

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 181 OF 2013

STATE

-v-

1. JOELI BALEILEVUKA
2. WATISONI SAQALAGILAGI
3. ISAIA BOBO
4. ISIMELI NAREZIA
5. SAKIUSA TUKANA

Counsels : Ms. L. Latu for the State
Ms. A. Lata for the 1st Accused
Mr. A. J Singh for the 2nd and 4th Accused
Ms Nasedra for the 3rd Accused and 5th Accused

Date of Trial : 01 April 2015 - 20 10 April 2015
Date of Summing Up : 13 April 2015
Date of Judgment : 13 April 2015

JUDGMENT

1. The five Accused are charged under the following counts:

COUNT 1

Statement of Offence

AGGRAVATED ROBBERY: Contrary to Section 311 (1) (b) of the Crimes Decree 44 of 2009.

Particulars of Offence

JOELI BALEILEVUKA, WATISONI SAQALAGILAGI, ISIMELI NARESIA and ISAIA BOBO and SAKIUSA TUKANA, in company of each other on the 20th of August, 2013 at Rakiraki in the Western Division, while being armed with an offensive weapons stole cash amounting \$127,180.00 and 70 whales tooth valued at \$35,000.00 all to the total value of \$162,180.00, the property of **GEORGE SHIU RAJ**.

COUNT 2

Statement of Offence

AGGRAVATED ROBBERY: Contrary to Section 311 (1) (b) of the Crimes Decree 44 of 2009.

Particulars of Offence

JOELI BALEILEVUKA, WATISONI SAQALAGILAGI, ISIMELI NARESIA and ISAIA BOBO and SAKIUSA TUKANA, in company of each other on the 20th of August, 2013 at Rakiraki in the Western Division, while being armed with an offensive weapon stole 20 big gold coins (mohar) valued at \$12,000.00, 4 bangles (kangans) valued at \$1,200.00, 1 gold chain and mohar valued at \$1,400.00, 1 gold patta worth \$4,000.00, other assorted jewelleries valued at \$2,000.00 all to the total value of \$20,600.00 the property of **PRAVEEN RAJ**.

COUNT 3

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Decree 44 of 2009.

Particulars of Offence

JOELI BALEILEVUKA, WATISONI SAQALAGILAGI, ISIMELI NARESIA and ISAIA BOBO and SAKIUSA TUKANA, on the 20th of August, 2013 at Rakiraki in the Western Division, assaulted **GEORGE SHIU RAJ**, thereby causing actual bodily harm.

COUNT 4

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Decree 44 of 2009.

Particulars of Offence

JOELI BALEILEVUKA, WATISONI SAQALAGILAGI, ISIMELI NAREZIA and ISAIA BOBO and SAKIUSA TUKANA, on the 20th of August, 2013 at Rakiraki in the Western Division, assaulted **PRAVEEN RAJ**, thereby causing actual bodily harm.

COUNT 5

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Decree 44 of 2009.

Particulars of Offence

JOELI BALEILEVUKA, WATISONI SAQALAGILAGI, ISIMELI NAREZIA and ISAIA BOBO and SAKIUSA TUKANA, on the 20th of August, 2013 at Rakiraki in the Western Division, assaulted **PRABHA PRASAD**, thereby causing actual bodily harm.

COUNT 6

Statement of Offence

THEFT OF MOTOR VEHICLE: Contrary to Section 291 (1) of the Crimes Decree 44 of 2009.

Particulars of Offence

JOELI BALEILEVUKA, WATISONI SAQALAGILAGI, ISIMELI NAREZIA and ISAIA BOBO and SAKIUSA TUKANA, on the 20th of August, 2013 at Rakiraki in the Western Division, stole a twin cab registration number: **GEORGE**, valued at \$94,000.00, the property of **GEORGE SHIU RAJ**.

