

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 030 of 2018

STATE

V

RAVIN NATH

Counsel: Mr Babitu for the State
Ms Ali for the Accused

Date of Hearing: 05 and 06 January, 2021

Date of Summing Up: 07 January, 2021

SUMMING UP

1. The hearing of this case has now reached its conclusion. I have to sum up the case now. As I explained to you before the commencement of the hearing, we have different functions. It is my task to ensure that the trial is conducted according to law. As part of that, I will direct you on the law that applies to this action. You must accept the law from me and apply all directions I give you on matters of law.
2. Your function is to determine the facts of the case based on the evidence that has been placed before you in this courtroom. That involves deciding what evidence you accept or refuse. You will then apply the law, as I explain it to you, to the facts as you find them to be, and in that way, arrive at your opinion.

3. I may comment on the facts if I think it will assist you when considering the facts. However, you are not obliged to accept any comment I make about the facts. Hence, it is entirely upon you to accept or disregard any comment I make about the facts unless it coincides with your own independent opinion.
4. You must reach your opinion on evidence and nothing but on the evidence itself. Evidence is what the witnesses said from the witness box and the exhibits tendered as evidence. This summing up, statements, arguments, questions, and comments made by the parties' counsel are not evidence. The purpose of the opening address by the learned counsel for the Prosecution is to outline the nature of evidence intended to be put before you. Therefore, the opening address of the Prosecution is not evidence. The closing addresses of the counsel of the Prosecution and the Defence are not evidence either. They are their arguments, which you may properly consider when you evaluate the evidence, but the extent to which you do so is entirely a matter for you.
5. If you have heard, read, or otherwise learned anything about this case outside of this courtroom, you must exclude that information or opinions from your consideration. You must have regard only to the testimony put before you in this courtroom. Ensure that no external influence plays a part in your deliberation. You are allowed to talk, discuss, and deliberate facts of this case only among yourselves. However, each one of you must reach your own opinion. You are required to give merely your opinion but not the reasons for your opinion. Your opinion need not be unanimous. I must advise you that your opinion does not bind me, but I assure you that I will give the greatest possible weight to your opinions when I make my judgment.

Burden and Standard of Proof

6. I now draw your attention to the issue of burden and standard of proof. The accused is presumed to be innocent until he is proven guilty. The presumption of innocence is in force until you form your own opinion that the accused guilty of the offence.

7. The burden of proof of the charge against the accused is on the Prosecution. It is because the accused is presumed to be innocent until he is proven guilty. In other words, there is no burden on the accused to prove his innocence, as his innocence is presumed by law.
8. The standard of proof in a criminal trial is "proof beyond a reasonable doubt." It means that you must be satisfied in your mind that you are sure of the accused's guilt. If there is a riddle in your mind about the accused's guilt that means the Prosecution has failed to satisfy you the guilt of the accused beyond a reasonable doubt. If you find any reasonable doubt about the commission of the offence as charged or any other offence by the accused, such doubt should always favor the accused.

Information and elements of the offences

9. The accused has been charged with one count of Attempted Murder, contrary to Section 44 (1) and 237 of the Crimes Act. The particulars of the offences are before you, hence, I do not wish to reproduce it in my summing up.
10. The main elements of the offence of Attempted Murder are that;
 - i) The accused;
 - ii) Engaged in a conduct, which was more than merely preparatory;
 - iii) With the intention to cause the death of complainant, or
With the knowledge or believe that his conduct would cause the death of the complainant.

Admitted Fact

11. I now request you to draw your attention to the agreed facts, which are before you. They are the facts that the prosecution and defence have agreed without dispute. Hence, you are allowed to consider them as proven facts by the prosecution beyond a reasonable doubt.

12. The first element is the identity of the accused. It is the onus of the prosecution to prove beyond a reasonable doubt that it was the accused who committed this alleged offence. According to the admitted facts, the accused had admitted that he had struck the complainant with a cane knife, causing her injuries. Therefore, the identity of the accused is not disputed by the defence.
13. The second element relates to the conduct of the accused. The conduct is a product of the will of the accused and it was not accidental. The prosecution has to prove beyond reasonable doubt that the conduct of the accused was deliberate and not accidental. For the accused to be guilty of attempted murder, the accused's conduct must be more than merely preparatory to the commission of the offence. The question whether a conduct is more than merely preparatory to the commission of the offence is one of fact.
14. In respect of the third element, the prosecution should prove beyond reasonable doubt either,
 - i) the accused intended to cause the death of the complainant, or
 - ii) that the accused knew/ believe that his act could cause the death of the complainant.
15. The prosecution has to prove only one of the two limbs of this third element. This element involves the state of mind of the accused at the time of the alleged act. It is not possible to have direct evidence regarding a person's state of mind as no witness can look into the accused's mind and describe what it was at the time of the alleged incident. However, you can deduce the state of mind of an accused from the facts and circumstances you would consider as proved.

Evidence of the Prosecution

16. Let me now remind you of the evidence presented by the Prosecution and the defence during the hearing. This is a very short hearing, where the Prosecution adduced the evidence of five witnesses and the accused gave evidence for the defence. I trust that you have heard those evidence and still could recall them.

