

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 160 of 2020

[CRIMINAL JURISDICTION]

STATE

V

SANJAY LAKHAN

Counsel : Mr. N. Sharma for the State
Mr. A. Singh for the Accused

Hearing on : 09 – 13 November 2020

Summing up on : 19 November 2020

SUMMING UP

Madam and gentleman assessors;

1. It is now my duty to sum up the case to you. Please remember that you should accept the directions on law that I will be giving you in this summing up and should apply those directions when you evaluate the evidence in this case in order to determine whether the accused is guilty or not guilty. You should ignore any opinion of mine on the facts of this case unless you agree with that opinion. You are the judges of facts.
2. As I have told you in my opening address, your opinion should be based only on the evidence presented inside this court room. If you have heard, read or otherwise come to know anything about this case outside this court room, you must disregard that information.

3. Evidence you should assess in this case is what the witnesses said from the witness box inside this court room, the admitted facts and the exhibits tendered. A few things you heard inside this court room are not evidence. This summing up is not evidence. Arguments raised by the lawyers for the prosecution and the defence during the proceedings, their questions and comments are not evidence. A suggestion made by a lawyer during the cross examination of a witness is not evidence unless the witness accepted that suggestion. The arguments and comments made by lawyers in their addresses are not evidence. You may take into account those arguments and comments when you evaluate the evidence only if you agree with them.
4. You have to bear in mind that a statement made by a witness out of court is not evidence. Therefore, a statement made to police by a witness can only be used during cross-examination to highlight inconsistencies. That is, to show that the relevant witness on a previous occasion had said something different to what he/she said in court. However, if a witness admits that a certain statement in such police statement was made by that witness and that it is true, then that portion of the police statement becomes part of that witness' evidence.
5. You must not let any external factor influence your judgment. You must not speculate about what evidence there might have been. You must approach the evidence with detachment and objectivity and should not be guided by emotion. You should put aside all feelings of sympathy for or prejudice against, the accused or the complainants. No such emotion should influence your decision.
6. You and you alone must decide what evidence you accept and what evidence you do not accept. You have seen the witnesses give evidence before this court, their behaviour when they testified and how they responded during cross-examination. Applying your day to day life experience and your common sense as representatives of the society, consider the evidence of each witness and decide how much of it you believe. You may believe all, part or none of any witness' evidence.

7. When you assess the testimony of a witness, you should bear in mind that a witness may find this court environment stressful and distracting. Witnesses have the same weaknesses you and I may have with regard to remembering facts. Sometimes we honestly forget things or make mistakes when recalling past events.
8. You may also consider the ability and the opportunity a witness had, to see, hear or perceive in any other way what the witness said in evidence. You may ask yourself whether the evidence of a witness seem reliable when compared with other evidence you accept. These are only examples. It is up to you how you assess the evidence and what weight you give to a witness' testimony.
9. Based on the evidence you decide to accept, you may decide that certain facts are proved. You may also draw inferences based on those facts you consider as directly proved. You should decide what happened in this case, taking into account those proven facts and reasonable inferences. However, you should bear in mind that the inference you draw should be the only reasonable inference to draw from the proved facts. If there is a reasonable inference to draw against the accused as well as one in his favour based on the same set of proved facts, then you should not draw the adverse inference.
10. In this case, there are certain facts which are agreed by the prosecution and the defence. You have been given copies of those admitted facts. You should consider those facts as proven beyond reasonable doubt.
11. As a matter of law you should remember that the burden of proof always lies on the prosecution. An accused is presumed to be innocent until proven guilty. This means that it is the prosecution who should prove that the accused is guilty and the accused is not required to prove that he is innocent. The prosecution should prove the guilt of the accused beyond reasonable doubt in order for you to find him guilty. You must be sure of the accused person's guilt.

12. In order to prove that the accused is guilty of a particular offence, the prosecution should prove all the elements of the offence beyond reasonable doubt. If you have a reasonable doubt in respect of even one of those elements, as to whether the prosecution has proved that element beyond reasonable doubt, then you must find the accused not guilty of that offence. A reasonable doubt is not a mere imaginary doubt but a doubt based on reason. I will explain you the elements of the offence in a short while.
13. You are not required to decide every point the lawyers in this case have raised. You should only deal with the offences the accused is charged with and matters that will enable you to decide whether or not those charges have been proved.
14. Please remember that you will not be asked to give reasons for your opinion. In forming your opinion, it is always desirable that you reach a unanimous opinion. But it is not necessary.
15. Let us now look at the Information. The Director of Public Prosecutions has charged the accused for the following offences;

FIRST COUNT

Statement of Offence

Act With Intent To Cause Grievious Harm: contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence

SANJAY LAKHAN, on the 19th day of May, 2020 at Bau Road, Nausori in the Eastern Division, with the intent to cause grievous harm to **VIKASHNI DEVI**, unlawfully wounded the said **VIKASHNI DEVI** with a cane knife.

SECOND COUNT

Statement of Offence

Act With Intent To Cause Grievious Harm: contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence

SANJAY LAKHAN, on the 19th day of May, 2020 at Bau Road, Nausori in the Eastern Division, with the intent to cause grievous harm to **RD**, unlawfully wounded the said **RD** with a cane knife.

