

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 172 of 2015

STATE

V

- 1. KELEPI SALAUCA**
- 2. VERETI WAQA**
- 3. TUI LESI BULA**

Counsel : Mr. J. Niudamu for the State.
: Accused 1 in person.
: Accused 2 trial in absentia.
: Accused 3 in person.

Dates of Hearing : 31st May, 1, 4,5,8,11,12 June, 2018
Closing Speeches : 13th, 14th June, 2018
Date of Summing Up : 14th June, 2018

SUMMING UP

Madam and Gentlemen Assessors

1. It is now my duty to sum up this case to you.

ROLE OF JUDGE AND ASSESSORS

2. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of facts, however, which witness to accept as reliable, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. If I do not refer to a certain portion

of evidence which you consider as important, you should still consider that evidence and give it such weight as you wish.

3. So, if I express an opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of facts.
4. You decide what facts are proved and what inferences you properly draw from those facts. You then apply the law as I explain it to you and form your own opinion as to whether the accused persons are guilty or not.
5. State Counsel and both the accused persons have made submissions to you about how you should find the facts of this case. That is in accordance with their duties as State Counsel and the accused persons in this case.
6. Their submissions were designed to assist you as judges of facts. However, you are not bound by what they said. You can act upon it if it coincides with your own opinion. As representatives of the community in this trial it is you who must decide what happened in this case and which version of the facts to accept or reject.
7. You will not be asked to give reasons for your opinions and your opinion need not be unanimous. Your opinions are not binding on me but it will assist me in reaching my judgment.

BURDEN OF PROOF AND STANDARD OF PROOF

8. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no obligation on the accused persons to prove their innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he or she is proven guilty.

9. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of the accused persons guilt, before you can express an opinion that he or she is guilty. If you have any reasonable doubt about their guilt, then you must express an opinion that he or she is not guilty.
10. Your decision must be based exclusively upon the evidence which you have heard in this court and nothing else. You are not to assume or speculate on the facts of the case. You must disregard anything you must have heard about this case outside of this courtroom.
11. You are to only concentrate on the evidence that has been adduced in this courtroom and nothing else.
12. You must decide the facts without prejudice or sympathy either to the accused persons or the complainant. Your duty is to find the facts based on the evidence without fear, favour or ill will.
13. Evidence is what the witnesses said from the witness box, documents or other materials tendered as exhibits. You have heard questions asked by the counsel and the accused persons. They are not evidence unless the witness accepts or has adopted the question asked.
14. There are three (3) accused persons who are each charged with one (1) count of Aggravated Robbery. You must consider the evidence against each accused separately just because you may think that one accused is guilty, it does not mean that the others are. This also applies with findings of not guilty.

INFORMATION

15. The accused persons are charged with the following offence: (a copy of the information is with you).

FIRST COUNT

Statement of Offence

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

Particulars of Offence

KELEPI SALAUCA, VERETI WAQA & TUI LESI BULA in the company of another on the 11th October, 2015 at Sigatoka in the Western Division robbed **KAVITESH KIRIT PRASAD** of the following items: Nissan Navara (Registration HA 448) valued at \$60,000.00, \$300.00 cash, Assorted cards namely Westpac, Westpac Debit Card, Australian Master Card, Australian Drivers Licence, Joint FNPF/FIRCA, Black SFIDA pair of canvas, Gym Gloves, White iPod, Nokia Lumia Phone, Euphoria Calvin Klein Perfume, Encounter Fresh Calvin Klein perfume, Mangal Sutra valued at \$10, 000.00, Bangles valued at \$6,000.00, Hair set valued at \$9,000.00, Bracelet valued at \$2,000.00, Ear ring valued at \$3,000.00, Bedstone Necklace valued at \$900.00, Wedding Ring (Female) valued at \$2,000.00, Wedding Ring (Male) valued at \$1,200.00, Gold Chain (22 carat) valued at \$1,200.00, Wrist Watch (Fossil-Citizen) valued at \$800.00, Ladies Watch (Pulsar) valued at \$300.00, Black Label (x 15 bottles) valued at \$1,350.00, Bombay Sapphire (x 5 bottles) valued at \$400.00, Galaxy Samsung S5(x2) valued at \$2,400.00, ITB Hardware (x2) valued at \$1,000.00, 1 Flash Drive valued at \$500.00, 1 Toshiba laptop valued at \$1,800.00 and assorted branded BLK Clothing valued at \$80.00 all to the **Total Value of Approximately \$93, 930.00.**

Madam and Gentlemen Assessors

16. You will notice that the information has three accused persons mentioned, however, only accused one and accused three are present in court. The second accused Mr. Vereti Waqa is not present in court. The law provides

for an accused to be tried in his absence known as *trial in absentia*. Although the second accused was not in court throughout the duration of the trial he is entitled to all the rights of an accused who is present in court that is a fair trial.

