

IN THE HIGH COURT OF FIJI  
CRIMINAL JURISDICTION  
AT LAUTOKA

CRIMINAL CASE: HAC 108 OF 2012

BETWEEN : STATE

AND : RAVINESH SINGH

Counsel : Mr. S. Nath for State  
Mr. R. Vananalagi for the Accused

Date of Hearing : 24th and 25th of October 2016  
Date of Closing Submissions : 26th of October 2016  
Date of Summing Up : 28th October of 2016

SUMMING UP

Madam Assessors and Gentleman Assessor.

1. The hearing of this case has now reached to its conclusion. It is my duty to sum up the case to you. You will then retire to consider your respective opinions.
2. Our functions are different. It is my task to ensure that the trial is conducted according to law. As part of that, I will direct you on the law that applies in this action. You must accept the law from me and apply all directions I give you on matters of law.

3. You are to determine the facts of the case, based on the evidence that has been placed before you during the course of the hearing. That involves deciding what evidence you accept or refuse. You will then apply the law, as I shall explain it to you, to the facts as you find them to be, and in that way arrive at your opinion.
4. I may comment on the facts if I think it will assist you when considering the facts. While you are bound by directions I give you as to the law, you are not obliged to accept any comment I make about the facts. Hence, it is entirely upon you to accept or disregard it unless it coincides with your own independent opinion. I say so because you are the sole judges of the facts.
5. You all have been chosen from the community and represent a pool of common sense, knowledge and experience of the conduct of human beings in our community. Accordingly, you are required to use your experience, common sense and knowledge of the community and the human conduct in deliberating of facts of this case.
6. You must reach your opinion on evidence. Evidence is what the witnesses, from the prosecution and the defence, said from the witness box, documents and other materials received as exhibits and agreed fact. This summing up, statements, arguments, questions and comments made by the counsel of the parties are not evidence. The opening address of the learned counsel of the prosecution is not evidence. The purpose of the opening address by the learned counsel for the prosecution is to outline the nature of evidence intended to be put before you. The closing addresses of the counsel of the prosecution and the accused are not evidence either. They are their arguments, which you may properly take into

account when you evaluate the evidence, but the extent to which you do so is entirely a matter for you.

7. If you heard, or read, or otherwise learned anything about this case outside of this courtroom, you must exclude that information or opinions from your consideration. You must have regard only to the testimony, agreed facts and the exhibits put before you in this courtroom during the course of this trial. Ensure that no external influence plays a part in your deliberation.
8. As judges of facts you are allowed to talk, discuss and deliberate facts of this case only among yourselves. However, each one of you must reach your own conclusion or form your own opinion. You are required to give merely your opinion but not the reasons for your opinion. Your opinion need not be unanimous. I must advise you that I am not bound by your opinion, but I assure you that your opinion will assist me in reaching my judgment.
9. Moreover, I must caution you that you should dismiss all emotions of sympathy or prejudice, whether it is sympathy for or prejudice against the accused or anyone else. No such emotion has any part to play in your decision, nor should you allow public opinion to influence you. You must approach your duty dispassionately; deciding the facts solely upon the whole of the evidence. It is your duty as judges of facts to decide the legal culpability as set down by law and not the emotional or moral culpability of the action.
10. Matters which will concern you are the credibility of the witnesses, and the reliability of their evidence. It is for you to decide whether you accept the whole of what a witness says, or only part of it, or none of it. You may accept or reject

such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified.

11. In assessing evidence of the witnesses, you must consider whether the witness had the opportunity to see, hear and or feel what the witness is talking in the evidence. You then should consider whether the evidence presented by the witness is probable or improbable considering the circumstances of the case. Apart from that you are required to consider the consistency of the witness not only with his own evidence but also with other evidence presented in the case.
12. It is your duty as judges of facts to consider the demeanor of the witnesses, how they react to being cross examined and re-examined, were they evasive, in order to decide the credibility of the witness and the evidence.