16. You should bear in mind to consider these two charges separately. You should not find the accused guilty of the other count simply because you may find him guilty of one count. It is necessary that you consider whether the prosecution has proved each count beyond reasonable doubt against the accused separately.
17. Now let us look at the evidence. Please remember that I will only refer to evidence which I consider important to explain the case and the applicable legal principles to you. If I do not refer to certain evidence which you consider important, you should still consider that evidence and give it such weight you may think fit.
18. The first prosecution witness was Vikashni Devi ("PW1"). She said that:
- a) *She is married to the accused for the past 10 years. RD (PW2) is her daughter from the first marriage. She was living with her daughter and the accused at Bau Road, Nausori for seven years. Their landlord was one Hemanth Kumar. On 19/05/20 around 8.30am she was lying down on the bed in her bedroom as she was sick. RD and her niece were watching a movie in the sitting room. The accused was at work.*
 - b) *Around 8.30am she started talking to a customer who wanted to buy her vehicle as she had put it up for sale. She was speaking to that customer on speaker phone because she had migraine that day. Then she heard a sound and thought that there is a thief under the floor of the house. She asked RD to go around and check. RD screamed saying that "mummy, mummy, the vehicle is parked here but I can't see Papa". Then the accused entered the house. She said that the accused's eyes were red and he was 'angrily looking with his big eyes'. He came in and put the carton down. She had spoken to him about 15 minutes ago and had told him to bring carrot and bread which he had brought in that box.*
 - c) *The accused came inside the bedroom and asked her who she was talking with. She told him that it was a customer regarding the sale of her vehicle. The accused told her that he had asked her not to sell the vehicle until he goes overseas. She was sitting on the bed at that point in time and was 'talking slowly' and the accused was standing and shouting. He asked her to give the phone to him. She asked him 'why?' She also told him that she wants to sell the vehicle because he just uses it without doing any maintenance. At that point RD came and stood near the bedroom door. She told RD that the accused always does this and always fights over small things, and she told her to go and call the police.*
 - d) *Then RD went to the sitting room to bring the phone. As soon as RD went to bring the phone, the accused ran to RD's bedroom and took out a cane knife from underneath the mattress. RD then came to her. The accused came there saying "move*

- away, move away” and struck RD on the left and the right thighs with the cane knife two or three times. She then held onto the blade of the knife to save RD. Then the accused made her and RD sit near the corner of the bed.*
- e) She told him ‘giving oath on his children from his ex-wife’, not to do this to her and RD as they have to go overseas and that she won’t complain about what he had done to RD. Thereafter the accused was staring at them ‘with his big eyes’ and then he said “no, I have already cut R, and now I have to go to jail and I will go to jail, never mind, now I will cut you”. He then pulled the knife from her hand grabbed her hair and wanted to strike on her neck. She placed her hand above her neck and the accused struck her hand thinking that it was her neck. She was still sitting and she thought that she will die. She then stood up and got hold of the knife to save RD.*
 - f) When she was holding onto the knife, the accused pushed her and tried to kick her. The accused then kept on striking her hand with the cane knife so that she won’t be able to hold the knife. Then he struck her on her left leg making an L-shape on the thigh and on the knee. She said that he did that so that she will fall down. She said that her knee bone was separated and the bone could be seen. She said that the accused struck her on both forearms as well. When the accused was striking her, he was angry.*
 - g) While she was holding on to the blade of the knife, they went to the sitting room. She was in pain and was crying and was asking him to stop. Yet he tried to take the knife from her and strike her. When they reached the sitting room and while she was holding on to the blade, at one point the accused let go of the handle. She then told RD to throw the knife far away. RD took the knife outside and threw it.*
 - h) Thereafter when the accused saw all the blood in the sitting room and saw her condition, he told her that he is going to commit suicide. The accused went to RD’s room and took a cable from the computer. She took a step back and told him not to hang himself. Then she fell from the steps. She started crawling because she thought that the accused will come from behind and hit her. Then RD came and pulled her. While she was being pulled she noticed that her knee bone was rubbing on the cement.*
 - i) While she was laying down outside the house on the cement, she saw the neighbours trying to climb the fence and then her landlord opened the gate. When the people started coming to the house, she saw the accused falling from the verandah. After he fell, he struggled for a while and then sat.*
 - j) She said that from the time the accused started striking her with the cane knife to the point the accused let go of the knife it took about half an hour. She identified the cane knife when it was shown to her and it was tendered as PE1.*
 - k) She was first taken to the Nausori Health Centre and then to CWM Hospital. She was admitted in the hospital for 16 days. She said that she was told by the doctors that her knee has been damaged very badly and therefore a bendable rod was placed there. She said she cannot bend her knee, cannot walk properly and she cannot use the stairs. She is still in a lot of pain and she goes for ‘physio’ every week.*

