

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 325 of 2015

[CRIMINAL JURISDICTION]

STATE

V

1. MATIA TUIBUA TUBUMASI QAQANIKOROVOU
2. JIMILAI TAWAKEDRAU DROSE

Counsel : Mr. R. Kumar for State  
Mr. A. Chand for 1<sup>st</sup> Accused  
Mr. R. Vananalagi for 2<sup>nd</sup> Accused

Dates of Hearing : 07<sup>th</sup> - 16<sup>th</sup> February 2017

Date of Summing up: 17<sup>th</sup> February 2017

Date of Judgment : 24<sup>th</sup> February 2017

JUDGMENT

1. The two accused were charged with the following offences;

**FIRST COUNT**

*Statement of Offence*

**AGGRAVATED ROBBERY:** contrary to section 311(1)(a) of the Crimes Decree No. 44 of 2009.

*Particulars of Offence*

**MATIA TUIBUA TUBAMASI QAQANIKOROVOU and JIMILAI TAWAKEDRAU DROSE** together with other persons unknown, on 07 October 2015, at Suva in the Central Division, committed theft of assorted properties belonging to Elizabeth Clayton, amounting to FJ\$37,600.00, and immediately before committing theft, used force on Elizabeth Clayton.

## SECOND COUNT

### *Statement of Offence*

**AGGRAVATED BURGLARY:** contrary to section 313(1)(a) of the Crimes Decree No. 44 of 2009.

### *Particulars of Offence*

**MATIA TUIBUA TUBAMASI QAQANIKOROVOU and JIMILAI TAWAKEDRAU DROSE** together with other persons unknown, on 07 October 2015, at Walu Bay, Suva in the Central Division entered into the building of Pacific Energy Service Station as trespassers with intent to commit theft therein.

## THIRD COUNT

### *Statement of Offence*

**THEFT:** contrary to section 291(1) of the Crimes Decree No. 44 of 2009.

### *Particulars of Offence*

**MATIA TUIBUA TUBAMASI QAQANIKOROVOU and JIMILAI TAWAKEDRAU DROSE** together with other persons unknown, on 07 October 2015, at Walu Bay, Suva in the Central Division dishonestly appropriated cash amounting to FJ\$110.00, the property of Pacific Energy Service Station with the intention of permanently depriving Pacific Energy Service Station of its property.

2. A finding of not guilty was recoded in respect of the first accused pursuant to section 231(1) of the Criminal Procedure Decree 2009. The trial was held in the absence of the second accused. The assessors have returned with the unanimous opinion that the second accused is guilty of all counts.
3. I direct myself in accordance with the summing up delivered to the assessors on 17<sup>th</sup> February 2017 and the evidence adduced during trial.
4. I accept the evidence of the prosecution witnesses. Though I decided after conducting a *voir dire* that the cautioned interview of the second accused is admissible as evidence, I considered it appropriate to place the question of voluntariness before the assessors again in view of the judgment of the Supreme Court in *Noa Maya v State* [CAV009/2015; 23 October 2015].

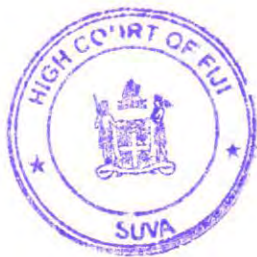
5. The admissibility of the cautioned interview was challenged on the basis of oppression. Considering the evidence of the police officers who dealt with the second accused from the time of arrest until the accused was formally charged, I am satisfied beyond reasonable doubt that the cautioned interview tendered in evidence as PE 11 was not obtained by oppression. I have considered the medical report of the second accused tendered with consent as 2DE1 that had been issued based on the examination conducted about two weeks after the second accused was produced in court. Though 2DE1 indicates that certain injuries were observed on the upper back region, the evidence presented by the prosecution suggests a possible explanation to the said injuries. Therefore, I hold that PE 11 is admissible.
6. It was established through the evidence of the first prosecution witness that certain items were stolen from her house on 07<sup>th</sup> October 2015 around 3.00am and force was used on her with the intention of committing theft, immediately before and at the time of committing theft. She saw three individuals inside her house that morning and according to her, another person was already inside her car waiting for the said three individuals. Therefore, the first prosecution witness' evidence proves beyond reasonable doubt that the offence of aggravated robbery was committed around 3.00am on 07<sup>th</sup> October 2015 at her house by four persons.
7. The first prosecution witness identified the laptop tendered in evidence as PE 01 as the laptop stolen from her house that morning. She identified the car key (PE 02) which was recovered by the police during the cautioned interview of the second accused. This was the key of her car, registration number EV 735 that was also stolen during the same incident.
8. The evidence of the second prosecution witness establishes that the second accused gave him a laptop which is similar to PE 1, to have it unlocked on the same day the offence of aggravated robbery was committed at the first prosecution witness' house. The second accused admits in his cautioned



interview that he gave PE 01 to the second prosecution witness to have it unlocked and that it was given to him by one of the accomplices immediately after the aggravated robbery was committed.

9. The second accused had made admissions in PE 11 to the effect that he agreed with one of the accomplices to steal money from the first prosecution witness' house and he planned with the said accomplice and two others 'about the job'. He had also admitted that he took a pinch bar from home; that he went to the first witness' compound with the others; that he started the car which was parked in the garage and waited for the others; and that he drove out with the others when they got into the car with two bags.
10. Considering the above, I am satisfied beyond reasonable doubt that the second accused formed a common intention with three others to prosecute an unlawful purpose, namely to steal from the first prosecution witness' house, and the second accused played a role in the prosecution of that purpose. The offence of aggravated robbery which was a probable consequence of the prosecution of the said unlawful purpose was committed in the prosecution of that purpose. Therefore, I find that the second accused is guilty of the first count.
11. The evidence of the third prosecution witness establishes that two men entered into the Pacific Energy Service station at Walu Bay at around 3am on 07<sup>th</sup> October 2015 and one of them took money from the cash register. According to the said witness, the duo then got into a car and left the scene.
12. The second accused had made admissions to the effect that there was a discussion inside the car for them to 'look for a service station to rob it'; that he drove to the Pacific Energy Service station at Walu Bay; that the other three got out of the car while he remained inside the car; that two of them went inside the service station; and that he drove off when the three came back and got into the car.

13. Considering the above evidence, I am satisfied beyond reasonable doubt that the offence of aggravated burglary was committed inside the Pacific Energy Service station at Walu Bay on 07<sup>th</sup> October 2015. I am also satisfied beyond reasonable doubt that the second accused formed a common intention with three others to prosecute an unlawful purpose. That is, to steal from a service station. The second accused played a role in the prosecution of that purpose during which the offence of aggravated burglary was committed. The offence of aggravated burglary was a probable consequence of the prosecution of the said unlawful purpose. Therefore, I find that the second accused is guilty of the second count.
14. Based on the above evidence, I am also satisfied beyond reasonable doubt that the offence of theft was committed at the Pacific Energy Service station at Walu Bay on 07<sup>th</sup> October 2015 and that the second accused was a joint offender.
15. In the circumstances I agree with the unanimous opinion of the assessors as it was open for the assessors to find the second accused guilty of the three counts based on the evidence led in this case.
16. I find the second accused guilty of the first, second and third counts and convict him accordingly.



Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.  
Solicitor for the 1<sup>st</sup> Accused : Legal Aid Commission, Suva.  
Solicitor for the 2<sup>nd</sup> Accused : R. Vananalagi & Associates.