

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 280 of 2017

[CRIMINAL JURISDICTION]

STATE

V

JONE VAKARISE

Counsel : Mr. E. Samisoni for State  
Mr. J. Dinati for Accused

Hearing on : 19 - 23 November 2018

Summing up on : 23 November 2018

Judgment on : 26 November 2018

JUDGMENT

1. The accused is charged with the following offences;

**FIRST COUNT**

*Statement of Offence*

**ARSON:** contrary to section 362(a) of the Crimes Act of 2009.

*Particulars of Offence*

**JONE VAKARISE** with others, between the 5<sup>th</sup> day of September, 2017 to the 6<sup>th</sup> day of September 2017, at Nasinu in the Central Division, willfully and unlawfully set fire to the dwelling house of **MICHAEL ASHLEIGH**.

## SECOND COUNT

### *Statement of Offence*

**ASSAULT CAUSING ACTUAL BODILY HARM:** contrary to section 275 and read together with section 45 of the Crimes Act of 2009.

### *Particulars of Offence*

**JONE VAKARISE** with others between the 5<sup>th</sup> day of September, 2017 to the 6<sup>th</sup> day of September 2017, at Nabua in the Central Division, assaulted **JITENDRA KUMAR** thereby causing **JITENDRA KUMAR** actual bodily harm.

2. The assessors have returned with the unanimous opinion that the accused is not guilty of the first count and guilty of the second count.
3. I direct myself in accordance with the summing up delivered to the assessors on 23 November 2018 and the evidence adduced during the trial.
4. The only evidence that incriminates the accused is the oral testimony of the first prosecution witness (PW1). Given the demeanour and deportment of PW1 when he gave evidence, he did not appear to me as a credible witness. Moreover, there were substantial inconsistencies between the statement made by PW1 to the police and his testimony in court, and PW1 failed to provide reasonable explanations for those inconsistencies.
5. It is pertinent to note that PW1 has mentioned the nickname 'Pei' in his statement to police as one of the persons of the group that committed the two offences. No other details were given in order to identify who he was referring to as 'Pei'. No identification parade or photo identification was conducted during the investigation.
6. During the examination in chief PW1 said he knew 'Pei' since 2004 as he was working at Carpenter's Shipping from 1999 to 2007. He did not explain how he came


to know 'Pei'. What could be inferred from his evidence during the examination in chief was that he used to work with 'Pei'. PW1 identified the accused in open court. However, during cross-examination PW1 said he used to buy marijuana from the accused since 2004. As such it was noted that PW1's version kept on improving. During cross-examination it was suggested that the accused was a form 4 student in 2004 and PW1 denied this suggestion. The accused said in his evidence that he is 29 years old now and accordingly was 15 years old in 2004.

7. According to the evidence given by PW1 the setting of fire to the house and the subsequent assault on him were instigated by an issue involving a dog. But there is no mention about the issue involving the dog in PW1's police statement. When PW1 was asked the reason for him not to mention about the dog in his police statement, he said the issue about the dog was a 'small matter' and he overlooked to mention it. In view of the account given by PW1, I find it difficult to believe that the issue involving the dog was such an insignificant matter that could escape PW1's recollection when he gave the statement to the police. This was another significant inconsistency where the explanation offered by PW1 was not acceptable.
8. All in all, in my judgment, PW1 was not a credible and a reliable witness. On the other hand, the accused was a convincing witness. He was able to sufficiently raise an *alibi*.
9. In the circumstances, I find that the evidence led by the prosecution does not prove the two charges against the accused beyond reasonable doubt. Therefore, I agree with the unanimous opinion of the assessors that the accused is not guilty of the first count and I do not agree with their opinion that the accused is guilty of the second count.



10. I find the accused not guilty of both counts and I hereby acquit the accused of both counts accordingly.



  
Vincent S. Perera  
JUDGE

Solicitors;

Office of the Director of Public Prosecutions for State.  
MIQ Lawyers, Suva for Accused.