person’s mental health) whether permanent or temporary, and includes unconsciousness, pain, disfigurement, infection with a disease and physical contact with a person that the person might reasonably object to in the*

circumstances (whether or not the person was aware of it at the time).” Whereas, “dangerous harm” has been defined to mean as “*harm endangering life*”.

[14] However, the Assessors were further directed that if they find that the prosecution has proved all elements of the offence beyond any reasonable doubt, except the final element, that the accused intended to cause grievous harm to the said Taniela Delai (in respect of Count One) and Savenaca Ratuduguca (in respect of Count Two); as an alternative, they were then allowed to look at the lesser offence of Assault Causing Actual Bodily Harm, in terms of Section 275 of the Crimes Act, though the accused is not formally charged in the Information for that offence in the first and second counts.

[15] In terms of Section 275 of the Crimes Act “A person commits a summary offence if he or she commits an assault occasioning actual bodily harm.”

[16] Therefore, the Assessors were further directed that In order for the prosecution to prove the offence of Assault Causing Actual Bodily Harm, in respect of Count One, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 23 June 2018);
- (iii) At Tarven Night Club, in Savusavu, in the Northern Division;
- (iv) Assaulted the complainant, Taniela Delai; and
- (v) Thereby caused actual bodily harm to the said complainant, Taniela Delai.

[17] Similarly, the Assessors were directed in order for the prosecution to prove the offence of Assault Causing Actual Bodily Harm, in respect of Count Two, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 23 June 2018);
- (iii) At Tarven Night Club, in Savusavu, in the Northern Division;
- (iv) Assaulted the complainant, Savenaca Ratuduguca; and
- (v) Thereby caused actual bodily harm to the said complainant, Savenaca Ratuduguca.

[18] The above individual elements were further elaborated upon in my summing.

[19] The prosecution, in support of their case, called the two complainants, Taniela Delai and Savenaca Ratuduguca, witness Sairusi Ratusili, and two Medical Officers: Dr. Rayape Racaca and Dr. Maloni Bulanauca. The prosecution also tendered the following documents as prosecution exhibits:

Prosecution Exhibit **PE1** – The Medical Examination Report of Taniela Delai.

Prosecution Exhibit **PE2** – The Medical Examination Report of Savenaca Ratuduguca.

Prosecution Exhibit **PE3** – Further Medical Examination Report in respect of Taniela Delai.

- [20] The accused exercised his right to remain silent.
- [21] I have summarized the evidence of all prosecution witnesses in my summing up.
- [22] In this case, the defence was objecting to the three medical reports being admitted into evidence as neither of the reports were shown to Taniela Delai and Savenaca Ratuduguca, at the time they testified in Court, for them to identify and confirm whether in fact the reports pertained to the examinations conducted on them. The defence counsel was not denying that both victims were taken to hospital and examined nor was he objecting to the contents of the said reports. As such, Court was of the opinion that this was not an issue of admissibility but of weight. Therefore the prosecution was permitted to tender the medical reports as Prosecution Exhibits PE1, PE2 and PE3.
- [23] Considering all the facts and circumstances of this case, I am of the opinion that this objection is without merit.
- [24] Both complainants testified in Court as to how the accused caused injury to them, on the night of 23 June 2018, at the Tavern Night Club, in Savusavu.
- [25] In respect of the first count, the Defence takes up the position that the injury was caused to Taniela Delai by accident or by mistake.
- [26] The prosecution states that the accused had unlawfully wounded Taniela Delai by stabbing him with a knife and at the time that he had the intention to cause grievous harm to the said Taniela Delai.
- [27] The Assessors have found the evidence of prosecution as truthful and reliable as they have by a unanimous decision found the accused guilty of Count One. Therefore, it is clear that they have rejected the version put forward by the accused.
- [28] In my view, the Assessor's opinion was justified. It was open for them to reach such a conclusion on the available evidence. I concur with the unanimous opinions of the Assessors in respect of Count One.
- [29] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the offence of Act with Intent to Cause Grievous Harm with which the accused is charged in Count One.
- [30] In the circumstances, I find the accused guilty of the first count of Act with Intent to Cause Grievous Harm.

[31] Accordingly, I convict the accused of the first count of Act with Intent to Cause Grievous Harm, as charged.

[32] In respect of the second count, the accused takes up the position that he acted in self-defence. 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.”*

[33] 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.”

[34] I now turn my attention to Section 59 of the Crimes Act. For ease of reference, the Section is reproduced below:

“59. — (1) Subject to section 60, a burden of proof that a law imposes on a defendant is an evidential burden only.

(2) A defendant who wishes to deny criminal responsibility by relying on a provision of this Decree (other than section 28) bears an evidential burden in relation to that matter.

(3) A defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter.

(4) The exception, exemption excuse, qualification or justification need not accompany the description of the offence.

(5) The defendant no longer bears the evidential burden in relation to a matter if evidence sufficient to discharge the burden is adduced by the prosecution or by the court.

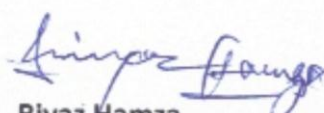
(6) The question whether an evidential burden has been discharged is one of law.

(7) In this Decree —

“evidential burden”, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

- [35] The witness Savenaca Ratuduguca testified as to how the injury was caused to him. He said: *“We were drinking. Chako came and took the beer bottle from us. I took a bottle hit him with it and it missed. That is the time he also stabbed me”*. The witness further explained that Chako had approached the table where he, his cousin brother Manasa and his neighbour Livai were at. The witness then explained: *“He came, he took a bottle, I saw him, then I took an empty bottle, I hit him with that bottle which missed him. That’s when he stabbed me”*.
- [36] Section 59 (6) of the Crimes Act provides that the question whether an evidential burden has been discharged is one of law. It is my opinion, considering all the facts and circumstances of this case that the defence has failed to discharge the evidential burden as required by law.
- [37] However, I am also of the opinion, considering all the facts and circumstances of this case, that the prosecution has failed to establish beyond reasonable doubt that the accused had the intention to do some grievous harm to the said Savenaca Ratuduguca, at the time he caused the injury to him.
- [38] Therefore, in my view, the majority opinion of the Assessors in finding the accused not guilty of the second count was justified. It was open for them to reach such a conclusion on the available evidence. I concur with the majority opinion of the Assessors in respect of Count Two.
- [39] In the circumstances, I find the accused not guilty of the second count of Act with Intent to Cause Grievous Harm.
- [40] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved the alternate count of Assault Causing Actual Bodily Harm beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the said offence in Count Two.
- [41] In the circumstances, I find the accused guilty of the alternate count of Assault Causing Actual Bodily Harm, in respect of Count Two.
- [42] Accordingly, I convict the accused of Assault Causing Actual Bodily Harm, in respect of Count Two.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT LABASA

Dated this 04th Day of October 2019

Solicitors for the State : **Office of the Director of Public Prosecutions, Labasa**
Solicitors for the Accused : **Maqbool & Company, Labasa**