17. The accused had brought a chicken when he came home after his work on the 26th of January 2018. He had asked the complainant to soak it and then cook it. While she was at the kitchen, the accused had gone to the back of the kitchen to sharpen the cane knife. At that time, the complainant had received a call. An argument developed between the accused and the complainant over this phone call. They both were in anger. The complainant had then spit on the accused. He had then struck her on her left leg with the cane knife. She had moved away, but he struck again on her right leg with the cane knife. She had sat down and then saw the accused was aiming at her face with the cane knife. She tried to cover her face with her right hand. The accused struck again on her right hand, causing a cut below her wrist. He then again struck which she tried to cover with her left hand. That strike landed on her left hand, severing two of her fingers. While she was still sat down, the accused had walked to the door and waited for a while. He was breathing in and out heavily. He suddenly turned back and came to her. He again struck her on her shoulder with the cane knife. You have seen the complainant demonstrated us the injuries caused by these assaults on her legs, hands and the shoulder.
18. After kissing their small son, the accused had then gone out. The neighbours had come to help her when the accused left. They had called the police and an ambulance. However, none came. They then managed to take her to Lautoka Hospital in a twin cab. She was treated at the Lautoka Hospital for a week and then transferred to CWM hospital in Suva, where she was treated for a month.
19. Doctor Eddie Mckaig, who was the Consultant Orthopaedic Surgeon at the Lautoka Hospital in January 2018. He had treated the complainant initially and then transferred her to CWM hospital in Suva. Doctor Mckaig had prepared a medical report, explaining the nature of injuries that the complainant had sustained and the treatment given at the hospital. You have heard Doctor Mckaig had described the nature of the injuries and the treatment he had given to the complainant. The injuries sustained by the complainant were severe, and she was in a hypovolemic shock due to the blood loss. A person could die due to such hypovolemic shock unless he or she is treated immediately. According to Doctor Mckaig, a very sharp object used with enormous force would have caused these injuries.

20. The third and fourth witnesses of the prosecution, Mr. Vijendra Singh and Jagdishwar Prasad, were the accused and the complainant's neighbours. They explained in their respective evidence how they had assisted the complainant after the accused had assaulted her with the knife. They had taken her to the hospital.
21. The last witness of the prosecution is Cpl Pita who had taken photos of the scene. He tendered those photos as evidence of the prosecution.

Evidence of the Defence

22. After the Prosecution's case, the accused was explained about his rights in Defence. The accused opted to give evidence. I will now proceed to summarise the evidence presented by the Defence briefly.
23. In his evidence, the accused explained about his troublesome marriage with the complainant, where complainant used to fight with him. On the 26th of January 2018, the accused had brought a chicken to cook. While the complainant and the accused were in the kitchen, an argument developed over her plan to visit Navua to attend her grand mother's birthday with their son. The complainant had spit on him twice, but he wiped it out and went out to sharpen the cane knife to cut the chicken. When he came back, he saw the complainant was on her phone. She had spit on him again and pushed him away. He stood up and tried to see the phone of the complainant, but she hid it. He then tried to cut the chicken. At the time he started to cut the chicken, the complainant spits him again. He then just swung the knife at her. The accused explained in his evidence that he did not know what happened to him. He was a blackout, and he just swung the knife at the complainant. He had swung the knife three to four times. After a while, he realised what he had done. He then kissed his son and left home silently.
24. I have summarised the evidence presented during this hearing. However, I might have missed some. It is not because they are not important. You have heard every item of evidence. I only wanted to draw your attention to the main items of evidence and help you in recalling yourselves of the evidence.

Analysis and the Directions

25. According to the evidence presented by the parties and the admitted facts, the prosecution alleged that the accused had struck the complainant on her both legs, both hands, and the shoulders with a cane knife causing her injuries as stated in the medical report. The accused did not deny the incident and assaulting her with a cane knife, but he claimed that he had no intention to kill her as he was provoked by the complainant. Due to the provocation, he lost his sense and did not know what he had done. The accused claims that he was a blackout and could only recall that he swung the cane knife at the complainant. Accordingly, the accused is relying on the defence of provocation.
26. The defence of provocation is not available for the offence of attempted murder. Therefore, I must advise you that you should not consider the defence of provocation raised by the accused to find him not guilty of this offence of attempted murder. If you find the accused was provoked by the complainant and lost his sense and cool, you are still not allowed to find that the accused had no intention to kill or had no knowledge that his action would cause the death of the complainant.
27. You have to determine whether the accused had an intention to kill the complainant or knew that his action would cause the death of the complainant. You have to determine then whether the accused had struck the complainant, with that intention or the knowledge, on her legs, hands and the shoulder with the cane knife, causing the injuries as stated in the medical report. If you are satisfied that the prosecution has proven it beyond a reasonable doubt, then you must find the accused guilty of the offence. If you are not satisfied or doubt it, you must then find the accused not guilty.

Conclusion

28. Madam and Gentleman assessors, I now conclude my summing up. It is time for you to retire and deliberate in order to form your individual opinions. You will be asked individually for your opinion and will not require to give reasons for your opinion. When

you have reached to your opinion, you may please inform the clerks, so that the Court could reconvene.

29. Learned counsel of the Prosecution and the accused, do you have any redirections to the assessors?



R. D. R. T. Rajasinghe

JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State

Office of the Legal Aid Commission for the Accused