### **Burden and Standard of Proof**

13. I now draw your attention to the issue of burden and standard of proof. The accused is presumed to be innocent until he is proven guilty. The presumption of innocence is in force until you form your own opinion that the accused is guilty for the offence.
14. The burden of proof of the charge against the accused is on the prosecution. It is because the accused is presumed to be innocent until he is proven guilty. Accordingly, the burden of proof rest on the prosecution throughout the trial and it never shifts to the accused person. In other words there is no burden on the accused person to prove his innocence, as his innocence is presumed by law.

15. The standard of proof in criminal trial is “proof beyond reasonable doubt”. It means that you must be satisfied in your mind that you are sure of the accused person’s guilt. If there is a riddle in your mind as to the guilt of the accused person after deliberating facts based on the evidence presented, that means the prosecution has failed to satisfy you the guilt of the accused person beyond reasonable doubt. If you found any reasonable doubt as to the commission of the offence as charged or any other offence by the accused, such doubt should always be given in favour of the accused person.

### **Information**

16. The accused is being charged with one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Decree. The particulars of the offence are with you. Therefore, I do not wish to reproduce it in my summing up.
17. The prosecution alleges that the accused in company with others robbed cash of FJD 20,000 and jewellery valued at FJD 30,000 from Mrs. Jasvanti Ben Jamnadas on the 23rd of May 2012. The accused has provided the transportation to the three masked robbers who entered into the house and robbed therein.
18. The accused denies this allegation and claims that it is a false allegation.
19. Section 311 (1) (a) of the Crimes Decree states that;

*A person commits an indictable offence if he or she —*

*a) commits a robbery in company with one or more other persons; or*

20. The robbery is an aggravated form of theft. If the accused person used any form of force on a person or threatened to use such force either immediately before the committing the offence of theft or with intent to escape from the scene, then he commits an offence of robbery. If the accused person commits such robbery in company with one or more other persons, then such act constitutes the offence of Aggravated Robbery. Hence, the main elements of the offence as charged in the information are that;

i) The accused person,

ii) In company with others,

iii) Steal FJD 20,000 and assorted jewellery worth of FJD 30,000 from Mrs. Jasvanti Ben Jamnadas,

iv) Used or threatened to use any force on Mrs. Jamnadas either before committing the offence of theft or with intent to escape from the scene,

21. The prosecution alleges that the accused committed this offence in joint enterprise. If two or more people form a common intention to execute an unlawful purpose in conjunction with one another and in execution of such purpose an offence is committed in a nature that its commission was a probable consequence of the execution of the said unlawful purpose, each of them is deemed to have committed the offence. Those who commit crime together may play different parts to achieve their purpose. The prosecution must prove that each defendant took some part. The essence of joint responsibility for a criminal offence is that each accused persons shared a common intention to commit the

offence and played his part in it [however great or small] so as to achieve that aim.

22. Let me now remind you the evidence presented by the prosecution and the defence during the course of the hearing.

### **Evidence of the Prosecution**

23. The first witness of the prosecution is DC Wayne Tanu. He is the investigation officer of this case. It was his duty as the investigation officer to compile the records and to take the matter to the court. The complainant of this matter is Jaswanti Ben Jamnadas. She was 70 years old at the time of this incident took place. Three masked men entered into her house and threatened her. They then took FJD 20,000 and assorted jewellery worth of FJD 30,000. The caution interview of the accused was conducted by DC Shailend.
24. During the cross examination, DC Wayne stated that the complainant has not identified any of the three masked men. No identification parade was conducted. DC Wayne has conducted a search at the house of the accused and has not recovered anything. The accused was the driver to this robbery. Three more suspects were interviewed for this offence, but only the accused and one of them were charged. Other two suspects were not charged as they did not admit the committing of the offence in their respective caution interviews.
25. DC Wayne came to the place of the arrest when the accused was arrested in the early morning of 8th of August 2012. He could not remember whether the accused was handcuffed or not when he arrived. PC Ilaitia escorted the accused to the police station. DC Wayne denied that he assaulted and threw the accused

inside the vehicle at the time of his arrest. He denied that he punched the accused on his ribs.

