

IN THE RESIDENT MAGISTRATE'S COURT

AT NADI

CRIMINAL JURISDICTION

Criminal Case No: 318 of 2018

BETWEEN : **THE STATE**
AND
RONALD NAIDU

Before : **NILMINI FERDINANDEZ**
RESIDENT MAGISTRATE

Date of Judgement : **4th February, 2020**

Corporal Bola for Prosecution

Accused not present

JUDGEMENT

1. The accused **RONALD NAIDU** is charged for one count of **Assault Causing Actual Bodily Harm**.

2. The statement of offence and the particulars of offence are as follows;

Statement of offence

Assault Causing Actual Bodily Harm contrary to Section 275 of Crimes Act 44 of 2009.

Particulars of offence

RONALD NAIDU on 01st day of March, 2018 at Nadi, in the Western Division, assaulted **NANISE LIKU** thereby occasioning him actual bodily harm,

3. BACK GROUND

- 3.1 The accused was produced in court from police custody and was charged on the 7th March 2018. He opted to obtain assistance of the Legal Aid and therefore the plea was differed. On the same day, he was released on a personal bail bond of \$300.
- 3.2 Thereafter, the accused never appeared in court and court issued a bench warrant on him. Since the police was unable to execute the bench warrant for some time, court ordered the police to send details of the accused to the Crime Stoppers so that they could be published on air.
- 3.3 On the 26th November 2018, court decided to hold the trial in absentia against the accused and the same was fixed for 8th of November 2019.
- 3.4 On the 8th of November 2019 too, the accused was not present in court and the trial in absentia commenced.
- 3.5 The prosecution called only one witness namely, **Nanise Liku (The complainant)** and tendered to court the following documentary evidence.
- a.) Pr.Ex1 – Medical Report of the complainant
 - b.) Pr.Ex2 – Statement of the accused at the Caution Interview

4. THE LAW

- 4.1 Section 275 of the Crimes Decree 2009 provides that;
- A person commits a summary offence if he or she commits an assault occasioning actual bodily harm.*
- Penalty — Imprisonment for 5 years.”*
- 4.2 Elements that need to be proven by the prosecution in a charge of **assault occasioning actual bodily harm** are;
- a.) The accused assaulted the complainant
 - b.) The said assault caused actual bodily harm to the complainant

4.3 Section 57 of the Crimes Act states that;

1. *The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.*
2. *The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.*

4.4 Section 58(1) states that “A legal burden of proof on the prosecution must be discharged beyond reasonable doubt”.

4.5 The burden of proof lies on the Prosecution and in this case the prosecution has to prove beyond reasonable doubt the following elements to secure a conviction.

- a) The **accused** assaulted the PW1 on the 1st day of March, 2018; and
- b) The said assault by the accused on PW1 caused actual bodily harm on PW1.

EVALUATION OF EVIDENCE

5 Prosecution’s Evidence

5.1 **PW1 Nanise Liku**, is the complainant in this case, who stated giving evidence under oath that on the 1st day of March 2018 the accused hit her head with a piece of timber.

5.2 At that time, she used to live in Korociri with her cousin sister **Pau** and worked for Pau’s brother in law, **Pranil Josep** as his *House Girl*.

5.3 She stated that on this date she had been drinking **Siviridi** (Methylated Spirit) with Pranil and Ronald, who is Pranil’s cousin, at Pranil’s house. While they were drinking, an argument has started between the witness and Pranil because Pranil has chased her out while drinking and she has reminded him that she was his House Girl. Then Ronald has hit the

witness on her head with a piece of timber and the witness explained that it was because he did not like the tone the witness responded to his cousin.

- 5.4 When the accused hit her with the piece of timber blood has come out and her body has not felt well. Thereafter, she has gone back to Korociri, where she was living and then has gone to the police station to report the incident.
- 5.5 Thereafter, she has gone to the hospital and undergone medical examination. The Medical Report that has been completed by the doctor after her examination was tendered to court through this witness marked as **Pr.Ex1**.
- 5.6 After this witness's evidence the prosecution tendered to court the Caution Interview Statement of the accused marked as **Pr.Ex2** and closed prosecution's case without calling any other witnesses.
- 5.7 Since the trial was held in absentia, no evidence were placed in court on behalf of the accused.

6 Analysis of the Evidence and the Law

- 6.1 According to PW1 the accused has only hit her once on her head with a piece of timber and that has caused her head to bleed. She never mentioned about any other attacks by the accused and after the said single blow by the accused she has left the place of incident and has gone to the police station to report, after which she has been medically examined at the hospital.
- 6.2 At this point, I pay my attention to the contents of the Medical report marked as **Pr. Ex1**. In it, under the medical findings [D(12)], the doctor has listed the following injuries that had been noted on the complainant at the medical examination;
 - a.) Small laceration with dried up blood on left head
 - b.) Abrasion of lower lip – inner surface

c.) Bruise noted at right side at the angle of mouth

- 6.3** The question is, if the accused has hit PW1 only once on her head as per her evidence, what has caused the other injuries viz; abrasion of lower lip – inner surface and the bruise at right side- at the angle of mouth. Those two injuries indicate that the complainant has been subjected to more blows other than the hit on her head by the accused as claimed by her.
- 6.4** It is evident that the contents of the Medical Report contradict the evidence of PW1 and therefore a shadow of doubt falls on the truthfulness of her evidence.
- 6.5** Now, I consider the contents of **Pr.Ex2**, which is the Statement of the accused to see what he had to say about the incident. Answering the questions 26 to 36, the accused has stated that on the 01/03/2018 he has gone to his cousin Pranil's house in Togo Lavusa to fix a wall mirror upon Pranil's request. He admitted the complainant's allegation that he has made the house dirty, but his explanation was that the house got dirty because he was working. He further admitted that he with his cousin, Pranil drank two bottles of beer and one litre of spirit mixed with water. However, he denied the suggestion that he hit PW1 with a stick on the head and the mouth thereby causing injuries. It is not clear why the police has suggested to the accused about hitting the complainant on the head as well as on the mouth whilst the complainant never stated in her evidence about any attacks by the accused other than the single blow on the head.
- 6.6** Thereafter, it has been suggested by the police to the accused that the complainant has hit the accused with a stick which has been admitted by him. He has continued to explain to the police that when the complainant hit him with a stick, he has tried to chase her, and that the complainant has run towards the main door. She has slipped at

the main door entrance as it has been wet and has crashed on the wooden ladder. Thereafter, she has gone away. This explanation of the accused looks more likely as the complainant has received more injuries than the injury on her head.

7 Conclusion

- 7.1 As per all the evidence that were placed before this court, it is clear that the complainant has sustained injuries on her head as well as on the face. However, it is not proven that all those injuries have been caused by the accused. PW1 stated that the accused has hit her head once with a piece of timber but did not explain how she sustained injuries on her face.
- 7.2 The evidence contained in **Pr.Ex1** and **Pr.Ex2** contradicts the evidence of PW1. As such, it does not appear safe to rely upon the evidence of PW1 and therefore, this court is unable to be satisfied that the prosecution has managed to prove **beyond reasonable doubt** that the accused has committed **Assault Causing Actual Bodily Harm** contrary to Section 275 of Crimes Act 44 of 2009.
8. Accordingly, I acquit the accused.
9. 28 days to appeal.

DATED at Nadi on 04th day of February, 2020.



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Nilmini Ferdinandez
RESIDENT MAGISTRATE