- l) *She said that during the 10 years of her marriage to the accused she had been a good wife and had been supporting the accused financially. However the accused always used to taunt her daughter saying that she is eating his money.*
- m) *She said that she had known a person by the name of Naleenesh Reddy who was from Labasa. She said that they are not close. She used to meet him sometimes where they just say hello or wave at each other. She said that the landlord Hemanth Kumar visited their house a week before the incident and he saw the accused pushing her after having an argument. She said that the landlord told the accused that the accused is eating the wife's money and that he should return the car key and the ATM card, otherwise he will remove him from the house. Thereafter the landlord left but the problem between her and the accused was still going on. So she called the police and the mobile police came.*
- n) *During cross examination she said that since there was a curfew at that time from 8.00pm the accused told her to drop him before 8.00pm at his workplace on 17/04/20. She denied the suggestion that when the accused unexpectedly came home around 1.00am on 18/04/20, the accused saw her having a party with RD and another man. She also denied all the other suggestions made pertaining to that date including that around 1.30am that man and her were hugging and kissing each other after sending RD to her room and then leaving the house the same morning with RD and that man. She denied having an affair with that man.*

19. The second prosecution witness was RD ("PW2"), the daughter of PW1. She said that;

- a) *She is 14 years old. On 19/05/20, around 8.30am, she was watching a movie with her cousin in the sitting room. PW1 was in her bedroom, resting, as she was sick. Upon being asked by PW2, she went outside to check whether there is someone and she saw the car but not the accused. Then she saw the accused enter the house from the back. He brought groceries PW1 requested. He put his bag [down] and went to PW1.*
- b) *The accused questioned PW1 about who she was talking to on the phone. PW1 told him that she was talking to someone regarding the car. The accused then started saying that "if you are doing all this, I am not going to take you people to Australia". She said that the accused's tone was high and rude and PW1's tone was slow and low. Then PW1 told her to go in front and call the police because the accused always does that.*
- c) *She went in front but did not call the police. Then she saw the accused running to her room and then taking the cane knife to PW1's room. Then he started chopping her and PW1. The accused struck both her legs with the cane knife on her thighs about 3 times. She said that the accused was angry when he was striking her and his behavior was weird. She felt like something was dripping from her legs and it was*

- blood. She saw that her legs had cuts. Then the accused struck PW1 on one knee and on both hands.
- d) She said that the accused, while he was striking them, said to PW1 that "I have already cut your daughter, now I will go to jail". PW1 then started begging him saying "no, no, I will get her stitched". She said that PW1 also 'gave him oath on his children', but he did not consider that. Then the accused slapped PW1 and pushed her with his leg and he wanted to cut PW1's neck. But PW1 raised her hand to cover her neck and the accused struck her hand. He grabbed her hair and dragged her to the sitting room. She said that the accused tried to strike PW1 on the neck may be because he wanted to kill her.
 - e) In the sitting room, PW1 was trying to take the knife from the accused and somehow she managed to take it and she gave it to her. She went outside and threw the knife far away from the house. She said that the accused then tried to commit suicide with the 'computer mouse'. At that time PW1 crawled to come out of the sitting room and she helped PW1 to come out of the house. She started shouting for help and people started coming. She saw the landlord opening the gate. Then the accused tried to run away and two of their neighbours punched him and made him sit. The landlord then called the police and the ambulance.
 - f) She recognized PE1 as the cane knife she was referring to. She said that when the police handcuffed the accused and was taking him, the accused said "sorry baba". She was first taken to Nausori Health Center and then to CWM. She said that she was admitted there for nearly one month. She said that after getting struck on both thighs now she cannot run. She went into a trauma and was admitted for one week at the Saint Giles Hospital. Now when she think about the incident she gets scared.
 - g) She said that the accused was not treating her well. She said that the accused used to taunt PW1. But PW1 used to treat the accused well.
 - h) She said that she knows someone by the name of Naleenesh Reddy. She said that he was related to PW1 but they hardly talk to him. She said that she does not know how close PW1 to the said Naleenesh Reddy is.
 - i) She said that the accused tried to commit suicide because he might go to jail or may be that it was just a show. She said that on the day of the incident she or PW1 did not provoke the accused in anyway.
 - j) During cross examination she denied the suggestion that on 17/04/20 a man came inside the house after the accused went to work. She said that PW1 did not have any boyfriend at that time. When it was suggested that the accused suddenly came home around 1.00am she said she can't remember. She denied the suggestion that she left the house with PW1 and that man that morning. She denied telling hospital authorities that her mother was in the car with her boyfriend. She also denied telling the hospital authorities that PW1 always fights and talks loudly in the house. Then a photocopy of a page from the CWM Hospital records relevant to 25/06/20 was shown to her. She said that it was the first time for her to see that. After going through the document she said that the contents of that document are true. However

she again denied telling a doctor that her mother was in the car with the boyfriend and other statements mentioned in that document as statements she had mentioned to whoever made the notes on that document. This document was marked for identification.

k) She denied the suggestion that there was a party on 18th April. She denied the suggestion that on 18th April there was a discussion about having her birthday party in a resort at Sigatoka.