17. You are reminded not to take the absence of the second accused from this trial to his disadvantage or against him or his non-attendance negatively.

18. For all the accused persons to be found guilty of the offence of aggravated robbery the prosecution must prove, beyond reasonable doubt the following elements:
 - (a) The accused;
 - (b) in company with one or more other persons;
 - (c) dishonestly appropriates the complainant's properties;
 - (d) with the intention of permanently depriving him of the ownership of those properties; and
 - (i) immediately before committing theft uses force on another person; or
 - (ii) threatens to use force then and there on another person with intent to commit theft; or to escape from the scene;
 - (iii) at the time of committing theft or immediately after committing theft, he or she;
 - (iv) uses force on another person; or
 - (v) threatens to use force then and there on another person with intent to commit theft or to escape from the scene.

19. In this case, there is no dispute that on 11 October, 2015 there was a robbery at the house of the complainant where four people with knives and golf clubs after threatening the complainant and his wife dishonestly appropriated the complainant's properties with the intention of permanently depriving them of the ownership of those properties.

20. What is in dispute is whether each of the three accused persons was involved in the robbery. There are no eye witnesses who saw any of the accused persons at the scene of the crime or actually committing the robbery. The prosecution relies on the principle of recent possession and circumstantial evidence to prove that the accused persons in the company of each other had committed the offence.

RECENT POSSESSION

21. The principle of recent possession means if someone is found in possession of property soon after it has been stolen and he fails to give a credible or reasonable explanation of the manner in which he came into possession of it, it is justifiable to infer that he was either the thief or else a guilty receiver of that stolen property.
22. In view of the above principle of recent possession it is for the prosecution to prove beyond reasonable doubt that:
- (a) The offence of aggravated robbery has actually taken place, where properties worth \$93,000.00 was stolen;
 - (b) The accused persons were found in possession of the stolen items within a few hours after the offence of aggravated robbery was committed.
23. If you are satisfied that the prosecution has proven beyond reasonable doubt the above mentioned two limbs of the principle of recent possession then the accused persons have the burden of giving an explanation of how they came into the possession of the properties in question.
24. Possession in the context of the principle of recent possession is for the prosecution to prove beyond reasonable doubt that the accused person had some form of physical possession or control over the stolen properties.

25. The burden on the accused persons is to give a reasonable explanation of possession of the stolen properties.

CIRCUMSTANTIAL EVIDENCE

26. The prosecution also relies on circumstantial evidence since there is no eye witness to prove that the accused persons were responsible for the theft of the properties stolen from the house of the complainant and that there is no other reasonable explanation for the theft of the stolen properties other than that the accused persons have stolen it.
27. The law on circumstantial evidence is that if, upon considering a series of pieces of evidence, you are satisfied beyond reasonable doubt that the only reasonable inference to be drawn is the guilt of the accused persons, and there is no other reasonable explanation for the circumstances which is consistent with the accused persons innocence, then you may find the accused persons guilty of the offence charged.
28. A case of circumstantial evidence relies on a variety of sources of evidence. One example of how it works is this. One day you find your house broken into. The item stolen is clearly identifiable by you because you have put your initial on your DVD recorder. The day after the burglary, your DVD recorder with your initials is found inside your neighbour's house. His son is seen to be spending a lot of money at a nearby shop. His fingerprints are found on your kitchen door. On the basis of all this evidence, you are entitled to draw a reasonable inference that your neighbour's son committed the burglary in your house, because there is no other reasonable inference that you can draw from the evidence which is consistent with the son's innocence.
29. However, if for instance you did not initial the stolen items and cannot be sure that this item in your neighbour's house is yours, and if there are no fingerprints found then the evidence of the neighbour's son's spending would not be sufficient for you to draw an inference of his guilt. This is

because there are other possible reasonable hypotheses for his sudden wealth.

