

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 21 of 2022

STATE

vs.

PENI RARAWA

Counsel: Ms. N. Ali with Mr. T. Naimila for the State
Mr. Veibataki for Accused

Dates of Hearing: 17th, 18th and 19th March 2025

Date of Closing Submission: 19th March 2025

Date of Judgment: 11th April 2025

JUDGMENT

Introduction

1. The Director of Public Prosecution on the 2nd of February 2022 filed this Information, charging the Accused, Mr. Peni Rarawa, with one count of Acts intended to cause grievous harm, contrary to Section 255 (a) of the Crimes Act. The particulars of the offence are:

FIRST COUNT

Statement of Offence

ACTS INTENDED TO CAUSE GRIEVOUS HARM: *Contrary to Section 255 (a) of the Crimes Act 2009.*

Particulars of Offence

PENI RARAWA on the 15th day of August, 2021 at Viro Village, Ovalau in the Eastern Division, with intent to cause some grievous harm to ***LAWRENCE ANDREW***, unlawfully wounded the said ***LAWRENCE ANDREW*** by striking his left arm with a cane knife.

2. Following the not-guilty plea entered by the Accused, the matter proceeded to the hearing. The hearing began on the 17th of February 2025 and concluded on the 19th of February 2025. The Prosecution presented evidence from four witnesses, while the Accused provided testimony for the Defence. Subsequently, the Court heard the closing submissions from the Learned Counsel for both the Prosecution and the Defence. The Learned Counsel for the Prosecution and Defence also submitted written submissions. Having carefully considered the evidence presented and the oral and written submissions of both parties, I shall pronounce the judgment on this matter.

Burden and Standard of Proof

3. I first draw my attention to the burden and standard of proof. The Accused is presumed innocent until proven guilty. The burden of proof for the charge against the Accused rests with the Prosecution, as the Accused is presumed innocent until proven guilty. The standard of proof in a criminal trial is "proof beyond a reasonable doubt". The Court must be satisfied that the Accused is guilty of the offence without any reasonable doubt.

The Admitted Facts

4. The Accused person filed the following admitted facts pursuant to Section 135 of the Criminal Procedure Act.
 1. *Peni Rarawa is from Viro Village, Ovalau.*
 2. *Peni Rarawa is also known by and addressed by the names 'Ben' and 'Sani'.*

3. *On or about the 14th to the 15th of August, 2021, Peni Rarawa was drinking with Lawrence Andrew, Vunirewa Noa, Josevata Koroi, Osipani Marau and Pacolo Veiqaravi at the junction of the main road at Viro Village.*
4. *Peni Rarawa was arrested on 15.08.24 by PC 6885 Simione Kaluva of Levuka Police Station and was handed over to the Levuka Police.*
5. *Peni Rarawa was charged on 17.08.21 by WPC Marica at the Levuka Police Station.*
6. *It is admitted that the contents of the following document is not in dispute and will be tendered by consent.*
 - a) *Medical of Lawrence Andrew conducted by Dr. L. P. Laginikoro at the Levuka Hospital dated 15.08.2021.*

Prosecution's Case

5. This case involves a night drinking party that ended in calamity. The Complainant and several others had been consuming alcohol since the evening of August 14, 2021, in Viro village when the Accused and the second Prosecution's witness, Josefata Koroi, joined them around midnight. They continued drinking until the alcohol was finished. Afterwards, they all decided to go to the Accused's and Josefata's houses for more drinks. According to the Complainant, an argument broke out between the Accused and the Complainant, leading to a few punches being exchanged.
6. The Accused took the lead, walking toward his house, with the Complainant following him and the rest of the group trailing behind. As the Complainant approached the flower hedge near the Accused's house, he felt something sharp strike his upper arm. Although he did not see who hit him, he later realized that his arm was bleeding and had a cut. The Complainant looked back and saw the Accused standing beside the flower hedge. He testified that the

lighting in the area was adequate for him to recognize the Accused, who was holding a cane knife.

