

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. HAC 105 of 2022

BETWEEN: **THE STATE**

AND: **ODILA CAVU LOALOA**

Counsel: **Ms. M. Lomaloma for the State**
 Ms. R. Raj for the Accused

Date of Trial: **26 and 27 September 2023**

Date of Judgment: **1st March 2024**

JUDGMENT

1. The Accused is charged with the following offence in the Information filed on the 3rd of November 2022 as follows: -

INFORMATION BY THE
DIRECTOR OF PUBLIC PROSECUTION

ODILA CAVU LOALOA is charged with the following offence:

COUNT ONE

Statement of Offence

ACT INTENDED TO CAUSE GRIEVOUS HARM: Contrary to section 255 (a) of the Crimes Act 2009.

Particulars of Offence

ODILA CAVU LOALOA on the 21st day of September 2022 at Salia Village, Tunuloa, Cakaudrove in the Northern Division with the intent

to cause grievous harm to **EPINERI AMANI VULA**, unlawfully wounded the said **EPINERI AMANI VULA** with a cane knife.

2. The Accused was first produced in the Savusavu Magistrate's Court on the 11th of October 2022 and the case was transferred to the High Court on the 12th of October 2022.
3. In addition to the transfer order, the Resident Magistrate had also made an order for the Accused to be psychiatrically evaluated to determine whether she was able to enter a plea to the Charge/Information
4. She was first arraigned in the Labasa High Court on the 27th of October 2022 and initially the plea was deferred to await Legal Aid's decision on her application for representation.
5. Additionally, on the 15th of December 2022, the Court made an order for the Accused to be psychiatrically evaluated to determine whether she is of unsound mind so as to be capable of mounting a proper defence.
6. The Court made these orders to determine whether she was fit to plead and also to explore whether there are possible defenses on the ground of mental unsoundness.

The Psychiatric Evaluation Report

7. On the 8th of May 2023, Dr. Balram Pandit and Dr. Kiran Gaikwad tendered their Evaluation Report and they made the following conclusions after examining the Accused, with the following disclaimer – “The following conclusions are exclusively based on assumption that whatever history/information available is correct, current observations, personal interviews and assessment of her mental status. Considering all of the above the opinion made is at the time of examination.”
 - (a) That Ms. Odila Cavu Loaloo has history of mental illness.
 - (b) At present, she is aware of wrongfulness of the alleged actions to plead in Court and should be able to meaningfully participate in the court proceedings.
 - (c) It is highly likely that she was under the influence of mental illness at the time of the alleged crime.

8. In addition to the above conclusions, the report also recommended that “if the Accused is bailed, discharged, absolved from the charge, or has been sentenced and is moved to a high security correction facility, it is our recommendation that the forensic Department of St Giles Hospital is contacted for proper discharge and planning or follow up treatment before she is released.
9. We could recommend her to be on compulsory community treatment order with support of local officers to ensure she complies with treatment plans if she is bailed, discharged or absolved from the charge.”
10. After the report was received, the Accused entered a plea of Not Guilty on the 13th of June 2023 and the matter was thereafter adjourned for pretrial conference in preparation for fixing a Trial date.
11. The parties then filed the following Agreed facts on the 18th of July as follows: -
 - (i) That Odila Cavu Loalua is 52 years old, born on 24th October 1971.
 - (ii) That Epineri Amani Vula and Odila Cavu Loalua are known to one another and had been living in the same house at Salia Village, Tunulua until Odila Cavu Loalua was arrested.
 - (iii) That Epineri Amani Vula was injured with a cane knife on 21st September 2022, at Salia Village, Tunulua, Cakaudrove.
 - (iv) That on the 21st of September 2022 Epineri Amani Vula was medically examined by Dr. Ashneel Chand at Natewa Health Centre.
 - (v) That on the 21st September 2022 Odila Cavu Loalua was arrested and taken into custody.
 - (vi) That on 21st September 2022 Odila Cavu Loalua was medically examined by Dr. Ashneel Chand at Natewa Health Centre.
 - (vii) On 8th May 2023 a Psychiatric Evaluation Report was prepared for Odila Cavu Loalua
12. The matter was fixed for Trial on the 26th and 27th of September 2023.

