

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 109 OF 2012

STATE

-v-

1. STEVEN PRASAD
2. RAVINESH SINGH
3. RONIL KUMAR

Counsels : Mr S. Babitu for the State
Ms V. T. Narara for 1st Accused
Ms A. Lata for 2nd Accused
3rd Accused in Person

Date of Trial : 16 March 2015 – 20 March 2015
Date of Summing Up : 23 March 2015

SUMMING UP

Madam Assessors and Gentleman 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, Counsels for the 1st and 2nd Accused and the 3rd 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 each 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 each 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. You must judge the case solely on the evidence that you heard in this Court room. There will be no more evidence and you are not to speculate on what evidence there might have been or should have been. You Judge the case solely on what you have heard and seen here.
11. 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.
12. 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.

13. 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.
14. The information against the accused is as follows:

Statement of Offence

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

Particulars of Offence

STEVEN PRASAD, RAVINESH SINGH and RONIL KUMAR in company with one another, on the 11th day of July 2012 at Nadi in the Western Division, robbed **KUSHAL KUMAR** of an I-Phone 4S Model valued at \$2,000.00, a Sony Ericson mobile phone valued at \$250.00, two Apple I-Pods valued at \$1,000.00, a pair of Nike shoes valued at \$140.00 and cash of \$5,500.00, all to the total value of \$8,890.00.

15. 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'
16. 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.'

17. 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 aggravated robbery 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.

18. 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.

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

20. 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.
21. 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.
 22. 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.
 23. 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.
 24. 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.
 25. 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.
 26. 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 them 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.

27. 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 pace mechanically created 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.

28. 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.

29. I will now deal with the summary of evidence in this case.

30. Prosecution called Mailing Chang as the first witness. She is 46 years old now. She is living in Lot 5, Richmond Crescent, Nadi since 2004. She is married with one son. On 11.7.2012 she was sleeping with the family members, sister and few others in her house. Four people came and robbed them. Three people came to her room while one was outside. She was scared. They searched her bag and the room. The drawer was opened and cash was taken. A big amount was taken. iPod and 4S iPhone were also taken. A TV

was also taken, but it was found outside in neighbor's house. She had seen the faces of these men but could not recognize them. One man punched her husband. One of them told to take the pillow case to pack the money. A container with coins was not taken away on her request.

31. Under cross examination by the counsel for the 1st accused, she stated that although she saw their faces she could not recognize them. Under cross examination by the counsel for the 2nd accused she stated that the light was off in her room and it was dark. They were using torch from phones. It all happened very suddenly. Under cross examination by the 3rd accused she admitted that an I-Taukei man who is her sister's staff was sleeping outside and he was taken to police station after the incident. She denied that he was involved in the robbery. They were talking in English. She could not recognize them if they come before her again.
32. You watched her giving evidence in court. What was her demeanor like? How she react to being cross examined and re-examined? Was she evasive? How she conduct herself 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 Mailing Chang beyond reasonable doubt then you have to decide whether elements of the charge apart from the identification of the persons involved is established beyond reasonable doubt through this evidence.
33. The other witnesses for the prosecution were called to establish that the 1st accused made a caution interview and a charge statement to the police, 2nd accused also made a caution interview and charge statement to the police and the 3rd accused made a caution interview to the police.
34. Three accused are on trial in this case. Each of the accused is entitled to be tried solely on the evidence that is admissible against him. This means you must consider the position of each accused separately, and come to separate considered decision on each of them. It is like having three separate trials for aggravated robbery but heard together. Just because they are jointly charged does not mean they must be guilty or not guilty. Complainant's evidence in this case is admissible against all three accused. However, regarding their police caution interview statements and the charge statements of each accused, which contained confessions, the statements therein are only admissible against the maker of the statement, and on no other. In other words, in each accused's caution interview statements and charge statements of the accused, you must totally disregard what each accused said about his co-accused on the commission of the offence. You can only take into account what he said about himself, regarding the role in the commission of the crime. You must keep in mind about the above rule, when you deliberate on the case.