26. The second witness of the prosecution is Mr. Ilaitia Rayasi. He was a police officer and had served in the Fiji Police Force for 14 years. In the year 2012, he was stationed at Nadi Police Station. He recalls that on the 8th of August 2012, he reported to the station in the early morning at around 4 a.m. He was a member of an operation team that was conducting operations on robberies and house breaking incidents.
  
27. As he was entering into the charge room, he received a call that a robbery was taking place and the suspects were heading towards Nadi town in a car. Fellow officers in his team had not yet reported, hence he got into the police vehicle and went to the temple end of the Nadi Town and waited for the said car. It was a white colour Toyota car with orange rim. The registration number is E 6912. In a while, he noticed the said vehicle was heading towards Nadi back road. He then followed the car until it turned into Korociri settlement and stopped at the dead end. He saw three of the passengers got off from the car and ran into the dark. He saw the driver of the car was also trying to get off. He ran towards him and put him down on the ground and arrested him. Mr. Ilaitia reached to the driver as he got off the car. Hence, he could not state whether the driver tried to run and escape. He identifies the accused as the driver that he arrested in the early morning of 8th of August 2012. Mr. Ilaitia then called for backup and Sgt Amol, DC Wayne, WPC Preeti and Special Constable Ajay came in the backup vehicle. He then instructed them to guard the vehicle and escorted the accused to the police station. When he reached the police station, he noticed that his fellow



officers were briefed about the robbery. He then handed over the accused to the officers at the charge room.

28. During the cross examination Mr. Illiatia denied that he assaulted the accused at the time of arrest. He said that he did not punch the accused on the left side of his face and on his ribs. He further stated that he did not kick the accused on his back. He put the accused down to the ground because he was not sure whether the accused was armed with a weapon.
29. The third witness of the prosecution is Acting Corporal Shailend Krishna. He is the interviewing officer of the accused. He has conducted the caution interview of the accused on the 9th of August 2012. It was conducted in English Language and question and answer format. The caution interview was conducted at the CID office in the Nadi Police Station. The accused has not made any complainant to him before the commencement of the interview. It was started at 1940 hours and concluded at 2140 hours.
30. Cpl Shailend stated that he gave the accused an opportunity to consult a lawyer. However, he only talked to his father *via* telephone. The accused was not induced, threatened, intimidated, or coerced before or during the recording of the caution interview. He was not promise anything. The accused appeared fit and normal during the recording of the caution interview. The accused read the caution interview at the conclusion. He was given an opportunity to add, alter or delete any part of the caution interview. Cpl Shailend then tendered the record of the caution interview as prosecution exhibit one.

31. During the cross examination, Cpl Shailend stated that the accused was the driver in this robbery. Cpl Shailend was not aware about the other three persons, mentioned by the accused in his caution interview. He does not know whether they were charged or not for this offence. Cpl Shailend has interview the accused under caution for another robbery on the 8th of August 2012. He denied that he assaulted the accused on the 8th of August 2012. He said that he did not slapped on the face of the accused or punched on his ribs. He further denied that he assaulted the accused before the commencement of the caution interview on the 9th of August 2012.
32. The last witness of the prosecution is Mrs. Jaswanthi Ben Jamanadas. She lives at Richmond Crescent, Nadi. She could recall that three masked men entered into her house while she was sleeping in the night of the 23rd of May 2012. She was alone at the house. The three masked men have entered into her house by cutting the lock of the front gate and the lock of the door. They have disconnected the telephone line. They told her to sit down and not to stand up. She shouted for help from the tenants at downstairs. They told her not to shout for help. She was seated on the bed. Those three men then took out jewelries and money from the wardrobe and started to divide them among themselves. All of them were masked. They talked in Hindi language.
33. During the cross examination, Mrs. Jamnadas stated that the stolen jewelleries were insured. But she could not recall the name of the insurance company. She cannot remember the built of those three men. She did not see the faces of any of the three robbers.

