

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 147 OF 2013S

STATE

vs

- 1. TEVITA GONEVOU**
- 2. JOELI SOAQALI**
- 3. PETERO TUIVAKALEA**

Counsels : **Ms. S. Navia for State**
Ms. S. Vaniqi for Accused No. 1
Accused No. 2 in Person
Mr. R. Vananalagi for Accused No. 3

Hearings : **13 to 17, 21 and 22 April, 2015**

Summing Up : **24 April, 2015**

Judgment : **24 April, 2015**

JUDGMENT

1. The three assessors had returned with a mixed verdict, as far as accused no. 1 was concerned. On accused no. 2 and 3, the three assessors returned with an unanimous guilty verdict against them. They found accused no. 2 and 3 guilty of robbing the complainant of \$45,281.57 on 2 April 2013, at Pacific Harbour, while being armed with an offensive weapon.
2. On accused no. 1, assessor no. 1 and 3 found the accused not guilty as charged, while assessor no. 2 found him guilty as charged. Obviously, the majority had not accepted the prosecution's version of events, and have found the accused not guilty as charged. The

minority accepted the prosecution's version of events, and found the accused guilty as charged.

3. The law at this stage of the trial is section 237 (1), (2), (4) and (5) of the Criminal Procedure Decree 2009, which reads as follows:

- “...237 (1) When the case for the prosecution and the defence is closed, the judge shall sum up and shall then require each of the assessors to state their opinion orally, and shall record each opinion.*
- (2) The judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors...*
- (4) When the judge does not agree with the majority opinion of the assessors, the judge shall give reasons for differing with the majority opinion, which shall be –*
- (a) written down; and*
- (b) pronounced in open court.*
- (5) In every such case the judge's summing up and the decision of the court together with (where appropriate) the judge's reasons for differing with the majority opinion of the assessors, shall collectively be deemed to be the judgment of the court for... all purposes...”*

4. In Ram Dulare, Chandar Bhan and Permal Naidu vs Reginam [1956 – 57], Fiji Law Report, Volume 5, pages 1 to 6, page 3, the Fiji Court of Appeal, said the following, on an equivalent section of the then Criminal Procedure Code:

“...In our opinion learned counsel for the appellants is confusing the functions of the assessors with those of a Jury in a trial. In the case of the King v. Joseph 1948, Appeal Case 215 the Privy Council pointed out that the assessors have no power to try or to convict and their 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 in the terms of the Criminal Procedure Code, section 308, he is not bound to follow the opinion of the assessors...”

5. In Sakiusa Rokonabete v The State, Criminal Appeal No. AAU 0048 of 2005, the Fiji Court of Appeal said as follows:

“...In Fiji, the assessors are not the sole judge of facts. The judge is the sole judge of fact in respect of guilt, and the assessors are there only, to offer their opinions, based on their views of the facts...”

6. I have reviewed the evidence called in the trial, and I have directed myself in accordance with the Summing Up I gave the assessors today. The assessors' verdict was not perverse. It was open to them to reach such conclusion on the evidence. On accused no. 2 and 3, I agree with the unanimous verdict of the three assessors. They had accepted the prosecution's version of events, and had found them guilty as charged. I accept that the complainant (PW1) properly identified them, at the crime scene, at the material time. I accept that PW1's identification evidence was of a high quality, and I accept them. On their alleged confession to the police, I accept that they gave the same voluntarily to the police, and out of their own free will. They never complained to the Magistrate Court or High Court of any police assaults, and never asked for a medical examination to confirm the injuries they received from police. Furthermore, \$16,000 plus cash was found on accused no. 2 and \$11,000 cash on accused no. 3 so soon after the alleged robbery, within the vicinity of the crime scene. I find accused no. 2 and 3, guilty as charged, and convict them accordingly.

7. As for accused no. 1, he made a full confession to the police when caution interviewed. He argued that he was assaulted by police, and two front teeth fell off. He produced a photo of his blood stained shirt (ie Defence Exhibit No. 2 and 3), he alleged, he was wearing at the time, as evidence of the police assaulting him. He was interviewed on 4 April 2013, and appeared in Navua Magistrate Court on 5 April 2013. He made no complaints to the Magistrate of alleged police assaults while in their custody, and did not ask for a court ordered medical examination, which will verify his fallen front teeth and other injuries, allegedly caused by police. To me, these actions showed that, he had nothing to complaint about at the time. To me, they showed he had no injuries to report. To me, they showed he was not assaulted by police. Then he produced photos of his blood stained shirt (Defence Exhibit No. 2 and 3). These were taken 7 months after the events ie. on 5 November 2013. One asked the question why he did not show the Magistrate the alleged blood stained shirt on 5 April 2013, as evidence of police assault. In my view, the evidence appear to show that he gave his alleged confession to the police voluntarily and out of his own free will. I accept his confession, and I find accused no. 1 guilty as charged, and I convict him accordingly.

8. In summary, I find all accused guilty as charged and I convict them accordingly.



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JUDGE

Solicitor for the State	:	Office of the Director of Public Prosecution, Suva.
Solicitor for Accused No. 1	:	Vaniqi Lawyers, Barrister and Solicitor, Suva.
Solicitor for Accused No. 2	:	Accused in Person
Solicitor for Accused No. 3	:	Mr. R. Vananalagi, Barrister and Solicitor, Suva.