

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 48 OF 2012**

STATE

-v-

EREMASI TASOVA

**Counsels** : Mr. Babitu for the State  
Accused in person

**Date of hearing** : 28 April 2014 to 08 May 2014

**Date of Ruling** : 08 May 2014

**SUMMING UP**

Madam Assessors and Gentlemen Assessor:

1. We have now reached the final phase of this case. The law requires me – as the Judge who presided over this trial – to sum up the case to you on law and evidence. Each one of you will then be called upon to deliver your separate opinion, which will in turn be recorded. As you listened to the evidence in this case, you must also listen to my summing up of the case very carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused person.
2. I will direct you on matters of law which you must accept and act upon.
3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, these are matters entirely for you to decide for yourselves. So if I

express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.

4. In other words you are the Judges of fact. All matters of fact are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.
5. The counsel for Prosecution and the accused made submissions to you about the facts of this case. That is their duty as the Prosecution Counsel and the accused. But it is a matter for you to decide which version of the facts to accept, or reject.
6. You will not be asked to give reasons for your opinions, and your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions, but I will give them the greatest weight when I come to deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law, that the accused person is innocent until he is proved guilty. The burden of proving his guilt rests on the prosecution and never shifts.
8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find the accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty.
9. Your decisions must be solely and exclusively upon the evidence, which you have heard in this court and upon nothing else. You must disregard anything you might have heard or read about this case, outside of this courtroom. Your duty is to apply the law as I explain to you to the evidence you have heard in the course of this trial.
10. Your duty is to find the facts based on the evidence and apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
11. As assessors you were chosen from the community. You, individually and collectively, represent a pool of common sense and experience of human affairs in our community which qualifies you to be judges of the facts in the trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.

12. In accessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole. In deciding on the credibility of any witness, you should take into account not only what you heard but what you saw. You must take into account the manner in which the witness gave evidence. Was he/she evasive? How did he/she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable.
13. The information against the accused is as follows:

**SECOND COUNT**  
*Statement of Offence*

**AGGRAVATED ROBBERY:** Contrary to Section 311 (1) (a) of the Crimes Decree, No. 44 of 2009.

*Particulars of Offence*

EREMASI TASOVA, LAISENIA VULUMA and JOLAME VUNITURAGA on the 12<sup>th</sup> day of March, 2012 at Lautoka in the Western Division robbed **JACKSON BHAI** and **SARWAN SINGH** of 10 cartons of assorted cigarettes valued at \$29,943.10, \$2,010.60 cash, \$359.80 cheque, Nokia mobile phone valued at \$400.00 all to the total value of \$32,713.50, property of British American Tobacco Company and at the time of robbery did use personal violence on the said **JACKSON BHAI** and **SARWAN SINGH**.

**THIRD COUNT**  
*Statement of Offence*

**AGGRAVATED ROBBERY:** Contrary to Section 311 (1) (a) of the Crimes Decree, No. 44 of 2009.

*Particulars of Offence*

EREMASI TASOVA, LAISENIA VULUMA and JOLAME VUNITURAGA on the 12<sup>th</sup> day of March, 2012 at Lautoka in the Western Division robbed **JACKSON BHAI** of Nokia mobile phone valued at \$100.00 and cash of \$120.00 all to the total value of \$220.00 and at the time of such robbery did use personal violence on the said **JACKSON BHAI**.

**FOURTH COUNT**  
*Statement of Offence*

**THEFT OF MOTOR VEHICLE:** Contrary to Section 291 (1) of the Crimes Decree, No. 44 of 2009.

*Particulars of Offence*

**EREMASI TASOVA, LAISENIA VULUMA and JOLAME VUNITURAGA** on the 12<sup>th</sup> day of March, 2012 at Lautoka in the Western Division, stole a Hyundai H1 motor vehicle registration number: FW 722, valued at \$89,000.00, the property of British American Tobacco Company.

**FIFTH COUNT**

*Statement of Offence*

**RESISTING ARREST:** Contrary to Section 277 (b) of the Crimes Decree, No. 44 of 2009.

*Particulars of Offence*

**EREMASI TASOVA** on the 14<sup>th</sup> day of March, 2012 at Lautoka in the Western Division, resisted **Detective Constable No. 3952 Senitiki Nakatasavu**, a police officer whilst effecting arrest in due execution of his duty.

