

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 335 of 2016**

**STATE**

**v.**

**SAULA VUNIVESI**

**Counsel:** Ms S. Lodhia with Mr E. Samisoni for State  
Accused In Person

**Hearing:** 16th and 18<sup>th</sup> October 2017

**Summing Up:** 24<sup>th</sup> October 2017

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**SUMMING UP**

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1. It is my duty to sum up the case to you. 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.
2. 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.
3. 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 judges of the facts.

4. 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 in your deliberation of facts of this case.
5. You must reach your opinion on evidence. Evidence is what the witnesses said from the witness box, and other materials received as exhibits and agreed facts. 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.
6. 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.
7. 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.



8. 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.

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

9. 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.
10. 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. In other words there is no burden on the accused to prove his innocence, as his innocence is presumed by law.
11. 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’s guilt. If there is a riddle in your mind as to the guilt of the accused 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**

12. The accused is charged with two others for one count of Aggravated Robbery contrary to Section 311 (1) (a) of the Crimes Act. The particulars of the offences are before you. Hence, I do not wish to reproduce it in my summing up.

13. Section 311 (1) (a) of the Crimes Act 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*

14. Robbery is an aggravated form of theft. If the accused person used any form of force or threatened to use such force on a person, either immediately before committing the offence of theft or with intent to escape from the scene, then he commits an offence of robbery. If the accused 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,
- ii) In company with two others,
- iii) Stole the items as stated in the information from Mr. Ronald Rohitesh, and
- iv) Used or threatened to use any force on Mr. Ronald Rohitesh before committing the offence of theft or with intent to escape from the scene.

#### **Evidence of the prosecution**

15. I will now take your attention to the evidence adduced by the prosecution and the defence during the course of this hearing.
16. The prosecution presented the evidence of the complainant that is Mr. Ronald Rohitesh, his friend Mr. Sione, and Detective Constable Pelasio.
17. The prosecution alleges that the accused together with two others came and robbed the complainant when he was coming out from the shop on the 7th of September 2016. The complainant had gone to one of his friend's place, where he drank two glasses of beer with one Sione. He then went to a shop beside the Happy Garden Restaurant to buy cigarette. It was about midday. When he was coming out of the shop, the accused and two of his accomplices came towards him. Two of them grabbed him from behind and



the accused punched on his face. After that the accused took the mobile phone and money from the trousers' pocket of the complainant.

18. The complainant in his evidence said that the accused was dressed in a red color t-shirt and 3/4 shorts. One of the three robbers was dressed in a white t-shirt and shorts and the last one was dressed in black and green vest. The complainant had not seen the accused or other two accomplices before this incident. He said that the accused and his accomplices took about few minutes to assault him and stole his items. The complainant said that he had accused under observation for few minutes when the accused was standing in front of him and stole the items. According to the evidence given by the complainant, it was a clear day. His observation had not obstructed by anything else. The complainant in his evidence explained the man dressed in red t-shirt is a medium build man with a dark complexion.
19. The complainant has called his friend, Sione while the three robbers were attacking him. Sione came and assisted him. At that point of time, the three robbers fled towards Yarawa Road. The complainant and Sione had chased after them. While they were chasing the three robbers, the man who was dressed in a white t-shirt had taken a broken beer bottle and tried to attack them. The complainant saw the man in the red t-shirt was looking at him at that time. The three robbers again ran away and jumped over the fence and disappeared.
20. At that point of time, a man in a civilian clothes came in a taxi and asked them to get into the taxi. He has told that he could help them. The complainant said in his evidence that he did not know that man who came in a taxi was a police officer DC Pelasio until he went to Nabua police station. However, Sione in his evidence stated that the man came in the taxi introduced himself as a police officer. While they were traveling in the taxi towards Nabua, the police officer, DC Pelasio had asked the complainant to cover his head with his t-shirt. DC Pelasio in his evidence said that he asked the complainant to cover his head with the hood of his t-shirt in order to prevent the suspects to identify the complainant.

