

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 70 of 2018

STATE

V

RAMESH CHAND

Counsel : Miss D. Rao for the State
Mr. J. Reddy for the Accused

Dates of Trial : 23, 24 and 25 April 2019
Date of Summing Up : 25 April 2019

SUMMING UP

Ladies and Sir,

1. The time has now come for me to sum up this case for you. My duty in summing up is two fold. I will direct you on the applicable law and you must accept what I say about the law. I will sum up the evidence for you but you don't have to accept what I say about the evidence or facts. That is because you are my advisors and you will assess the evidence and after applying the law to that evidence you will tell me in your opinion whether

the accused is guilty or not guilty of the charge he faces. I don't have to follow your opinions, but I will give them great weight when I come to the make the final judgment of the Court.

2. You must judge this case solely on the evidence that has been placed before you in this Courtroom and on nothing else. Evidence consists of the oral testimony of all witnesses, together with all documents, and photographs if you think they assist you. You may accept the evidence or reject it. You may also accept part of a witness' evidence or part of a document and reject the rest. It is entirely a matter for you. You will not consider as evidence anything that someone has told you outside or anything that you may have read or seen in the media. You may have heard me in the course of the trial express an opinion or make a remark about the evidence. You must ignore that completely and come to your own views about the evidence placed before you.
3. Counsel for the prosecution and the defence have made submissions to you about how you should find the facts of this case. They have the right to make these comments because it is part of their duties as counsel. However you are not bound by what counsel for either side has told you about the facts of the case. If you think that their comments appeal to your common sense and judgment, you may use them as you think fit. You are the representatives of the community in this trial and it is for you to decide which version of the evidence to accept or reject.
4. Please do not be influenced by any sympathy or prejudice you may feel towards anybody connected with the trial; it is your duty to come to your opinions solely on the facts as you find them in accordance with my directions on the law.

5. Remember what I first told you when you were sworn in. You can only find the accused guilty if you are sure beyond reasonable doubt that he is guilty. If you have a doubt in your mind then it is your duty to return with an opinion of not guilty.
6. The accused, whom I will call Ramesh in this summing up, has been charged with one count of an **Act intended to cause grievous harm**.
7. To prove their case to you so that you are sure, the State has to show you the following elements of the crime:
 1. That it was this accused, who
 2. Did an act, which
 3. Caused serious harm to the victim, and
 4. It was his intention to cause serious harm.
8. Let us look at those elements separately.
9. It has never been part of the defence case that the State has charged the wrong accused, so I don't think you will have any difficulty with the first element.
10. Nor do I think you will have trouble with the second. Whatever happened on that day, it is very clear that Anjani's wound was caused by the chainsaw being held by the accused.
11. The Doctor has told us that the wound on Anjani's arm was serious because it was deeper than 2cm.
12. It is the last element of the crime that is more difficult to assess because we cannot have evidence of what was in Ramesh's

mind at the time of the wounding. You know that it has been the main thrust of the defence case that the injury came about by accident and he certainly didn't have any intention to cause her harm. The State says that he rushed at the men, then at her with the running chain saw raised and it was fortunate that she was able to push the saw down from her neck thereby occasioning the injuries to her arm. So if you find that he did rush towards her with the chain saw running; you might well find that is enough for you to find that he intended to cause her serious harm. We all know what dreadful harm a chain saw could do to a human body.

13. To assist you in determining this issue I would urge you to look at all the evidence both factual and circumstantial.
14. Circumstantial evidence is the putting together all of the circumstances that you know from the evidence that you believe and coming to a conclusion. That conclusion must be the only conclusion that can be made from putting all those matters together, none other.
15. Circumstantial evidence can be powerful evidence, indeed, it can be as powerful as, or even more powerful than, direct evidence, but it is important that you examine it with care — as with all evidence — and consider whether the evidence upon which the prosecution relies in proof of its case is reliable and whether it does prove guilt, or whether on the other hand it reveals any other circumstances which are or may be of sufficient reliability and strength to cast doubt upon or destroy the prosecution case.
16. Finally, you should be careful to distinguish between arriving at conclusions based on reliable circumstantial evidence, and mere

speculation. Speculating in a case amounts to no more than guessing, or making up theories without good evidence to support them, and neither the prosecution, the defence, nor you should do that.

17. Circumstances which you may wish to take into account are the nature of the rips on Anjani's left sleeve and especially the history of dispute between the two families. You may wish to explore the possibilities of the wounding happening in the way that Anjani describes in contrast to the way in which the accused tells us that this accident happened. It is the central issue in this case and in deciding that issue you will consider all of the evidence.
18. It is now my duty to remind you of the evidence.
19. We have heard a lot of examination by both counsel over the beneficial ownership of the land. It is an interesting background issue and not one that you should become too embroiled in. The only relevance of this difficult land issue is that it was and is the cause of the bad feelings between the two related families. Ramesh and his wife obviously felt aggrieved over what they regarded as an unfair division of the land left to them by their father.
20. This Court is a criminal court to make findings on the wounding and not to adjudicate on differences over land. Other Courts called Civil Courts do that. So I ask you not to trouble yourselves unduly with the land issue but view it is an obvious cause of disharmony. The victim, Anjani, told us of the harassment that she and her husband Santa suffered from Ramesh. Things that made them report to the Police and in 2017 as a result of threats of murder from him she was worried

enough to obtain a DVRO from Court to prevent him from bothering her. You have seen that Court Order and you heard me explain to you at the time what it was and the implications of his breaching it. It puts a duty on the accused not to be aggressive but it does not put any obligation on the lady Anjani as Mr. Reddy submits to you.