14. Firstly I must explain the legal basis of the charge. When charge is laid jointly against more than one accused-person in this manner, it brings into focus an important legal principle, which is known as the 'doctrine of joint enterprise'
15. Usually, a person is liable in law for only acts committed by him and for his conduct and such acts or conduct attract criminal liability if they are unlawful acts or unlawful purposes. The doctrine of joint enterprise is an exception to that general rule, of course, for valid and sound reasons. The principle is explained under Section 46 of the Crimes Decree, which reads:

***Offences committed by joint offenders in prosecution of common purpose***

*'When two or more persons form a common intention to prosecute an unlawful purpose in connection with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.'*

16. Madam assessors and the gentleman assessor, if I am to site an example, this is how the principle works. Three people plan to rob a shop and one stands guard outside looking out for any police surveillance. One man goes inside and holds the security guard, while the other threatens the cashier with a gun and takes all the cash. All three men then make their

get-away. Now you will see that only the third man did the actual act of offence, while the other two helped to execute the plan of robbery. Under the law, each one of them is held liable for the offence of robbery. Under the law, each one of them is held liable for the offence of robbery with violence irrespective of the individual roles played by each one of them under the doctrine of 'joint enterprise.' For the principle to work under the Section, there should be evidence beyond reasonable doubt that:

- (i) There should be two or more persons forming a common intention to prosecute an unlawful purpose;
- (ii) In prosecution of that unlawful purpose, an offence/s should be committed; and
- (iii) The commission of such offence/s should be the probable consequence of the prosecution of that unlawful purpose.

17. In dealing with the principle, you must also consider the following factors as matters of law. They are:

- (i) The case of each accused must be considered separately. That is, you must find evidence as to what each accused did to demonstrate that he too had shared the intention in common to prosecute unlawful purpose;
- (ii) Each accused must have been actuated by that common intention with the doer of the unlawful purpose at the time the offence was committed and should have contributed in some meaningful way towards the prosecution of the unlawful purpose;
- (iii) Each one of them should have known that the commission of the offence is a probable consequence of the prosecution of that unlawful purpose;
- (iv) Common intention must not be confused with same or similar intention entertained independently of each other. Instead, it should clearly be distinguished from similar intention. That is, if you find no evidence to show a particular accused did not share the intention in common with others and that he was actuated by his own intention which was, however, similar to the intention of other, you can find the accused guilty only for what he has committed and not for anything else;
- (v) There must be evidence, either direct or circumstantial, or pre-arrangement or some other evidence of common intention. Sometimes, such common intention could occur on the spur of the moment;
- (vi) The mere fact of the presence of the accused at the time of the offence is not necessary evidence of common intention.

18. I will now deal with the elements of the offences. The offence of Aggravated Robbery is defined under Section 311 of the Crimes Decree.

19. Accordingly the elements of the offence are:

- (i) A person,
- (ii) Committed Theft,
- (iii) Immediately before committing theft uses force on another person,
- (iv) He was in company of one or more persons.

20. The offence of Theft of motor vehicle is defined in Section 291(1) of the Crimes Decree.

21. Accordingly the elements of the offence are:

- (i) A person,
- (ii) Dishonestly appropriates property belonging to another,
- (iii) With intention of permanently depriving the other of the property.

22. The offence of Resisting arrest is defined in Section 277 (b) of the Crimes Decree.

23. Accordingly the elements of the offence are:

- (i) A person,
- (ii) Assaults, resists or willfully obstructs any police officer,
- (iii) In execution of his duty.

24. Apart from the elements of the offence, the identity of the person who alleged to have committed the offence is very important. There must be positive evidence beyond reasonable doubt on identification of the accused-persons and connect them to the offence that they alleged to have been committed.

25. Evidence that the accused has been identified by a witness as doing something must, when disputed by the accused, be approached with special caution because experience has demonstrated, even honest witnesses have given identification which have been proved to be unreliable. I give you this warning not because I have formed any view of the evidence, but the law requires that in every case where identification evidence is involved, that the warning be given.

