

**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 the 1<sup>st</sup> Accused  
Ms. A. Lata for the 2<sup>nd</sup> Accused  
3<sup>rd</sup> Accused in person

**Date of Trial** : 16 March 2015 - 20 March 2015  
**Date of Summing Up** : 23 March 2015  
**Date of Judgment** : 24 March 2015

**JUDGMENT**

1. The three Accused are charged under following count:

**COUNT 1**

***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 11<sup>th</sup> 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.

2. The three assessors unanimously found accused Not Guilty of the above count.
3. Obviously, the three assessors have not accepted the prosecution's version of events. It appeared that they have found the prosecution had not proven its case beyond a reasonable doubt.
4. I adjourned overnight to consider my judgment, I direct myself in accordance with the law contained in my summing up to the assessors.
5. I bear in mind that whilst the opinion of the assessors carries great weight, the verdict of the Court is that of the judge and it is his duty to reach his own conclusion on the evidence. (**Joseph v the King [1948] AC 215**) In **Ram Dulare & others v R [1955] 5 FLR 1** the Court of Appeal referred to Joseph's case and held:

*'...[the assessor's] duty is to offer opinions which might help the trial Judge. The responsibility for arriving at a decision and of giving judgment in a trial by the [High] Court sitting with the assessors is that of the trial Judge and the trial Judge alone and ...he is not bound to follow the opinion of the assessors.'*

6. More recently, in **Sakiusa Rokonabete v The State** Criminal Appeal No. AAU 0048/05, the Court of Appeal observed:

*'In Fiji, the assessors are not the sole judges of fact. The Judge is the sole Judge of fact in views of the facts.'*

7. If the presiding trial Judge disagrees with the opinion of the assessors, he must give written reasons for differing from the opinion and those reasons must be pronounced in open court (Section 237 (4) of the Criminal Procedure Decree). The reasons for differing with the opinion of the assessors must be founded on the weight of the evidence and must reflect the presiding Judge's view as to the credibility of witnesses. (**Ram Bali v Regina** (1960) 7 FLR 80 at 83, **Ram Bali v The Queen** Privy Council Appeal No. 18 of 1961), **Shiu Prasad v Regina** (1972) 18 FLR 70 at 73. In **Setevano v State** [1991] FJA 3 at 5, the Court of Appeal stressed that the reasons of the presiding trial Judge:

*'...must be cogent and they should be clearly stated. In our view they must also be capable of withstanding critical examination in the light of the whole of the evidence presented in the trial.'*

8. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.

9. The offence of Aggravated Robbery requires proof of the following elements:
- (a) A person,
  - (b) Committed Theft,
  - (c) Immediately before committing theft uses force on another person,
  - (d) He was in company of one or more persons.
10. The prosecution case was that the accused broke in the house of Kushal Kumar and Mailing Chang and robbed items worth \$8,890.00. The complainants have failed to identify the accused. The prosecution's case was based on the caution interview statement and charge statement of the 1<sup>st</sup> accused, the caution interview and charge statement of the 2<sup>nd</sup> accused and the caution interview statement of the 3<sup>rd</sup> accused.
11. This Court in Voir-dire ruling had already decided that each of these statements were made voluntarily. Therefore, the question before the Court is whether these statements were truthful.
12. After careful perusal of each statement, I find that each of these statements is truthful. If these statements are fabricated as alleged by each accused, there could be similar questions and answers. However, there is no evidence as such. The 1<sup>st</sup> accused was asked 86 questions and he had given answers to those questions. The 2<sup>nd</sup> accused was asked 74 questions and he had answered those. The third accused was asked 85 questions and answered those.
13. The first accused from question 45 - 66 had admitted entering the house of the complainant with others and robbing cash from them while punching the complainant. That evidence is sufficient to establish all elements of the charge against the 1<sup>st</sup> accused.
14. In the charge statement, 1<sup>st</sup> accused had admitted entering the said house with others and he received a share.
15. The 2<sup>nd</sup> accused in his caution interview had admitted that he dropped and picked up the accused knowing that they are going to rob a house. Further, he had received his share after the robbery. Therefore, it is clear that the 2<sup>nd</sup> accused acted with common purpose with others to commit this robbery. Therefore, he is liable for this offence under the doctrine of common enterprise.
16. In the charge statement, 2<sup>nd</sup> accused had admitted driving the people for robbery and that he dropped and picked them up. He was aware what was going on.
17. The 3<sup>rd</sup> accused in his caution interview from questions 47 - 54 and 60 - 69 had admitted entering the house with others, robbing cash and other items and punching the complainant in the process. That evidence is sufficient to establish all elements of the charge against the 3<sup>rd</sup> accused.

18. The evidence of each accused and the witnesses called by the 2<sup>nd</sup> accused had failed to create a reasonable doubt in the prosecution case. The version of the 1<sup>st</sup> accused was that, he was assaulted by police officers from the moment they saw him. I reject this version as it is highly improbable. The version of the 2<sup>nd</sup> accused that he was not treated fairly during the interview was contradicted by his own father. The 3<sup>rd</sup> accused's version that he confessed due to fear that his sister's wedding will be ruined by the police officers is also highly improbable. None of the accused had made any complaint reading the assaults to the police.
19. I have considered both parties' evidence and witnesses, in order to discover the truth. I find the state witnesses credible, and I accept their evidence. I find each accused was not a credible witness, given the above. I reject their versions. I reject the evidence of the witnesses called by the 2<sup>nd</sup> accused as untrue.
20. According to **Kean v State** [2013] FJCA 117; AAU 95.2008 (13 November 2013) there is no bar that a conviction could be based only on a confession.
21. Considering the evidence before the Court which I extensively discussed in my summing up to assessors, I am convinced that there is evidence against each accused person to prove that he had committed the offence of aggravated robbery as charged in the information.
22. For the reasons given, I do not accept the unanimous opinion of Not Guilty given by the assessors in respect of the count of Aggravated Robbery.
23. In my view, the assessor's opinion was perverse.
24. The learned DPP has satisfied me the guilt of each accused beyond reasonable doubt in respect of the count. Accordingly I convict each accused for the count as charged.
25. This is the Judgment of the Court.



At Lautoka  
24<sup>th</sup> March 2015

  
Sudharshana De Silva  
**JUDGE**

Solicitors: Office of the Director of Public Prosecution for the State  
Office of the Legal Aid Commission for the 1<sup>st</sup> and 2<sup>nd</sup> Accused  
3<sup>rd</sup> Accused in person