35. A conviction could be based only on a caution interview or charge statement provided that all the elements of the charge are established through such statement.
36. The second witness for the prosecution was DC Timoci Tavurunaqiwa. He is an officer with 15 years' experience. On 8.8.2012 he had caution interviewed the 1st accused. PC Vishal was the witnessing officer. The 1st accused did not make any complaint. He identified and tendered the original caution interview notes marked P1 and identified the 1st accused in Court.
37. Under cross examination by the counsel for the 1st accused, he stated that he is unaware whether the 1st accused was arrested same day. He had seen the 1st accused was limping and he had some scratches on face. He had not recorded that the interview was suspended for the reconstruction. In answering the question that the interview was not voluntary as the 1st accused had injuries at the time of arrest and he should have been taken for medical attention and the interview should be suspended. The witness stated that 1st accused was already taken to the hospital before the interview. The 2nd accused and 3rd accused did not cross examine this witness.
38. It is up to you to decide whether the 1st 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 charge are proved by this statement against the 1st accused.
39. The third witness for the prosecution was DC 3260 Vishal Kumar. On 8.8.2012 he had received instruction to be the witnessing officer of the caution interview of the 1st accused. The 1st accused did not make a complaint of anything. He was not forced to give answers. He identified P1 and the 1st accused in Court.
40. Under cross examination by the counsel for the 1st accused, he stated that the 1st accused was limping. The 1st accused had scratches on his forehead. When it was suggested that the 1st accused was not fit for the interview, he stated that 1st accused told that he had taken medicine. There was a reconstruction of the scene. The interview was suspended for the same. It was recorded in the interview. The 2nd accused and 3rd accused did not cross examine this witness.
41. The fourth witness for the prosecution was DC 3858 Saiasi Matarugu. On 9.8.2012 he had charged the 1st accused. During the charge, 1st accused complained that he was assaulted during the arrest. The 1st accused made a voluntary statement in the charge. He identified and tendered the charge statement marked P2. He identified the 1st accused in Court.

42. Under cross examination by the counsel for the 1st accused, he stated that he did not record that 1st accused complained about assault during the arrest in the charge statement. Then he said that such complaint was made to the investigating officer. It was not recorded that the 1st accused was fit for the charge. He was already taken to the hospital when he was charged. The 2nd accused and 3rd accused did not cross examine this witness.
43. It is up to you to decide whether the 1st accused made a statement in the charge voluntarily to this witness. If you are sure that the charge 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 charge statement are truthful. If you are sure that the facts in the charge statement are truthful then you can use those to consider whether the elements of the charge are proved by this statement against the 1st accused.
44. The fifth witness for the prosecution was DC Gupta. He is an officer with 8 years' experience. On 9.8.2012 he had received instructions to caution interview the 2nd accused. WDC Virisila was witnessing officer. It was in English language. He did not make a complaint before or during the interview. The 2nd accused was not forced to give answers. The answers were given on his own freewill. He identified and tendered the caution interview notes of the 2nd accused marked P3. He identified the 2nd accused in Court.
45. Under cross examination by the counsel for the 2nd accused, he stated that the rights were read over to the 2nd accused in English. The 2nd accused is his distant cousin. The 2nd accused could read and write in English. He denied that questions were asked in Hindi language and answers were also given in Hindi language. He denied threatening the 2nd accused, if he does not sign, his sister will undergo same treatment. He was aware that the 2nd accused often drives private vehicle in the night. He denied wrongly accusing the 2nd accused. No stolen item was recovered from the 2nd accused. He had not seen the cuts on the lips or left side of the face being swollen. He was given right to consult legal counsel. His sister was allowed to see him after question 40. He denied the names of other accused in the interview were concocted by him. He denied fabricating the questions and answers in the interview. The 1st and 3rd accused did not cross examine this witness.
46. It is up to you to decide whether the 2nd 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 charge are proved by this statement against the 2nd accused.