The evidence for the State

13. At the trial the State called the following witnesses: -
- (i) Dr. Ashneel Nand – PW2
 - (ii) Lui Bale – PW2
 - (iii) Epineri Amani Vula – PW3
 - (iv) Luisa Vakadrano – PW4
14. PW1 – Dr. Ashneel Nand was the doctor on duty at the Natewa Health Centre on the 21st of September 2022. He examined both the victim Epineri Amani Vula and the Accused Odila Cavu Loaloa.

Examination of Epineri Amani Vula

15. Dr. Nand made the following specific medical findings on Epineri Amani Vula: -
- Laceration to the upper lip
 - Laceration to the nose
 - Laceration to the rights cheek
16. In his professional opinion, the injuries were not fatal but grievous bodily harm which could give a poor cosmetic outcome. The victim was then transferred to Savusavu Hospital and from there to Labasa Hospital for surgical intervention.

Examination of Odila Cavu Loaloa

17. Dr. Nand made the following specific medical findings on Odila Cavu Loaloa: -
- Laceration on forehead
 - Abrasion on left arm
18. In his professional opinion the patient was cooperative but needed psychiatric specialist evaluation. In her current state of mind, she was not fit to be interviewed by the Police. She was diagnosed with schizophrenia and had been prescribed medication for the same however at the time of the offending, she had stopped taking her prescribed medication.
19. Lui Bale, resident of Salia village, Tunuloa testified that on the day in question, the 21st of September, he was resting at the foreshore and listening to the radio. He heard a sound and when he looked, he saw Amani and Odila struggling over something. They were standing

in front of their house. After a while Amani grabbed what they were struggling over and he entered the house while Odila walked into the village.

20. He knew Amani as he was married to a woman in Salia called Lena Loalua and Odila was the youngest sister of Amani's wife.
21. Under cross examination he confirmed that he has always resided in Salia village and he knows Odila. He also confirmed that he was aware that she suffered from a mental illness.
22. The victim, Epineri Vula then testified. He is 52 years of age and is a farmer by profession. He has lived in Salia village for 10 years with his wife, Alena Loalua and they also lived with her wife's younger sister, Odila Loalua. She had lived with them for one year at the time of the alleged incident. Prior to that she had lived in Nepani and she had come to live with them at the request of his wife.
23. On the date in question, 21st September 2022 he had come back to cook for lunch and after having lunch he came and rested outside the house. He then saw Odila, she came and she went back inside the house and she closed the door. He asked her why she closed the door, she then asked him where the matches were and she appeared angry.
24. He then went to the outside kitchen and as he did so, Odila asked him whether he wanted her to hit him with a knife? At this point, Odila took hold of his small weeding knife and ran up behind him, he turned around and saw her so he grabbed a stick and he hit her hand with it, however she still managed to hit him with the knife.
25. Odila hit him in the nose with the knife and she also hit his upper lip and his right cheek. He then tried to grab the knife from her and when he finally managed to grab the knife from Odila. At this point he was bleeding heavily from his nose. He identified the cane knife which had been seized by the Police as an Exhibit.
26. He was initially attended to at the scene by the village nurse and she accompanied him to the Natewa Health Centre. Odila was also taken with them and she was also examined by the doctor at the Natewa Health Centre.
27. After being examined at Natewa Health Centre, he was then referred to Savusavu Hospital and from there to Labasa Hospital for further treatment.