21. On the 10th September she and her husband were at home when their son came and said that Ramesh and his wife were cutting wood on the land. Throughout the trial the word has been translated as logs which suggest large pieces of tree but both the prosecution and defence both tell us that they were not logs but small thin tree stumps. Anyway her husband and son went to investigate and she followed a little later. She saw her husband talking to Ramesh and she stood a few metres away. Ramesh then saw her and ran towards her with the chainsaw running. His wife was holding a stick. He ran to her and placed the saw on her shoulder. At that moment she slipped and fell and raised her arm defensively. She showed us her arm which is still scarred below the elbow. She showed us the long sleeve shirt she was wearing over another top and we all saw rips from the shoulder area down the arm. Perhaps you will find that the saw bounced back from the shoulder and down the arm, catching in the thick material, but of course it is a matter for you. Her slippers came off and landed at the edge of the road. She showed then to us in Photo no. 3. She was very frightened and she thought she was going to die. Fortunately a Govt vehicle was passing and they were able to flag it down and have Anjani taken to the Station and then to hospital. Her wound was stitched and these stitches were removed after one week. She told us that it took about a month for her wound to heal. She couldn't work and it was painful and even now it is still painful when she stretches. Her husband Santa was the second

witness for the prosecution. He too talked about the Land issue and I won't remind you of that because it is of limited relevance aside from sowing the seeds of discontent. He did also tell us about the harassment they were subjected to by Ramesh.

22. He told us of going to investigate their son's report of wood cutting. He saw three people there. He didn't know who the other man was, but he approached him, asked him a few questions but got no response. While he was trying to talk to this stranger, Ramesh's wife said things like "go home and do the cooking. You can complain to whatever authority you want." Santa ignored her and went directly to Ramesh and asked him who gave him permission to cut the wood. He just looked and then started running towards them holding the running saw. He was trying to cut them. Santa was frightened and stepped back. Ramesh then swung the saw towards his wife's neck. It was on her shoulder but she slipped and raised her arm to stop him cutting her neck. The saw then cut through her clothes and she got an injury on her arm. She shouted in pain and said "he has cut me". He spoke of the Govt vehicle and putting her and the son in the car. He told us that the wood was his because it was on land he regarded as his. He next saw her when she came back from the clinic with a dressing on her arm. He told Miss Rao that at the time he thought that Ramesh was attacking them and would cut them.
23. The next witness was the young medical officer from the Seaqaqa Health Centre. He examined Anjani within hours of her injury. He said it was a fresh wound, bleeding, 5cm long and 3cm deep. It was an incision from a sharp object. It could have been caused by a running chainsaw but not by a saw that was not operating. He said that because the incision was deeper than 2cm, it was regarded as serious.

24. The fourth witness for the prosecution was the investigating officer. He provided us with formal evidence relating to the exhibits and the police enquiry. His evidence was necessary to prove that the exhibits we have seen in Court were the actual items seized in the enquiry. However his evidence will probably not assist you in the decision you have to make. He did tell us about Anjani's complaint which was consistent with the evidence she gave us. He charged the accused with this charge he now faces but the accused said nothing in response to that charge.
25. As a final part of the prosecution case, they made available for cross examination the police officer who interviewed Ramesh. Mr. Reddy took him through some of the questions and answers where Ramesh denied the allegations made by Anjani. You may not find this evidence very helpful but it is a matter for you.
26. That was the end of the prosecution case and you heard me explain to the accused what his rights are in defence. He could remain silent and say that the State had not proved the case beyond reasonable doubt or he could give sworn evidence from the witness stand. In either case he was entitled to call witnesses.
27. As you know he elected to give evidence. You must consider his evidence in the normal way and give it the weight that you think fit. If you don't believe him it doesn't necessarily make him guilty. The prosecution must still prove to you so that you are sure that he committed the crime.
28. Ramesh told us that on the 10th September last year, he and his wife went to the Police Station to tell them they wanted to cut wood and wanted security. Police told them to go to the Forestry

Department where they were told that they could cut the wood but not sell it. You may wonder why they were taking these cautionary steps. When they got home, his brother-in-law was there. After lunch the three of them set out with the bullocks and cart to cut the logs.

29. He had started to cut the logs when Santa arrived. Santa talked to his brother-in-law, asking him who gave them permission to cut the wood. The brother-in-law said he knew nothing about it so Santa turned to Ramesh's wife. Suddenly his wife shouted out "Oi, look out!" and he felt something hit his waist/back. He was holding the saw and turned around quickly. He doesn't know what happened but he saw Anjani hurt on her arm. It all happened so quickly. He never ran towards her and he never intentionally placed the saw anywhere near her neck.
30. He denied all of the other allegations put to him and insisted that it was all an accident.
31. Ladies, Sir, that was the end of the defence case.
32. Remember that the accused, Ramesh, doesn't have to prove anything to you; you must still decide the issue on the prosecution evidence.
33. Forget about the land issue but ask yourselves these questions: Did Ramesh run at Anjani with the chainsaw or was it a dreadful accident?
34. If he did run at her with the running saw is that showing an intention to cause her serious harm? Your possible opinions will be guilty or not guilty.

35. Let me know when you are ready and I will reconvene the Court.
36. I will first ask Counsel if they wish me to add or alter any of the legal directions in this summing up. The facts of course are for you to decide.
37. Counsel?

A handwritten signature in black ink, appearing to read 'P. K. Madigan', with a large, stylized initial 'P'.

P. K. Madigan
Judge

At Labasa
25 April 2019