30. Therefore, with circumstantial evidence you must look at all the evidence together and ask yourselves whether the only reasonable inference you can draw from the evidence is the guilt of the accused persons. You must ask yourselves whether there can be any other explanation for the evidence which is also consistent with the accused persons innocence.
31. Remember that in considering circumstantial evidence you must be satisfied beyond reasonable doubt that the only reasonable inference available to you is the guilt of the accused persons before you can find them guilty. If you find that there are other reasonable inferences you can draw which are consistent with the accused's innocence or if you have a reasonable doubt about it, then you should find the accused persons not guilty.
32. This is the law on circumstantial evidence.

JOINT ENTERPRISE

33. The prosecution is also alleging that the accused persons committed the offence of aggravated robbery jointly as a group. This means the prosecution is relying on the concept of joint enterprise.
34. Joint enterprise is when an offence is committed not just by the person who actually does the act, but also by the person who assists him to commit the offence. Here all the accused persons have been jointly charged with the offence of aggravated robbery. The law is if two or more people jointly commit a crime, each one is responsible and liable for the actions of another. For example if "A" stabs his wife with intent to kill, he commits murder. If "B" lends "A" a knife knowing fully well that it will be used to murder the victim then "B" is also guilty of murder even if he was not present at the actual stabbing.

35. In this trial all the accused persons have denied committing the offence of aggravated robbery. It is for the prosecution to prove in respect of each accused beyond reasonable doubt that it was the accused persons in the company of each other after threatening to use force on the complainant and his wife dishonestly appropriated the complainants' properties with the intention of permanently depriving them of the ownership of those properties.
36. If on the other hand you have a reasonable doubt with regard to any of those elements concerning the offence of aggravated robbery then you must find all the accused persons not guilty of the offence as charged.
37. I will now remind you of the prosecution and defence cases. In doing so it would not be practical of me to go through all the evidence of every witness in detail. Although it was a fairly long trial still I hope things are fresh in your minds. I will refresh your memory and summarize the important features. If I do not mention a particular piece of evidence that does not mean it is unimportant. You should consider and evaluate all the evidence in coming to your opinion in this case.

PROSECUTION CASE

38. The prosecution called fifteen (15) witnesses to prove its case against all the accused persons.
39. The first prosecution witness was the complainant Kavitesh Kirit Prasad who recalled on 11 October, 2015 he was at his home at Malaqereqere, Sigatoka with his wife. He was awoken at about 2am by a noise of someone breaking into his bedroom.
40. At this time four iTaukei men with knives and his golf clubs came into his bedroom and told him to cooperate with them so that no one was harmed. The witness saw one of the men was wearing his gym gloves. Blankets were

thrown over the complainant and his wife so that they could not see what was happening but they could clearly hear what was happening.

41. All the curtains were drawn and the lights in the house turned on. The complainant and his wife were threatened a few times as to the whereabouts of their valuables in the house. The wife of the complainant was dragged by her hair from room to room so that she could tell them where the valuables were. According to the complainant the robbers were very keen on cash money the house was searched for about one hour.
42. The complainant and his wife's hands and legs were tied with bed sheets and they were gagged. The complainant's pregnant wife was put on top of the bed and he was pushed on the floor and kicked two times. After the robbers left the complainant freed himself, they also took the complainant's red Nissan Navara registration number HA 448 valued at \$60,000.00 with them. After about 5 minutes one iTaukei man from the group came up and saw the complainant with a phone and he then fled.
43. Other than his motor vehicle, the following items were stolen two Galaxy S5 phones, Alcatel mobile phone, his wife's mangal sutra, jewellery (haar set), wedding rings, earrings, his wrist watches, wallet containing all his credit cards, \$300.00 cash, assorted alcohol, perfumes, laptops, few BLK clothes, pair of shoes, black and white SFIDA brand canvas all to the approximate value of \$93,000.00.
44. From the accent of the robbers the complainant was able to make out that they were iTaukei men, two were masked and two were not. He was able to see clearly the man who had come into the house for the second time. The complainant closed the door and said that he had already called the police.
45. The following items were recovered by the police his wife's Samsung Galaxy S5 phone, some jewellery, wallet, black and white SFIDA canvas, Haar set (necklace), earrings, mangal sutra pendant, his personal credit and identification cards, and BSP gym glove. The above items were tendered as

prosecution exhibits 1 to 5. The complainant's red Navara was also found by the police. As a result of this incident the complainant and his wife were traumatised and psychologically affected.

