

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 263 - 2015

STATE

-v-

SIKELI SULUO

Before : RM Fotofili L.
For Prosecution : Inspector Lenaitasi S. and WPC Chand A. [Police Prosecution]
Accused : Waived Right To Counsel
Date of Trial : 7th May 2019 and 12th August 2019
Date of Judgment : 9th December 2019

JUDGMENT

BACKGROUND

1. The defendant **SIKELI SULUO** pleaded not guilty to the following charge [amended on the 1st of July 2017]:

Statement of Offence

COMMON ASSAULT: Contrary to section 274 of the *Crimes Act No. 44 of 2009*.

Particulars of Offence

SIKELI SULUO on the 4th day of September, 2015 at Korovou, Tavua in the Western Division wilfully and unlawfully assaulted **ZIEB ZUBAR ALI**.

2. Having waived his right to counsel, the defendant pleaded not guilty to the charge as early as the 11th of January 2016.
3. On that same day, the defendant indicated that he gave his 'statement' to police on his own free will.

4. An amended charge was filed on the 31st of July 2017 reflecting the charge outlined above. The defendant maintained his not guilty plea.
5. Again on the 7th of May 2019 the defendant indicated that he gave his answers in his police caution interview on his own free will. Having given him a copy of his purported police record of interview and having him peruse it in court, the defendant indicated that his answer specifically his answer to question 21 of the interview was fabricated. The defendant explained that he told police in answer to question 21 that he pulled the alleged victim back and not that he slapped the alleged victim.
6. Although fabrication is not *per se* a requirement for a *voir dire*, I held one anyway since the defendant was unrepresented and to see whether the answer(s) were given by him, even if given by him whether it was on his own free will and that it was not obtained without any breach of his constitutional right.
7. The *voir dire* trial was held on the 7th of May 2019.
8. The prosecution called only 1 witness during the *voir dire* trial.
9. The police caution interview of the defendant was tendered as a prosecution exhibit and I listed them as follows:

Prosecution Exhibit 1 (a) – Itaukei police caution interview

Prosecution Exhibit 1 (b) – English translation of the police caution interview

10. The defendant opted to remain silent and did not call any other witness during the *voir dire*.
11. I subsequently ruled the police caution interview admissible as evidence against the defendant in his trial.
12. The defendant had no question related to the trial proper for the officer who gave evidence during the *voir dire* and I was satisfied that the officer was not required to give evidence again.
13. I have taken judicial notice of the evidence given during the *voir dire* trial and that will be considered in this judgment.

14. During the trial proper, the prosecution called 1 witness who is a juvenile. I was satisfied that this witness was competent to give evidence.
15. Having found there was a case to answer and explaining the options available to the defendant, the defendant chose to remain silent and did not call any other witness.
16. I summarise the evidence adduced so far below.

PW1

17. Prosecution witness 1 [PW1] is Police Constable 5224 Selema Raitukutuku.
18. He is based at the Tavua Police Station. He has been with the Fiji Police Force for 5 years.
19. He held the same rank in 2015.
20. On the 17th of September 2015 he interviewed the defendant for an allegation of common assault.
21. PW1 was requested by the investigating officer [IO] to conduct the Itaukei interview as the IO could not speak in Itaukei.
22. The interview was in Itaukei, in the Bauan dialect.
23. The defendant was given his rights.
24. PW1 recorded the interview.
25. PW1 and the defendant who was a suspect at the time both signed the interview.
26. The interview took about 20 minutes.
27. The defendant was not forced or threatened to give his answers.
28. The defendant gave his answers voluntarily.
29. The defendant made no complaints.
30. The Itaukei caution interview was given to the defendant to read.

31. The police caution interview of the defendant both the Itaukei and English translated version was tendered by PW1.
32. In cross examination, PW1 accepted that the defendant was interviewed about 13 days after the alleged offence.
33. PW1 did not accept that he changed the defendant's answer from 'pulling' to 'slap'.
34. PW1 denied that the the defendant explained why the defendant 'pulled him.'
35. PW1 maintained that the defendant was given time to read the interview.
36. The defendant was not given the interview just to sign.

PW2

37. PW2 is Mr Zeid Zuber Ali.
38. He is now 16 years old. His date of birth is the 19th of June 2003.
39. On the 4th of September 2015 PW2 was around 12 years old.
40. After school, PW2 went inside a bus and gave his ticket to the driver.
41. The bus was full and PW2 sat in the 1st seat.
42. PW2 then later stood up as the bus was full.
43. PW2 saw the defendant in the bus. That was the first time he saw the defendant.
44. PW2 said that the defendant hit his right forearm and his forearm was swollen and hard.
45. The defendant did not tell PW2 why he hit him.
46. PW2 had his hand on the seat.
47. PW2 told the teacher what happened and PW2 was later taken to the hospital by his mother.
48. In cross-examination, PW2 denied running from the back to the front seat.
49. PW2 denied that the defendant was saving him from falling.