47. The sixth witness for the prosecution was WDC Virisila. She is the witnessing officer of the interview of the 2nd accused. DC Gupta was the interviewing officer. The 2nd accused gave answers voluntarily. He was not forced to give answers. The 2nd accused did not make any complaint to her or the interviewing officer. She identified P3. She had charged the 2nd accused on 10.8.2012. The 2nd accused did not make any complaint. The 2nd accused made a statement in the charge. He was not forced to make the statement. She identified and tendered the charge statement marked P4. She identified the 2nd accused in Court.
48. Under cross examination by the counsel for the 2nd accused, she said that 2nd accused was given his rights. She did not see any bruises on the face of the 2nd accused or that the face was swollen. She was present throughout the caution interview of the 2nd accused. There was no witnessing officer for the charge. She was unaware that lawyer made an application for the medical examination of the 2nd accused. She admitted that officer Maciu was present in the same office. But she denied Officer-Maciu shaking the shoulders and knocking on the head. The 1st and 3rd accused did not cross examine this witness.
49. It is up to you to decide whether the 2nd accused made a statement in the charge to this witness. If you are sure that the charge 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 charge statement are truthful. If you are sure that the facts in the charge statement are truthful then you can use those to consider whether the elements of the charge are proved by this statement.
50. The seventh witness for the prosecution was DC Jolame. He had caution interviewed the 3rd accused on 10.8.2012. The 3rd accused did not make any complaint before the interview. He identified and tendered carbon copy of the interview marked P5. He identified the 3rd accused in Court.
51. Under cross examination by the 3rd accused, he stated that witnessing officer was Sgt. Amol. Witnessing officer was present throughout the interview. He was given opportunity to sign the interview. But he did not sign. He denied that this caution interview was fabricated. The interviewing officer was not present at the reconstruction. But he was informed by the crime officer that 3rd accused was taken for reconstruction. He noticed few injuries on the accused. Panadol was given after the interview. After seeing injuries he thought the 3rd accused was fit to give the interview. 1st and 2nd accused did not cross examine this witness.
52. It is up to you to decide whether the 3rd 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 charge are proved by this statement against the 3rd accused.

53. The eighth witness for the prosecution was former Sergeant Amol Prasad. He was the witnessing officer of the caution interview of the 3rd accused. 3rd accused did not make any complain. He identified P5 and the 3rd accused in Court.
54. Under cross examination by the 3rd accused he stated that he could identify the P5 from the names of the accused, interviewing officer and witnessing officer. He said that P5 is a carbon copy and he cannot confirm whether he signed in the original unless he sights the original. There was an old black eye on the 3rd accused's face. He could not recall whether the interview was suspended for a reconstruction. He was not cross examined by the 1st and 2nd accused.
55. The last witness for the prosecution was Inspector Maciu Vava. He is an officer with 27 years' experience. He was the Directing officer in this case. Three suspects were arrested. The 2nd accused was arrested in Korociri, Nadi. The 1st accused was arrested at Qeleloa. The 3rd accused was arrested in Lautoka. The 1st accused got injuries when he ran away from police. The 3rd accused had injuries when he was arrested. He identified all three accused in Court. He did not receive any complaint from the any accused during the investigation.
56. Under cross examination by the counsel for the 1st accused, he admitted that 1st accused was limping after the arrest. He was taken to the hospital. He came back with a medical report. He was fit for the interview. He was asked and he said okay. He had not noted that in his note book. The 1st accused was arrested for a case of robbery at Malolo. No stolen items were recovered from the 1st accused. He was taken for a reconstruction of the scene. He denied that 1st accused received injuries due to assaults at the time of arrest. He denied that answers were fabricated in the interview. He could not recall whether 1st accused was carried to the vehicle during the arrest.
57. Under cross examination by the counsel for the 2nd accused, he stated that Ilaitia arrested the 2nd accused. He was driving a car at Korociri. The 2nd accused had not resisted the arrest. The 2nd accused was arrested for the robbery at Portion Pack. No stolen items were recovered from the 2nd accused. He denied that police officers assaulted 2nd accused after arrest at the point of arrest. He denied that he and other officers assaulted 2nd accused at the station. He denied that the shirt and vest of the 2nd accused was taken out and he was blind folded by the vest. He further denied police officers were assaulting the 2nd accused while he was blind folded. He was not present at the interview of the 2nd accused but was present at the crime office. He denied assaulting the accused and officer Salend slapping the accused. When the 2nd accused was brought in to the station, he did not have any injuries. When he was taken to Court, he did not have any visible injuries.