20. The third prosecution witness was Dr. Racheal J. Prasad ("PW3"). She said that;

a) She is a medical officer since February this year. She is currently attached to the Nausori Health Center as a General Practitioner. Prior to becoming a medical officer, she had been a medical intern at CWM Hospital for one year. She said that, on average she would see 20 to 30 patients a day at the Emergency Unit of the Nausori Health Center.

b) On 19/05/20 she medically examined PW1 and PW2. She tendered the medical report she prepared regarding PW1 as PE2. She said that PW1 was not in a condition to sign the document. She said that PW1's clothes were fully soaked in blood and PW1 had lost a lot of blood. She observed a deep laceration on the left forearm and on the left knee. She also noted a superficial small laceration on the forearm. She said that a deep laceration means an extensive cut that would cause the patient to bleed a lot. Superficial lacerations mean cuts or injuries that may bleed less. She said that PW1's knee joint was damaged. In her professional opinion PW1 had soft tissue injuries that involved muscles and blood vessels which caused PW1 to bleed and there was a high likelihood that the bone was injured since the left knee was damaged. She said that the injuries were caused due to a 'blunt force, example a cane knife'.

c) She tendered the medical report of PW2 as PE3. She said that PW2 had deep lacerations on both the thighs and a small laceration on the left hand. In her professional opinion PW2 had soft tissue injuries 'secondary to a cane knife'. She said that PW2 had bled a lot. If not for the medical intervention PW2 could have bled to death.

d) During cross examination the document which was marked for identification through PW2 was shown to her. She admitted that it is a medical record for 25/06/20 at the Ministry of Health and Medical Services. She agreed that it looks genuine. The said document was then tendered as DE2.

21. That was the evidence for the prosecution. The accused opted to give evidence on oath and called one witness.

22. The accused ("DW1") said in his evidence that;

- a) *As at 19/05/20 he was working for a bakery as a driver. He would leave home around 12.30am and come back around 8.00am, 9.00am or 10.00am. He said he worked 7 days a week. He said that PW1 is his second wife and he is her second husband. He has two kids with his first wife and they are living in Sydney. PW2 is his stepdaughter. He said that his relationship with PW1 was good until last year.*
- b) *He said that during the lockdown period of two weeks which ended on 17/04/20, he was at a friend's place in Suva because of his work. After the lockdown, on 17/04/20 he went home around 10.30am. Around 11 o'clock, he saw PW1 going outside the house while talking to someone on the phone. After that phone call, she told him that she wants to use the vehicle on the following day to go to the hospital because she is very sick. He said that she did not look sick. Thereafter on several occasions she insisted to give her the vehicle and finally he agreed to get himself dropped at the workplace before 8.00pm because of the curfew that starts at 8.00pm at that time. Accordingly PW1 dropped him around 7.20pm. He told PW1 that since she had dropped him early, he has to now sit in the company vehicle for 4 to 5 hours and he cannot sleep.*
- c) *Around 10.00pm his boss sent him to drop two staff members at their houses. After he dropped the second person, his vehicle broke down around 11.00pm at Qarase Road. While he was attending to the vehicle, he was robbed and his phone and the money were stolen. After he managed to report the matter at the Valelevu Police Station, he requested the police to call PW1 on 3 different numbers but there was no answer. Thereafter, his boss who came to assist him dropped him at his home around 1.00am.*
- d) *While he was outside, his boss tried to call PW1 to tell her to open the gate, but there was no answer. Then he jumped from the gate and went towards his flat. When he was about to reach the flat he heard a man's voice, PW1's voice and music. He also heard the sound of bottles. This was coming from inside his house from the sitting room. He went near the kitchen window and then he saw one man serving beer and wine to PW1 and PW2. He saw them drinking and enjoying and he was able to hear everything. He heard PW1 talking to PW2 referring to the man who was inside the house as PW2's father and they were planning to go to a resort for PW2's birthday.*
- e) *Around 1.30am the man told PW1 to send PW2 for her to sleep and PW2 then left. One to two minutes later that man and PW1 started hugging and then kissing each other mouth to mouth. The man took off his shirt, opened his belt and then the zip. PW1 was wearing small shorts which were just the size of her panty and a bra. He then saw the man's hand inside PW1's panty. PW1 was enjoying and he heard her saying "when you called me in the day time, I didn't think of anything and I dropped 'robot' to his workplace". That was the first time he heard PW1 referring to him as 'robot'. He said that she may have referred to him as 'robot' because he would do whatever she asks him.*
- f) *Then she said "robot must be sitting in the van" he said he got very angry and he was out of his mind. He said he was very upset and heartbroken to hear that. Then*

he told PW1 "what are you doing and what are you saying Vikashni?" When he said that, they did not say anything and they sat down. Thereafter he told them to open the door several times but they did not. Thereafter he break opened the kitchen door and went inside the house. As he reached the kitchen shelf, PW2 came and punched him on his left forehead, and kept moving her hands trying to hit him. He pushed her away.