21. DC Pelasio in his evidence stated that a taxi driver came to the police station and told that there was a robbery taking place. He was in the police station at that time. DC Pelasio then got into the same taxi and proceeded to the place of this alleged crime. He was informed by the people at the scene of the crime that the three robbers and the victim had run towards Yarawa Road. He then went there and found the complainant and his friend Sione. He told them to go to the other side of the road and look for the suspects. He had advised the complainant and his friend to inform him, if they saw the suspects.
22. While they were waiting at the bus station, the complainant and Sione had seen the man in the red t-shirt and the man in the green vest were coming out from a shop. They told DC Pelasio about the two suspects. The two suspects came towards them. The complainant went towards the man in red t-shirt while Sione went to the man in green vest. They had a fight when DC Pelasio approached them. The complainant and Sione in their respective evidence said they clearly saw the two suspects were coming towards them and informed DC Pelasio accordingly. DC Pelasio in his evidence said that the complainant and Sione told him about the two suspects when the two suspects were coming out of a shop.
23. DC Pelasio said that he saw the man in red t-shirt and recognized him as Saula. DC Pelasio in his evidence further said that the accused is a known person to him. DC Pelasio had seen him almost every day in Nabua. Having recognized the accused, he called the accused by his name. The accused knew DC Pelasio had recognized him. He looked at DC Pelasio and escaped from the scene. Meanwhile, the man in green vest was arrested and taken to Nabua police station.
24. DC Pelasio in his evidence further said that he went to the work place of the accused, that is, Rajend Towing to check the accused. He did not find him there. DC Pelasio then arranged a team of police officers to go to the accused house. He went there with two other police officers. DC Pelasio went to the back door while one police officer went to the front door. While he was waiting behind the back door, he saw the accused was running out from the back door. The accused came and collided on him. They arrested the accused at his house.



25. According to the evidence given by the complainant, he had met the accused in the prison when he was remanded in last year. The accused had approached and threatened him to write a letter in order to withdraw the complaint he made against the accused. The accused had threatened to the complainant that if he does not want to do as requested, he will tell the boys to assault and bang the complainant. The complainant then wrote a letter informing that he mistakenly identified the accused as one of the robbers. The complainant during the cross examination, denied that he voluntarily wrote this letter in front of the officer in charge of the prison.
26. You have seen that each of the three witnesses of the prosecution identified the accused in the court as the person who was dressed in a red t-shirt and robbed the complainant. During the cross examination, the defence suggested to all the three witnesses of the prosecution that it was not the accused who was dressed in a red t-shirt and robbed the complainant. However, each of these three witnesses did not agree to the suggestion of the defence and said that it was the accused who robbed the complainant with two others.

### **Evidence of the Defence**

27. The defence presented the evidence of the accused, his wife and one Keresoni Waqatairewa, who was in the cell block at the Nabua Police Station, when the accused was kept therein.
28. According to the evidence given by the accused, one Sakaraia and another man came to see him at his work place in the morning of 7th of September 2016. They wanted to get marijuana. The accused then took them to one of his friends' house near Happy Garden Restaurant. That friend of him used to sell Marijuana. The accused saw Sakaraia and other man were talking to a man, whom he later came to know as the complainant of this matter. At the same time, another youth who was dressed in a red t-shirt came and joined Sakaraia and the other youth. The accused then saw three of them robbed the complainant. The accused said that he was dressed in a black t-shirt and a cap and not in a red t-shirt. He further said that he should have been called as a witness, but police fabricated him to this crime.



29. The wife of the accused in her evidence stated that the Police came and searched the house for a red t-shirt. She further said that the accused was dressed in a black t-shirt on the 7th of September 2017. Mr. Keresoni in his evidence said that he heard that the police officer and the complainant were discussing to incriminate the accused to this offence, when he was taken to record his caution interview.

### **Directions and Analysis**

30. In view of the evidence presented by the prosecution and the defence, both parties do not dispute the occurrence of this robbery on the 7th of September 2016. The accused in his evidence stated that he saw three people, including Sakaraia robbed the complainant. One of the robbers was dressed in a red t-shirt. The accused denied that it was him who was in the red t-shirt and robbed the complainant. Accordingly, the main dispute of this matter is whether the accused was dressed in a red t-shirt and robbed the accused together with two others. Accordingly, you have to determine whether the complainant and Sione have correctly and accurately identified the accused as the person who was dressed in a red t-shirt and robbed the complainant with two others.
31. You have heard that the complainant and Sione in their evidence said that they have never seen the accused before this incident. The complainant and Sione identified the accused in open court. That was the first time they identified the accused after this crime took place. The police had not conducted a proper identification parade. DC Pelasio in his evidence said that the police did not conduct an identification parade because the complainant and Sione identified the accused at the scene of the crime.
32. When you consider the evidence of identification given by the Complainant and Sione, you need to exercise a special caution, specially the evidence of dock identification. It is because, the experience tells us, that honest and impressive witnesses, genuinely convinced of the correctness of their identification, have in the past make mistakes, even a number of witnesses making the same identification. You must not find the accused guilty to this offence, unless you are sure that the identification made by the complainant and Sione was accurate. In making that judgment you need to look carefully at the circumstances in which it was made and at any other evidence in the case which may support it.