58. Under cross examination by the 3rd accused he stated that he went to Lautoka on 10.8.2012 to pick the 3rd accused with officers Filise and Opeti. He cautioned the 3rd accused. He did not record statements from the arresting officers. He instructed officers to interview the 3rd accused for this case. The 3rd accused had some injuries on the face. The injuries were recorded in the cell book and the station diary. He denied taking the 3rd accused to Lomolomo beach and threatening that they will go and ruin his sister's wedding if he does not admit. He denied that no witnessing officer was present during the caution interview of the 3rd accused. The 3rd accused was well and fit for the interview. He denied that they took advantage of his medical condition and tricked him to confess.
59. After the prosecution case was closed, you heard me explaining each accused his rights in defence.
60. The 1st accused gave evidence. He stated that he was arrested in August 2012. It was a Thursday or Friday. Four to five police officers came and asked him to stop and threw a baton at him. It hit his left eye. His left eye was bleeding. He was just coming out of his girlfriend's house on a gravel road. Three boys ran passed him. Police officers came yelling at him. He was hand cuffed and taken long way to another compound. There were lots of i-Taukei men standing there. Some of them were wearing uniforms. All of them took turns to beat him. His leg was struck on barbed wire on the ground. There were 14-16 officers. Four to five of them were beating him at one time with three others swearing at him. He had short breath and shit in his pants. He had injuries in his chest and ribs all got injured.
61. He was blacked out. Then he was in the Nadi police station, Crime office. There were so many there. When he opened his eyes, officers started slapping him and asking him where the money is. Then he saw 2nd accused seated there. That was the first time he saw 2nd accused. He was interviewed the same day, next day and third day. He complained to officers regarding injuries. He had pain in chest, ribs and legs. He could see only with one eye. He was limping. Interviewing officers could see the injuries. But they did not bother. He was taken to Court after 4 days. On the 2nd day at night, he was taken to Nadi hospital. They spoke to the doctor and he was taken back to the car. No doctor saw him. Only nurse was there. The nurse examined him. Then he said nurse too did not examine him but only gave Panadol and pain killers. Then he was driven back to Nadi station.
62. After four days he was taken to Court. He informed the Magistrate. He was advised to go and see a doctor. He managed to see a doctor the following day at Lautoka hospital. He was given medicine and clutches. He was x-rayed. He was bailed out by the High Court. He tendered a photo copy of prescription marked 1D1. He denied the allegation against him.