- g) Thereafter, all three of them ran into his bedroom and locked the door. They came out in a line after he told them several times to come out. During the conversation they had, thereafter the man told him that he is a policeman and that he can help him to get the stolen items back. He said he then scolded that man. He told the man and PW1 that if they love each other they should go and live somewhere else. Thereafter all three of them left in PW1's car. The same day after 9.00am, PW1 and PW2 came to the compound when his landlord and the wife were also there. He refused to take them back to the house.
- h) Two days later he allowed PW1 and PW2 back into the house mainly because the landlord and the wife intervened. During his conversations with the landlord's wife before that he was told that PW1 had told the landlord's wife that PW1 wants him to take her back and that she won't keep the phone with her. He also wanted PW1 to reveal the name of the police officer for him to make a complaint but PW1 did not disclose it.
- i) He said that from the very next day after PW1 and PW2 returned home, PW1 started using the phone and she started fighting with him. He said that PW1 would not answer his calls when he called her from work and after three four days she blocked his number. He said that PW2 started to push him when she talked with him. PW1 would threaten him that she will make a false allegation that he raped PW2 and get him jailed. He said that he would 'cry in his thoughts'. Then PW1 also started going out every day without telling him where she is going. She would go out with her lipstick and makeup, but come back without them and with messy hair. She would go straight to the bathroom from the car and would tell PW2 to get her the towel.
- j) On the second week after PW1 returned home, he told her to leave the house because she kept on leaving the house without telling him. Then she called the police and when the police arrived, she lied to the police that he was shouting and fighting with her and wanted him to be taken into custody. Then he asked for forgiveness from PW1 and PW2 and the police left.
- k) About two weeks before 19/05/20 when he was talking to the landlord, PW1 suspected that he is complaining about her and she called the police. That was the last time the police came to the house before 19/05/20. He said that she would go out of the house every day and fight every day, and as soon as he says something, she would want to call the police. He was suspecting that the same police officer had setup something for them.
- l) On 19/05/20 while he was at work, PW1 called him and told him to bring some groceries. He went home with those groceries and he had to park the car in a different

place because the landlord was making a kitchen on their driveway. On his way to his flat, he heard PW1 talking to someone on the phone and she was on the speaker. When he went closer he realized that it was the same police officer from the other night who was talking to PW1. He said that he got very frustrated and his 'heart got hurt'. He started remembering 18th April. He then heard PW1 telling the other person that she wants to sell the car and if she sells the car how can she come and meet him every day, and then she asked that person whether he would then pick her every day. He said that upon hearing this his 'heart completely broke'. He was crying internally. Then the police officer said "don't worry, I will pick you every day". He said that when he heard that his head hit the house wall.

- m) Then PW1 asked PW2 to check whether he had come. PW2 who was watching a movie with her cousin then came out. He went inside the house, put the groceries and his bag on the table. Then PW2 said from outside "papa has come, papa has come". PW2 and the cousin came inside the house by the time he put his bag down. Then he said, "if you do like this I will not take you to Australia with me. Vikashni, you are doing this every day, how it's going to work? You break my heart every day. I am also a human being, I also get hurt." Then PW1 asked him "what did I do? I am talking to a customer". Thereafter when he confronted her about what he heard, PW1 started shouting and fighting.
- n) She told loudly to PW2 to ring the police and came out of the room quickly. At that time he was standing outside the bedroom door. He was hurt and 'very stressed'. It was something like boiling inside because she did not accept having the conversation with the other person which he just heard. When she walked past him she hit his left eye with her hand. He said that, "after that I got very stressed. After getting hurt my brain went very crazy. After that I don't know what happened". Thereafter a medical report of the accused was tendered as DE3. This report indicated that his left eye was completely swollen and red and there was a cut under his eye. He said that this is the injury he suffered from PW1.
- o) The next thing he remembers is him going in a police van. Police officers asked him why he wanted to commit suicide and he told them that he does not want to commit suicide. He was taken for the medical examination as soon as they reached the police station. He was interviewed on the same day. He said that when he was asked about the incident he told the police that he cannot remember. He said that he found out the name of the 'policeman' at the police station. He said that he was told that everyone in the Nausori Police Station knows that his wife is having an affair with Naleenesh Reddy.

23. The second defence witness was Hemanth Kumar ("DW2"). He said that;

- a) He had known the accused and PW1 for almost 11 to 12 years as his tenants. He said that the two of them were renting at his flat in Laucala Beach before they moved to Bau Road. In April 2020 flat 1 and flat 2 at Bau Road were vacant because he