33. Let me now draw your attention to the circumstances in which the identification took place.
34. The complainant had the person who punched his face and then robbed his mobile phone and money under observation for few minutes, when he was standing in front of him. The two accomplices were holding him from his behind. It was a day time and nothing has obstructed his observation. The complainant has then chased after the robbers with Sione. While they were chasing them after, one of the robbers tried to attack them with a broken beer bottle. At that point of time, the complainant saw the man in red t-shirt was standing and looking at him. In a while, the complainant saw the man in red t-shirt was coming towards them when he was waiting at the bus stop with Sione and DC Pelasio. You have to consider that the complainant was suddenly attacked by three robbers while he was coming out of the shop. He was punched on his face by the man in red t-shirt.
35. According to the evidence given by Sione, he came to the scene of the incident after the complainant called his name. He saw the man in green vest was taking the mobile phone and money from the complainant, while the man in red t-shirt and the man in white t-shirt were holding him from his behind. He then saw the man in red t-shirt when they chased after the three robbers.
36. You should examine carefully the circumstances in which the complainant and Sione made identification. How long did they have the person they say was the accused under observation? At what distance? In what light? Did anything interfere with the observation?
37. Likewise, you have to take into consideration the evidence given by DC Pelasio. According to his evidence, he knew the accused as he had seen him almost every day in Nabua. Having recognized the accused, DC Pelasio had called the accused by his name. The accused then looked at him and ran away.
38. When you evaluate the evidence of the prosecution and the defence, you have to consider 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. You can accept part of a witness's evidence and reject other parts. A witness may tell the truth about one matter and lie about another; he may be accurate in saying one thing and not accurate in another thing.

39. 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 testifying 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.
40. It is your duty as judges of facts to consider the demeanours 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.
41. You have heard the evidence that the accused is known to the police. DC Pelasio in his evidence said that he knows the accused as he is a known person. He has raided the house of the accused previously. These evidences of the previous character of the accused has been given in evidence in order to establish that DC Pelasio knew the accused and recognized him as the man in the red t-shirt.
42. What is the relevance of the accused's previous character in this case? It is only relevant in order to determine the credibility and reliability of the evidence of identification given by DC Pelasio. You must not assume that the accused is guilty or that he is not telling the truth because he has previous bad character. His previous character is not relevant at all to the likelihood of his having committed this offence. You must not allow these evidence of previous character of the accused to affect your judgment.



43. I now take your attention to the evidence adduced by the defence. The accused elected to give evidence on oath. The accused is not obliged to give evidence. He does not have to prove his innocence. However, the accused decided to give evidence and called two other witnesses for his defence. Therefore, you have to take into consideration the evidence adduced by the defence when determining the issues of fact of this case.
44. Accordingly, it is for you to decide whether you believe the evidence given by the defence. If you consider that the account given by the defence is or may be true, then the accused must be acquitted.
45. If you neither believe nor disbelieve the version of the defence, yet, it creates a reasonable doubt in your mind about the prosecution case. You must then acquit the accused from this charge.
46. Even if you reject the version of the accused that does not mean that the prosecution has established that the accused 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.
47. Madam and gentleman, upon consideration of whole of the evidence adduced during the course of the hearing, if you are satisfied that the prosecution has proven beyond reasonable doubt that the accused has committed the offence of Aggravated Robbery, as charged, you can find the accused guilty for the said offence.
48. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the accused has committed the offence of aggravated robbery as charged, you must find the accused is not guilty for the said offence.
49. 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. You will be asked individually for your opinion and will not require to give reasons for your opinion. When you have reached to your opinion, you may please inform the clerks, so that the court could reconvene.

50. Learned counsel of the prosecution and the accused, do you have any redirections to the assessors?



R.D.R.T. Rajasinghe  
**Judge**

**At Suva**

24<sup>th</sup> October 2017

**Solicitors**

Office of the Director of Public Prosecutions for the State.  
Accused In Person.