

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 095 OF 2019

STATE

V

RAHESH CHAND

Counsel : Mr. R. Kumar for State
Accused in Person

Dates of Hearing : 17, 18 February 2020

Date of Summing Up : 20 February 2020

SUMMING - UP

1. Lady and Gentlemen Assessors, it is my duty to sum up to you. The object or purpose of a summing-up is to help you in forming your opinion of this case. You and I are trying this case together and your opinions will weigh heavily with me when I make my final decision.
2. In my summing up, 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.

3. State Counsel and the accused have made submissions to you, about how you should find the facts of 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 must decide what happened in this case, and which version of the evidence is reliable.
4. You will not be asked to give reasons for your opinions, but merely your opinions themselves and need not be unanimous but it would be desirable if you could agree on them.
5. 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 innocent until he is proved guilty.
6. The standard of proof in a criminal trial is one that 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 about his guilt, then you must express an opinion, that he is not guilty.
7. 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.
8. In evaluating evidence, you should see whether the story relayed in evidence is probable or improbable; whether witness is consistent in his or her own evidence and with his or her previous statements or with other witnesses who have given evidence in court. It does not matter whether that evidence was called for the Prosecution or for the Defence. You must apply the same test to evaluate evidence.

9. Another relevant aspect in assessing truthfulness of a witness is his or her manner of giving evidence in court. You have seen how the witnesses' demeanour in the witness-box when answering questions. How did they conduct themselves in court? In general, what was their demeanour in court? But, please bear in mind that many witnesses are not used to giving evidence and may find court environment distracting.
10. In this case the Prosecution and the Defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth.
11. Agreed facts of this case are that:
 1. Rahesh Chand is the accused in this case who had been driving a rented Toyota Prius vehicle, registration LR 5251 during the night of 25 February 2019.
 2. The said Rahesh Chand had parked the said vehicle registration LR 5251 along Volavola Road, Tamavua, Suva during the night of 25 February 2019 and while he was seated at the driver's seat, a vehicle registration GQ 382 had approached the said vehicle registration LR 5251.
 3. Based on Police investigations and the filed disclosures, it is not disputed that Corporal 2875 Qarau, Special Constable 4875 Ravouvou had been travelling in vehicle registration GQ 382 which was being driven by Special Constable Mohammed Irfan during the night of 25 February 2019.
 4. It is not disputed that the said Rahesh Chand was interviewed under caution on 27 February 2019 at Samabula Police Station by Police Officer Munilesh Goundar and the admissibility and authenticity of the said cautioned interview is not disputed, which may be tendered into evidence with consent.
12. You have a copy of the information with you. The Information reads as follows:

COUNT 1

Statement of Offence (a)

ACTS INTENDED TO PREVENT ARREST: Contrary to section 255 (b) of the Crimes Act 2009.

Particulars of Offence (b)

RAHESH CHAND on the 25 February 2019, at Volavola Road, Tamavua, Suva in the Central Division, with intent to prevent his own lawful arrest or detention, unlawfully attempted to strike Corporal 2875 Qarau with a Toyota Prius (registration LR 5251) by driving the said Toyota Prius (registration LR 5251) towards the said Corporal 2875 Qarau.

COUNT 2

Statement of Offence (a)

ACTS INTENDED TO PREVENT ARREST: Contrary to section 255 (b) of the Crimes Act 2009.

Particulars of Offence (b)

RAHESH CHAND on the 25 February 2019, at Volavola Road, Tamavua, Suva in the Central Division, with intent to prevent his own lawful arrest or detention, unlawfully attempted to strike Special Constable 4875 Ravouvou with a Toyota Prius (registration LR 5251) by driving the said Toyota Prius (registration LR 5251) towards the said Special Constable 4875 Qarau.

COUNT 3

Statement of Offence (a)

PUNISHMENT FOR MALICIOUS INJURIES IN GENERAL (DAMAGING PROPERTY): Contrary to section 369 (1) of the Crimes Act 2009.

Particulars of Offence (b)

RAHESH CHAND on the 25 February 2019, at Volavola Road, Tamavua, Suva in the Central Division, willfully and unlawfully damaged Police Fleet vehicle registration GQ 382 causing damages to the said vehicle valued at FJ\$7439.65.