50. PW2 said that the bus was full to the steps.

ANALYSIS

Burden and Standard of Proof

51. The defendant is presumed innocent.
52. The burden is on the party that wish to rebut this presumption. In this case, the burden is on the prosecution.
53. The prosecution rebuts the presumption when they make the court sure or convinces the court beyond a reasonable doubt that the defendant committed the offence.
54. Even if I reject the evidence of the defendant or I don't accept his denial, it doesn't necessarily mean that the prosecution has proven their case.

Elements of the Offence

55. The elements of the offence for common assault contrary to section 274 of the **Crimes Act 2009** are:
 - a. The defendant
 - b. Unlawfully assaults, that is, doing an act which intentionally or possibly causes another person to apprehend immediate and unlawful personal violence [**Fagan v Metropolitan Police Commissioner** [1968] 3 All E.R 442].
 - c. That the unlawful assault was done to PW2 Mr Zeid Zubar Ali.

FINDINGS

56. I am satisfied beyond a reasonable doubt that although that was the first time the parties met or saw each other, identification is not an issue here. The defendant accepts being in the bus at the material time.
57. PW2 the alleged victim was a young man at the time being about 12 years old. I understand that the world would look differently to him and his interpretation of what the defendant did could be morphed or wrongly interpreted.
58. As the defendant explained in his submission and cross examination during the course of the proceedings, he was trying to save the victim by pulling the victim.
59. I kept that and other factors in mind when assessing PW2's evidence but I do not find that PW2 is mistaken or that he is lying.
60. I believe PW2 that the bus was full at the time, right to the steps of the bus. Even the defendant in his cross examination of PW2, suggests that the bus was full.
61. I do not accept that PW2 would be running inside the full bus as the defendant makes it out to be, in-order for the defendant to save PW2 from falling.
62. I accept that the defendant hit or slapped PW2 on PW2's forearm once. It was sore or painful enough for PW2 to complain to his teacher.
63. There is no explanation or reason or motive that can be reasonably deduced from PW2's evidence as to why the defendant would do such a thing.
64. Even without a motive, the act was still unlawful and nothing suggests to me that it was necessary.
65. Having considered the evidence in totality, I am not shaken in my acceptance of PW1's evidence that the defendant gave his answers in his police caution interview and that the answers were given voluntarily. There was no breach of his constitutional right.
66. I also accept PW1's evidence that the answers were given by the defendant and that none of the answers were changed or fabricated. PW1 and the defendant both signed the interview.
67. The defendant himself accepts that he signed the interview.
68. I find and accept that the defendant read the interview himself and did not make any changes.

69. I found PW1's evidence credible and I believe PW1. He was un-evasive and forthright and nothing suggested to me that he would be lying.
70. PW2's evidence need not be corroborated in-order for the defendant to be found guilty of the charge. The defendant could be convicted solely on the evidence of PW2.
71. The answers in the defendant's caution interview are capable of corroborating PW2's evidence if I accept that the answer(s) in the caution interview are true.
72. I accept that all the answers given by the defendant in his police caution interview are true and I see no reason why that perception should change.
73. I believe that the defendant told the police officer what really happened. The fact that the defendant gave his answers or was interviewed 13 days after the alleged offence does not water down the quality or veracity of his answers in his interview.
74. The answers and description given by the defendant in his caution interview reveals the circumstance and the motive at the time arguably in much better detail than PW2's oral evidence.
75. I have perused the original Itaukei police caution interview of the defendant and I am satisfied with the English translation. It may be best that I quote the relevant question and answers:

Q.18 Did you see Zeib Zubar Ali 12 years of age which is schooling with your kids at the same school?

A. Yes, that is the first time I saw him.

Q.19 Did you speak to Zeib Zubar Ali on that day?

A. Yes, I told him move inside don't stand on the bus steps.

Q.20 What happen when you told him move inside the bus?

A. He don't want to get inside the bus.

Q.21 Then what happen?

A. I slap him then he went inside

Q.22 What happen after you slap his left hand?

A. Then he cried after that he get off the bus then go to the headmaster

76. I do not find that it was necessary or justified for the defendant to slap the victim's hand even if it were to be argued that the defendant was trying to save the victim. There are other non-violent ways of dealing with the circumstance of the full bus rather than resorting to hitting the victim. It was not unnecessary or unjustified which makes it unlawful.

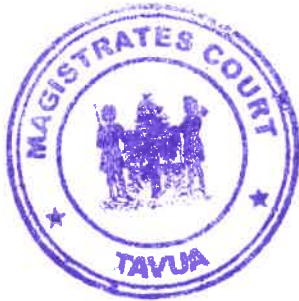
77. I do not see any defence succeeding here.

78. All the elements are proven beyond a reasonable doubt.

Conclusion

79. Based on the aforementioned reasons, I'm satisfied beyond a reasonable doubt that the defendant committed the offence.

80. The defendant is found guilty and convicted of the charge of common assault contrary to section 274 of the Crimes Act 2009.



.....
Lisiata T.V. Fotofili

Resident Magistrate

At Tavua this 9th day of December 2019