46. In cross examination by the first accused the complainant agreed that he did not give any description of the robbers to the police and also he did not know the first accused. He agreed that the police had called him and showed him the items recovered which he had identified as his.
47. In cross examination by the third accused the complainant stated that he had not seen or met the third accused anytime.
48. In re-examination the complainant confirmed that the recovered items belonged to him since he had purchased it and was using them.
49. The second prosecution witness the wife of the complainant Ashmika Anjana Devi basically confirmed what the complainant had informed the court. This witness further stated that after the robbers had searched her bedroom they grabbed her hair, put a knife on her neck and dragged her from one room to the other asking for money and jewellery.
50. At the time of the robbery she was three months pregnant. She also saw her husband being punched and kicked on his stomach.
51. The witness stated the following items were stolen all her jewellery, ear rings, mangal sutra, Haar set, citizen and forzil watches, gold bangles, bracelets, wedding rings, male and female perfumes, laptop, flash drive, hard drive, shoes and branded shorts. She confirmed that the following recovered items namely bangles, haar set with a chain and matching earrings, mangal sutra (pendant) and the Samsung S5 phone belonged to her.
52. Furthermore the witness was able to identify the Euphoria perfume she had gifted to her husband and one Calvin Klein Encounter perfume her husband already had. The two bottles of perfume were marked and tendered as prosecution exhibit no. 6.

53. In cross examination by the first accused the witness stated that she saw one iTaukei boy who was her height of dark complexion the others were masked. The witness stated that she did not give any specific description of the jewellery because she was traumatised at that time, however her husband did.
54. The third witness was Epi Kolinivala on 11 October, 2015 at about 8am he was watching TV at his grandfather's house when he was told that there was a visitor at his house. The witness went home and saw it was Kelepi Salauca. Kelepi asked the witness whether he had benzine the witness replied he did not. Kelepi also requested for a boat to take him to Nabukadra. At this time a boat arrived which belonged to Kelepi's uncle.
55. The witness saw that Kelepi had a BSP coin bag which he put inside another bag and then ran to board the boat. The witness did not suspect anything was wrong he knows Kelepi Salauca since they have gone to primary school together. The witness identified the first accused in court.
56. In cross examination by the first accused the witness agreed that he was related to the first accused and it was normal for the first accused to come to his house.
57. The fourth prosecution witness Sakiusa Yavala on 11 October, 2015 between 8.30am to 9.00am came back from Veidrala Village in his boat. While he was anchoring his boat at the river bank Kelepi approached the witness accompanied by three others who the witness did not know. Kelepi requested the witness to be taken to Nabukadra Village.
58. According to the witness Kelepi was his brother's son so he agreed to take everyone to Nabukadra Village. All of them were carrying bags the witness did not bother about the bags. Kelepi gave the witness \$100.00 in Australian currency. The witness recognized the first accused in court.
59. In cross examination by the first accused the witness agreed that Kelepi had approached him to be taken to Nabukadra Village which he had done.

60. The fifth prosecution witness Manoa Dugulele on 11 October, 2015 at about 7am was at his home at Nabukadra Village when he saw his cousin brother Kelepi Salauca the first accused and three other men crossing the river bank in front of his house.
61. The witness told them to wait for him at his brother's house since his father was at home. The witness told Kelepi that he will join them after he had tethered his cattle. The witness saw all the men were carrying a bag each with Kelepi also holding a bolt cutter which was wrapped in a black jacket.
62. After a while Kelepi came to the place where the witness was grazing his cattle and whilst having conversation Kelepi informed the witness that they did a robbery in Sigatoka. The Indo-Fijian husband and wife were tied at their house and they took their Red Nissan Navara vehicle which had been abandoned on a road. The witness did not know the name of the place where it was abandoned but it was before Naocobau Village.
63. Kelepi also informed the witness that after the vehicle was abandoned they were transported from Namarai to Nabukadra by one of their father's.
64. At the house of the witness's brother the third accused brought out a bottle of alcohol which all of them drank. They started drinking liquor at about 10am. After a while Kelepi called a person by the name of Sivo who is a boat captain so that a boat could be arranged for them to go.
65. Sivo came and joined in after sometime Sivo said they should go since it will be high tide soon. All then went to the river bank to drop Kelepi and his group. The witness went with the group at the request of Kelepi. They all sat at the old bridge in the village and continued drinking until it was high tide.
66. While Kelepi and the others were boarding the boat Kelepi asked the witness to go with them. When the boat was moving a Fisheries boat from Namarai came with Police Officers on board.