26. In assessing the identification evidence, you must take following matters into account:
- (i) Whether the witness has known the accused earlier?
  - (ii) For how long did the witness have the accused under observation and from what distance?
  - (iii) Did the witness have any special reason to remember?
  - (iv) In what light was the observation made?
  - (v) Whether there was any obstacle to obstruct the view?
27. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw it or by a victim who saw, heard and felt the offence being committed.
28. Documentary evidence is also important in a case. Documentary evidence is the evidence presented in the form of a document. In this case, caution interview is an example if you believe that such a record was made. Then you can act on such evidence.
29. As a matter of law, I must direct you on circumstantial evidence. In this case, the prosecution relies on certain circumstantial evidence. In circumstantial evidence, you are asked to piece the story together from witnesses who did not actually see the crime being committed, but give evidence of other circumstances and the events that may bring you to a sufficiently certain conclusion regarding the commission of the alleged crime.
30. I cite the following situation as an example for circumstantial evidence. In a silent night, you hear cries of a man from a neighboring house. You come out to see that a man named 'A' is running away from that house with an object in his hand. Out of curiosity you go inside the house to see what really had happened. You see your neighbor 'B' lying fallen on pool of blood with injuries. Here you don't see 'A' committing any act on 'B'. The two independent things you saw were the circumstances of a given situation. You can connect the two things that you saw, and draw certain inferences. An inference you may draw would be that 'A' caused the injury on 'B'. In drawing that inference you must make sure that it is the only inference that could be drawn, and no other inferences could have been possibly drawn from said circumstances. That should be the inescapable inference that could be drawn against 'A' in the circumstances. Further in evidence one witness may prove one thing, and another witness may prove another thing. None of those things separately alone may be sufficient to establish guilt, but taken together may lead to the conclusion that the accused committed the crime.

31. Circumstances are not made by mere speculation or guesswork. They must be established beyond reasonable doubt and the proved circumstances must only be consistent with the accused having committed the crime. To find him guilty, you must be satisfied so as to feel sure that an inference of guilt is the only rational conclusion to be drawn from the combined effect of all the circumstances proved. It must be inference that satisfies you beyond reasonable doubt that the accused committed the crime and that inference should be irresistible and inescapable on the evidence. Before you can draw any reasonable inference, you must first be satisfied beyond reasonable doubt, that the evidence given by each witness relating to the circumstances giving rise to the issues of fact to be proved is credible and truthful.

32. In assessing evidence of witnesses you need to consider a series of tests. They are for examples:

**Test of means of opportunity:** That is whether the witness had opportunity to see, hear or feel what he/she is talking of in his/her evidence. Or whether the witness is talking of something out of place mechanically crated just out of a case against the other party.

**Probability and Improbability:** That is whether what the witness was talking about in his or her evidence is probable in the circumstances of the case. Or, whether what the witness talked about in his/her evidence is improbable given the circumstances of the case.

**Belatedness:** That is whether there is delay in making a prompt complaint to someone or to an authority or to police on the first available opportunity about the incident that was alleged to have occurred. If there is a delay that may give room to make-up a story, which in turn could affect reliability of the story. If the complaint is prompt, that usually leaves no room for fabrication. If there is a delay, you should look whether there is a reasonable explanation to such delay.

**Spontaneity:** This is another important factor that you should consider. That is whether a witness has behaved in a natural or rational way in the circumstances that he/she is talking of, whether he/she has shown spontaneous response as a sensible human being and acted accordingly as demanded by the occasion.

**Consistency:** That is whether a witness telling a story on the same lines without variations and contradictions. You must see whether a witness is shown to have given a different version elsewhere. If so, what the witness has told court contradicts with his/her earlier version.



33. You need to consider all those matters in evaluating the evidence of witnesses. You shall, of course, not limit to those alone and you are free to consider any other factors that you may think fit and proper to assess the evidence of a witness. I have given only a few illustrations to help what to look for to evaluate evidence.
34. I will now deal with the summary of evidence in this case.
35. Prosecution called Jackson Bhai as the first witness. In 2012 he was working as a sales representative at British American Tobacco Company. On 12.3.2012 he had done sales at Lautoka city in the morning. He was with his associate Sarawan Singh. Then they have gone towards Ba. Their first customer was Singh's shopping center at Naikabula. Sarawan had gone to get the order while he was waiting in the van. Sarawan had come back and given the order and gone to the back of the van.
36. He had heard a big bang at the back of the van. When he turned around he had seen cane knife banged on his glass from right side. A tall guy wearing a shirt had half of his face covered with a cloth pulled him out of the vehicle. He was punched on the ribs. When he fell on the ground he was kicked. When he was on the ground that person had driven the vehicle away. He had seen another person holding a knife at the neck of Sarawan. There were about 10 cartons of cigarettes with a value over \$ 28,000. There was some cash from the sales. Company mobile and his mobile were inside the vehicle. His wallet in the door. When the van was reversed other two had got into the van. The van had gone towards Ba.
37. After the incident he had called his area manager and police. At the police station his statement was taken. He had seen the tall, slim guy with a long face for about one minute from a distance about 1 ½ feet. At the police station he had recognized him from the album of photos shown to him. He identified the accused in court as the tall guy.
38. Under cross examination he said that he came to know the accused on the day of the robbery. He saw the other two persons only when they got in to the van. He said that van got stuck in a drain when it was reversed. He was shown 10-12 photos on 13<sup>th</sup>. When he saw the accused's picture all of sudden he recognized it. He denied that he was lying or that he was coached by the police.
39. You watched him giving evidence in court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of a