COUNT 4

Statement of Offence (a)

BREACH OF ORDER SUSPENDING SENTENCE: Contrary to section 26 and 28 (1) and (2) of the Sentencing and Penalties Act 2009.

Particulars of Offence (b)

RAHESH CHAND on the 25 February 2019, at Volavola Road, Tamavua, Suva in the Central Division, breached his suspended sentence order of 19 months imprisonment, 8 months to be served in custody of the prison and balance 11 months suspended for 5 years vide Suva Magistrates' Court CF: 1063/16 given to him on 16 March 2018 by committing other offences on 25 February 2019, namely ACTS INTENDED TO PREVENT ARREST and DAMAGING PROPERTY vide Suva HAC 95 of 2019.

13. Lady and Gentlemen Assessors, let me now deal with the charges in the information. The first two counts are on Acts Intended to Prevent Arrest. On the first two counts, the Prosecution must prove that the accused Rahesh Chand unlawfully attempted to strike Corporal Qarau and Special Constable Ravouvou with a car by driving it towards the respective police officers with intent to prevent his lawful arrest and detention. You have to be satisfied that the intention of the accused when he did the alleged act was to prevent his lawful arrest or detention.
14. In order to establish the third count, the prosecution must prove that the accused Rahesh Chand willfully and unlawfully damaged the police fleet vehicle GQ 382 causing damage to the said vehicle valued at FJ \$ 7439.65. You must be satisfied that the accused committed the alleged act willfully and without lawful excuse.
15. There are four counts and you must consider evidence against each count separately. You must not assume that because the accused is guilty on one count that he must be guilty of the other as well. However, there is an exception to that rule in this case in respect of the fourth count. If you find the accused guilty on the first three counts, you should find the accused guilty on the 4th count because the accused has violated a condition imposed by the court that he must not commit another offence during the suspension of his previous sentence.
16. You must not however hold against the accused in respect of the first three counts merely because the accused had previous convictions. In considering the first three counts, you must not assume that the accused would have committed the first three counts because he had

previous convictions. Please erase from your mind whatever you have heard about the previous character of the accused. You must take into account only the evidence led in this case in respect of the first three counts and nothing else.

17. I must also remind you of the evidence given and the cases of both the Prosecution and the Defence. In doing this I do not propose going through all the evidence of every witness. It should still be fresh in your minds. If I refer to only some aspects of a witness's evidence it does not mean that the rest is unimportant. You must weigh up and assess all the evidence in coming to your decision on this case.

Case for Prosecution

PW1 : MOHAMMED ZAHID IRFAN

18. Irfan is a police driver attached to the Samabula Police Station. On the 25th of February 2019 he was driving a police fleet vehicle GQ382. He took the Night Impact Team comprising Corporal Qarau, and Special Constable Ravouvou on night petrol. The team was looking for High Risk Criminals. As he approached Volavola Road roundabout at around 9 pm, he saw a vehicle LR 5251 parked in a suspicious manner on the right hand side of the roundabout. When they approached this vehicle, they saw Rahesh Chand whom he knew as Rakesh seated at the driver's seat. He suggested to Corporal Qarau that they should go and search the vehicle.
19. As per Qarau's instructions, he reversed the vehicle and blocked the way so that Chand could not escape. He parked about a 3 vehicles long distance facing the roundabout because the road was narrow and there were some other vehicles also parked on the side of the road.
20. Corporal Qarau and SC Ravouvou got off the vehicle to search and talk to the driver Chand. As the officers were approaching Chand's car, Chand reversed his vehicle and went straight at Corporal Qarau and SC Ravouvou. Corporal Qarau and SC Ravouvou had to jump to the side of the road. Chand did not stop and drove his car straight towards the police vehicle. He

picked-up a bit fast and then he tried to slow down and bumped the front left side of the police vehicle which was parked.

