

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 311 of 2020

BETWEEN : STATE

AND : SAVENACA BATIBAWA

Counsel : Ms. B Kantharia for the State
Ms. M. Chand for the Accused

Dates of Hearing : 02 February 2021

Closing speeches : 02 February 2021

Date of Summing up: 02 February 2021

Date of Judgment : 03 February 2021

JUDGMENT

1. The Accused is charged with one count of attempted aggravated burglary. The statement of offence and the particulars of offence are as follows;

First Count

Attempted Aggravated burglary: contrary to Section 44 and 313(1)(a) of the Crimes Act 2009.

Particulars of offence

Savenaca Batibawa with another on 01st day of October 2020 at Wailea Settlement, Vatuwaqa in the Central Division, attempted to break and enter into the dwelling house of Lalita Wati as a trespasser with intent to steal from therein.

2. Only the Complainant was called by the Prosecution to give evidence. After the closure of the Prosecution case the Accused decided to remain silent and no witnesses were called for the Defence. The assessors returned with a unanimous opinion of guilty after a short deliberation.
3. Having directed myself in accordance with the summing up I will now give reasons for the judgment.
4. According to the Complainant's evidence, on 01 October 2020 at 2 pm she had seen the Accused with another person outside her kitchen window. They were trying to break open her window with a pinch bar, tin cutter and a hammer. When the Complainant confronted them, the Accused had tried to cover his face. However, by that time the Complainant had recognized the Accused as 'Save' who lives a couple of houses away from her house.
5. The Complainant gave convincing and reliable evidence regarding the recognition of the Accused. Prior to the incident she had known the Accused well. She had been in the kitchen when she saw them outside the kitchen window, and nothing was obstructing her view. The place had not been dark as it happened around 2 pm and apparently there had been enough light as the louvres were open. She had even told the Accused that no use of covering the

face after she recognized him. Then the Accused and the other had fled the scene. She had not recognized the other person.

6. Although the Complainant was cross examined at length by the Defence, her evidence could not be challenged, or her credibility could not be impeached. The Complainant was absolutely forthright and having observed her demeanour, I am satisfied that she is a reliable and credible witness.
7. I have no reason whatsoever to disbelieve the Complainant. I accept the evidence given by the Complainant. I have considered whether the Prosecution evidence was sufficient to prove all the elements of the offence. I am satisfied that the Prosecution proved all the elements of the offence beyond reasonable doubt.
8. In my view the assessor's unanimous opinion is justifiable. I am satisfied that they have followed the directions given at the summing up and have correctly believed the evidence given by the Complainant. Thus, I concur with the unanimous opinion of the assessors.
9. I find the Accused guilty to attempted aggravated burglary contrary to section 44 and section 313(1)(a) of the Crimes Act.
10. Accordingly, I convict the Accused as charged.



At Suva
03 February 2021

Solicitors

Office of the Director of Public Prosecutions for the State
Office of Legal Aid Commission for Accused