67. At that time Kelepi took control of the boat and steered the boat towards Nukudavia where the boat came to a stop. Kelepi and one man ran inside the bush.
68. The witness left Nukudavia Village and went home he reached home after 5pm. At about 7pm the witness heard someone calling at the door of his house. When he opened the door he saw it was the third accused. The witness called him inside and served dinner at this time the police came and arrested both of them.
69. According to the witness his father is the elder brother of Kelepi's father, he identified the first accused Kelepi Salauca and the third accused Tui Lesi Bula in court.
70. In cross examination by the first accused the witness agreed that he gave a police statement on 12 October, 2015 at line 5 he had told the police of the following:
- "I can clearly recall yesterday 11/10/15 at around 7 am I woke up ..."*
71. The witness agreed in his evidence in chief he had informed the court that he was at home at 7am when the four men came. He also agreed that there were two different time mentioned by him one in the police statement and the other in his examination in chief, however, the witness maintained that Kelepi and his group had come to his house at 7am and at 10am they had started drinking alcohol.
72. Moreover the witness stated that the incident happened in 2015 and also he was drunk at the time but everything he informed the police and also the court were true. Further the witness explained about the difference in time by saying that staying in the village in the morning sometimes he forgets what time it was. The time he gave to police was normal time he goes to graze his cattle and that was the time he saw Kelepi and his group.
73. Furthermore the witness agreed that he had informed the court that before leaving Vucunivola Kelepi came and asked him to board the boat but it was

not in his police statement. The reason for the difference according to the witness was because it was long time ago a 2015 case.

74. The witness further stated that when he was taken to Namarai Police Post he saw Vereti who was arrested at the village. The witness was released by the police the next day that is on Monday after he gave his statement to the police. He denied giving a police statement to implicate the first accused in order to get released from the police. The witness confirmed that the first accused Kelepi had told him about the robbery, but, he could not recall the time.

75. The witness also stated that Vereti was arrested at Nukudavia and before boarding the boat there was a fight.

76. In cross examination by the third accused the witness was referred to line 25 of his police statement:

“He took out another black label and put it in front of us both of these bottles are already half full. I opened the gin bottle and start drink, Kelepi woke Vereti and Tui then we start drinking the first bottle.”

77. It was put to the witness that he had not informed the police that it was the third accused who had taken out a bottle of alcohol which was contrary to what he had informed the court. The witness stated that while they were drinking another bottle was taken out. The witness also maintained he had met the third accused near his house in the morning and later in the evening the same accused came to his house.

78. The sixth prosecution witness Ana Sera informed the court that on 11 October, 2015 in the morning while she was grazing her cattle she was told that some men were at her house. When she reached home she saw four men waiting outside her house. The witness recognised Kelepi Salauca who was her brother in law as one of them. When all of them entered her house she saw them carrying their luggage into the house.

79. After giving them food to eat the witness went fishing, while fishing at the sea shore she saw Kelepi and the group, they were arguing amongst themselves. After a while Sivo went and brought a boat which all of them boarded and went away.
80. When the witness went home she saw bottles of liquor, packets of cigarettes and panadol packets. All the bottles were empty. After two days the police came and took the empty bottles away. The witness identified the first accused in court.
81. The seventh witness Etuwini Sivo informed the court that on 11 October, 2015 he was at his village in Nabukadra. At about 1pm he received a call from Kelepi Salauca who asked the witness to meet him so that some grog and a whale's tooth could be presented to the uncle of the witness for Kelepi to ask for a piece of land to build his house.
82. The witness went to Vucunivola Settlement. Kelepi was with three other boys whom he did not know, however, he knew the two Caucau boys. When inside the house witness shook hands with the person seated beside Kelepi who said he was from Lau and the other person said he was from Tailevu, another one was lying down so he was not able to know him.
83. The witness started drinking he saw the group had already finished drinking two bottles of liquor. After the Whisky finished, Tau from Lau opened the bag and brought out a bottle of Gin.
84. At the corner of the house the witness saw two bags, one black Canterbury bag, one blue Canterbury bag, and a bolt cutter wrapped in a cloth. Kelepi asked to be dropped at Natovi, the witness agreed. Tau from Lau carried the black Canterbury bag, the blue Canterbury bag and the bolt cutter was carried by the man from Tailevu. All of them left for the village Kelepi, Tau, man from Tailevu, the man who was lying down in the house, both Caucau's, Manoa and the witness. It wasn't high tide so the group went at the old bridge in the village and the drinking continued.