7. The Complainant went home and then to the Medical Centre, where the Doctor treated him before he was transferred to CWM Hospital in Suva.
8. Josefata Koroï was walking toward the Accused's house, following the Complainant. He saw the Accused emerge behind the flower hedge, holding a dark object and walking toward the Complainant. Josefata Koroï observed that the Accused lifted his hand and heard a loud sound. Afterwards, he noticed that the Accused walked back to the flower hedge. Josefata then returned to his house.
9. Doctor Laginikoro testified, detailing the nature of the wound sustained by the Complainant from the alleged attack by the Accused with a cane knife. It was a deep cut that a sharp object could have caused.

Defence's Case

10. The Accused found no issues with the Prosecution's account of events regarding drinking with the Complainant and others that night before walking back to his house. However, he vehemently denied the allegation that he struck the Complainant with a cane knife and wounded him. According to the evidence presented by the Accused, he walked back home after the drinks finished, had dinner, and then went to sleep.

Elements of the Offence

11. In view of the evidence presented by the parties, the central issue in this matter is whether the Accused assaulted the Complainant with a cane knife as claimed by the Prosecution. I shall first consider the main elements of the offence as stated under Section 255 (a) of the Crimes Act. The main elements of Acts intended to cause grievous harm are:

- i) The Accused,
 - ii) With intent to maim, disfigure, or disable any person or to do some grievous harm to any person,
 - iii) Unlawfully wound or does any grievous harm to any person,
 - iv) by any means.
12. This offence exhibits characteristics of both conduct and result offences. However, the defining element is the intention rather than the outcome of that intention. The Court of Appeal of England, in **R v Frank Purcell (1986) 83 Cr App R**, outlined the appropriate approach for determining the intention to cause grievous bodily harm, where the Lord Chief Justice stated:

*“The direction which the judge would have given on intend had he had the opportunity (which the judge in this case did not) would have been as follow:
“You must feel sure that the defendant intended to cause serious bodily harm to the victim. You can only decide what his intention was by considering all the relevant circumstances and in particular what he did and what he said about it”.*

Evaluation of the Evidence

13. Keeping in mind the above-discussed elements of the offence and the legal precedents, I shall now proceed to evaluate the evidence presented by the parties so as to determine whether the Accused committed this offence as charged. In evaluating the evidence, the Court must determine the testimonial trustworthiness of the evidence given by the witnesses based on the credibility and reliability of their evidence. In doing that, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (**vide; Matasavui v State [2016] FJCA 118; AAU0036.2013 (the 30th of September 2016, State v Solomone Qurai (HC Criminal - HAC 14 of 2022).**

14. According to the evidence presented by the Prosecution, the Complainant did not see who struck him with a sharp object, which cut his upper arm and caused a deep wound. However, he did see the Accused standing beside him, holding a cane knife in his hand. In addition to the Complainant's testimony, the Prosecution presented evidence from Josefata Koroi, who observed the Accused approaching the Complainant, holding a dark object in his hand before lifting it. He also heard a loud noise from that same direction. There is no dispute between the parties that the Accused was drinking alcohol with the Complainant, Josefata, and others before this incident occurred.
15. The Prosecution's case against the Accused relies on circumstantial evidence. Therefore, I will briefly discuss the legal definition of circumstantial evidence. The Prosecution depends on the evidence of specific conduct by the Accused and observations made by witnesses related to this incident. The Prosecution argues that when considered together, these evidence will lead to a certain, indisputable, and undeniable conclusion that the Accused has committed this crime.
16. Keith JA in **Naicker v State [2018] FJSC 24; CAV0019** (1 November 2018) explained the nature of circumstantial evidence and its evidential effects, where His Lordship held that:

“It is sometimes said that circumstantial evidence is less compelling than direct evidence. What better evidence can there be than that someone saw the defendant commit the crime he is accused of? But eye witnesses can sometimes be mistaken, and they have also been known to lie. That is why it is also said that circumstantial evidence can be just as compelling, if not more so. If I go to bed at night and the ground outside is dry, and I wake up in the morning to find that it is wet – true, I have not actually seen it rain, but the inference that it rained during the night is irresistible. As long ago as 1866, 8 years before Fiji became a Crown Colony, a distinguished judge likened circumstantial evidence to a rope comprised of several chords. He said that “one strand of the chord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.” One of the issues in

this case is whether the circumstantial evidence was sufficient to justify the conviction of the petitioner for murder.”