63. Under cross examination by the State counsel, he admitted that he was arrested on 8.8.2012 and produced in Court on 10.8.2012. But he maintained that he was kept in the police station for 4 days. He denied that injuries were as a result of trying to escape. He complained to every police officer who talked to him. He had never lodged a complaint against these police officers. He could only recall they were writing something and asking him to sign. He does not know how to read. He did not know that interview was conducted using a computer. He was only given some papers to sign here and there. They read back the interview to him. Only some part was read back to him. He understood only some. He understands if someone speaks to him in English but not the hard words. He talks in both languages, English and Hindi. He agreed with what was read back to him by police. He was asked to sign and he signed without reading. He did not admit that what is recorded is what he told the police. He was assaulted during the interview by plenty of officers.
64. In re-examination he said that he could not recall what parts of the caution interview was read back to him. He closed the case with this evidence.
65. You watched 1st accused giving evidence in court. What was his demeanor like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? Is his version given in Court probable in all the circumstances? His version given in Court is inconsistent with his caution interview statement and charge statement. 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 1st accused should be discharged. Even if you reject his version, still the prosecution should prove its case beyond reasonable doubt.
66. The 2nd accused also gave evidence. He stated that on 11.7.2012 he drank 'kava' at his brother's place. He was at home as he was really drunk. His neighbor brought him home. He was holding him as he could not walk. He was arrested in Korociri, Nadi on 8.8.2012. He was driving his sister's car. He was arrested by officer Iaitia. He picked up three passengers from Malolo and police was chasing him. When he tried to stop the car the passengers hit him and they tried strangle his neck with seat belt. They put something sharp on his neck. He was told they will kill him if he tried to stop. They directed him to Korociri. There, they got off and ran away. He could not remember the faces of these people. Police vehicle came within a minute.
67. Police officer came and handcuffed him. He was asked who they were. And where they went? He said he doesn't know. He was punched on the stomach and face. He was made to sit in police car and other officers were called. He was not explained the right of silence and seek counsel there. The officers who came started beating him. Then he was taken to the station. At the station while one officer was talking to him another officer standing behind him hit him on the back of the head and punched him on the stomach. One officer took off his shirt and vest. The vest was wrapped around his face. Then they

started beating him again. He was beaten on stomach, face and on legs. When he could not tolerate he said he will cooperate with them and tell them everything.

68. Then he was taken back to place he was arrested. They were talking in i-Taukei. He was told another suspect is at another place and was he was dropped at the station. He was sitting in a corner crying. He asked Officer Maciu to call home. He was asked to wait a while. After a while they came with another man. One person hired the car in Nadi town and picked others Wailoaloa junction and Vuda back road between 10.00 to 11.00 p.m. When they were dropped at Malolo they took his number and asked him to come back when they call. One was i-Taukei and other two were Indo-Fijian. They did not look suspicious to him. His mother, father, wife, sister, aunt and one friend visited him at the station.
69. Officer Gupta interviewed him. He was not informed about right to legal representation. He was interviewed in Hindi and English. He understood few questions. The names in question 31-40 are the names used by the passengers. He was not asked question 39 and 40. Questions about plan were not asked from him (questions 50 & 51). Gupta asked him about name, address, income and about driving the car. He was told if he will co-operate they will leave, otherwise his sister will be taken for legal proceedings. Other officers were in the room. They were coming and telling him to co-operate or otherwise it is not good for him. He signed the caution interview. It was not read back to him. He did not ask Gupta for his lawyer to be present. Salend told Gupta that his sister is arranging for a lawyer.
70. When he went to Court, his lawyer was present. Gupta is his cousin brother. Whatever he told, Gupta wrote and asked him to sign. His lawyer asked for a medical examination. He had a cut on lips and it was swollen. He had a cut in cheek inside. He was limping. Ilaitia, Vere and Salend beat him and swear at him. Maciu pressed his shoulder. Lady officer witnessed his signature for interview. She was far away and came after Gupta finished everything, he called her and showed places to sign. He could not recall that lady charged him.
71. Under cross examination by the state, he stated that significance to remember drinking kava was that on 19, 20 & 21 July, his brother's daughter got married. It was prayer day one week prior to the wedding. He denied that he just made up this story. He had never made any complaint regarding police assault. He had no knowledge as he was not involved in things like this. Gupta interviewed him in Hindi and wrote in English. He understands English little bit. He has not passed the term 1 of Form 4. He admitted that he signed the interview notes. He was scared as he was assaulted prior to the interview. Gupta also threatened that his sister will be brought in. Virisila never assaulted him. She was far away. He can't recall Virisila charging him. That is out of his mind. Virisila was talking to him in English and broken Hindi. He is familiar with almost all the roads in Nadi. But he does not know Richmond Crescent.