85. The witness brought the boat it was high tide Kelepi boarded the boat, Tau with his black Canterbury bag, the man from Tailevu carried his blue Canterbury bag and he was also holding the bolt cutter which was covered with a black jacket.
86. When the boat was moving the Fisheries boat came which had Police Officers on board. Police Officer Eremasi shouted for the boat to be stopped. Upon hearing this Kelepi took control of the boat and increased speed. The witness shouted to Kelepi that there wasn't enough fuel and that they were very close to Sand Island. At that speed the boat went over the sand.
87. As soon as the boat stopped Kelepi and the man who was lying inside the house jumped out of the boat followed by the man from Tailevu with the bolt cutter. This man from Tailevu wanted to hit the Police Officer Eremasi with the bolt cutter and was arrested by Police Officers.
88. After that the witness, Manoa, Salabogi and Tau jumped out of the boat. Tau was with the witness and he was talking in the Ra dialect. The Police Officer Eremasi went to the boat and took both the Canterbury bags in his possession.
89. The Police Officers took the man from Tailevu to Nabukadra Village with the two bags. The witness was able to recognize the two bags. He mentioned that the blue bag belonged to the man from Tailevu and the black bag belonged to Tau from Lau. The witness also stated that he signed a search list that the bags were seized from his boat.
90. The witness after one week identified the man from Lau and the man from Tailevu at the Rakiraki Police Station. In court the witness identified Kelepi Salauca the first accused saying that they were from the same village he also identified the third accused who he said was Tau from Lau.
91. In cross examination by the first accused the witness stated that Kelepi did not do anything wrong at Vucunivola and that the first accused was brought up in Vucunivola and that they were drinking from morning. The witness

confirmed that after drinking at Vucunivola the man from Tailevu was holding the bolt cutter.

92. When they boarded the boat from the bridge one bag belonged to Tau and the other bag belonged to the man from Tailevu and apart from the two bags the bolt cutter was found in his boat. The witness also saw the man from Tailevu carrying the bolt cutter but he did not know who owned it.
93. In cross examination by the third accused the witness stated that in his police statement he had stated that he saw four bags in the house which was the truth and that it was a long time ago.
94. The witness confirmed that the third accused had a black bag and the man from Tailevu had a blue bag. He agreed that he did not know the contents of the bag the police knew.
95. The witness also stated that the police did not inform him of anything he told them what he had seen and that is what he told the court. He agreed that after one week he identified the third accused at Rakiraki Police Station. When it was put to the witness that he identified the third accused after four days of his arrest and not one week as mentioned in his evidence the witness replied that all he knew was that he went and identified the third accused and the Tailevu man which was the truth.
96. The eighth witness Siteri Levers informed the court that in October, 2015 she was residing at Nabukadra Village and she was living with her husband Manoa Dugulele. On 11 October, 2015 when she went to get some dalo leaves she saw four people. Kelepi was her brother in law who was one of them when he saw her he asked her about her husband. The witness lied saying he was sick.
97. After a while Kelepi came home to meet her father in law the witness invited him to have tea at the family house. The witness stated that Kelepi was wearing a black canvas which he left outside the house. After having tea Kelepi asked the witness for a flip flop to wear. The witness gave a pair to Kelepi who left the canvas and went away. In the afternoon the witness

brought the canvas inside the house, the next morning police came asking about her husband and also inquired if Kelepi had left a bag at her house.

