

**IN THE HIGH COURT OF FIJI AT SUVA**  
**[CRIMINAL JURISDICTION]**

**CASE NO: HAC. 362 of 2018**

**BETWEEN** : **STATE**

**AND** : **ALIKI HARRY**

**Counsel** : **Mr. Kumar R. for State**  
: **Ms. Mataika P. for the accused**

**Hearing on** : **14<sup>th</sup> October – 15<sup>th</sup> October 2019**  
**Summing up on** : **17<sup>th</sup> October 2019**  
**Judgment** : **01<sup>st</sup> November 2019**

## **JUDGEMENT**

[1] The accused, Mr. Aliko Harry was charged as follows;

*Statement of Offence*

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

*Particulars of Offence*

*ALIKI HARRY on the 9<sup>th</sup> day of September, 2018 at Suva, in the Central Division, with intent to cause grievous harm, unlawfully wounded MARISILINO RADROGALE.*

- [2] He pleaded not guilty to the charge and the ensuing trial lasted for 2 days. The complainant Mr. Marisilino Radrogale and Dr. Jolyn Buadromo, who was attached to the Valelevu Medical Center, gave evidence for the prosecution while the accused Mr. Alik Harry remained silent exercising his constitutional right.
- [3] At the conclusion of the evidence and after the directions given in the summing up, the assessors unanimously found the accused not guilty to the count of Act with Intent to Cause Grievous Harm, but guilty to the lesser count of Unlawful Wounding.
- [4] I direct myself in accordance with the law and the evidence inclusive of which I discussed in my summing up to the assessors.

### **Analysis**

- [5] First I will look into the elements of the alleged offence of Act with Intent to cause Grievous Harm, as for section 255 of the Crimes Act.
- a) The accused;
  - b) with intent to do some grievous harm;
  - c) unlawfully does harm to the complainant by any means.
- [6] The main issue in this case is whether the accused intended to cause grievous harm to the PW1, or not. There is sufficient evidence to establish the rest of the elements. It is evident that the accused did not carry any weapon with him when he went to the PW1's house. He is alleged to have picked the coconut scraper and a kitchen knife from a basin on a shelf at PW1's house.
- [7] The intention of the accused could only be inferred from the circumstances of the alleged incident. The sole witness to the alleged incidence is PW1, Mr. Marisilino Radrogale. He states that the accused said that he is going to kill him, which he has failed to inform to the police, in his statement. The witness has also stated in evidence that this assault has gone on for about ½ an hour, until a cousin of the accused came and took him out of the witnesses' house.
- [8] The PW2, the doctor who examined the pw1, after the alleged assault states that all the injuries suffered by the pw1 are superficial injuries. Therefore it is evident that the accused has not stabbed the pw1. It is apparent that there was enough time and ample

opportunities for the accused to stab him if he intended to do so. Therefore, it creates a doubt of the accused's intention to cause the pw1, grievous harm.

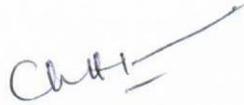
[9] In establishing the lesser count, the proof of the intention of the accused is not necessary. Therefore, when there exists a reasonable doubt in regards to the intention to cause grievous harm, the assessors were correct in opining that the accused is not guilty of the alleged count but guilty of the lesser count of unlawful wounding.

[10] From my point of view, the assessor's opinion was not perverse. It was open for them to reach such a conclusion on the available evidence. Therefore, I endorse and concur with the opinion of the assessors.

[11] I, having seen and heard the testimonies of the witnesses, am satisfied that evidence of the prosecution presented through the witnesses 1 to 2, is sufficient to establish the elements of Unlawful Wounding beyond any reasonable doubt. The prosecution also established the identity of the accused beyond a reasonable doubt. In these circumstances, I am satisfied without a doubt that the accused has committed the offence of Unlawful Wounding.

[12] Therefore, I acquit the accused, of the count of Act with Intent to Cause Grievous Harm and convict him of the lessor count of Unlawful Wounding.

[13] This is the Judgment of the Court.

  
Chamath S. Morais  
JUDGE



At Suva

This 01<sup>st</sup> Day of November 2019

**cc: Solicitors for the State - Director of Public Prosecutions, Suva**  
**Solicitor for the Accused - Legal Aid Commission**