

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 372 of 2018

STATE

V

PETERO NUKU

Counsel : Mr. Saif Shah for the State
Mr. Isireli Romanu for the Accused

Dates of Trial : 18-19 November 2020

Summing Up : 20 November 2020

Judgment : 23 November 2020

JUDGMENT

[1] As per the Information filed by the Director of Public Prosecutions (DPP), the accused Petero Nuku was charged with the following offences:

[COUNT 1]

Statement of Offence

ATTEMPTS TO COMMIT ARSON: Contrary to Section 363 of the Crimes Act 2009.

Particulars of Offence

PETERO NUKU, on the 30th day of December 2017, at Kadavu, in the Central Division, attempted to set fire to the dwelling house of MARICA QOLI.

[COUNT 2]

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to Section 375(1)(a)(i)(iv) and (2)(a) of the Crimes Act 2009.

Particulars of Offence

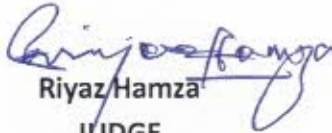
PETERO NUKU, on the 2nd day of January 2018, at Kadavu, in the Central Division, without lawful excuse and with intent to cause alarm threatened to burn **MARICA QOLI** inside her dwelling house.

- [2] The accused pleaded not guilty to the two charges and the ensuing trial was held over 2 days.
- [3] At the end of the prosecution case this Court decided that there was no relevant or admissible evidence to establish that the accused had committed the offence he is charged with in Count 2. Accordingly, the accused was found not guilty and acquitted of the said charge. The trial proceeded in respect of Count 1.
- [4] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found the accused guilty of Count 1.
- [5] 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.
- [6] During my summing up I explained to the Assessors the salient provisions of the offence of Attempt to Commit Arson as defined in Section 363 of the Crimes Act No 44 of 2009 ("Crimes Act"). Since Section 363 makes a reference to *to any such thing as is mentioned Section 362*, I also referred to the provisions of Section 362 of the Crimes Act.
- [7] Accordingly, I directed the Assessors that in order for the prosecution to prove the first count of Attempt to Commit Arson, they must establish beyond any reasonable doubt that;
 - (i) The accused;
 - (ii) On the specified date (in this case on 30 December 2017);
 - (iii) At Kadavu, in the Central Division;
 - (iv) Unlawfully;
 - (v) Attempted to set fire to the dwelling house of Marica Qoli.

- [8] All the above individual elements were further elaborated upon in my summing up in relation to the said count.
- [9] Furthermore, I explained to the Assessors that Section 44 of the Crimes Act deals with Attempts, which is in effect an extension of criminal responsibility. I made particular reference to Sections 44(1) and 44(2) of the Crimes Act.
- [10] The prosecution relied on the evidence of the complainant Marica Qoli to prove its case. The accused testified on his behalf.
- [11] In terms of the provisions of Section 135 of the Criminal Procedure Act No. 43 of 2009 ("Criminal Procedure Act"), the prosecution and the defence have consented to treat the following facts as "*Admitted Facts*" without placing necessary evidence to prove them:
1. Petero Nuku is the husband of the complainant Marica Qoli.
 2. Between the months of December 2017 to January 2018, Petero Nuku resided at Gasele Village, Yale, Kadavu, together with his wife and children.
- [12] I directed the Assessors that since the prosecution and the defence have consented to treat the above facts as "*Admitted Facts*" without placing necessary evidence to prove them, they must therefore, treat the above facts as proved beyond reasonable doubt.
- [13] The accused has testified in Court and denies that he really had the intention to burn down his house. He said that he only wanted to make his wife angry because she had not given him money when he had asked for it.
- [14] The position taken up by the Defence is that the gas burner/stove was not working properly at the time of the alleged incident (30 December 2017). The stove could not be turned on simply with the knob. You needed a match or a gas lighter to ignite the stove.
- [15] However, I explained to the Assessors that when the complainant gave evidence in Court, the fact that the gas burner/stove was not working properly at the time of the alleged incident and that the stove could not be turned on simply with the knob, but needed a match or a gas lighter to ignite was not put to her. Therefore, that they should consider this portion of the evidence with that infirmity in mind.
- [16] The Assessors have found the evidence of the prosecution as truthful and reliable as they have by their unanimous decision found the accused guilty of the charge of Attempt to Commit Arson. Therefore, it is clear that they have rejected the position taken up by the defence.
- [17] 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 opinion of the Assessors in respect of the said charge.

- [18] 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 Attempt to Commit Arson with which the accused is charged in Count 1.
- [19] In the circumstances, I find the accused guilty of the offence of Attempt to Commit Arson as charged.
- [20] Accordingly, I convict the accused of the offence of Attempt to Commit Arson as charged.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 23rd Day of November 2020

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused : MIQ Lawyers, Barristers and Solicitors, Nasinu.