21. Irfan reversed his vehicle again, and moved up to prevent him escaping from the other side; then Chand came and hit the vehicle again right in the middle front of police vehicle. He said that his aim in moving his vehicle up was to prevent Chand from escaping because there was some gap on the left side.
22. After the second bump, Rahesh Chand reversed his vehicle and came again towards the police vehicle. Rahesh Chand came and bumped the left side again causing the police vehicle to roll backwards. At the same time, Rahesh Chand managed to escape in his vehicle from the left side of the police vehicle. Irfan said his nose was injured with a bleeding nose as a result of the impact at the second hit when his nose hit the steering wheel. He did not try to ram LR 5251 because he did not want to damage the police vehicle. He went for a medical checkup at CWM Hospital. The medical report (PE1) was tendered in evidence.
23. Under cross examination, Irfan denied that he was lying under oath. Irfan said he that he was not aware that the incident was captured in a CCTV camera mounted at a nearby house. When the CCTV footage on accused's smartphone was played to the witness, he said that it is not clear. However he admitted that the incident has been recorded in the video footage. The witness denied that he reversed the police vehicle to bump accused's car. He said that the police vehicle was parked when the accused bumped it.
24. Irfan denied that he got off the police vehicle and went up to accused's vehicle. He denied that the he was not injured and that the medical report is a fake one.

PW2 : CONSTABLE EPELI QARAU

25. Qarau said that the Night Impact Team led by him started the night petrol from 9 pm with SC

4875 Ravouvou in the vehicle GQ 382 driven by SC Mohammed Irfan. The incident happened when they arrived at Volavola Road after 11 pm. The driver Irfan spotted a rental car that was parked on the right side of the road. The driver nicknamed Rehan was known to Irfan. He also recognised this Rehan as the owner of the corner shop in Nabua. Based on SC Irfan's information, he and SC Ravouvou got out and went to search Rehan's vehicle. As they were approaching the rental vehicle, it started moving straight towards them. Both of them had to jump out of the way as they were in danger of being hit by the rental vehicle. Both officers were in police uniform at that time. When they were coming from behind, the rental vehicle had bumped the police vehicle again, and reversed at high speed. He had to run to the grass to avoid being hit. The front of the police vehicle was damaged. He did not see the bumping the police vehicle; but there was a loud sound.

26. When he was looking from the side of the road he saw the front of the police vehicle being bumped for the second time. The rental vehicle reversed again, and managed to escape from the left side of the road. They got in the police vehicle, and tried to chase. As they turned the police vehicle around, the rental vehicle had already left at high speed. Irfan was complaining about an injury on his nose but there was no visible injury.
27. Before the accused started his cross examination, the CCTV footage was screened in Court. Constable Qarau under cross-examination agreed that the alleged incident had been captured in CCTV footage although the visuals are not that clear. Constable Qarau could not clearly remember whether the driver Irfan also got off from the vehicle. He conceded that the video has more memory than him as at that time it all happened so quickly. After the incident within about 5 minutes they reached Nabua Police Station but the report was lodged later at Samabula Police Station.
28. He pointed out in the video the visual that shows how he and SC Ravouvou jumped out of the way of the vehicle driven by the accused. He has no exact idea as to the person exited from the right hand side of the Police vehicle. That person could either be Special Constable Irfan or Special Constable Ravouvou.

PW3: DC MUNILESH GOUNDAR

29. DC Goundar is the investigating officer of this case. He also interviewed the accused at Samabula Police Station.
30. He gathered evidence and documents relating to this case. He tendered the Damage Assessment Report for the Police vehicle prepared by Asco Motors. He said that, according to the said report, the total repair costs for vehicle GQ 382 was \$7,439.65.
31. DC Goundar also tendered the report of previous convictions of the accused. Under cross-examination, DC Goundar said that if the suspect has run away after an accident, the police officers have all powers to move the vehicle involved in the accident to pursue the suspect.
32. That was the case for the Prosecution.
33. At the close of the Prosecution's case you heard me explain to the accused what his rights were in defence and how he could remain silent and say that the Prosecution had not proved the case against him to the requisite standard or he could give evidence in which case they would be cross-examined.
34. The accused elected to give evidence under oath although he is under no obligation to prove his innocence. Now I must tell you that the fact that an accused gives evidence in his own defence does not relieve the Prosecution of the burden to prove their case to you beyond reasonable doubt. Burden of proof remains with the prosecution throughout. Accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

Defence Case

RAHESH CHAND (The Accused)