34. Mrs. Jamnadas gave evidence through Skype. The giving of evidence in this way is perfectly normal. It is designed to enable the witness who is not able to attend the court and give evidence in person due to adverse medical condition. The fact that the witness gave evidence in this manner must not be considered against the accused.
35. At the conclusion of the prosecution case the learned counsel for the prosecution tendered the charging statement of the accused as prosecution exhibit 2 with the consent of the learned counsel for the defence.
36. At the conclusion of the prosecution case, the accused person was explained about his rights in defence. The accused opted to give evidence on oath and call two witnesses for his defence.

#### **Evidence of the Defence.**

37. The accused in his evidence stated that he went to drop one passenger to Korovuto in the early morning of 8th of August 2012 in his private care. While he was driving back to Nadi, he met three persons, and they got into the car. He thought they were passengers and wanted to go to Nadi town. In between Nadi and Navu, the police signaled him to stop the car. At that time, the three passengers grabbed him from his behind and told him not to stop the car. One of them had a small knife. They threatened him that they will kill him. He then drew the car without stopping. He knew the police was coming behind him. Therefore, he drew the car to a place where the road ends, so the police can come and help him. He stopped at Korociri. The three passengers got off the car and ran towards the jungle. He also got off and put his hands on the bonnet and

looked at the direction the three passengers fled away. At the same time, police officer came and punched him. The police officer grabbed his both hands and made him turned towards him. He then punched the accused's stomach and chest. The officer made the accused lie on the ground and then kicked on his back. He was then handcuffed.

38. The police officer then called for backup officers. One of the officers came with the backup team was Officer Wayne. Officer Wayne came and grabbed the accused and slapped him on his face. He then asked the accused who were the three passengers. Officer Wayne then grabbed him from the collar of his shirt from behind and made him to sit on the back of the twin cab. He was then taken to the Nadi Police Station.
39. At the Nadi Police Station, he was asked to sit on the chair. One officer came and twisted his ear and another one came and hit his head. They then took his shirt and blind folded. He said Officer Wayne was one of those officers who did that.
40. Officer Shailend conducted his caution interview. Officer Shailend was also assaulted him on the previous day, but did not assault him during the caution interview. Shailend only threatened him saying that his sister will be taken to police and charged. The accused said that he was afraid as he was beaten and threatened that his sister will also be charged. Therefore, he said yes to whatever they said. He made admissions in the caution interview because he did not want anything happened to his small sister. He said that he did not commit this crime and this is a false allegation.

41. The accused was questioned by the learned counsel for the prosecution during the cross examination about the answers that he had given in the caution interview. He said that he does not know any Stephen and denied that he went and dropped three people at Richmond crescent in the night of 23rd of May 2012. He further denied that he went back and picked those three men and received FJD 300 from them as of his share of this alleged crime.
42. The accused stated he was threatened during the recording of his caution interview. The officers wrote the caution interview by themselves. He was then told to sign it.
43. The second witness of the defence is Mr. Ronil Kumar. He in his evidence stated that he met the accused inside the cell block of the Nadi Police Station on the 10th of August 2012. He observed the accused was injured. Left side of his face and lips was swollen. The accused told him that the police assaulted him.
44. Mr. Kumar said that he was not present during the arrest of the accused. Neither he saw the accused at the Nadi Police Station on the 9th of August 2012.
45. The third witness for the defence is Mrs. Amritha Archana Devi. She is the wife of the accused. She has visited the accused at the Nadi Police Station on the 8th of August 2012. She observed that the face of the accused was swollen and a cut on his lips.
46. Her father-in-law and Sister-in-law tried to arrange a lawyer for the accused. She was present in the court when the accused was first produced before the Magistrates court. She said that his lawyer made an application to the learned Magistrate about the injuries and assault. However, she admitted that such an

application has not been recorded in the copy record of the proceeding of the Magistrates court.

**Analysis and Directions.**

47. The prosecution case against the accused is mainly founded on the confessions made by the accused in his caution interview. The prosecution tendered the caution interviews of the accused in evidence as one of the prosecution's exhibits.
48. I must caution you that do not make any adverse inference against the accused about the incidents that took place during the arrest of the accused on the 8th of August 2012. As it was revealed from the evidence of Mr. Ilaitia, the accused was arrested on an information he received about a robbery that took place in the early morning of 8th of August 2012. This alleged robbery had taken place on the 23rd of May 2012.
49. The accused in his evidence stated that he was assaulted during the arrest and then again assaulted when he was brought into the Nadi Police Station. He was further threatened by the interviewing officer that his sister will be brought into the police and charged. The accused stated that he was afraid because of the assault that he was subjected on the previous day, therefore he said yes for everything that the police told to him during the recording of the caution interview. During the cross examination, the accused said the officers themselves wrote everything down and he was only asked to sign on it. He in his evidence denied this allegation.

