MC/CRIM/01/24

JUDGMENT

Rex
v
Rishon KAMOTO

before
HHJ Malcolm Simmons

JUDGMENT GIVEN ON

28 August 2024

Heard on 27 August 2024

Representation

Mr Stuart Walker, Crown Counsel	Prosecution
Ms Alison Inglis, Waverley Law	Defence

This judgment will be published until 4th October 2028 for this reason:

- As per Schedule 10 of the Criminal Procedure Evidence Ordinance, 2014, the conviction of the defendant will be considered spent.

Any concerns about the publication or content of this document will be placed before the Judicial Officer(s) for consideration.

IN THE FALKLAND ISLANDS
MAGISTRATES COURT **Case No.MC/CRIM/01/24**

BETWEEN:

REX

V

RISHON KAMOTO

Before HHJ Malcolm Simmons (Senior Magistrate)

Mr. Stuart Walker appeared for the prosecution.

Mrs Alison Inglis appeared for the defence.

The Defendant was present at trial.

VERDICT

COUNT 1 – Guilty

COUNT 2 - Guilty

REASONING

1. The defendant was charged in two counts that:

    i. *On the 31st day of March 2024, intentionally strangled AB, an offence under section 71A(1)(a) of the Crimes Ordinance 2014.*

    ii. *On the 31st day of March 2024, assaulted AB by beating her, an offence under section 70(1) of the Crimes Ordinance 2014.*

Directions

2. The burden is on the Prosecution to prove that the Defendant is guilty. The Defendant does not need to prove anything. The Defendant does not need to prove that he is innocent. The Prosecution will only succeed in proving that the Defendant is guilty if I am sure of the Defendant's guilt. If I am not sure, then I must return a 'not guilty' verdict.

3. I do not have to decide every point that has been raised in this case. I am entitled to draw inferences, that is, to come to common sense conclusions based on the evidence which I accept, but I may not speculate about what evidence there might have been or otherwise allow myself to be drawn into speculation. I will not make any findings of fact unless I am sure and, although I might not preface each finding of fact with that point, it should be taken that I am sure on the evidence of any factual finding that I make.

4. I will not conduct any reading into this case beyond the evidence sought to be and in fact relied on by the prosecution and defence. I will not consider any material that was not placed before the court or referred to in questioning of witnesses. I will not discuss the case or the evidence with anyone. Accordingly, the reasons for my verdict will be entirely based on the evidence, my assessment of it and of the witnesses and the conclusions that I have drawn from all the evidence.

5. Allegations of the type that arose in this case may be highly emotive. I will put aside any emotion and judge this case solely on the evidence.

6. Victims and witnesses respond in different ways to the events they have experienced or witnessed. It is possible for someone to put on an act if they choose to. I will take that into account in my consideration of the evidence.

7. The Complainant gave evidence in the form of a pre-recorded interview. That is quite normal in criminal trials and in no way counts against the defendant. She subsequently gave evidence from behind a screen. Giving evidence in this way is entirely normal these days in criminal cases. It is designed to enable a witness to be more at ease and to focus on their evidence. The fact that the Complainant gave evidence from behind a screen does not reflect at all on the Defendant and did not affect my assessment of the evidence.

8. I heard evidence about what the Complainant told police officers happened on the day in question. I recognise this is not independent evidence. It is evidence of what the Complainant told them about what she said happened. They were not present and did not see what did or did not happen. I also recognise that such witnesses may not accurately recall what they were told by the Complainant.

9. The reason why I have heard about what the Complainant said to those witnesses, is so that I can consider it in deciding whether or not the Complainant has been consistent in what she has alleged and whether or not she has told the truth. And when deciding this I should consider, inter alia, for example, the timescale between the alleged incident and what she said to each of them; how the version of events unfolded and whether there is any consistency or inconsistency in what she said.