17. After outlining the nature of the circumstantial evidence, Keith JA further explained that:

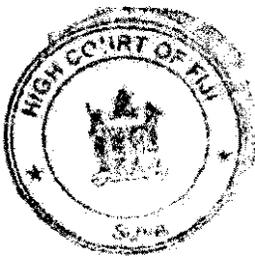
“The essence of it is that the prosecution is relying on different pieces of evidence, none of which on their point directly to the defendant’s guilt, but when taken together leave no doubt about the defendant’s guilt because there is no reasonable explanation for them other than the defendant’s guilt”

18. Accordingly, the Court must ensure that the primary circumstances on which the inference of guilt is based are proven beyond a reasonable doubt. Furthermore, the inference of guilt must be the only reasonable inference available. It must be the sole and certain rational conclusion regarding the Accused's guilt. If the accepted or considered evidence suggests any other probable inferences or conclusions indicating the Accused's innocence or raising doubt about his guilt, the Court should refrain from drawing any inference or forming any conclusion of guilt against the Accused.
19. As outlined above, the Complainant asserted that the Accused was standing beside the flower hedge, just a few steps away from him, holding a cane knife in his hand when he felt a sharp object strike his upper arm. He emphasized that the lighting conditions were sufficient for him to see the Accused. This is not an incident of identifying an unknown person. They had been drinking together for several hours prior to this incident and had known each other for several years, as they were from the same village.
20. The testimony of Josefata Koroi further corroborated the Complainant’s evidence. Josefata Koroi was following the Accused and the Complainant a few meters behind the flower hedge when he observed the Accused emerging from behind the flower hedge, holding a dark object in his hand. He then observed the Accused lifting his hand with the object, which was followed by a loud sound.

21. During the cross-examination, Josefata Koroï acknowledged that he did not inform the Police about what he witnessed that night; therefore, it was not included in his statement to the Police. While explaining the reason for that omission, Josefata stated that he did not want to jeopardize his relationship with the Accused; thus, he refrained from disclosing what he saw that night to the Police but was determined to tell the Court the truth.
22. Josefata further elaborated on the lighting conditions of that night when he saw the Accused emerging from behind the flower ledge with a dark object. As I explained before, this is also not an identification of an unknown person, as Josefata and the Accused are known to each other.
23. Considering the reasons outlined, I find the evidence from the Complainant and Josefata to be credible and reliable. The Accused denied the allegation, asserting that he went home soon after they finished their drinks. In light of the conclusion above, I refuse to accept that the evidence provided by the Accused is or could be the truth. Therefore, the Accused failed to establish any reasonable doubt regarding the evidence presented by the Prosecution.
24. The Complainant observed that the Accused was standing close to him, holding a cane knife immediately after the Complainant felt a sharp object strike his upper arm, establishing the Accused's proximity to the offence, both temporally and locationally. Josefata's evidence further supported and elaborated the evidence of the Complainant.
25. The Doctor's evidence confirmed that a sharp object caused the injury sustained by the Complainant on his upper arm.
26. Considering the evidence presented by the Complainant, Josefata, and the Doctor, the only rational conclusion that the Court can draw is that the Accused assaulted the Complainant on his upper arm with a cane knife.
27. Taking into account the nature of the weapon used by the Accused and the manner in which he executed his assault, resulting in a deep cut on the upper arm of the Complainant, the

Court could confidently draw a further undeniable inference that the Accused assaulted the Complainant with the intent to maim, disfigure, disable, or inflict grievous harm upon the Complainant.

28. Accordingly, I conclude that the Prosecution has proven beyond a reasonable doubt that the Accused committed the offence as charged in the Information. Hence, I find the Accused guilty of the offence of the Acts intended to cause grievous harm, contrary to Section 255 (a) of the Crimes Act, and convict him of the same accordingly.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe".

.....
Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

11th April 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.