2. The three assessors gave a mixed verdict. All three assessors unanimously found 1st and 4th accused Guilty of the two Aggravated Robbery charges. The 2nd assessor also found the 5th Accused Guilty of the two Aggravated Robbery counts. The 3rd assessor found all five accused Guilty of the Aggravated Robbery charges. All assessors found all accused were not guilty of the other charges.
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 in respect of some of the charges.
4. I adjourned 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 offence of Assault causing actual bodily harm requires proof of the following elements:

- (i) A person

- (ii) Assaulted another person
- (iii) As a result of that assault the other person received bodily harm

11. The elements of the offence of Theft of motor vehicle are:

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

12. The prosecution case was that the accused broke in the house of George Shiu Raj and robbed items worth \$162,180.00 from the complainant. The second charge is for robbing \$20,600.00 worth jewelries from the complainant's wife. The 3-5 charges are that they caused actual bodily harm to the complainant, his wife and sister. The last charge was theft of motor vehicle with registration number 'GEORGE'.

13. The complainants have failed to identify the accused. The prosecution case was based on the caution interview statements of the 1st and 2nd accused, the recoveries from the 1st, 2nd, 4th & 5th accused and the evidence of the accomplice, Sailasa Momo.

14. This Court in Voir-dire ruling had already decided that the caution interview statements of the 1st and 2nd accused were made voluntarily. Therefore, the question before the Court is whether these statements were truthful.

15. 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 first accused was asked 146 questions and he had given answers to those questions. The 2nd accused was asked 140 questions and he had answered those.

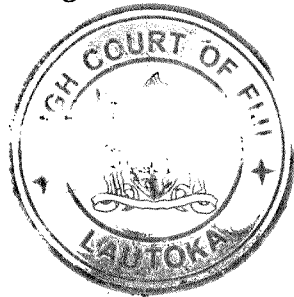
16. I have observed the demeanor of the accomplice Sailasa Momo when he gave evidence. I have no doubt in my mind that he is a truthful witness. He was prompt in answering the questions put to him by prosecution and the defence. He was not evasive in his answers. There are some contradictions in his statements and the police version that 2nd and 5th accused were arrested on 21.8.2013. Further, in his caution interview he had given two answers regarding 19th that he cannot remember where he was on 19th and that on that day he took a job from Nadi coming down to Rakiraki. However, considering the totality of his evidence before Court, these inconsistencies are insignificant.

17. In **Ali v State** [2013] FJCA 41; AAU105.2008 (30 May 2013), the Court of Appeal discussed the requirement of corroboration of the evidence of an accomplice.

18. The recovery of large amount of money \$93,433.00 and 19 Tabua from the 1st and 4th accused within 22 hours from the incident is corroboration of that evidence in respect

of the 1st and 4th accused based on the doctrine of recent possession. The principles laid down in **R v Garth** (1949) 1 AER 773 and **R v Raviraj** (1987) 85 Cr. App. R needed to be followed in this regard. There were also recoveries from the 2nd and 5th accused. There is no independent corroboration of this evidence in respect of the 3rd accused. However, considering the evidence of Sailasa Momo, I am of the opinion it is safe to act on that evidence to convict the 3rd accused.

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 1st, 2nd, 4th accused were not credible witnesses. The 1st and 2nd accused took an alibi as a defence. However, when I apply the tests of consistency and belatedness, I reject their versions. The 4th accused had never given an alibi notice although he took up an alibi in the trial. I reject the evidence of the witnesses called by the 1st and 3rd accused as untrue.
20. 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 offences of Aggravated robbery as charged in the information.
21. The other counts in the information were also based on the doctrine of common enterprise. I have no doubt that the complainant, his wife and sister received injuries during the cause of this incident. It is supported by medical reports. The Medical reports are an agreed fact. There is no doubt the vehicle 'GEORGE' was stolen and left at Naseyani.
22. For the reasons given, I do not accept the opinion of Not Guilty given by the assessors in respect of the counts of Assault causing actual bodily harm and Theft of Motor Vehicle.
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 each count. Accordingly, I convict each accused for each count as charged.
25. This is the Judgment of the Court.



At Lautoka
13th April 2015


Sudharshana De Silva
JUDGE

Solicitors: Office of the Director of Public Prosecution for the State
Office of the Legal Aid Commission for the all the accused