

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 281 OF 2022

BETWEEN : **STATE**

AND : **MANASA QALU**

Counsel : Mr T Naimila for the State
Mr T Varinava for Accused

Date of Hearing : **13 March 2023, 27 March 2023, 29 September 2023**

Date of Judgment : **2 November 2023**

JUDGMENT

Charges, Burden of Proof and Elements of Offence

- [1] The accused is charged with one count of assault causing actual bodily harm (count 1) and two counts of act with intent to cause grievous harm (counts 2 and 3).
- [2] The accused pleaded guilty to count 1 and not guilty to counts 2 and 3. The trial proceeded on counts 2 and 3.
- [3] Counts 2 and 3 are based on the same facts.
- [4] Count 2 alleges that the accused on 12 August 2022 at Kalekana Settlement, Lami, with intent to cause grievous harm to his spouse Tuliana Moala unlawfully wounded her on the leg with a concrete brick.

[5] Count 3 alleges that the accused on 12 August 2022 at Kalekana Settlement, Lami, with intent to cause grievous harm to his spouse Tuliana Moala unlawfully attempted to wound her with a wooden stick.

[6] The onus of proving the charges rests on the prosecution from beginning to end. There is no onus on the accused at any stage to prove his innocence or to prove anything else.

[7] The prosecution must prove each charge beyond a reasonable doubt before there can be a finding of guilty. If there is a reasonable doubt as to the guilt of the accused then he must be acquitted.

[8] Count 2 is contrary to section 255 (a) of the Crimes Act, which reads:

A person commits an indictable offence if he or she, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—

(a) unlawfully wounds or does any grievous harm to any person by any means.

[9] Count 3 is contrary to section 255 (b) of the Crimes Act, which reads:

A person commits an indictable offence if he or she, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—

(b) unlawfully attempts in any manner to strike any person with any

kind of projectile or with a spear, sword, knife, or other dangerous or offensive weapon.

[10] On each count of act with intent to cause grievous harm the prosecution must prove the following ingredients:

1. That the accused with the intention to do some grievous harm to the complainant
2. Either unlawfully wounded the complainant or attempted to wound the complainant with a dangerous or offensive weapon.

[11] Unlawful means without lawful excuse. There is no suggestion that the accused acted with lawful excuse when he allegedly struck the complainant with a concrete block or when he allegedly attempted to strike the complainant with a timber.

[12] Attempt requires proof of two things. Firstly, that the accused intended to cause grievous harm to the complainant, and secondly, with that intention he did something which was more than mere preparation for committing the offence of an act with intent to cause grievous harm.

[13] Grievous harm means dangerous harm or a permanent or serious injury to a person. It is not sufficient for the accused to have intended only to cause injury. He must have intended to cause serious injury. The intention of an accused is considered by what he did or did not do and by what he said or did not say or his actions before, at the time of and after the alleged offence. All these things may shed light on his intention at the relevant time.

Prosecution Case

[14] The prosecution led evidence from eight witnesses.

- [15] The complainant is the spouse of the accused. Her evidence is that on 12 August 2022 at around 3 pm she had a fight or an argument with the accused. She was going to a wedding and her son wanted to accompany her and was crying. She slapped her son and the accused got angry. The accused got angry and punched her. She ran outside and pulled a long stick (PE 2) from the clothes line and hit the accused with it. When she was struggling with the accused trying to pull the stick from him she tripped and fractured her leg. She was hospitalized for three days.
- [16] With the leave of the Court the prosecution declared the complainant a hostile witness and cross-examined her on her police statement. In her police statement, the complainant said that the accused threw a cement block or a brick at her and broke her leg. She said when the police obtained her statement she was in the hospital receiving treatment and was not in the right state of mind. She did not read her statement before signing it. She maintained that the accused did not hit her with a brick and that her leg injuries were due to a fall.
- [17] Raijieli Mavono gave evidence that on 12 August 2022 she was at her canteen when the complainant came with her son and bought something from her and went back home. The next thing she saw was that the complainant was lying down in a drain and she was crying out for help. She saw the accused bring a stick (PE 2) from the clothes line and started smacking the complainant while she was lying down in the drain. She saw the accused hit the complainant on the chest. The complainant managed to avoid the second blow by taking cover. The complainant was seeking help and was scared and trying to cover herself using her hands. The accused then took a 4.5 liter ice cream container pot plant (PE 3) and threw it at the complainant's head.
- [18] Alisi Tabaka gave evidence that on 12 August 2022 she was cooking dinner inside her house when she heard someone screaming and crying out loudly. She went