witness's evidence is reliable, and therefore to accept and whether witness's evidence, or part of evidence, is unreliable, and therefore to reject, in your deliberation. If you accept the evidence of Jackson Bhai beyond reasonable doubt you should consider whether elements of charges 1-3 are proved by that evidence.

40. The next witness for the prosecution was Sarwan Singh. He was with the 1<sup>st</sup> witness doing the sales. He had taken the order from the Singh's shopping center and was about to open the trunk. All of a sudden somebody held his neck from back putting a knife to his neck. He could hear somebody banging on glass of vehicle with knife. He was hit once on the side. When he was released he ran towards the back of the shop. He saw three people taking the van away with cigarette and cash.
41. Under cross examination he said there was about \$2000-\$3000 cash and 12-13 cigarette cartons in the van. There were three persons. There was something on their head. All of them were covering them with T-shirt from the head. He had seen this from some distance.
42. You watched him giving evidence in court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of a witness's evidence is reliable, and therefore to accept and whether witness's evidence, or part of evidence, is unreliable, and therefore to reject, in your deliberation. If you accept the evidence of Sarwan Singh beyond reasonable doubt the evidence of Jackson Bhai is confirmed by that evidence.
43. The third witness for the prosecution was Suliasi Nawaqa. He was attached to Water Authority and was at Naikabula repairing a damaged pipe. They were right opposite the robbed shop. He had seen three Fijian boys walking down the road. He knew two of them and said hello to them. The one on the front was a tall guy with green pants and green T-shirt. He had seen him earlier but don't know him by name. His brother was working with him earlier. This person had a cane knife in hand. Other two were carrying a cane knife and sack. They went inside the shop. All of a sudden a motor vehicle came out and the shop owners came running out of shop shouting for help and saying that they were robbed by three Fijian boys.
44. The vehicle had gone towards Ba. Police had come to the scene. He had made a statement at the station. He was shown a photo album. He had recognized the photo of the tall guy and pointed out to police. He is the accused in court.

45. Under cross examination he said that he saw the accused for about 30 seconds when he said hello. He had known the accused since his young days. It was brought to attention that in police station he had only mentioned about green pants but not the t-shirt. His position was that he told police about it. He had not seen what happened at the shop. He was sitting down and only seen black vehicle being reversed. He had gone to the police station the next day. He denied that he is lying or coached by police.
46. You watched him giving evidence in court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of a witness's evidence is reliable, and therefore to accept and whether witness's evidence, or part of evidence, is unreliable, and therefore to reject, in your deliberation. If you accept the evidence of Suliasi beyond reasonable doubt then the prosecution wants you to infer that the accused was seen going into the shopping center soon before the robbery with a cane knife. You have to consider whether the only irresistible inference that could be drawn from that is that the accused is a person who was involved in the robbery.
47. Prosecution called DC Suliasi Senitiki as the next witness. He is an officer with 12 years experience. On 14.3.2012 he had gone to Suva on instructions to look for a suspect on information. Around 13.30 hours he had seen the suspect travelling in a bus. When the suspect saw them he had jumped from the moving bus and ran away towards mangrove swamp. They could not locate him.
48. On the evening same day around 8.00 p.m. they have received information from the girl friend of the suspect that he is at Nadera. They were going in a taxi. The taxi was stopped at Magbul place at a shop. The suspect had resisted the arrest. The officers had used reasonable force to overpower him. The suspect was brought straight to Lautoka police station. He identified the accused.
49. Under cross examination he said as the suspect tried to escape he used reasonable force. He did not have his note book with him. However, he recorded everything in the note book kept at the station. In re-examination he said all he did is in his statement.
50. You watched this witness giving evidence in Court. It is up to you to decide whether you could accept his evidence beyond reasonable doubt. If you accept his evidence beyond reasonable doubt you have to consider whether it is sufficient to establish all elements in the last count.