10. Inconsistencies in accounts can happen whether a person is telling the truth or not. This is because if someone has experienced a traumatic event such as the kind alleged in this case, their memory may be affected in different ways. It may affect that person's ability to take in and later recall the experience. Some people may go over an event afterwards in their minds many times and their memory may become clearer or can develop over time. But other people may try to avoid thinking about an event at all, and they may then have difficulty in recalling the event accurately. I will consider all

the evidence that has been presented in this case, including apparent inconsistencies in order to evaluate the truthfulness of each witness.

11. I also recognise that just because a person gives a consistent account about an event, that does not necessarily mean that account must be true, any more than inconsistent accounts must be untrue.

12. In deciding whether an account given by a witness is true, I will look at all the evidence, including inconsistencies. If I am sure the account is true, I will rely upon it. If I am not sure, I will disregard it.

13. The fact the Defendant is in the dock is not relevant. I will treat the evidence of all witnesses equally. I shall decide whether any witness, including the Defendant, has been truthful and accurate or not, by having regard to what they say, whether it is consistent with what they have said on other occasions, how they gave evidence and how it compares to other evidence and to common sense.

14. The defendant admits restraining the complainant but says he was not acting unlawfully but in lawful self-defence. The prosecution must prove the case, so it is for the prosecution to make me sure that the defendant was the aggressor and was not acting in lawful self- defence.

    The law of self-defence is really just common sense. If someone is or believes they are under attack or believes they are about to be attacked, they are entitled to defend themselves. In this case, the defendant says he restrained the complainant and held her face down on the floor because the complainant had been violent towards him, and he believed that he needed to defend himself.

    If I am sure the defendant was the aggressor and was not under attack or believed they were about to be attacked, then self-defence does not arise and, subject to the other elements of the offence being proved, my verdict will be one of Guilty.

    If, however, having considered all the evidence, I consider that the defendant believed, or may have believed, that he was under attack or about to be attacked, there is no suggestion that the force he used was unreasonable, and the prosecution will not have proved that the defendant was acting unlawfully and my verdict will be Not Guilty.

15. The defendant has convictions in 2015 for taking a motor vehicle without consent and theft; in 2016 for being in charge of a motor vehicle while over the prescribed limit of alcohol in breath, and in 2021 for driving whilst over the prescribed limit of alcohol in breath. He has never been convicted of any offence involving violence. While this may not be a defence to the charges, it may make it less likely the defendant has committed an offence of the type charged in this case. I will take that into account in the defendant's favour.

16. I heard speeches from both sides. I may wish to take account of the arguments in the speeches I have heard. I have to say they have been helpful from both sides, but I am not bound to accept them. Counsel for each of the parties ask me to look at the case from their perspective. Evidence is what I've heard from the witness box or what was read or the facts that have been agreed. I have considered all the evidence.

17. I will take all of these matters into consideration in my assessment of the evidence.

Introduction

18. The defendant was born on 5th February 1985. He has lived and worked on the Falkland Islands since December 2013.

19. The complainant was born on [redacted].

20. They have been in a relationship since December 2023. The complainant would often stay at the defendant's home address where she kept some personal belongings.

Law

Section 71A(1)(a) of the Crimes Ordinance 2014

21. The legislation does not provide a definition of 'strangulation' or 'suffocation'. These words should be given their ordinary meaning. Strangulation is the obstruction or compression of blood vessels and/or airways by external pressure to the neck impeding normal breathing or circulation of the blood.

22. Applying any form of pressure to the neck whether gently or with some force could obstruct or compress the airways or blood flow. Strangulation does not require a particular level of pressure or force within its ordinary meaning, and it does not require any injury.

23. Intention is required.

Section 70(1) of the Crimes Ordinance 2014

24. A person who unlawfully assaults or beats any other person commits an offence.

25. An assault occurs when a person intentionally or recklessly causes another person to apprehend immediate unlawful violence, whether or not physical contact is made.

26. A battery occurs when a person intentionally or recklessly applies unlawful force to another person.

Assessment of the Evidence

27. It was the prosecution case that on Saturday 30th March 2024 the complainant was staying at the defendant's address and that shortly after midnight, into the early hours of the Sunday morning, the defendant subjected the complainant to a violent and frightening assault.