35. Rajesh Chand said that he parked his vehicle at Volavola Road and when he was about to go he saw an oncoming vehicle parked in front of his vehicle. Then the same vehicle reversed back. The driver came to him and forced him to come out of his vehicle. It was around 11.30 pm. He asked the police driver if they could go to the Police Station but still he was forced to come out of the vehicle
36. After that, he started his vehicle and tried to go from there. On the same Volavola Road, two vehicles were parked on the side of the road. That road is a one way narrow one. He tried to go slowly between the two vehicles to avoid being scratched from both the vehicles. When he was going, the driver from the Police vehicle went and sat in his vehicle and then he reversed the police vehicle. Then the police driver came and bumped into his vehicle on the front left fender. Chand said that he reversed his vehicle to avoid other accidents. When he reversed his vehicle, the police vehicle came from the front and hit on his vehicle at the same place. He saw a gap from the left side and he went through the gap. In the morning he called Samabula Police Station, and surrendered himself.
37. Under cross examination, Chand admitted that the video had been in his possession for a long time. He said that when he gave his statement, he told the Police officer about the CCTV footage and the Police Officer told him to leave that and proceeded to charge him. The police officer told him to bring the video to the court house. The same footage was given to his lawyer.
38. He denied the proposition that the video does not show the driver of the police vehicle coming out of the police vehicle. Chand admitted that SC Ravouvou and Corporal Qarau after exiting the police vehicle approached his vehicle and Corporal Qarau and SC Ravouvou jumped out of the way of his vehicle. He denied driving his vehicle directly at the police officers. He didn't mean to drive at Corporal Qarau. He was driving very slowly. When he

was using that very narrow road Corporal Qarau jumped on to his way. He denied driving his car at police officers because he didn't want to be arrested. He admitted that he wanted to prevent his arrest because it was 12 o'clock at night. He told the police driver who came to him that it was not a check point. Chand said that he would have surrendered himself if one of passenger police officers came to him not the driver.

39. Chand denied willfully ramming the Police Fleet vehicle to cause damages. Chand admitted the previous convictions in PE-3.
40. That is the case for Defence

Analysis

41. There is no dispute as to the identity of the accused. The accused admits that he was driving LR5251 on the 25th February 2019 and a collision occurred between the car driven by him and the police fleet vehicle GQ 382 driven by Irfan Mohammed (PW1).
42. The Prosecution says that the three police officers told the truth in court and you should rely upon their evidence.
43. The accused says that the police officers were lying in court. Accused's position is that he did not intend to bump the police vehicle and that the collision occurred because the police vehicle moved forward to block his movements. He also says that he was driving slowly and he did not intend to drive his vehicle at police officers. The accused admits that he did not want to obey the orders of the police officer who came to him first because he was a police driver and that the place he was stopped was not a police check point. He also admits that he did not want to come out of his vehicle because it was around midnight.

44. You had the opportunity to watch the video footage tendered by the accused. It is not disputed that the video footage had captured the alleged incident. Although it is not very clear, it will help you to form your opinions as to what actually happened at the alleged crime scene and who told the truth in court.
45. If you are sure that the accused Rahesh Chand unlawfully attempted to strike Corporal Qarau and Special Constable Ravouvou with a car by driving it towards the police officers and the intention of the accused was to prevent his own lawful arrest or detention you should find the accused guilty on the counts 1 and 2.
46. If you are sure that the accused willfully and unlawfully damaged police fleet vehicle you should find the accused guilty on the 3rd count.
47. According to the record of previous convictions tendered in evidence, the accused has been sentenced on 16 March 2018 to a term of 19 months imprisonment by the Magistrates Court at Suva. 11 months of the sentence has been suspended for a period of 5 years. If you find that the accused guilty on the first three counts, you must find the accused guilty on the 4th count because the accused has committed offences when a suspended sentence was still pending.
48. It is up to you to decide whether you could accept the version of the Defence and that version is sufficient to establish a reasonable doubt in the prosecution's case. If you accept the version of the Defence, you must not find the accused guilty. Even if you reject the version of the Defence still the Prosecution should prove its case beyond reasonable doubt. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the Prosecution throughout the trial, and never shifts to the accused, at any stage of the trial.
49. That concludes my summing up of the law and the evidence in this particular trial. We have now reached the stage where you must deliberate together and form your individual opinions on whether the charge has been proved against the accused. On your return, you will be asked

to separately state in Court your opinion whether the accused is guilty or not guilty on each count as charged.

50. Would you please now retire to consider your opinions? When you have made your decisions would you please advise the Court Clerk and the Court will reconvene to receive your opinions?
51. Any redirections?



At Suva

20 February 2020

Aruna Aluthge
Judge

Counsel: Office of the Director of Public Prosecution for State