

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 095 OF 2019

STATE

V

RAHESH CHAND

Counsel : Mr. R. Kumar for State
Accused in Person

Date of Summing Up : 20 February 2020

Date of Judgment : 21 February 2020

JUDGMENT

1. The accused is charged on the following information and tried before three assessors:

COUNT 1

Statement of Offence (a)

ACTS INTENDED TO PREVENT ARREST: Contrary to section 255 (b) of the Crimes Act 2009.

Particulars of Offence (b)

RAHESH CHAND on the 25 February 2019, at Volavola Road, Tamavua, Suva in the Central Division, with intent to prevent his own lawful arrest or detention, unlawfully

attempted to strike Corporal 2875 Qarau with a Toyota Prius (registration LR 5251) by driving the said Toyota Prius (registration LR 5251) towards the said Corporal 2875 Qarau.

COUNT 2

Statement of Offence (a)

ACTS INTENDED TO PREVENT ARREST: Contrary to section 255 (b) of the Crimes Act 2009.

Particulars of Offence (b)

RAHESH CHAND on the 25 February 2019, at Volavola Road, Tamavua, Suva in the Central Division, with intent to prevent his own lawful arrest or detention, unlawfully attempted to strike Special Constable 4875 Ravouvou with a Toyota Prius (registration LR 5251) by driving the said Toyota Prius (registration LR 5251) towards the said Special Constable 4875 Qarau.

COUNT 3

Statement of Offence (a)

PUNISHMENT FOR MALICIOUS INJURIES IN GENERAL (DAMAGING PROPERTY): Contrary to section 369 (1) of the Crimes Act 2009.

Particulars of Offence (b)

RAHESH CHAND on the 25 February 2019, at Volavola Road, Tamavua, Suva in the Central Division, willfully and unlawfully damaged Police Fleet vehicle registration GQ 382 causing damages to the said vehicle valued at FJ\$7439.65.

COUNT 4

Statement of Offence (a)

BREACH OF ORDER SUSPENDING SENTENCE: Contrary to section 26 and 28 (1) and (2) of the Sentencing and Penalties Act 2009.

Particulars of Offence (b)

RAHESH CHAND on the 25 February 2019, at Volavola Road, Tamavua, Suva in the Central Division, breached his suspended sentence order of 19 months imprisonment, 8 months to be served in custody of the prison and balance 11 months suspended for 5 years vide Suva Magistrates' Court CF: 1063/16 given to him on 16 March 2018 by committing other offences on 25 February 2019, namely ACTS INTENDED TO PREVENT ARREST and DAMAGING PROPERTY vide Suva HAC 95 of 2019.

2. The assessors unanimously found the accused guilty on each count as charged. I direct myself in accordance with my own Summing-Up and review evidence led in the trial.
3. The Prosecution called three witnesses. At the end of the Prosecution's case, the accused was put to his defence. The accused elected to give evidence under oath.
4. There is no dispute as to the identity of the accused. The accused admits that he was driving LR5251 on the 25th February 2019 and a collision occurred between the car driven by him and the police fleet vehicle GQ 382 driven by Irfan Mohammed (PW1).
5. All the Prosecution witnesses are police officers. They described how the incident happened that night. I was extra cautious in evaluating the evidence of the police officers, firstly, because their evidence was not supported by an independent non-police witnesses and secondly, the accused was unrepresented.
6. The accused says that the police officers were lying in court. The accused does not deny that a collision occurred between his vehicle and the police fleet vehicle. Accused's position is that he did not intend to bump the police vehicle and that the collision occurred because the police vehicle moved forward to block his movements.
7. The accused himself in his testimony corroborated the version of the Prosecution. The CCTV video footage tendered by the accused in his evidence further strengthened the case for

Prosecution. It is not disputed that the video footage had captured the alleged incident. Although the visuals are not that clear, it is sufficiently clear for the Court to form its opinion as to what actually happened at the alleged crime scene and to ascertain who told the truth in Court. Having watched the video footage carefully, I do not have an iota of doubt as to the plausibility of the evidence presented by the police officers.

8. The police officers doing night petrol have every right to stop and search suspicious vehicles. They are justified to block all the avenues of possible escape. It is clear from the video footage that the police driver was moving the police fleet vehicle forward to block the accused's vehicle which was trying to escape. It is also clear that the accused moved his vehicle forward when the two police officers were approaching the accused's vehicle, thus causing them panic of being hit.
9. The accused admits that he did not want to obey the orders of the police officer who first approached him. He gives two reasons to justify his conduct. He says that the officer who came to him was a police driver. The other reason is that the place he was stopped was not a police check point. Both reasons do not justify his conduct to disobey a police officer.
10. The accused admits that he did not want to get off his vehicle because it was around midnight. He says that, instead of getting off the vehicle, he wanted to go straight to the police station and he made his point clear to the police officer (PW1). But such a proposition was never put when PW 1 was subjected to cross-examination. The accused, after escaping from the scene, had not gone straight to the police station. He had surrendered himself to police much later.
11. It is open for the assessors to find that the accused Rahesh Chand unlawfully attempted to strike Corporal Qarau and Special Constable Ravouvou with a car by driving it towards the police officers and the intention of the accused was to prevent his own lawful arrest or detention.

12. Prosecution also proved that the accused willfully and unlawfully damaged the police fleet vehicle.
13. According to the record of previous convictions tendered in evidence, the accused has been sentenced by the Magistrates Court at Suva on 16 March 2018 to a term of 19 months' imprisonment. 11 months of the sentence has been suspended for a period of 5 years. Since the assessors found the accused guilty on the first three counts, they must also find the accused guilty on the 4th count because the accused has committed offences while a suspended sentence was still pending.
14. I endorse the unanimous opinion of the assessors.
15. The accused is found guilty on each count. The accused is convicted accordingly.
16. That is the judgment of this court.



At Suva

21 February 2020

Aruna Aluthge

Judge

Counsel: Office of the Director of Public Prosecution for State