

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 191 of 2019

STATE

V

1. TOMASI COVU [Now Acquitted]

2. MOHAMMED MUFEZ ALI

Counsel : Mr. Eoghn Samisoni for the State
Ms. Shantel Hazelman for the 1st and 2nd Accused

Date of Trial : 1 September 2020

Summing Up : 2 September 2020

Judgment : 4 September 2020

JUDGMENT

[1] As per the Amended Information filed by the Director of Public Prosecution (DPP), the accused above named were charged with the following offences:

[COUNT 1]

Statement of Offence

ACT WITH INTENT TO CAUSE GRIEVOUS HARM: Contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence

TOMASI COVU, on the 18th day of May 2019, at Nasinu, in the Central Division, with intent to cause grievous harm to **KALIOVA QARAVANUA**,

caused grievous harm to the said **KALIOVA QARAVANUA**, by striking his face with a broken bottle.

[COUNT 2]

Statement of Offence

COMMON ASSAULT: Contrary to Section 274 of the Crimes Act 2009.

Particulars of Offence

MOHAMMED MUFEZ ALI, on the 18th day of May 2019, at Nasinu, in the Central Division, unlawfully assaulted **KALIOVA QARAVANUA**, by striking the neck of the said **KALIOVA QARAVANUA** with a rod.

- [2] Both accused pleaded not guilty to the respective charges and the ensuing trial was held over one day.
- [3] At the end of the prosecution case, this Court decided that there was no relevant or admissible evidence to establish that the 1st Accused had committed the offence he is charged with in Count 1. Accordingly, the 1st Accused was found not guilty and acquitted of the said charge.
- [4] Thereafter, the trial proceeded against the 2nd Accused, in respect of Count 2. At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found the 2nd Accused not guilty of the charge of Common Assault.
- [5] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the unanimous opinions of the Assessors.
- [6] During my summing up I explained to the Assessors the salient provisions of Section 274 of the Crimes Act No. 44 of 2009 (Crimes Act).
- [7] The Assessors were directed that in order for the prosecution to prove the second count of Common Assault, they must establish beyond any reasonable doubt that:
 - (i) The 2nd Accused;
 - (ii) On the specified day (in this case the 18 May 2019);
 - (iii) At Nasinu, in the Central Division;
 - (iv) Unlawfully assaulted Kaliova Qaravanua, by striking his neck with a rod.

- [8] Each of the above individual elements were further elaborated upon in my summing up in respect of the said charge.
- [9] In support of their case, the prosecution called the complainant, Kaliova Qaravanua, who was their sole witness. The 2nd Accused exercised his right to remain silent.
- [10] I have summarized the evidence of the sole prosecution witness Kaliova Qaravanua during the course of my summing up.
- [11] The complainant testified to the incident which took place on 18 May 2019. He said at around 5.00 in the morning he was at the RB Patel car park, on the way to buy bread. He explained that the said RB Patel is located at Nakasi. He was going to Hot Bread Kitchen near RB Patel to buy bread. At the time one of his friends namely Solo was with him.
- [12] The witness testified that on the way to buy bread he heard a girl screaming from the back of the RB Patel. He wanted to go and help the girl and wanted to find out what was going on there.
- [13] The complainant said that when he first saw this girl she was crying and that blood was coming out from her nose. The girl was with two or three boys. One was an Indian boy and the other two were Fijian (Kai Viti or I-taukei). When asked if he knew of any of these people, the witness said that he did not know any of them.
- [14] When asked if he could describe the girl that he saw, the witness said: "This time I can't remember the face of the girl and the boys too." He was unable to describe even what the girl was wearing at that time. Later the witness said that the girl was of Fijian ethnicity and was about 17 to 19 years old.
- [15] The complainant said that the distance between himself and the group of people when he first saw them was about 2 metres. Later when asked to explain he said the distance was about 5 to 6 metres. He testified that when he first saw them, they were drinking.
- [16] The complainant said one of the boys was touching the girl and the girl was crying with blood coming out from her nose. He said: "Maybe they tried to do something to the girl." When asked to explain what he meant by touching, the witness said: "When the time I was trying to help the girl and lay my hand on the girl and try to pull her, this boy he pulled her towards him".
- [17] The complainant confirmed that it was dark at that time and that there was no light at that place. So he was unable to see any of their faces.
- [18] The complainant testified that when he saw this happening, he was trying to help the girl by trying to pull her away from the boys. However, he couldn't take her away from the boys. Thereafter, the boys took the girl away from the dark corner. When asked to

explain, the witness said: "Like one of the boys was taking the girl's hand and pulling her from the corner".

[19] The complainant testified that one of the I-taukei boys had then hit him two times on the side of his head (face) with a cracked bottle. However, he could not identify as to who had hit him in this manner.

[20] Thereafter, the complainant said that the Indian boy had hit him on the back of his head with a rod. When asked to describe what sort of a rod it was, the complainant said it was one used for sign boards on the streets.

[21] The complainant, inter alia, testified as follows:

Q. *Were you able to see the Indian boy's face?*

A. *Yes.*

Q. *How far away was this Indian boy when he struck you with the rod?*

A. *I can't recall.*

Q. *Where did he strike you with the rod?*

A. *The back of my head (The witness demonstrated).*

Q. *Was he standing in front of you or behind you at the time?*

A. *Behind me.*

Q. *How then were you able to see his face?*

A. *The last time I saw this Indian boy, he ran on the road to get the rod.*

Q. *How far away was he then at that point in time?*

A. *It's like 4 to 5 metres away.*

[22] The complainant said that was the last thing he could remember as he had blacked out. He had woken up or regained consciousness only at the Nausori Hospital.

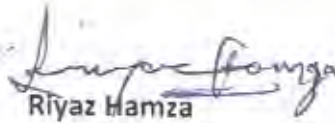
[23] The complainant identified the 2nd Accused in the dock, as the person who had struck him with the rod.

[24] In this case, it is clear from the evidence that the 2nd Accused was not known to the complainant, prior to the date of the alleged incident, which was 18 May 2019. It is also clear from the evidence that according to the complainant he saw the 2nd Accused for

the first time on the date of the alleged incident. Thereafter, the complainant identified the 2nd Accused in Court.

- [25] In the circumstances, I explained to the Assessors as to how they should deal with the evidence of dock identification and as to what weight they should give to the said evidence.
- [26] The 2nd Accused denies having attacked the complainant with a rod. It has been suggested by the defence that in fact the complainant got into a scuffle with an I-taukei boy and as a result fell on the ground and that the cracked bottle hit the side of his face.
- [27] At the conclusion of the evidence and after the directions given in my summing up, the three Assessors by their unanimous opinions have found the 2nd Accused not guilty of the charge of Common Assault.
- [28] In my view, the Assessors' opinion is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the unanimous opinions of the Assessors.
- [29] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has failed to prove the charge of Common Assault against the 2nd Accused beyond reasonable doubt.
- [30] In the circumstances, I find the 2nd Accused not guilty of the charge of Common Assault and accordingly acquit him of the charge.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 4th Day of September 2020

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused : Office of the Legal Aid Commission, Suva.