98. The witness informed the Police Officers that Kelepi had only left his canvas which was given to the police by the witness. The witness was able to recognise the canvas which was prosecution exhibit no. 1. The witness stated that she had signed a search list which the police had asked her to sign when they took the canvas with them. Witness was able to identify Kelepi in court.
99. In cross examination by the first accused the witness stated that she gave her police statement when facts were fresh in her mind. It was not in her police statement that she went to get the canvas from her father in law. The witness stated that she went to her father in law brought the canvas and handed it over to the police.
100. The witness agreed that it was not in her police statement that Kelepi had asked for her flip flop. She maintained that she told the truth in court and also to the police. She also stated that the police got the canvas from her father in law and that Kelepi had not asked her to keep the canvas or had given it to her.

Madam and Gentlemen Assessors

101. In this trial you have seen and heard in cross examination of the prosecution witnesses the accused persons were cross examining the witnesses about some inconsistencies in the statement they gave to the police immediately after the incident when facts were fresh in their mind with their evidence in court. I will now explain to you the purpose of considering the previously made statement of the witnesses with their evidence given in court. You are allowed to take into consideration the inconsistencies in such a statement when you consider whether the witnesses are believable and credible as a witness. However, the police statement itself is not evidence of the truth of its contents.

102. It is obvious that passage of time can affect one's accuracy of memory. Hence you might not expect every detail to be the same from one account to the next.
103. If there is any inconsistency, it is necessary to decide firstly whether it is significant and whether it affects adversely the reliability and credibility of the issue that you're considering. If it is significant, you will need to then consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, you may then conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then it is for you to decide as to what extent that influences your judgment of the reliability of the witness.
104. In re-examination the witness clarified that her statement was recorded by a Police Officer who asked her to sign which she did.
105. The ninth witness Sergeant Eremasi Vuli informed the court that on 11 October, 2015 he was based at Namarai Community Post where he was the Community Policing Officer.
106. Around 2pm he received a call from the Suva Command Centre that some iTaukei youths were drinking at the Nabukadra Village and that he was to attend to that report. The witness together with two Police Officers Special Constable Eremasi and Senivalati went to attend to that report.
107. The witness used the Fisheries boat to travel from Namarai Police Post to Nabukadra Village. On his way to Nabukadra Village he saw a white fibre glass boat going towards Tailevu. The witness instructed the captain of the Fisheries boat to follow the fibre glass boat. As their boat went near the fibre glass boat he saw some iTaukei youths in the other boat.
108. The witness started to wave at the Captain of the fibre boat to stop, at this time he saw an iTaukei youth jump from the place where he was sitting and took control of the boat. There was a chase by the boat the witness was in

which lasted for 15 minutes and then the boat in front turned towards the mainland.

109. At the sea shore some iTaukei youths jumped out of the boat as a result one was arrested. The person arrested was Vereti Waqa who was drunk and violent. Vereti was arrested after Special Constable Eremasi came to assist the witness.
110. The others ran away, the witness was able to seize two bags from the boat one was black and the other blue. The witness was able to open the bags and see the contents of both bags. A search list was prepared by the witness dated 11 October, 2015. The search list was marked and tendered as prosecution exhibit no. 7. The witness was able to recognise those items mentioned in the search list in court.

Madam and Gentlemen Assessors

111. There are some items mentioned in the search list which the witness had recovered from the bags that are not part of the information before you namely one Nokia touch screen and Alcatel phone which were marked as prosecution exhibits no. 8 and 9 including the two Canterbury bags which were tendered as prosecution exhibit no. 13.
112. You will have to approach this aspect of the evidence with caution. The prosecution witnesses Police Officers Eremasi Vuli and Misidomo Baseisei did not suggest these items were stolen they only told the court what they had recovered as part of their search. You are not to draw any adverse inference against any of the accused persons in respect of these items. The information has not mentioned anything about the theft of the two phones and the two bags similarly the prosecution is not making any allegation that these items were stolen. This also applies to the Samsung S3 phone mentioned in the search list which is not part of the information as well and there is no allegation by the prosecution that it was stolen from the complainant.