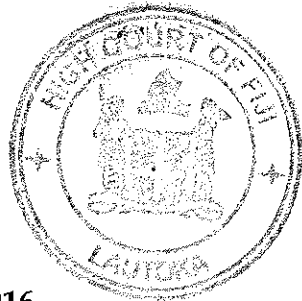
50. Meanwhile, the prosecution presented evidence to establish that the accused was not assaulted during the arrest and/ or before the recording of the caution interview. Cpl Shailend in his evident stated that the accused was not threatened, intimidated or assaulted during the recording of his caution interview.
51. In order to determine whether you can safely reply upon the admissions made by the accused person in the caution interview, you must decide two issues,
52. Firstly, did the accused person in fact make the admissions? Having considered the evidence presented during the course of the hearing, if you are not satisfied or not sure of that the accused has actually made the confessions in his caution interviews, you must ignore the admission made in the caution interview.
53. Secondly, If you are satisfied, that the accused has made the admission in his caution interview, then it is for you to decide whether the contents of the caution interview are truthful, and what weight you give them as evidence. It is for you to decide whether you consider the whole of the caution interview or part of it or none of it as truthful and credible. You must consider all other evidence adduced during the course of the hearing in deciding the truthfulness and the reliability of the confessions and it acceptability.
54. The accused has stated in the caution interview that he dropped Stephen, Bobo and Hema at the Richmond Crescent. He did not say in the caution interview that he saw them was entering into the house of the victim. The accused, during the reconstruction, has pointed out at a double story house on the left side of the roundabout at the Richmond Crescent and stated that it was the house they rob. He has stated that he knew the occupant of the said house was an old lady. The

accused had further stated he only gave information to Stephen about the occupant of the house.

55. Please note, that the Interviewing officer Cpl Shailend did not specifically stated in his evidence that the house pointed out by the accused during the reconstruction was the same house that was robbed by the three masked robbers on the 23rd of May 2012.
56. The accused has stated in the caution interview that he went and picked Stephen, Bobo and Hema at the junction of Lodhia Street. Bobo then told him that they found two persons in the house and both of them were tied up by them.
57. You have heard the evidence of Mrs. Jamnadas. She said that she was alone at the house when the three masked men entered into her house and robbed therein.
58. You heard the evidence presented by the accused, where he denied this allegation. If you accepted the versions of the accused is or may be truth, or it creates a reasonable doubt in your mind about the prosecution case, though you neither believe nor disbelieve his version, then the case of the prosecution fails. You can then reach to an opinion that the accused is not guilty for this charge.
59. Even if you reject the version of the accused, that does not mean that the prosecution has established that the accused person is guilty for this offence. Still you have to satisfy that the prosecution has established on its own evidence beyond reasonable doubt that the accused has committed this offence as charged in the information.



60. Upon consideration of all evidence, if you believe that the count of aggravated robbery is proved beyond reasonable doubt, you can reach to an opinion that the accused is guilty of the charge. If you believe that the charge is not proved beyond reasonable doubt, then you must find the accused is not guilty.
61. Madam and gentleman assessors, I now conclude my summing up. It is time for you to retire and deliberate in order to form your individual opinions on the charge against the accused. You will be asked individually for your opinion and are not required to give reasons for your opinion. Once you have reached your opinion, you may please inform the clerks, so that the court could be reconvened.
62. Learned counsel of the prosecution and the accused, do you have any redirections to the assessors?



At Lautoka

28th of October 2016

  
R. D. R. Thushara Rajasinghe

Judge

Solicitors : Office of the Director of Public Prosecutions  
Messrs R Vananalagi & Associates