- wanted to do some repairs. For this purpose he occupied flat 1 and stayed there sometimes for 3 days in a week.
- b) On 20/04/20 he saw PW1 and PW2 sitting in his porch at flat 1. He said PW1 was wearing [a pair of] small shorts that looked like night wear and just a blouse. He said that he was told by PW1 that the accused is not opening the door as the accused is sleeping. Then the accused said from his washroom that PW1 is a liar and that PW1 ran away with the boyfriend at about 5 o'clock. Thereafter the accused came and told him what happened. He said the accused told him that PW1 dropped him at 7 o'clock the previous night at his workplace, he was robbed the same night and when he called PW1 she did not answer. He was told by the accused that, thereafter the accused came home and jumped over the fence and then saw PW1 having a party with another man. He said that the accused further told him that he was watching them for half an hour and then when he could not tolerate he wanted them to open the door and because they did not open, he broke the lock in the kitchen door. He said that he was also told that there was an argument and after that PW1 and PW2 left the house in the car with that man.
 - c) He said the accused asked him to come and have a look inside the house and then he saw the bottles, the pot which was used to cook and he saw the broken lock at the back. Thereafter the accused refused to take PW1 and PW2 back into the house. Thereafter PW1 called him on several occasions and she also asked him to mediate between her and the accused. Accordingly he met the accused and PW1 at 2pm on the next day. PW2 was also there. The accused told PW1 to give the number and the name of the person who came the previous day in order for him to let her inside the house. PW1 then told him that she does not know his number or the name. He asked PW1 how she can call that person inside the house when she does not know him. After some time PW1 told him that she does not want to tell his name and he is a traffic officer. She told him that the said man would always assist her whenever there is a problem in the vehicle.
 - d) Between that day and 19/05/20 he received several complaints from the neighbours that PW1 and the accused are always fighting, and also that sometimes the driveway is blocked by someone when the accused is not at home. He also recalled that two weeks before the 19th May they were quarreling and running with a phone outside the house. While they were running the little girl fell down on the grass. He thought that the accused was chasing them and told the accused not to do that. Then the accused came to him and told him that he wanted to take the phone away to see with whom PW1 was talking and wanted to come and show the phone to him. Then he felt sorry for the accused because he scolded him. Thereafter the accused told him that PW1 is calling the police. He said that he did not see the accused pushing PW1 at any time.
 - e) He said that he went to the property around 9.00am on 19/05/20. He saw one of his neighbours running towards his house with his family and the grandson trying to jump over the fence. He then opened the gate. Then he heard the neighbor yelling "save, save someone is hanging". Thereafter he saw PW2 and then PW1 being injured and lying down. He also saw the accused and he saw blood on the accused's left eye. Thereafter he called the ambulance and the police.
 - f) After PW1 and then PW2 were taken to the hospital and after the accused was taken by the police, a little girl was left behind. He took that girl to his flat. He said that the said little girl was questioned by the police in his presence and he heard her saying that her name is Aisha. He also heard her saying that one day she went shopping

with PW1 and PW2 and then they went to meet a person and while sitting in the car PW2 said that 'he is my new papa, Reddy'. Then the lady police officer showed a picture to that girl using her phone which was on Facebook and then the girl identified the person in the photograph as Reddy.

g) During cross examination he denied seeing the accused pushing PW1 and PW1 falling down on a belle plant.

24. The third prosecution witness (PW3) gave her medical opinion based on what she observed and her experience. You are not bound to accept that evidence. You will need to evaluate that evidence for its strengths and weaknesses, if any, just as you would with the evidence of any other witness. It is a matter for you to give whatever weight you consider appropriate with regard to the observations made and the opinion given by PW3. Evaluating her evidence will therefore include a consideration of her expertise, her findings and the quality of the analysis which supports her opinion. You would have noted that her experience as a medical officer was for less than one year. However, you may also have noted that PW3's evidence in relation to the observations she made regarding the injuries sustained by PW1 and PW2, were not challenged.
25. Through PW3, the defence counsel tendered DE2. She is not the author of DE2. She accepted DE2 to be part of a genuine document (copy) maintained at CWM Hospital. PW3 cannot say whether those notes made in DE2 are true or whether the relevant statements were in fact made by PW2. In relation to DE2, what she can confirm is that the notes found on DE2 had in fact been made by the relevant author on an official document maintained at the CWM Hospital.
26. The notes which appear in DE2 would be relevant when you determine the credibility of the evidence given by PW2 and also PW1 because the notes in DE2 supports the defence version that PW1 had a 'boyfriend' at the material time which was denied by both PW1 and PW2 when they gave evidence.
27. Now let me take you through the elements the prosecution is required to prove in respect of each count. On both counts the accused is charged with the same offence, that is, act with intent to cause grievous harm.

28. To prove the offence of act with intent to cause grievous harm in this case, the prosecution should prove the following elements beyond reasonable doubt;
 - a) the accused;
 - b) unlawfully wounded or did any grievous harm to any person by any means;
 - c) with intent to maim, disfigure or disable that person, or to do some grievous harm to that person.

29. The first element above involves the identity of the offender. The prosecution should prove beyond reasonable doubt that it was the accused who committed each offence and no one else. The accused does not say that it was someone else who wounded PW1 (first count) and PW2 (second count) and that it was not him. What he says is that he does not remember wounding them.

30. In the second element, unlawfully means without a lawful authority. The accused does not take up the position that he had a lawful authority to wound PW1 and/ or PW2.

31. To prove the second element, the prosecution should prove that the accused wounded PW1 (first count) and PW2 (second count) or did any grievous harm to PW1 (first count) and PW2 (second count) in relation to the respective counts. This is the physical element of the offence.

32. You have to bear in mind that the relevant conduct should be a product of the will of the accused for such conduct to constitute an offence. Therefore, the prosecution has to prove beyond reasonable doubt that the act of the accused in question was deliberate and a product of his will.