outside and saw the complainant lying down in a drain in front of their neighbour's house. The complainant was screaming. The complainant's leg was hurt. Alisi then saw the accused pick up a 4.5 liter ice cream container pot plant [PE 3] and throw it on the complainant.

[19] Dr Vandhana Prasad's evidence is that she is an Emergency Registrar at CWM hospital and that on 12 August 2022 at around 4 pm she attended to the complainant at the emergency department. The complainant came to the hospital with a deformity to her leg. The deformity did not look normal, it was swollen and the patient was in a lot of pain. The patient had a 4-5 cm cut on her left leg and was bleeding. After taking history from the patient, the patient was referred for x-ray. X-ray showed the patient had an open communicated fracture on her left tibia and fibula, meaning the two bones on her leg had multiple fractures. Dr Prasad said the injuries were consistent with a direct force trauma with a large object such as being hit by a brick and not by a fall. The doctor said a fall would have just caused a simple fracture and not multiple breaks in the bones. The medical report of the complainant [PE 1] was admitted in evidence by the consent of both parties.

[20] PC Lomani gave evidence that he recorded the complainant's statement on 13 August 2022 at CWM hospital. The complainant allowed him to record her statement and that she signed it after reading it.

[21] PC Silagi tendered the physical exhibit PE 3 – ice cream container pot plant.

[22] Rebecca Moala is the sister of the complainant. She gave evidence that on 12 August 2022 he was at home when she heard the complainant calling out for help. She looked through the window and she saw the accused and the complainant fighting. She thought it was a normal fight but then she saw the accused holding onto a long stick (PE 2) and poking the complainant, she

grabbed a broom and then ran over to her sister to help her. The accused then put the stick down. The complainant was in a drain, crying and saying that her leg was broken or fractured. She called out for help and people came and they took the complainant to the hospital.

[23] Corporal Salabuco tendered the caution interview of the accused (PE 5). The caution interview contains admissions which amount to a confession. The admissions are as follows:

Q 22: Then what happen during the argument?

A: So I got angry and punched her on the right shoulder then she ran outside the house.

Q.31 According to witness, when your wife ran outside the house you threw a piece of cement block at her, which landed on her left leg. What can you say about this?

A. Yes, I did.

Q. 32 Where did you get that piece of cement block?

A. Along the footpath.

Q. 33 Is this the piece of cement block?

A. Yes, I did use this piece of cement block.

Q.34 Why you threw this piece of cement block?

A. I threw it because I was calling her to come home but she was still running.

Q.35 When the piece of cement block hit your wife on her left leg what happen to her?

A. She ran to my auntie's compound.

Q. 36. According to witness, you use a long wooden stick to pocked (sic) your wife.

A. Yes, I did,

Q. 37 Is this the long wooden stick that you pocked (sic) your wife with? (Long wooden stick shown to him)

- A. Yes, it is.
- Q. 38 How many time did you pocked (sic) your wife with the long wooden stick?
- A. Only once.
- Q. 39 Where was your wife when you were pocking (sic) her with the long wooden stick?
- A. She was at a small drain near my auntie's place.
- Q. 40 After that what happen?
- A. Then I put away the long wooden stick then picked a red ice cream container (4 liters) use for pot plant and threw to my wife.
- Q. 41 What position was your wife in when you threw the pot plant?
- A. She was sitting down and screaming up to me to help her because of her leg.
- Q. 42 Did you help her?
- A. No, I didn't help I went straight home to see our son who was crying at home.

[24] That is a summary of the prosecution's case.