28. It was agreed that on 31st March 2024 at 00.29 hours the Royal Falkland Islands Police received a report from a neighbour that an incident was taking place at Mr Kamoto's home address. As a result of that report, police officers attended the premises. PC's Abrahams, Smith and Christie gave evidence. Statements of PC Casson and PS Thorsen were read into the record.

29. The court was also shown video footage of the body camera's worn by PC's Smith and Zalewski that depicted the aftermath of what was clearly a violent incident.

30. Upon entering the premises, the officers saw the complainant face down on the floor with the defendant sitting on top of her. That was depicted in the body worn camera footage of PC Smith.

31. PC Smith described the defendant's right hand on the small of the complainant's back and his left hand holding her hair. She said the complainant's hands were underneath her.

32. PC Abrahams said she could see a mobile telephone in one of the defendants hands.

33. It appeared the defendant and complainant had been drinking.

34. Photographs of the interior of the property depict a scene of utter turmoil, including furniture in disarray, a large fridge up-ended, a broken printer on the floor, damaged flat screen TV and blood spatters on various pieces of furniture.

35. Both complainant and defendant had suffered physical injury.

36. An ambulance was called for the defendant. Both defendant and complainant went to hospital for treatment.

37. The pocket notebook entry commenced by Reserve Police Constable Smith on 30th March 2024 at 1645 hours and continuing into 31st March 2024 recorded the complainant stating:

> 0045 hours
>
> *'He punched me all over mainly stomach and head.'*
>
> *Bump on head from running away.*

38. The pocket notebook entry commenced by Reserve Police Constable Casson on 30th March 2024 at 1630 hours and continuing into 31st March 2024 recorded the complainant stating:

> 0056 hours
>
> *"She advised nurse punched all over, mainly head and face, bump when fell over"*

39. The complainant was interviewed by police on 10th April 2024. The defendant was interviewed on 31st March 2024.

40. The complainant said that on the night in question, the defendant seemed in a bad mood. They went to the Stanley Arms before returning to the defendants home.

41. She said that when they returned to the defendants home, she had tried to talk to him. They began to argue. She said he became violent, grabbing her by the hair, before slapping her three times and causing her nose to bleed. She went into the bedroom and began packing a bag.

42. The altercation continued and she described leaving the bedroom and going into the kitchen. She said the defendant followed, continually assaulting her. She described holding onto the fridge and the defendant pulling and kicking her. She said the fridge toppled over in the struggle, causing the handle to break off.

43. She said the defendant picked up the fridge handle and threw it at her, missing and hitting the TV.

44. The complainant described grabbing a bottle and throwing it at the defendant. The bottle connected with the defendant's head, causing him an injury.

45. The defendant grabbed the complainant and, in the ensuing struggle, she fell onto a table. She then found herself on the floor and the defendant kicking her. She referred to kicks to the head and stomach.

46. She said the defendant got on top of her, holding her neck with both hands, squeezing. She described it as a 'punch and choke'. She said she felt like vomiting and was struggling for air. In her evidence, the complainant demonstrated the choking, putting both hands around her neck, her fingers extended around the front of her neck.

47. She said he alternately held her neck with both hands and put one hand on her neck, punching her with the other hand. It was at that point that police arrived.

48. The defendant said that on the night in question, the complainant was attempting to have a conversation with him about their relationship. He said he did not want to have that conversation at that time because he was tired.

49. He said he was sitting on the sofa trying to eat and that the complainant had then pushed his plate away from him.

50. He said the complainant then went into the kitchen, returning with a whisky bottle that she used to strike him on the head, causing the bottle to smash and resulting in him sustaining a laceration. He described it as completely unprovoked.

51. In his police interview, the defendant described the complainant smashing his printer, striking him on the head with a bottle, pulling on the fridge, causing it to topple over before attacking him with the handle of the fridge. He said the complainant then threw the fridge handle at the TV, damaging it. It was only then that he attempted to restrain the complainant.