72. In re-examination he said his questions were asked in Hindi and he answered in Hindi. It was recorded in English. He trusted Gupta. He told whatever you said I wrote. That is why he signed. But whatever he said was not written. No one advised him to make a police complaint.
73. The 2nd accused in his defence takes an alibi. He says that he was not at the scene of crime but was at her brother's house drinking 'kava'. 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 2nd 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.
74. Present 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.
75. No notice as required by law was given of alibi in this case. Such notice is required as then the prosecution could investigate on that matter.
76. You watched 2nd accused giving evidence in court. What was his demeanor like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? Is his version probable? His evidence given in Court is inconsistent with his caution interview statement and charge statement. 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, 2nd accused should be discharged. Even if you reject his version still the prosecution should prove its case beyond reasonable doubt.
77. The 2nd accused called his mother to give evidence. She had come to give evidence that his son did not do any wrong thing. When he was taken to Court, she saw injuries on his face. He was limping. He said he was beaten up. His lips were swollen and cut. There were some injury underneath eye and it was swollen. He could not walk.

78. Under cross examination she stated that she did not see his son being assaulted. She knew what happened to her son was wrong. Up to date no complaint was made to anyone.
79. The second witness called by the 2nd accused was the wife of the 2nd accused. On 8.8.2012 she came to know that her husband was arrested. That day they were not allowed to see him. She saw him from a distance (about 10 feet). He was sitting on a chair. He had a cut on the lip and one side of the face was swollen. She met him next afternoon. She went to Court on 10th. Magistrate advised him to be taken for medical. His medical was not done.
80. Under cross examination she said that she did not see how her husband got injuries.
81. Under re-examination she said that 2nd accused had injuries before he was taken to police custody. She did not see these injuries on 7.8.2012 but on 8.8.2012 at the Nadi Police station.
82. The father of the 2nd accused also called to give evidence. He stated that on 8.8.2012 the 2nd accused was having 'kava' at his brother's place. It was raining. At 4 o'clock he received a call from the 2nd accused. He had borrowed a phone of police officer and informed him that he is in police station. Then he came to the station. He was made to sit. They were taking his statement. He could see a bit swelling on his face. Gupta and i-Taukei officer were taking the statement.
83. Last witness for the 2nd accused was his sister. On 8.8.2012 while at work she received a call that 2nd accused was arrested. She went to Nadi police station in the afternoon. She was not allowed to see his brother. She met officer in charge Salend. She asked for that officer's number to follow up. She had not seen the 2nd accused that day. She called that officer later and told him not to do anything as she was arranging a lawyer for him. Lawyer arranged a representative to see the 2nd accused. The following day she met the 2nd accused. Before that, she saw her brother being surrounded by number of officers. There were just unwanted questions that were going through. Number of officers were speaking at the same time. She could not hear what they were saying. She could see the officers banging on the table, screaming and questioning him. Then he was brought to the room she was sitting. She could see cuts on his lips and he had a swollen face. When she asked him whether he was assaulted he shook his head saying yes. He did not have those injuries on 7.8.2012. She asked the officer in Charge whether her brother was assaulted. She was told that they are doing the investigation. She advised him that her brother is illiterate. If he can make a statement when his lawyer is present. She was told that investigations are undergoing and she has to leave. She contacted her lawyer.
84. In Court she could see her brother limping. She told lawyer about injuries she saw. The lawyer requested for a medical examination to be done. But her brother was not taken for a medical examination.