33. Please note that this element requires the prosecution to prove that the relevant person was either wounded or was inflicted any grievous harm by the accused. The fact that PW1 and PW2 were wounded on 19/05/20 and the injuries sustained by them are not in dispute in this case.

34. PW1 and PW2 had given evidence that the accused struck them with the cane knife tendered as PE1 and they have explained the injuries that were caused due to the said conduct of the accused. PW1 and PW2 had said that they were cut by the accused using the cane knife. PW3 had explained the nature of the injuries she observed on PW1 and PW2 upon admission to the Nausori Health Centre and she tendered the relevant medical reports as PE2 and PE3 respectively. There was no challenge to the authenticity or the contents of those medical reports or to the observations made by PW3 in relation to the injuries.
35. You should bear in mind that though the defence did not dispute the fact that PW1 and PW2 were wounded on 19/05/20, the defence does not agree that the conduct of wounding was a product of the accused's will. The accused's position is that he does not know what happened, in other words, he says that he does not know how PW1 and PW2 got wounded. I will further discuss about this position of the accused after I explain you the third element.
36. To prove the third element above, the prosecution should prove beyond reasonable doubt that the accused when he engaged in the conduct as per the second element above, he did so with intent to maim, disfigure or disable the relevant person, or to do some grievous harm to that person. That is, the prosecution should establish that the accused meant to bring about the permanent damage, disfigurement, disability or the grievous harm to the person relevant to each count; or that he was aware that the relevant person would be maimed, disfigured, disabled or that grievous harm would be caused to the person in the ordinary course of events as a result of his conduct.
37. "Wound" means any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is "exterior" for the purpose of this definition which can be touched without dividing or piercing any other membrane. According to the Concise Oxford Dictionary, the word 'membrane'

means 'a pliable sheet-like structure acting as a boundary, lining, or partition in an organism. Accordingly, the skin of a human body is an exterior membrane.

38. "Harm" means any bodily hurt, whether permanent or temporary, and includes, pain or disfigurement. "Grievous harm" means any harm which—
 - (a) amounts to a maim or dangerous harm; or
 - (b) seriously or permanently injures health or which is likely so to injure health; or
 - (c) extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense;

39. "Maim" means the destruction or permanent disabling of any external or internal organ, member or sense and the word 'member' in this definition means a part or organ of the body, especially a limb or other separate part.

40. You should remember that no witness can look into an accused's mind and describe what it was at the time of the alleged incident. Therefore, it is not possible to have direct evidence regarding an accused's state of mind. The intention of an accused can only be inferred based on relevant proven facts and circumstances.

41. Therefore, in relation to this element, you should consider all the facts and the circumstances you would decide that the prosecution has proven beyond reasonable doubt; such as, what the accused said and do before, during and after the incident, how the injuries were inflicted, where on the relevant witness' body the injuries were inflicted, the nature of the weapon used to inflict the injuries and the nature of the injuries that were inflicted, so that you will be able to decide whether or not the accused had the intention to maim, disfigure or disable the relevant witness, or to do some grievous harm to that witness in relation to each count. As I have already directed you, you must consider each count separately.

42. The defence completely denies that the accused had the required intention. The defence says that the accused did not act consciously and he did not know what happened. It was pointed out that the accused had taken up the position that he cannot remember what happened even when he was questioned by the police in relation to this matter on 19/05/20.
43. You would note that, even if you accept the evidence of PW1 and PW2 that the accused wounded them on 19/05/20 in the manner they explained, if you find that the accused's position that his conduct on that date was not deliberate and involuntary is true or that it may be true, not only would the third element pertaining to intention fail, but also the second element which is the physical element of the offence would also fail. If that is the case, you have to find the accused not guilty of both counts.
44. Both PW1 and PW2 had stated in their evidence that the accused was angry when he struck them with the cane knife. According to PW1 the accused was angry even when he came into the house before he started striking her and PW2. According to PW2 the accused was angry when he was striking her and his behavior was weird. However, the accused does not say that he was angry when he struck PW1 and PW2.
45. It is the position of the defence that the accused was very angry, 'out of his mind' and heartbroken after what he discovered on the early morning of 18/04/20 and thereafter, from the day he allowed PW1 and PW2 to come back into the house he was ill-treated by PW1 and PW2 throughout, and finally on 19/05/20 when PW1 denied talking to the said 'policeman' when he confronted PW1 after hearing the conversation between the two over the phone that morning and being assaulted by PW2, he was hurt, he was 'very stressed' and 'his brain went crazy' and from there on, his actions were involuntary.
46. When you consider the evidence of PW1 and PW2 it is clear that the accused went for the cane knife after PW1 told PW2 to call the police and when PW2 went to the sitting room accordingly. Even according to the accused, 'his brain went

crazy' after PW1 asked PW2 to call the police but also after PW1 hit him on his left eye, which is denied by PW1.