52. He said he grabbed the complainant's arms, trying to prevent her from assaulting him. He said she pulled at his penis, and that in the struggle they ended up on the floor. He said he held the complainant on the floor, holding his hand on the back of her neck to prevent her from attacking him again. He did not think he had hit her and that any injuries she sustained were the result of him restraining her to prevent her assaulting him further.

53. When he was interviewed by police, the defendant admitted that his hand was on the back of the complainant's neck.

54. Dr. Taylor recorded the complainant reporting she had been punched and slapped to the face, head and back. She did not record the complainant reporting that she had been choked.

55. It was noted by Dr. Taylor the complainant had a "large bruise above right eye. subconjunctival haemorrhage to lateral left eye. Dried blood in both nostrils, a bruise to the right upper back below scapula, rib tenderness to left anterior ribs, slight bruise to medial right knee, grazes to both elbows/extensor areas".

56. The defendant was noted to have blood on his face, a wound on the left side of his jaw approximately 1cm long, some graze wounds to his left elbow, the back of his neck, top of head, and one scratch on the front of his neck.

57. Various photgraphs of injuries sustained by the complainant and defendant were put in evidence.

58. There were also a series of WhatsApp messages between the defendant and complainant between 1st and 29th April 2024. The defendant said he had sent those messages because he wanted to work out their relationship.

59. The defendant owns two mobile telephones. He said that on the night in question, he had tried to telephone police but had mistakenly dialled 911, instead of 999. He said 911 is the emergency number in his native Zimbabwe.

60. The defendant told the court that he has lived in the Falkland Islands since 2013. He admitted that he had used the correct emergency 999 number on two previous occasions.

61. The court heard evidence the defendant had suffered a sprain to his right wrist in March 2024 for which he sought medical advice on 19th March 2024. He was prescribed pain relief and gastro-resistant medication. He did not return to the doctor, despite being advised to do so if the condition did not improve.

62. An unchallenged statement of the defendant's wife was read in which she stated that during their marriage, the defendant had never displayed any violence.

Findings

63. The court was faced with two diametrically opposed accounts of what happened on the night in question.

64. In reaching my verdicts, I have carefully considered all of the evidence.

65. It should be taken that I am sure on the evidence of any factual finding that I make, even though I might not preface each finding of fact with that point.

66. I should say at the outset that there were anomalies and inconsistencies in the complainants evidence. She initially denied having nose bleeds. She was then shown WhatsApp messages from 19th March 2024 in which she had referred to having had

two nosebleeds. In evidence, the complainant accepted she had had nose bleeds on that occasion but that it was not a matter of concern.

67. During her police interview, she said the defendant had not previously been violent. However, she told PC Abrahams the defendant had been violent on one previous occasion, although not as serious. In evidence she said the defendant had been verbally abusive on the previous occasion but had not used physical violence.

68. The complainant did not tell Dr. Taylor the defendant had choked her. It was not recorded by PC Smith or PC Casson. She mentioned it for the first time when she was interviewed by police on 10th April 2024. Those were significant omissions.

69. However, I carefully watched the complainant in her ABE interview. I also watched her carefully when she was cross-examined. I found her to be a credible and reliable witness who gave a true account of the events on the night in question.

70. The complainant and defendant had been in a relationship since December 2023. It appears the relationship was, at times, strained.

71. On the night in question, there had been obvious tension between the defendant and complainant regarding their relationship. That disagreement continued to fester when they visited the Stanley Arms and upon returning to the defendants home.

72. They had both consumed alcohol.

73. That night the complainant wished to leave but the defendant persuaded her to stay until the next morning. They continued to argue. As the argument escalated, the defendant slapped the complainant three times, causing her nose to bleed. She went into the bedroom and packed a bag.

74. The defendant denied they had gone into the bedroom during the incident. He was asked about the presence of blood on the duvet. His said he thought it was possible the complainant had had a nosebleed earlier in the day. I am sure the nosebleed and the presence of blood on the duvet was the result of the complainant having been slapped by the defendant.