51. The next witness was DC Inoke Colati. He is an officer with 10 years experience. On 15.3.2012 he had received instructions to caution interview the suspect. DC Tuitai was the witnessing officer. Accused was given his rights. The accused had complained of body pains before the interview. His nose was bleeding. The interview took place for two days. Accused answered the questions voluntarily. He had conducted the interview in English language. Accused was not assaulted or threatened in any way. He identified the original interview notes. He produced the interview notes marked P1 and read out the same. He identified the suspect in court.
52. Under cross examination he said the accused was not handed over to him after arrest. When asked whether the accused had good rest before the interview, he said that the accused did not make such complaint to him. He had complained about body pain and bleeding nose. When asked whether he wants to see a doctor the accused had told that they could continue with the interview and go after the interview. The injuries were not serious for immediate medical attention and the accused looked normal. The accused was not forced to admit the allegations. The accused was taken to the hospital the following day as he wanted to go to the hospital.
53. It is up to you to decide whether the accused made a statement under caution voluntarily to this witness. If you are sure that the caution interview statement was made freely and not as a result of threats, assault or inducements made to the accused by persons in authority then you could consider the facts in the statement as evidence. Then you will have to further decide whether facts in this caution interview statement are truthful. If you are sure that the facts in the caution interview are truthful then you can use those to consider whether the elements of the charges are proved by this statement.
54. The next witness for the prosecution was Sgt. A. Tuitai. He is an officer with 29 years experience. On 15.3.2012 he had received instructions to be the witnessing officer of the caution interview of the suspect. It was conducted in English language. He or the interviewing officer did not assault or threaten the suspect before or during the interview. He was given his rights. At the conclusion the accused did not make any complaint. The accused gave answers voluntarily. A reconstruction was done. He identified the interview notes and the accused.
55. Under cross examination he said that suspect had a slight injury on nose and black eye. And for him it was not serious. The accused said that he could continue with the interview and taken to a doctor later. The accused looked normal and fit.
56. It is up to you to decide whether you could accept evidence of this witness beyond reasonable doubt. If you accept this evidence beyond reasonable doubt it confirms the evidence of DC Inoke Colati regarding caution interview.

57. The last witness for the prosecution was DC Samuela. He is the investigating officer of the case. On 12.3.2012 they have received a report of a robbery from Nakaibula. He had gone to the scene and continued with the investigations. Suspects were identified. The accused's house was checked and it was told that he had gone to Suva with the wife. A team was sent to Suva. The accused was arrested at Nadera. The accused did not make any complaint about the way he was treated by police.
58. The accused did not cross examine this witness. Therefore, you could accept this evidence as truthful and correct. It is up to you to decide whether this evidence confirm the evidence of other police witnesses.
59. After the prosecution case was closed, you heard me explaining the accused his rights in defence. Accused elected to give evidence. His position was that he went to Suva on 10.3.2012 and stayed in a friend's house till 14.3.2012. On 14.3.2012 his wife came there to pick him up. They have taken a taxi. On the way they have gone to Magbul shopping center to buy some groceries. When they stopped the taxi, two twin cabs came and parked on either side of the taxi. Police officer in civvies got out from the twin cabs and started throwing punches at him while he was inside the taxi. One of them, Senitiki pulled him out, punched him on the face and dumped him on the ground. Then all officers started assaulting him. Then he was handcuffed and put into one vehicle. He was firstly taken to Nabua police station. He was further assaulted there and then taken to Lautoka police station.
60. He was locked in the cell. He was without proper rest before the interview. He was further assaulted before and during the interview by the investigating officer and witnessing officer to admit the allegation put to him. He could not resist torture whereas he had followed the instructions. During reconstruction he was taken to Drasa, Lololo where he was beaten on the ankle with a wooden rod. And then he was brought back to the interview.
61. Under cross examination he denied that he was in Naikabula even though Suliasi and Jackson identified him to be there. He said they were lying. He denied all the allegations against him. He denied that he went to Suva to evade the arrest. He denied jumping out of a bus. He denied resisting arrest at Magbul shopping center. He said that at the interview he denied the allegation but was forced to admit. He said that police made up the whole story.
62. The accused's defence is one of alibi. He says that he was not at the scene of crime when it was committed. As the prosecution has to prove his guilt so that you are sure of it, he does not have to prove he was elsewhere at the time. On the contrary, the prosecution must

disprove the alibi. Even if you conclude that alibi was false, that does not by itself entitle you to convict the accused. It is a matter which you may take into account, but you should bear in mind that an alibi is sometimes invented to bolster a defence.