Defence Case

[25] The accused's account is that he had an argument with his wife over her punching their son. She told him to look after their children while she was going to be away attending a wedding function. He said that he felt sad and little jealous when he learnt he was to look after the children over the weekend while his wife was going to be away attending a wedding function. He lightly punched his wife and she ran outside. He called out to her and she didn't stop. He took out an astray and threw it at her. The astray didn't reach her but landed on the side of his neighbour's house. She kept running and he ran after her. She grabbed a long wooden stick and hit him a couple of times. He managed to grab hold of the other end of the stick and as they were pulling the stick towards each other she slipped and fell in the drain behind her. After she fell she was sitting down and

telling him to help her. He dropped the stick and went back home as his son was crying.

[26] That is a summary of the defence's case.

Analysis

[27] The accused elected to give evidence. If I accept his account to be true, then he is not guilty of the charges. But if I reject his account as false or may be false, that would not relieve the prosecution of its burden of making sure by evidence of the accused's guilt in respect of each charge.

[28] The complainant's account is that the accused punched her once when she was inside her house. Her account is that the accused is not responsible for her leg injuries. Her account is her leg injuries were caused by a fall and not by the accused using a cement block.

[29] The prosecution was allowed to treat the complainant as a "hostile witness" – a witness who had in effect changed sides, and to cross-examine on her previous statement. Under cross-examination the complainant maintained that the accused did not hit her with a cement block and that her leg injuries were caused by a fall into a drain while she was running away from the accused. Her evidence is materially different from her police statement.

[30] I accept the complainant's evidence that the accused punched her inside the house and she ran out of her house to escape from the accused. But I do not accept her account that the accused did not carry any further assault on her outside her house.

[31] Witnesses did not see the accused hitting the complainant with a cement block but they saw him assaulting her with a wooden pole used for clothes line and

with a pot plant container while she was in the drain near her neighbour's house and screaming and crying out for help. By the time the witnesses realized what was going on, the complainant was already down in the drain and was in a distressed condition. It was the complainant's distressed calls that got the attention of her neighbours, Raijieli and Alisi, and her sister, Rebecca.

[32] The witnesses gave a consistent account of seeing the accused attacking the complainant when she was in the drain and I believe their account to be true. I do not accept that the complainant fell and broke her leg bones.

[33] I accept the medical evidence that the complainant's leg injuries were caused by a direct force trauma with a large object and not by a fall.

[34] I accept that the accused in fact made the admissions in his caution interview [PE 5] and that the admissions are true. The admissions amount to a full confession that he threw a concrete block and hit the complainant to prevent her from escaping from him.

[35] The confession is logical and consistent with all other evidence that the accused was angry and did not want to accept that he was being told to look after the children at home over the weekend while his wife was going to be out attending a wedding function.

[36] The confession is logical and consistent with all other evidence that the accused persistently attacked the complainant, first by punching her, secondly by hitting her with a solid object, thirdly by a wooden pole which can be a dangerous weapon and fourthly by a pot plant. His action shows he intended to cause serious harm to the complainant and he did in fact cause serious harm by wounding her legs. The complainant sustained multiple fractures to her legs, she had to undergo surgery and was hospitalized due to her injuries.

[37] I do not believe the account of the accused. The complainant tailored her account to suit the account of the accused. She decided to continue with her relationship with the accused and both the complainant and the accused tailored their evidence to absolve the accused from serious criminal liability.

[38] The prosecution has proved the accused's guilt on counts 2 and 3 beyond a reasonable doubt.

[39] On count 2, I feel sure that the accused with the intention to cause serious harm to the complainant and without any lawful excuse wounded her using a concrete block.

[40] On count 3, I feel sure that the accused intended to cause serious harm to the complainant and with that intention he did something which was more than mere preparation for the offence of act with intent to cause grievous harm when he used a wooden pole without any lawful excuse to poke the complainant with it when she was already down with serious leg injuries.

Verdict

[41] The verdict of the court is:

Count 1 – Assault causing actual bodily harm – Guilty Plea – Convicted.

Count 2 – Act with intent to cause grievous harm – Guilty – Convicted.

Count 3 – Act with intent to cause grievous harm – Guilty – Convicted.



.....
Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused