

IN THE MAGISTRATE'S COURT OF THE REPUBLIC OF FIJI
AT SUVA

CRIMINAL CASE No: 604 of 2019

STATE
-Vs-
PRAJEET SINGH

BEFORE : Mr. Lakshitha Jayawardhana, Resident Magistrate
TRIAL ON : 18th August and 29th September 2022
COUNSEL : Inspector Qerewaqa, L. for the Prosecution
Ms. Pillai, M. with Mr. Gosai for the Accused

JUDGEMENT

A. INTRODUCTION

1. Accused in this case Mr. Prajeet Singh is charged with one count of **Criminal Intimidation**, one count of **Assault Causing Actual Bodily Harm**, one count of **Damaging Property** and one count of **Theft**. The charge dated 20-04-2019 reads as follows:

Charge
(Complaint by public officer)

Count 01
Statement of Offence (a)

Criminal Intimidation: Contrary to section 375 (1) (a)(4) of the Crimes Act No. 44 of 2009

Particulars of offence (b)

PRAJEET SINGH, on the 16th day of April, 2019 at Suva in the Central Division without lawful excuse, with intend to cause alarm, threatened to kill POOJA PRIYANKA MISHRA.

Count 02

Statement of Offence (a)

Assault Causing Actual Bodily Harm: Contrary to section 275 of the Crimes Act No. 44 of 2009

Particulars of offence (b)

PRAJEET SINGH, on the 16th day of April,2019 at Suva in the Central Division assaulted POOJA PRIYANKA MISHRA, causing her actual bodily harm.

Count 03

Statement of Offence (a)

Damaging Property: Contrary to section 369(1) of the Crimes Act of 2009

Particulars of offence (b)

PRAJEET SINGH, on the 16th day of April,2019 at Suva in the Central Division wilfully and unlawfully damaged 1x ladies black top Fanjipani brand valued at \$45.00, 1x Apple Iphone X valued at \$ 2500.00 and 1 x Iphone XS Maxvalued at \$ 3,000.00 all to the total value of \$ 5,545.00 the property of POOJA RIYANKA MISHRA.

Count 04

Statement of Offence (a)

Theft: Contrary to section 291(1) of the Crimes Act No. 44 of 2009

Particulars of offence (b)

PRAJEET SINGH, on the 16th day of April,2019 at Suva in the Central Division, dishonestly appropriated (stole) 1x Couch brand purse valued at \$600, containing cash of \$125.00 all to the total value of \$ 725.00 the property of POOJA PRIYANKA MISHRA, with the intention of permanently depriving the said POOJA PRIYANKA MISHRA her property.

2. Accused pleaded not guilty to the charge. Accordingly, the trial proceeded before this court on the 18th day of July 2022 for the prosecution's case and on 29th September 2022 for the defence case.
3. Prosecution called three witnesses. They were Ms. Pooja Priyanka Mishra (PW01) who was the complainant/ victim; Dr. Samuel Satendra Prasad (PW02) and Acting Inspector Peter Voi (PW 03). Prosecution marked as evidence a damaged black ladies strap top (Frangipani brand) as "PEX01", Purple colour ladies wallet (Couch Brand) containing \$130.00 in it as "PEX02" and Medical Examination Form of Pooja Priyanka Mishra as "PEX03." That concluded the prosecution's case. The counsel for the defence make an application for No Case to Answer (NCA) and move to file written submission on it. The same was filed on 05-08-2022. The prosecution did

not file any submission and relied upon their evidence. After careful consideration of the prosecution's evidence and the defence written submission this court pronounced its ruling dated 16-09-2022 on NCA application by refusing it. The Court having satisfied that the prosecution has made a *prima facie* case against the accused, acted as per section 179 of the Criminal Procedure Act, read the charge to the accused, and given his rights to defence and called the defence. The counsel for the defence informed that she would lead the evidence of the accused. Hearing adjourned for defence case on 29-09-2022 and on that day the accused gave evidence. At the conclusion of the accused's evidence defence close their case and informed court that they would file closing submissions. Prosecution opted not to make submissions and informed that they were relying on their evidence. Time given till 28-10-2022 for closing submissions of the defence and the same was filed by that date. Having considered all evidence adduced in this case, and the submissions made by the defence, this Court now proceed to make its judgment.

B. THE LAW

4. In order to prove the Charges, the Prosecution must prove each of the elements of the offence beyond reasonable doubt. This is the standard of proof required in any criminal case. It is further an imperative and pertinent rule of law; in common law legal systems, that the burden of proving each element of an offence lies with the prosecution and it shall not in any circumstance or by any means shifts to the accused person. In Fiji, sections 57 and 58 of the Crimes Act confer this burden of proof on the prosecution. This burden of proof placed on the prosecution is a legal burden of proof and the standard of proof is beyond reasonable doubt. This principal of law shall guide this court right throughout this judgment.
5. If an Accused is relying on any law or exception created by law pursuant to section 59 of the Crimes Act 2009, there could only be an evidential burden on him. There could be a legal burden of proof on an Accused; only when the law expressly specifies the same, requires the Accused to prove certain matters or creates a presumption that a matter exist unless the contrary is proved pursuant to section 60 of the Crimes Act. The evidential burden on an Accused is to adduce or point out to the evidence of a reasonable possibility of the existence of such matters exist or do not exist and the legal burden on an Accused is to be discharged only on the balance of probabilities. Other than in the above instances there is no burden on an Accused to prove anything.
6. This Court shall now consider the elements of the offence. The accused is charged with four counts. Count 01: Criminal Intimidation contrary to Section 375(1) (a) (iv) of the Crimes Act, Count 02: Assault Causing Actual Bodily Harm contrary to Section 275 of Crimes Act, Count 03: Damaging Property contrary to Section 369(1)

of the Crimes Act, and Count 04: Theft contrary to Section 291(1) of the Crimes Act No. 44 of 2009.

7. Section 375 (1) (a) (iv) of Crimes Act 2009, Criminal Intimidation:
“375. – (1) A person commits a summary offence if he or she, without lawful excuse –
–(a) threatens another person or other persons (whether individually or collectively) with any injury to –
i) their person or persons; or
(ii) their reputation or property; or
(iii) to the person, reputation, or property of anyone in whom that person is or those persons are interested –
with intent –
(iv) to cause alarm to that person or those persons; or...”
8. Pursuant to this section, the elements of the offence of **Criminal Intimidation** can be identified as follows;
a) A person (the accused), without lawful excuse,
b) threatens another person (the victim / complainant) with any injury to-
c) with intent to cause alarm to that person (the victim).
9. Fault element of this offence is “intent to cause alarm”; that is the intention of the accused.
10. Section 275 of the Crimes Act No 2009, Assault causing actual bodily harm reads as follows:
“275. A person commits a summary offence if he or she commits an assault occasioning actual bodily harm.”
11. The elements of **Assault causing actual bodily harm** can therefore be identified as follows:
a) A person (the Accused),
b) commits an assault occasioning actual bodily harm,
c) to another (the Victim).
12. The above offence does not specify a fault element. Therefore section 23 of the Crimes Act is applicable in interpreting the fault element of this offence.
13. The offence of Damaging Property defined in section 369 (1) of the Crimes Act as follows:
369 (1): “ A person commits a summary offence if he or she wilfully and unlawfully destroys or damages any property.
Penalty – imprisonment for 2 years, if no other punishment is provided under any other provisions of this section”.

14. Accordingly, the elements of the offence **Damaging Property** can be identified as follows:
 - a) A person (the accused),
 - b) wilfully and unlawfully.
 - c) destroy or damage any property.
15. The fault element of the offence of Damaging Property is the element identified above as (b), which is 'wilfully and unlawfully'.
16. Section 291 (1) of the Crimes Act 2009 interprets the offence of Theft:

"291 (1) A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property."
17. Accordingly, the elements of the offence of **Theft** can be identified as follows;
 - a) A person (The Accused)
 - b) Dishonestly,
 - c) Appropriates property belonging to another,
 - d) With the intention of permanently depriving the other of the property.
18. The fault element in this offence can be identified in the element (d) above, that is the intention.
19. This court now consider the legal interpretations with regard to the faults elements of the four offences in the charge.
 - a) Legal interpretation of "wilfully" is found in Director of Public Prosecutions v Singh [1977] FJSC 79; Criminal Appeal 053 of 1977 [1977] FJLawRp 16; [1977] 23 FLR 135 (12 August 1977), wherein Kermode J. held that: "The expression "wilfully" means that the act is done deliberately and intentionally, not by accident or inadvertence but so that the mind of the person who does the act goes with it. Per Avory J. in R. v. Waiter (1834) 24 Cr. App. Rep. 117 at page 122."
 - b) In *Lagi v The State* [2004] FJHC 69; HAA0004].2004S (12 March 2004), Shameem J. held that: "The only matter in dispute was whether he had done so "wilfully." The word "wilfully" was defined by the House of Lords in *R -v- Sheppard* (1981) AC 394 as either deliberately doing an act or doing an act not caring about the consequences. The majority opinion was that "wilfully" meant either intentionally or recklessly. In *R -v- Giffins* (1982) RTR 363 the same definition was adopted on a charge of the wilful obstruction of a railway, and also in *Willmot -v- Attack* (1977) QB 496 63 Cr. App. R. 207, where the defendant was charged with the wilful obstruction of a police officer."
 - c) Thus, the interpretation of wilfully, according to the above superior court decisions is that an act or an omission done deliberately. As Shameem J. pointed out in *Lagi*

- vs State (Supra) “wilfully means either intentionally or recklessly.” Therefore, the fault element of the offence of damaging property shall either be the intention or the recklessness.
- d) Term “unlawful” according to the Concise Oxford English Dictionary (12th Edition, Oxford University Press, 2011), means: “not conforming to the law or rules or not permitted by law or rules”.
 - e) Sections, 18 to 22 of the Crimes Act 2009 deals with the fault element of a criminal charge. As per section 18, ‘fault element for a particular physical element maybe intention, knowledge, recklessness or negligence’. Sections, 19 to 22 makes the definition of intention, knowledge, recklessness, and negligence.
 - f) Section 23 of the Crimes Act 2009 deals with the offences that do not specify the fault element. Accordingly, if the law creating the offence does not specify a faults element for a physical element that consists only of conduct, the fault element is intention while the physical element that consist of circumstances or result, then the fault element shall be recklessness.
20. According to the above legal analysis this court shall now consider and evaluate the evidence adduced during the hearing.

C. EVIDENCE

21. The first witness for the prosecution (PW01) was the complainant, Pooja Priyanka Mishra. She stated that she worked as a State Counsel at office of the Director of Public Prosecution for about one year and one month. Before that she worked at couple of private law firms. She remembered the 16-04-2019 at about 2.15, she was at University of Fiji, Samabula campus. She was a student there those days. On that day at that time, she received a phone call from her ex-boyfriend, Prajeet Singh. She had been in a relationship with him for about one year and they had an argument on a day prior to 16th April 2019 and their relationship was broken. At the time she received the call from Prajeet, she had finished her lecture and was having conversation with her friends. Prajeet called and informed her that he wanted to see her again and discussed about their break upon previous day. She refused to see him again. Then he threaten her that he would upload her indecent photos. They had short argument and finally she agreed to meet him. After 10-15 minutes, he came to pick her from campus. His tone was aggressive and authoritative while the telephone conversation. He came in his Toyota Crown car. She got into it. To the front passenger seat. There were nobody else was in the car. He proceeded towards Namadi Hights, where he resides. They were continuing the conversation while travelling to his apartment in Namadi hights. After reaching their, she got off from the vehicle, he opened the door of the apartment for her. They went inside and had talked and had reached an agreement to not being in that relationship. It

was mutual understanding. After that Pajeet offered her to drop her at town, so she could go home with her friends. They were on their way to town in the car, while Prajeet started questioning and accusing her on cheating. He questioned her on chatting with some other boys and accused her that she had slept with other men. She told him that it was not true. But she was devastated about what he had said. While having this conversation Pajeet got aggressive. She explained that she had not done none of those things. He got furious and initially started swearing at her and then pulling her hair. This happened while he was driving the car. She got hurt and started crying and begged him not to hurt her. He did not listen, instead he punched her right cheek, back of her head and right arm on several times. He kept on accusing her and punching her. He threaten that he would ruin her and her family's reputation, and not let her to continue her education. He threaten that he would upload her indecent photos and at one point he threatened to kill her. She was very frightened as the way he behaved at that point. She was wearing a striped, black top with blue jeans. Prajeet pulled her black top and due to that pulling the black top was torn. When he threatened to kill her, she was very frightened and tried to get off the vehicle, but he said that he would drop her at her brother's workplace. He did not stop the vehicle, she saw some police officers on the road, she asked to stop the vehicle, but he did not stop. While driving he continued to punch her on her cheek and head. She received scratch marks. He drive along Jerusalem road, near the Rifle range and headed to her brothers workplace located at Lalita Behandi Street, Vatuvaqa. When they reached her brothers workplace, she got off from the vehicle. The damaged black top of her was worth about \$ 40- \$45. She identified it and marked it as evidence. (PEx 01). Brother was outside, when he saw her, he asked her to get into his vehicle and took her to buy a new top. While Prajeet driving her to her brother's workplace, he grabbed her wallet. It was a light pink/ purple colour Couch brand wallet with a golden colour zip. It had about \$125- \$ 130 in it. It worth about NZ\$ 600/= and was a gift given by Prajeet to her. He grabbed it from her and throw it to the back side of the car. He did not give it back to her. She identified the wallet and marked it as evidence. (PEx02). Prajeet dropped her at brother's place and went away. She went home with her brother. She reported the incident to Samabula police station on that day itself. She informed police that she was assaulted and was in pain. Police issued a medical report and directed her to be medically examined. She went to Valalevu Health Centre and a doctor examined her on the same day. She identified the Medical Examination Form and marked it as evidence. (PEx03). PW01 also identified the accused who was in the accused box as Prajeet Singh.

22. In cross examination, PW01 stated that Accused called her to meet him. He was aggressive at that time and threaten her that he would upload indecent photos of her. They broke up their relationship before 16-04-2019. It took about 10-15 minutes to go to his residence from university of Fiji, and during that time he seemed to be calm. At his apartment they talked about their relationship and came to a mutual understanding that they would not be together anymore. That decision devastated

her. After the talk, he was going to drop her at town. She could not remember through which road they went. He started swearing at her when they reached Prouds, Suva Central. He threatened to kill her or pay some money to somebody to kill her. She told him to drop her at that point since she was in pain, she wanted to get off from the vehicle. He was continuously threatening and punching her from Prouds to her brothers workplace. She could not remember the time. There were many people in the city. He continued to assault her while driving. He assaulted on back of her head. There was headrest in the car seat. He not just assaulted her head but punched on her right cheek and right arm. He used his both hands to drive but he was a left-handed man. He used his left hand to grab her right shoulder and pulled her towards him. The "Frangipani" top that she wore on that day was not very fragile one. It had cuttings as its design. Prajeet was seated on the right-hand side of her, and he used his right hand to steer the steering wheel, while he grabbed her from left hand. he did not bend because the Toyota Crown cars is quite spacious. The frangipani top was not fragile, but it had torn because of the force he used. It tore on the right-hand side. He used his both hands to drive and he grabbed her by her shoulder that's how the strap got broken. While he was swearing and assaulting her, she was in pain and scared. She tried to resist but she was unable to do much while seated in the car, she pleaded him to stop doing it. She believed that they came though Raiwaqa to Jerusalem Road. She did not know what was in the mind of Pajeet, he drove through Jerusalem Road. Maybe he did not have enough of assaulting her, that's why he had taken a longer route. After he dropped her at brother's workplace accused refused to give her the wallet. It was on the back seat of the car. She asked him to give her back the wallet, but he said no and went away. It was his vehicle and he asked her to get off and go. So, she asked him for her wallet, and he said no and drove off. The wallet had her cards and her money of around \$ 125- \$130. Still, it had \$130 inside it. Her medical report was issued from Valalevu health centre. According to the medical report, she could go to any hospital of her choice. Her father is the Director Traffic of the Fiji Police force. He did not influence her to do anything against the accused. After the accused being charged, he had tried to contact her on several times through different phone numbers.

23. PW 02 was Dr. Samuel Satendra Prasad. He is a medical doctor with MBBS degree from Fiji National University. He had 5 1/2 years of experience and doing general practice. He stated that from January 2018 till May 2022 he worked at Valalevu Health Centre. He remembered that on 16-04-2019 examined a patient named Pooja Priyanka Mishra at Valalevu health Centre. She presented with a history of assault. She was fully conscious. He examined her. She came with a police medical examination form. Results of the examination was written in the Medical Examination Form. PW02 then identified his signature on "PEX03." Pooja was examined by him on 16-04-2019 at 11.00 pm. Medical finding were mild bruising and scratch marks on the right upper arm and on right chest. The witness then explained page 03. 04 and 05 of the PEX03 including paragraphs D10 to D16. In

D12 the witness described the special medical findings as “mild bruising on the right upper arms well as scratch marks. Bruising occurred where there is bleeding beneath the skin as a result of blood tumour. Whereas scratch marks are linear aggressions that occurred when a sharp object is scratched across the surface of the skin, that could be a nail, a sharp pencil or any other sharp object. There was also scratched mark noted on the right side of the chest as described earlier” In his professional opinion, PW02 stated that the injuries were of recent history, and it was likely to occurred that it was secondary to what the patient described in her history. Patient was not admitted to the hospital, and she was given pain relief medication. According to the summery mentioned in D 16 PW 02 stated that the patient was 21 years old female at the time of examination presented with a history of assault with injuries on face and right arm, but visible injuries noted only on the right side of the chest and right upper arm. He concluded the examination by about 11.15 pm on the same day.

24. In cross examination, PW02 stated that the scratched marks that he had noticed on the patient’s right upper arm and right chest could be classified as wounds. Those were the only finding found by him. The patient’s history is consistent with his findings. He did not write several punches; he was only told that she was punched. Punch on the right upper arm could give bruising. The patient told him that she was punched on right face and right upper limb. On examination there was bruising noted on the right upper arm and that would have resulted from the punch.
25. The last witness called by the prosecution was PW 03 Acting Inspector Petor Voi. He stated that he recalled on 16-04-2019 at about 6.00pm he received some recovered stolen items from Mr. Pajeet’s flat at Namadi. Pajeet was a suspect in a case investigate by Samabula police station. Items that were recovered from his flat were: a purse contained cash \$130/=, four Iphones of which two had cracked screens, and an Apple laptop. Prajeet gave all these wilfully. The purse was a pink coloured ladies purse and \$ 130/= was inside it. PW03 then identified “PEx02” as the purse he recovered from Prajeet’s flat on that day. He further examined it and stated that it had \$ 130 inside it. He Furter stated that he still remember Prajeet Singh and then he identified him as the accused who was in the accused box. PW03 was not cross examined by the defence.
26. By leading the above evidence, prosecution closed their case.
27. The accused gave evidence for the defence case. He stated that on 16-04-2019 he received a call from the complainant, his girlfriend at that time, Pooja Mishra, for him to come and met her at University of Fiji to discuss further about their broken-up relationship on the last night. He agreed to pick her up and came to the university and she got into the car, and he drove back to his apartment. He did not call her or threaten her that he would upload her indecent photos. Police seized all

his devices from his property but nothing indecent nature had been found of them. In the apartment she started inquiring about car ownership and whether he had an affair with a girl named Zoya. He had brought two cars and registered under her name. Since their relationship had been falling apart, few months back he decided to transfer it back to his name and of which she had agreed. He showed the paper works to her at the apartment and told her that he did not have an affair with any other girl. She got furious and started fighting with him. She could not bear the fact that after a year they ended up the relationship and he transfer the cars back to his name. She was arguing as to why he had transferred the cars back to his name, she was freaking out and act irrationally, ran out to the car park, demanding him to drop her at town and threw one of the phones he brought to her at concrete pavement. He agreed to drop her off to the town, it took about 15-20 minutes since it was school finishing time. While driving she was accusing him of having affairs with other girls and out of anger and frustration, she lashed him with her wallet in hand. He had to defend himself, she was distracting him, so he had pushed her away from his right hand. The argument went on till he dropped off her at her brothers place. While he was trying to defend himself, he pushed her away and that process, her Frangipani top, which had a strap made in rather thin material would have been broken, as claimed by her. He could not drop her in town as he agreed since she was getting angry and saying that she would report him. He decided to drop her at her family member. He did not threat her that he would hire somebody to kill her. She was threatening to report to the police with all kinds of allegation on him because he decided to end the relationship. Before he reached the town, he turned and decided to drop her at her brothers workplace, Maja Upholstery at Lalita Behindi Street, Vatuwaqa. After he dropped her off at her brothers place, she got into her brothers car, he waited for her to chat with her brother, but no one attended to him. So, he drove back to his residence. Once he parked the car, he realised that her wallet was in the car. He tried to contact her, but she had blocked him on all platforms. He did not realise that the wallet was dropped in the car while she was tried to hit him with it, while he was driving. It was fallen between the seats and could not be visible from the driver's point of view. He denied all four charges against him and stated that he did not do any grievance to her. He reached home, everything was normal, after two days, three police officers came in a vehicle and asked him to go with them to question on Pooja Mishra's matter.

28. In cross examination the accused stated that he did not call Pooja on 16-04-2019. After they had broken up on the previous night, she had blocked him. On 16-04-2019 she had massaged him and a screenshot of the same was with his attorney. She wanted to see him and see the ownership of the vehicles. There was an argument between them while at his apartment, she was accusing him of having another afire with another girl, he refused it, she demanded to drop her at town, while travelling in the car the argument continued. The accused denied the suggestion that he had assaulted her several times whilst driving. He drove a Toyota Crown Elite car. It was a small car. No space for him to punch her on top or

behind her head, he tried to defend himself because she was hitting his head with her wallet. He was a left-handed person, so he drove with his left hand. Anyone on the driving seat can reach the person in the front passenger seat. He refused the allegation made by PW01 that he swore at her in filth and stated that he would pay someone to kill her. While driving her to town, he was not angry with her but frustrated. He refused that he punched her while driving. He did not scratch her chest as that could not be happened, he was a habitual nail biter. After seen the Medical Examination Form of complainant("PEX03"), the accused stated that he agreed with one injury but not with others. Those injuries had been inflicted on her while he was trying to prevent her from interfering with his driving. He did not intentionally injure her, but it occurred while he was acting in self-defence. When she was coming towards him in full force, he pushed her away, at that time, the thin strip of her Frangipani top would have gone torn. He wanted to take her to brothers place as he did not want to sort out it on the road. Accused was asked as to why he did not stop the car to seek the assistance of the police, and that could avoid all the accusation against him. In answering the accused stated that if he had stopped the car she could have screamed and made all sort of accusations against him. Accused refused the suggestion that he did not stop the car when pooja asked to stop it near a police officer. Also, he refused the suggestion that he refused to return the wallet to her when she asked it at her brothers place and further stated that the wallet and the cash in it had been given to her by him and he had no knowledge of the wallet being inside the car.

29. In re-examination the accused stated that Pooja texted him, but he did not text her or called her. He recalled the message she had sent. It said: her mum will drop her at university and that she wanted him to discuss about their breakup. Misunderstanding between them was caused by Pooja Mishra. While he was driving his right hand was free. He did not slap her at all, he rather pushed her away to defend himself. There were no visible injury to her at the time of her got off at brother's place. She did not complaint of any injuries whilst in the car. He pushed her away with his right hand holding her shoulder. If he stopped the car, the situation would gone worse. She would get out and made a public scene, therefore he thought of dropping her at her family member's place.

D. ANALYSIS AND FINDINGS

30. At the outset, I must place on the record the demeanour of the three prosecution witnesses. They gave evidence before this court clearly and confidently. After the scrutiny of the defence counsel's cross examination, their evidence on all material points in this case are unchallenged and uncontradictory. Thus, I accept the complainant PW01, PW02 and PW03's evidence *in toto*.

31. I now consider whether the elements of offence are established by the prosecution's evidence to the standard of proof.
32. The identity of the accused abovenamed was never challenged in this case. The complainant PW01 and PW03 made dock identification of the accused. Defence did not challenge it and in fact the accused in his evidence accepted the fact that the complainant was his ex-girlfriend. I therefore consider that the element of the identity of the accused in all four counts in the charge has been proven beyond any reasonable doubt.
33. The elements of the offence of **Criminal Intimidation** are:
 - a) A person (the accused), without lawful excuse,
 - b) threatens another person (the victim / complainant) with any injury to-
 - c) with intent to cause alarm to that person (the victim).
34. With regard to Count 01 offence of Criminal Intimidation, evidence of the complainant, PW01 is relevant. In her evidence-in-chief PW01 had categorically stated that on 16-04-2019, in the evening, when she returned to her brothers workplace with the accused in his car, the accused had threatened her while driving the car. At some point he even threatened to kill her. PW01 got scared because of this threat of the accused. In cross examination, it was suggested to the witness that in her police statement she had mentioned that the accused's threat was that he would pay someone to kill her. The witness clarified this point and stated that in whichever way, the accused had threatened to kill her. According to PW01, this threat was made during she had been assaulted in the car by the accused. It indicates that the accused wanted to cause fear on her. Those evidence of the PW01 was not discredited by the cross examination and are reliable. Those evidence contained all the elements of the offence of Criminal intimidation as mentioned herein before.
35. Count 02 offence was **Assault Causing Actual Bodily Harm**. The elements are:
 - a) A person (the Accused),
 - b) commits an assault occasioning actual bodily harm,
 - c) to another (the Victim).
36. In regard to Count 02, I considered the evidence given by PW 01 and PW02. PW 01 the complainant had stated that while she was travelling in the accused's car towards her brothers workplace, the accused accusing her on cheating, having talked to other boys and slept with other men. She refused the allegation, but the accused got aggressive and started pulling her hair and punched her. She stated that he had assaulted on the back of her head, right cheek and right arm several times. She begged to stop it and cried in pain. Her evidence was not discredited on those points in her cross examination. Instead, she elaborated more on the incident. The accused was a left hander and while she was seated on to his left, he used his left

hand to assault her. PW02, the doctor who examined PW01 on the same date of the incident, marking her medical examination form as "PEX03", corroborated the evidence of PW01. He observed a mild bruise on the right upper arm. Further, he observed scratched marks on the right side of the chest and the right upper arm of PW01. His professional opinion was that those injuries were recently happened and compatible with the history given by the complainant. The doctor's evidence was not challenged by the short cross examination, in fact the witness firmly elaborated his position taken in examination-in-chief. By the said evidence it has been established that the accused assaulted the complainant PW01 where she sustained the injuries inflicted in "PEX03." In considering this evidence of the said two witnesses, it is clear that it contained all the elements of this offence, and it was not discredited and those are reliable evidence.

37. Count 03 of the charge is offence of **Damaging Property**. It's elements are:
- a) A person (the accused),
 - b) wilfully and unlawfully,
 - c) destroy or damage any property.
38. PW01 stated that she was wearing black "Frangipani" strap top on the date of the incident. During the assault that took place in the car, while the accused grabbing her right shoulder and assaulting her, the right side of strap top had been damaged. She marked said strap top as "PEX01" as evidence. The Court observed it and noted that the right sleeve area of that garment had been torn. According to this evidence, it is clear that the accused's wilful act caused the damaged to complainant's Frangipani brand strap top. She stated that the value of that garment was about \$40-\$45. This evidence contained all three elements of this offence as mentioned herein before. In cross examination those evidence was not discredited. Those are reliable and firm evidence. However, in this count in the charge, it has been mentioned that two Apple brand mobile phone (iPhones) of which were the property of the complainant was also damaged. But no evidence was led by the prosecution to establish the same.
39. The elements of Count 04 of the charge of **Theft** are:
- a) A person (The Accused)
 - b) Dishonestly,
 - c) Appropriates property belonging to another,
 - d) With the intention of permanently depriving the other of the property.
40. PW01 stated that while the accused travelling with her in his car and while he was quarrelling and assaulting her, he grabbed her wallet and throw it to the back of the seat. He never gave it back to her. In cross examination PW01 stated that when the accused drop her at her brothers workplace, she asked for her wallet, but the

accused refused to give it to her and went back. The wallet was Couch brand light pink/ purple coloured one. It had about \$ 125-\$130 inside it. PW01 identified the wallet and marked it in evidence as "PEX02." The Court observed that inside that wallet there were \$ 130 in cash. PW03 a Police Officer who investigated this offence stated in his evidence that on the date of the incident at about 6.00 pm they have recovered "PEX02" along with some other items from the accused person's (Prajeet Singh) flat in Namadi. He also identified PEX02. Therefore, the accused had dishonestly taken the complainant wallet from her and throw it to the back of the car in order to permanently deprive it to the complainant. His intention is reflected when the complainant had asked to return the wallet at the time she got down at her brothers place, the accused had refused her request and drove the care away. Those evidence was not challenged or discredited by the cross examination, and I therefore consider that all the elements of the offence of theft are comprise in those evidence.

