

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 228 of 2016

[CRIMINAL JURISDICTION]

STATE

V

KALOKALO MATAUNIDILO

Counsel : Ms. W. Elo for State
Ms. A. Prakash and Ms. E. Radrole for Accused
Hearing on : 05th March – 15th March 2018
Summing up on : 15th March 2018
Judgment on : 16th March 2018

JUDGMENT

1. The accused is charged with the following offences;

FIRST COUNT

Statement of Offence

AGGRAVATED ROBBERY: contrary to section 311 (1) of the Crimes Act 2009.

Particulars of Offence

KALOKALO MATAUNIDILO together with 4 other persons unknown, on 25 June 2016, at Samabula, Suva in the Central Division, committed theft of assorted properties, namely FJ\$500.00, 1 x Alcatel mobile phone worth FJ\$250.00, 1 x gold chain worth FJ\$700.00 and 1 x Probox Taxi registration number LT4934 worth FJ\$18,000.00, to the total value of FJ\$19,450.00, belonging to **RADHIKASH KAPOOR**, and immediately before committing theft, used force on **RADHIKASH KAPOOR**.

SECOND COUNT

Statement of Offence

AGGRAVATED ROBBERY: contrary to section 311 (1) (a) of the Crimes Act 2009.

Particulars of Offence

KALOKALO MATAUNIDILO together with 4 other persons unknown, on 25 June 2016, at Samabula, Suva in the Central Division, committed theft of assorted properties, namely, 2 x cartons of cigarettes worth FJ\$5385.00, 21 x gross BH 20 worth FJ\$2272.20, 5 x gross Rothmans 20's worth FJ\$541.00, 4 x gross Rothmans 10's worth FJ\$448.00, 2 x cartons of recharge cards worth FJ\$30,000.00, 5 sets of INKK recharge cards worth FJ\$7,500.00, 1 set of \$11 Vodafone recharge cards worth FJ\$5,500.00, 350 x \$15 Vodafone recharge cards worth FJ\$5250.00, 300 x \$10 INKK recharge cards worth FJ\$3000.00, 250 x \$25 Vodafone recharge cards worth FJ\$6250.00, 25 x \$20 INKK recharge cards worth FJ\$500.00, 23 x \$30 INKK recharge cards worth FJ\$ 690.00, 300 x \$3 Telecards worth FJ\$900.00, 150 x \$5 Telecards worth FJ\$750.00, 70 x \$10 Telecards worth FJ\$700.00, 70 x \$20 Telecards worth FJ\$1400.00, 350 x \$5 Quick Dial recharge cards worth FJ\$1750.00, 100 x \$10 Quick Dial recharge cards worth FJ\$1000.00, 30 x \$20 recharge cards worth FJ\$600.00 and cash of FJ\$5000.00, all to the total value of FJ\$79,436.20, belonging to **GERALD SEETO**, and immediately before committing theft, used force on **AKATA KAFOA**.

2. The assessors have returned with the unanimous opinion that the accused is not guilty of the above offences.
3. I direct myself in accordance with the summing up delivered to the assessors on 15th March 2017 and the evidence adduced during the trial.
4. The accused does not dispute the fact that the robberies as alleged in the two counts above had taken place but denies his complicity. The prosecution relies on the cautioned interview (PE5) and the charge statement (PE11) of the accused that contains admissions. The accused says that his admissions in PE5 and PE11 are fabricated by the police.

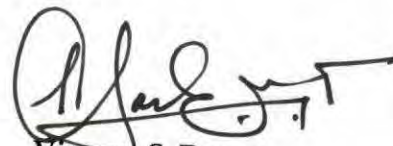
5. According to the prosecution the police identified the accused as one of the suspects by checking the call logs in the mobile phone that was recovered from the second prosecution witness' car and when a search was conducted in the accused's house, one gross of BH20 and 16 Rothmans 10 cigarettes were found. However, according to the registration form of the number alleged to have been used by the accused (DE2), the said number belongs to one 'Carlos Whippy' and more importantly the IMEI number which appear in the said form and the IMEI number of the phone recovered from the scene (PE3) are different.
6. The tenth prosecution witness who was the investigation officer clearly agreed during cross examination that these are two different phones. Even though she said during re-examination that the accused was arrested after checking the call records of the sim card that was inside PE3, no evidence was adduced by the prosecution to explain about the two different IMEI numbers and to establish that PE3 belonged to the accused. The evidence of the tenth prosecution witness in fact creates a reasonable doubt as to whether PE3 does not belong to the accused.
7. There were inconsistencies noted in the evidence given by the fifth and the sixth prosecution witness who gave evidence regarding the search that was conducted in the accused's house. Moreover, according to the evidence presented the police had not gathered evidence to establish that the cigarettes found inside the accused's house are in fact part of the items that were stolen from the second prosecution witness. The accused had provided an explanation with regard to having the BH cigarettes in his room stating that he used to run a Kava business and he was selling cigarettes along with Kava. During his evidence, the accused produced a registration form for a business named 'Ezra's Kava' (DE3).
8. There were inconsistencies between the evidence of the seventh prosecution witness who was the interviewing officer and the evidence of the eighth prosecution witness who was the witnessing officer with regard to the

circumstances surrounding the recording of the cautioned interview tendered as PE5.

9. The eighth prosecution witness contradicted the evidence of the seventh prosecution witness and also the answer recorded at question 217 of the record of the cautioned interview (PE5) by saying that the accused read the record of the interview for 6 minutes after it was printed. She also contradicted the evidence of the seventh prosecution witness and supported the position taken by the accused when she said that the seventh prosecution witness was taking notes on a piece of paper during the cautioned interview.
10. The accused said PE 5 is fabricated because certain questions were not put to him and therefore he did not give the respective answers recorded in PE5.
11. When I examined the disputed answers I noted that in the answers to questions 66, 69, 72, 83, 85, 119, 120, 125, 151, 153 and 169 the accused had either denied or had stated that he is unaware. Especially, it is pertinent to note that to question 69 which reads "Do you know the registration number of the taxi that you guys robbed later" the answer is "no". By that time the police knew the registration number and it is also mentioned in the first allegation. If the accused's allegation on fabrication is true, one would not expect such answers to be there in the record.
12. However, the veracity of the accused's admission that the mobile phone recovered from the scene was used by him was challenged by the evidence of the investigating officer that created a doubt on the ownership of that phone. The truthfulness of the answer to question 217 and the evidence of the seventh prosecution witness was challenged by the evidence of the eighth prosecution witness who said that the accused read the record of interview for 6 minutes before signing.

13. In my view, the aforementioned circumstances and the other inconsistencies in the prosecution case casts doubt on the truthfulness of the admissions in PE5 and PE11 and I am unable to find cogent reasons to disagree with the assessors who had obviously decided to disregard the said admissions.
14. In the circumstances, I agree with the unanimous opinion of the assessors and I find that the prosecution had failed to prove the two charges against the accused beyond reasonable doubt.
15. I find the accused not guilty of both counts and the accused is acquitted accordingly.




Vincent S. Perera
JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused : Legal Aid Commission, Suva.