28. He also stated that this was not the first incident with Odila and she had attacked her elder brother and another brother in law as well. He confirmed that Odila attacked him with his own cane knife that day.
29. Under cross examination he confirmed that Odila had not been taking her medication and he also confirmed that at the time that she did these acts, Odila was not herself.
30. The last witness was Luisa Vakadraru testified that on the day in question, she was cleaning in the church, and she saw Odila coming past. She noticed blood coming from her forehead and as she was the village nurse she attended to her and cleaned her wound. She saw that Odila appeared to be panicking. She has known Odila since she was in Class 6 and she also knew of her history of receiving medication for medical illness.
31. That was the State's evidence.

The evidence for the Accused

32. At the close of the State's evidence, the Court found that there is a case to answer, and the Accused was put to her defence. Through her counsel she confirmed that she was exercising her right to silence, and she would not call any witnesses, therefore the Accused rested the defence case.
33. At the close of the evidence, directions were given for the filing of written submissions.

Analysis

34. Odila Loalua is charged with the offence of Act Intended to Cause Grievous Bodily Harm contrary to section 255 (a). The relevant section provides as follows: -

“Acts intended to cause grievous harm or prevent arrest

255. 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.”

35. The State bears the burden of establishing beyond a reasonable doubt that “**ODILA CAVU LOALOA** on the 21st day of September 2022 at Salia Village, Tunuloa, Cakaudrove in the Northern Division with the intent to cause grievous harm to **EPINERI AMANI VULA**, unlawfully wounded the said **EPINERI AMANI VULA** with a cane knife.
36. The evidence that has been led establishes that on the date and time in question, Odila Cavu Loaloo struck Epineri Amani Vula on the upper lip; nose and right cheek with his own cane knife, causing the injuries that have been noted in the Police Medical Examination Form.
37. The evidence also establishes that Odila Cavu Loaloo is a patient diagnosed with schizophrenia and she was prescribed the necessary medication to be supervised by the Natewa Health Centre. It is also established that at the date of the offending, she had not been taking her medication for some time.
38. This accords with the conclusions of Dr. Kiran Gaikwad in his medical report dated 8th May 2023 where he opined that “It is highly likely that she was under the influence of mental illness at the time of the alleged offence.”
39. Section 105 (1) of the Criminal Procedure Act 2009, provides for such situations as follows: -

“Defence of unsoundness of mind on trial

105.-(1) The court shall make a special finding that an accused person is not guilty of an offence by reason of insanity if–

- (a) any act or omission is charged against any person as an offence; and
- (b) it is given in evidence on the trial of the person for that offence that he or she was insane so as not to be responsible for the actions at the time when the act was done or the omission was made, and
- (c) it appears to the court that the accused person did the act or made the omission charged but was insane at the time when it was done or made.”

40. After such a finding is made, section 105 (2) then provides as follows: -

“[(2) When a special finding is made sub section (1) the court shall order that the accused is-

(a) to be confined in a mental hospital, prison, a declared mental health facility or other suitable place for safe custody; and
(b) to be dealt with in accordance with any law dealing with mental health.”


41. Applying the above provisions to this case, I make a finding that on the 21st of September 2022, Odila Cavu Loaloo was insane so as not to be responsible for her actions at the time the charged offence took place. The Court finds that she did attack Epineri Amani Vula with his own cane knife on the 21st of September 2022, causing the injuries set out in the medical report, however she was insane at the time of the offending.
42. Pursuant to the above provisions, I direct that Odila Cavu Loaloo is to be hereby confined to St Giles Hospital for treatment and safe custody and to be dealt with in accordance to the relevant provisions of the Mental Health Act.

This is the Court’s judgment in this matter: -

- 1. Odila Cavu Loaloo is not guilty of the offence of Act Intended to Cause Grievous Bodily Harm by reason of insanity as she was suffering from schizophrenia at the time of the offending.**
- 2. Odila Cavu Loaloo will be committed to St Giles Hospital for treatment and safe custody and to be dealt with in accordance to the relevant provisions of the Mental Health Act.**

30 days to appeal.




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Mr. Justice U. Ratuveli
Acting Puisne Judge

Solicitors:

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