47. The accused says that PW1 and PW2 were lying in relation to the affair PW1 was having with the policeman by the name of Naleenesh Reddy and it is that affair which led to the incident in question that took place on 19/05/20. What if you decide to disbelieve PW1 and PW2 in this regard and accept the accused's version or if you find that the accused's version may be true?
48. You need to then consider whether it is possible given what the accused witnessed in the early morning on 18/04/20 and what he went through from that day onwards till 19/05/20 according to him, for the accused to lose his consciousness upon PW1 denying her conversation with the relevant policeman and then assaulting the accused on the left eye, so much so that the wounds sustained by PW1 and PW2 on that day were inflicted unconsciously and involuntarily by the accused. In this regard you have to consider whether the experience as related to by the accused in his evidence would, if experienced by a reasonable person who is of the same age of the accused and having the same background, cause that reasonable person to suddenly become unconscious and then inflict the injuries found on PW1 and PW2 involuntarily or without knowing that the person is inflicting those injuries. If you think that there is such a possibility so that it creates a reasonable doubt in your mind as to whether the prosecution has proved that the conduct of the accused was deliberate and voluntary, then you have to find the accused not guilty of both counts.
49. On the other hand, even if you accept the version of the accused, but given all the circumstances, if you are also satisfied beyond reasonable doubt that though the accused was emotionally disturbed, he formed the intention to cause grievous harm to PW1 (in relation to the first count) and/or to PW2 (in relation to the second count); and with that intention he inflicted the wounds on PW1 (in relation to the first count) and/or PW2 (in relation to the second count)

deliberately, then you should find the accused guilty of the relevant count accordingly.

50. Please remember that, if you find that the accused was provoked by PW1 and/or PW2 and because of that provocation the accused acted out of anger, that would not constitute a valid defence in this case. You have to remember that, anyway, the accused does not say that he acted out of anger.

51. When you consider whether the conduct of the accused was deliberate, you may consider the following facts as revealed in the evidence, of course depending on whether or not you would consider those facts to have been proven beyond reasonable doubt;
 - a) the cane knife which was used to wound PW1 and PW2 was underneath the mattress of the bed inside PW2's bedroom;
 - b) the accused confronted PW1 inside PW1's bedroom (according to PW1) or near PW1's bedroom (according to the accused) and therefore the accused had to go to PW2's bedroom to take the knife from underneath the mattress and then come back to where PW1 was;
 - c) after he wounded PW2 and before wounding PW1 the accused had a conversation where he acknowledged the fact that he wounded PW2, the fact that he would have to go to jail, in other words, the fact that he had done something wrong, and that he will thereafter wound PW1;
 - d) from the time the accused first struck PW1 it took around half an hour when the accused let go of the knife;
 - e) after wounding PW1, the accused told PW1 that he will commit suicide and then he again went to PW2's room to get hold of a cable and then used it (evidence of DW2 as to what he heard on 19/05/20); and
 - f) according to PW2 the accused while he was being taken by the police said "sorry baba".

52. With regard to the argument put forth by the defence that the accused lost his capacity to control his behavior on 19/05/20 given what he experienced

according to him on 18/04/20 and then until 19/05/20 and finally on 19/05/20, the prosecution points out that the accused did not lose control on 18/04/20 after seeing PW1 behaving with the 'policeman' in the manner the accused explained in his evidence and therefore, questions whether it can be accepted that the accused lost his consciousness over a phone call on 19/05/20 to be probable. The prosecution also points out that even if the accused's version of events is considered as true that would indicate that there were grounds for the accused to form a motive to commit the offences he is charged with.

53. You would remember that the learned defence counsel mentioned to you about three cases from other countries during his closing address. Please note that you are not fully aware of all the facts relevant to those cases. Therefore the conclusions reached in those cases according to the learned defence counsel should not have a bearing in relation to the conclusion you would reach in this case.
54. You have to remember that you are not here to judge whether PW1, PW2 or the accused is right or wrong morally. You are here to decide whether the accused had committed the relevant offences as stipulated by the law.
55. You must remember to assess the evidence for the prosecution and the defence using the same yardstick but bearing in mind that always the prosecution should prove the case against the accused beyond reasonable doubt.
56. I must again remind you that even though an accused person gives evidence, he does not assume any burden of proving his case. The burden of proving the case against an accused beyond reasonable doubt remains on the prosecution throughout. An accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.
57. Generally, an accused would give an innocent explanation and one of the three situations given below would then arise in relation to each count;

- (i) You may believe his explanation and, if you believe him, then your opinion must be that the accused is 'not guilty'.
- (ii) Without necessarily believing him you may think, 'well what he says might be true'. If that is so, it means that there is a reasonable doubt in your mind and therefore, again your opinion must be 'not guilty'.
- (iii) The third possibility is that you reject his evidence. But if you disbelieve him, or his witness, that itself does not make him guilty. The situation would then be the same as if he had not given any evidence at all. You should still consider whether the prosecution has proved all the elements beyond reasonable doubt.


If you are sure that the prosecution has proved all the elements, then your proper opinion would be that the accused is 'guilty' of the offence.

58. Any re-directions?

59. Madam and Gentlemen Assessors, that is my summing up. Now you may retire and deliberate together and may form your individual opinion on the charges against the accused. When you have reached your separate opinion you will come back to court and you will be asked to state your separate opinion.

60. Your opinion should be whether the accused is guilty or not guilty on each count.




Vinsent S. Perera
JUDGE

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