75. Upon leaving the bedroom, the complainant went to the kitchen. The defendant followed her, assaulting her. The defendant was pulling at her and she held onto the fridge which toppled over in the ensuing melee.

76. The defendant picked up the handle of the fridge that had become detached, and threw it at her, hitting the TV.

77. The complainant threw a bottle at the defendant which connected with the defendant's head, causing him an injury.

78. The defendant grabbed the complainant and, in the ensuing struggle, she fell onto a table. She then found herself on the floor and the defendant kicking her.

79. The defendant slapped, punched and kicked the complainant, causing her physical injury as described in the hospital reports and as depicted in the photographs.

80. While prone on the floor, the defendant got on top of her, and on two occasions, he intentionally held the complainants neck from behind, extending his fingers around the front of her neck and squeezing, thereby choking her. She was struggling for air and told him she would vomit.

81. I accept the defendant had a pre-existing injury to his wrist for which he had received medical treatment. However, this did not prevent him choking the complainant, as I have found.

82. The defendant then proceeded to hold her neck, pressing her head against the floor with one hand on her neck. It was at that point that police entered the premises.

83. It was the defendants evidence the complainant was the aggressor and that he had acted in lawful self-defence.

84. The defendants account was inconsistent. On his evidence, he had been sitting on a sofa in the living room when, unprovoked, the complainant had simply approached him and struck him on the head with a glass bottle causing it to shatter. It was his evidence he passively sat and watched as the complainant then went about his property, smashing a printer and pulling over a large fridge before striking him with the handle of the fridge. His account is simply not capable of belief.

85. The position of the broken whiskey bottle at the threshold of the kitchen contradicts the defendants account that the bottle smashed as he was struck by the complainant while sitting on the sofa.

86. Given the defendant has lived on the Falkland Islands since 2013 and has previously used the emergency '999' number, it beggars belief that he would not know to call the correct number in an emergency. In fact, he telephoned 911 because he wanted the complainant to believe he was telephoning the police.

87. The complainant's account is consistent with the disarray and damage that is depicted in the police photographs.

88. Indeed, other evidence supports the complainant's account that she was the victim of a violent assault.

89. The injuries sustained by the complainant are not consistent with the defendant's account of the struggle as, he says, he attempted to restrain her. It is simply inconceivable that the type and degree of injuries the complainant sustained were the result of the defendant restraining her. Instead, they are entirely consistent with the violent assault described by the complainant.

90. The injuries sustained by the defendant are not inconsistent with the complainants account of the events.

91. There were also a series of WhatsApp messages between the defendant and complainant between 1st and 29th April 2024.

92. The defendant sent a number of WhatsApp messages to the complainant in the days after the incident in question, in which he said "*I am sorry I have done wrong to you I'm sorry.*" The defendant further stated "*I didn't meant to hurt you I dnt knw what came over me. U know me I don't fight.*" In another WhatsApp exchange, the complainant sends the defendant a photo of her face, depicting a bloodshot eye with the message "*it wont go away.*" The defendant responded, stating "*I'm really sorry bbe it will go*" and "*Im really sorry.*" In a later message the defendant states "*I promise it will never happen again.*" The defendant subsequently asked the complainant to delete their calls and messages. He said he did that because he wanted to protect them. In fact, he wanted the complainant to delete those messages because he knew they incriminated him.

93. It is inconceivable that, if he had been attacked as he now asserts, suffering physical injury and significant damage to his property, he would then send messages to the complainant in those terms. The messages are consistent with the complainants account that she was the victim of a violent assault and entirely inconsistent with the defendants account.

Routes to Verdict

Count One – Intentional Strangulation

Q1. Is the court sure that the defendant intentionally placed his hands around the neck of AB?

YES

Q2. Is the court sure that the defendant intentionally strangled AB by affecting her ability to breathe?

YES

I find the defendant GUILTY on count 1

Count Two – Common Assault

Q1. Is the court sure that the defendant assaulted AB by slapping, punching or kicking her?

YES

Q2. Is the court sure that at the time the defendant was not acting in lawful self-defence?

YES

I find the defendant GUILTY on count 2