85. Under cross examination by the state she stated that she did not see him being assaulted. She knows Gupta. He is related to them. His brother complained that Gupta he was hash and then just took his side said that he was doing his duties. Brother complained about Virisila. That she was far from the investigation room yet she signed all the documents. This was not told to her at that time but about a month back.
86. In re-examination she said that she was not present at the time of signing the caution interview statement.
87. These witnesses were called by the 2nd accused to establish that he had injuries due to police assault. You saw all these witnesses giving evidence. None of them had made any complaint regarding this assault up to now. How is their demeanor? What is their relationship with the 2nd accused? How they react to cross examination and re-examination? Are their versions consistent with the version of the 2nd accused and among themselves? If you accept the evidence of each of these witnesses and it creates a reasonable doubt in the prosecution case the accused should be discharged. Even if you reject their versions, that does not mean that the 2nd accused is guilty. Prosecution still has to prove the case against the 2nd accused beyond reasonable doubt.
88. The 3rd accused also gave evidence. He stated that he was arrested by Lautoka strike back team on 9.8.2012 at 7.30 p.m. prior to his arrest he was badly injured by some Fijian youth on 6.8.2012. He submitted a medical report 3D1. Wedding ceremony of his younger sister was to be held on 11.8.2012. He was busy preparing for the same. He was arrested and taken to Lautoka police station. Sometime after 10.00 p.m. Nadi police officers arrived. He was handed over to them. He was never told the reason for his arrest. Only thing told was that this is for a Nadi matter and person by the name Ron had been mentioned. He was escorted to Nadi in private white paneled van. Inside the van two officers' blind folded him and assaulted him.
89. He was taken to an isolated place in Lomolomo. He was told by Maciu that his name had come up in the robbery at Malolo, Nadi. He told the officers to bring them for confrontation to confirm the identity of him. He was told that they were already in remand. Further he was told that they have a warrant to search his house and they can ruin his sister's wedding. He told them that they can't do such things. He was told that they are police officers and they can do anything. He had no choice. He told them, let's go to Nadi police station.
90. On 10th morning he was interrogated by police officers. On that day around lunch the other two were still at the station. He was told that they are now in remand. Same day he was interviewed for this offence. He was only asked few questions. He does not know anything about the content of his caution interview. He was told if he doesn't sign they will go and search his house and ruin his sister's wedding. He doesn't know anything about this robbery. He was busy preparing for his sister's wedding. He signed the interview to save his family being victimized.

91. Under cross examination he admitted that he was not assaulted during the interview. At the Nadi station too he was not assaulted but he was verbally abused and promise was done to him. Jolame threatened him. At Lomolomo few punches were given to him on both sides of his ribs. He never reported this to police. He was told to think about his family. They can do anything to ruin his sister's wedding. He was scared. He did not want them to spoil the wedding. If he signs and admits they will not ruin his sister's wedding. At that moment that was the only thing in his mind. On the day of his arrest he was fit enough to walk and talk. The answers given are not voluntary but made out of promise.
92. You watched 3rd accused giving evidence in court. What was his demeanor like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? Is his version probable? His version in Court is inconsistent with his caution interview statement. 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 its case beyond reasonable doubt.
93. 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.
94. 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 offence.
 - (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 offence. 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 offence then the proper opinion would be Guilty.
95. 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.

96. Remember, the burden to prove each 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. Each accused is not required to prove his innocence, or prove anything at all. In fact, they are presumed innocent until proven guilty beyond reasonable doubt.

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

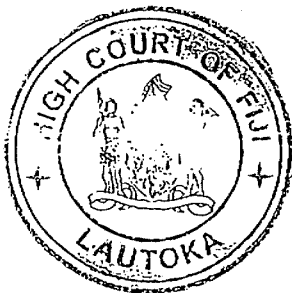
98. Your possible opinions are as follows:

Charge of Aggravated Robbery

1st Accused Guilty or Not Guilty
2nd Accused Guilty or Not Guilty
3rd Accused Guilty or Not Guilty

99. 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.

100. Any re-directions?




Sudharshana De Silva
JUDGE

At Lautoka
23rd March 2015

Solicitors: Office of the Director of Public Prosecution for State
Office of the Legal Aid Commission for 1st and 2nd Accused
3rd Accused in Person