63. Criminal Procedure Decree in Section 125 provides that:

'On a trial before any court, the accused person shall not, without the leave of the court, adduce evidence in support of an alibi unless the accused person has given notice in accordance with this section.

A notice under this section shall be given-

- (a) Within 21 days of an order being made for transfer of the matter to the High Court (if such order is made); or
- (b) In writing to the prosecution, complainant and the court at least 21 days before the date set for trial of the matter, in any other case.

64. No notice was given of alibi in this case. The accused is not represented in this case. However, according to above legal position, accused cannot take a defence of alibi without giving a proper notice.

65. You watched the accused giving evidence in court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? His position taken up in Court is different from his caution interview statement. In other words his evidence is inconsistent. It is up to you to decide whether you could accept his version and his version is sufficient to establish a reasonable doubt in the prosecution case. If you accept his version accused should be discharged. Even if you reject his version still the prosecution should prove it's case beyond reasonable doubt.

66. I must remind you that when an accused person has given evidence he assumes no onus of proof. That remains on the prosecution throughout. His evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

67. You will generally find that an accused gives an innocent explanation and one of the three situations then arises:

- (i) You may believe him and, if you believe him, then your opinion must be Not Guilty. He did not commit the offences.

- (ii) Alternatively without necessarily believing him you may say 'well that might be true'. If that is so, it means there is reasonable doubt in your minds and so again your opinion must be Not Guilty.
- (iii) The third possibility is that you reject his evidence as being untrue. That does not mean that he is automatically guilty of the offences. The situation then would be the same as if he had not given any evidence at all. He would not have discredited the evidence of the prosecution witnesses in any way. If prosecution evidence proves that he committed the offences then the proper opinion would be Guilty.

68. The accused called two witnesses on his behalf. Malakai Kotobalavu was the first witness. He stated that the accused came to his house in Nadera on 10.3.2012 and stayed there till 14.3.2012. He did not go anywhere. On 14<sup>th</sup> his wife came to pick him up to go to her house after 8.00 p.m. Accused was in normal condition at that time.

69. Under cross examination he said that accused once went to his plantation but was at his house all other time just watching movies. He did not know the reason for the accused to come to his house. His wife was living close by. He never visited his wife till 14<sup>th</sup>

70. The next witness for the accused was Sunia Raraqio. On 14.3.2012 around 8.00 to 9.00 p.m. he had gone to Magbul shopping center to buy a recharge. When he came out of the shop he had seen a taxi had come and stopped in front of the shop. Then two twin cabs have come and stopped beside the taxi. All of those inside the twin cabs jumped out and started punching a man inside the taxi. After that he was pulled out and hand cuffed. He was further assaulted and put in to a twin cab. The person arrested was the accused.

71. Under cross examination he stated that he know the accused through his wife. He denied that he was in remand for a case in Nadi Magistrate court at this time.

72. It is up to you to decide whether the evidence of these witnesses confirms the version of the accused and reasonable doubt is created in the prosecution case. If, so you should find the accused Not Guilty of the charges.

73. I have summarized all the evidence before you. But, still I might have missed some. That is not because they are unimportant. You heard every item of evidence and you should be reminded yourselves of all that evidence and form your opinions on facts. What I did was only to draw your attention to the salient items of evidence and help you in reminding yourselves of the evidence.

74. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial, and never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt.

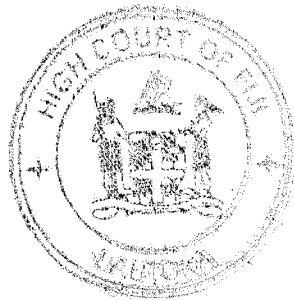
75. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of accused's guilt of each charge you must find him guilty for each charge. You have to consider evidence against each charge separately. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty as charged.


76. Your possible opinions are as follows:

1 <sup>st</sup> charge of Aggravated Robbery	Accused Guilty or Not Guilty
2 <sup>nd</sup> charge of Aggravated Robbery	Accused Guilty or Not Guilty
3 <sup>rd</sup> charge of Theft of Motor Vehicle	Accused Guilty or Not Guilty
4 <sup>th</sup> charge of Resisting Arrest	Accused Guilty or Not Guilty

77. You may now retire to deliberate on the case, and once you have reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.

78. Any re-directions?



  
Sudharshana De Silva  
JUDGE

At Lautoka  
08<sup>th</sup> May 2014

Solicitors: Office of the Director of Public Prosecutions for prosecution  
Accused in Person