41. I now consider the defence case. As I mentioned hereinbefore in this judgement, the burden of proving each element of an offence exclusively lies with the prosecution and it shall not in any circumstance or by any means shifts to the accused person. But the defence has the opportunity to create reasonable doubts in the prosecution's evidence regarding the essential elements of the offence, through the defence evidence. The following analysis is to ascertain whether the defence was able to create reasonable doubt in prosecution's case.
42. The accused opted to give evidence in defence case and stated that he received a text message from PW01 the complainant on 16-04-2019 to the effect that her mother would drop her at the university and that she wanted to discuss about their broken-up relationship, therefore, him to come and pick her up from the university. Then they went to his apartment at Namadi hights. There, she got furious about him and accusing him that he was having an afire with another girl. She also questioned him about transferring the ownership of two cars which he had brought under her name. But at the same time, he stated that he got her consent few months back to transfer the ownership of those two cars. If that is so, then what was the reason for the complainant to be furious about the vehicle transfer. The accused's evidence here is contradictory. Then the accused stated that he agreed to drop her back in town and while driving her back, the complainant accusing him of having affairs with other girls and lashed out to him with the wallet which was in her hand. She came towards him in full force and tried to distract him driving the vehicle. Then the accused used his Right hand to push her away and defend himself. He stated that the complainant's Frangipani strap top may have had damaged while he pushed her away acting in defending himself. This evidence of the accused is unrealistic. Is it a common human behaviour of a left-handed driver to use his Left hand, not the right hand to defend himself from an attack coming from a passenger sitting on to his left-hand side. He has to take his right hand across the left hand to push her away. Instead, a left hander can easily use his left hand to push away a person sits on the left. He also stated that he did not notice the wallet of PW01 had been

dropped between the seats after she had assaulted him with it. He did not see it until he went back his home. But if the complainant lashed him with her wallet and in that cause if it had been dropped inside the car, why would she not pick the wallet that contained her Identity card and money? That evidence also unrealistic. The accused stated that the complainant had send a text message to him requesting for a meet-up and he had obtained a screenshot of the same and given it to his attorney. But he never submit any such document as evidence before this court. Accused had refused the allegation that he had threatened the complainant that he will publish her indecent photos. He also refused the allegation that he had threaten to kill her or pay someone else to kill her. Basically, he refused all four charges against him.

43. During the cross examination, the prosecutor had asked a pertinent question from the accused. That is why the accused did not he stop the car to seek the assistance of police and complain the incident to police. That could have been avoided the allegation against him. In answering the said question accused stated that if he had stopped the car the complainant could have screamed and made all sort of accusations against him. The aforesaid answer is irrational and is not compatible with the alleged incident he had explained in his evidence. If the complainant Pooja Mishra was violent on that day, and making falls allegations, distracting his driving, and attacking him in her wallet; there was nothing preventing for him to seek the assistance of the police.
44. The court observed a saliant lacuna in the defence case. None of the positions that the accused had taken in the defence case were not suggested to the complainant in her cross examination. For example, the complainant stated that the accused had telephoned her in the afternoon of 16-04-2019 and requested to meet her. But the accused stated in the defence case that the complainant requested him to meet her on that day and she had in fact send him a text message. In the cross examination of the complainant (PW01) the above position of the defence did not put to her. Therefore, the defence intentionally or by mistakenly avoided this court of getting an explanation of the prosecution witness on these saliant points of the defence case. That seriously undermine the credibility of the total defence case.
45. In considering the whole evidence given by the accused before this court, I observe that his version is very unrealistic and self-contradictory. Therefore, this court cannot rely on the defence case. Further, according to the aforementioned reasons, I hold that the defence failed to create any reasonable doubt on any of the prosecution's evidence establish the elements of all four counts of the charge.
46. In the above analysis of the evidence in this case, it is the overall finding of this court that the prosecution has proved all elements of all four count as per the charge, beyond any reasonable doubt.

E. CONCLUSION

47. Upon careful consideration of the evidence that was adduced on behalf of the prosecution's case and the defence's case, this court is of the view that the prosecution has clearly established through credible and admissible evidence, all the elements of all four counts in the charge and that there are no reasonable doubts whatsoever, on the proof of these counts against the accused.
48. As such this court finds that the accused above named is guilty to Count 01, Count 02 Count 03 and Count 04 of the charge and convict him as charged.

F. ORDERS OF THE COURT

49. The Accused is found guilty and convicted on Count 01, Count 02, Count 03 and Count 04 in the charge as charged.
50. Accused is directed to make submissions in mitigation, if any, before sentencing.

G. RIGHT OF APPEAL.

51. There is a right to appeal to the High Court.
52. Finally, this court place on record its appreciation for both prosecution and defence counsels for their rendered assistance in adjudicating this matter.




Lakshitha Jayawardhana
Resident Magistrate

At Suva, on this 20th day of January 2023.