113. According to the witness Vereti was taken to Namarai Police Post and that Vereti was not present in court. At about 8pm the same day the witness received information from Nabukadra Village that an iTaukei youth who was not from the area was seen in the village.
114. Upon reaching Nabukadra Village the witness after verifying the information received went to the house of Manoa and arrested Lesi the third accused and Manoa. Both were brought to Namarai Police Post. The witness was able to identify the third accused in court.
115. In cross examination by the first accused the witness agreed that the reason why he went to Nabukadra Village was because there was a report of drinking and fighting in the village.
116. In cross examination by the third accused the witness agreed that they knew each other. When he signed the search list Etuwini Sivo and Atunaisa Caucau were present.
117. The tenth witness Police Constable Eremasi Rasigavaki informed the court that on 11 October, 2015 he was stationed at Namarai Community Post in the afternoon the witness boarded the Fisheries boat with Police Officers Eremasi Vuli and Senivalati.
118. This witness basically stated what Sergeant Vuli had told the court. Further the witness stated that after the boat had stopped at the sea shore one youth from the boat who the witness did not know got hold of a bolt cutter and hit the witness twice on the sand.
119. This youth was later arrested by the witness and the other Police Officers this person was Vereti Waqa who was not in court. According to the witness when the others ran towards the bush they were carrying one bag each and from the boat two bags and one bolt cutter were recovered.
120. In cross examination by the first accused the witness stated that when they went towards Nabukadra the witness saw a boat coming. At that point in time the youths were shouting and standing in the boat it occurred that

they would be the ones who were drinking at Nabukadra. The witness agreed that all the Police Officers were in civilian clothes. According to the witness Kelepi had ran away from them at the sea shore so they started to look for him.

121. The eleventh witness Inspector Rusila Cakacaka informed the court that on 13 October, 2015 she went to the scene where the abandoned vehicle HA 448 was found. The witness after dusting the scene took photographs. The witness took 8 photographs of the scene and the vehicle which was marked and tendered as prosecution exhibit no. 10.
122. The twelfth witness Emori Qilu informed the court that on 11 October, 2015 at about 6.10pm he received instructions to attend to a case at Rakiraki where some items were recovered which was believed to be stolen from Malaqereqere. At the Namarai Police Post he saw two itaukei men were already in custody with some of the stolen items found on them.
123. According to the witness one of the men had a swollen mouth and he was not talking properly so he took this man to the Rakiraki Hospital. He had received information that the person in question was involved in a brawl.
124. The name of the suspect was Vereti Waqa at the Rakiraki Hospital the doctor examined the suspect who was not opening his mouth. At the request of the doctor the witness assisted the doctor in removing what was inside the suspect's mouth. After the suspect opened his mouth the witness removed a plastic from the suspect's mouth.
125. Inside the plastic there was a \$50.00 Fijian currency. After the suspect was examined by the doctor the witness took the suspect to a secured toilet in the hospital where Vereti was searched. Upon searching him a wallet was found in the suspect's underpants. The wallet was recovered which contained the identification cards of the victim from Malaqereqere. The plastic and the \$50.00 note were marked and tendered as prosecution exhibit no. 11. The witness recognised the wallet and the photocopy of the

complainant's identification cards in court. According to the witness Vereti Waqa was not present in court.

126. In cross examination by the first accused the witness stated that he knew the items recovered were from Malaqereqere, Sigatoka because he had physically recovered the wallet which had the identification cards of the victim.
127. The thirteenth witness was Detective Inspector Saimoni Qase on 11 October, 2015 a report was received of a robbery in Sigatoka and that some suspects had been arrested in Nabukadra Village. The witness conducted a search at Nabukadra Village and was able to recover empty liquor bottles and also a pair of black SFIDA canvas.
128. The witness stated that he received the pair of canvas from a female villager at Nabukadra Village. The witness was informed that the black canvas was brought to her house by Kelepi Salauca. As a matter of procedure a copy of the search list was given to this villager and she had acknowledged by signing the search list. The search list dated 12 October, 2015 was marked and tendered as prosecution exhibit no. 12.
129. The witness was able to recognize the pair of canvas which was given to him by the villager at Nabukadra Village. Furthermore he also identified the first accused in court according to the witness he personally knows Kelepi Salauca since they have the same maternal links.
130. In cross examination the witness stated that the canvas was handed to him by a female villager from Nabukadra Village and that the canvas did not have any identification marks on it.
131. The fourteenth witness Shane Shalendra informed the court that he owns a Pawn Shop in Suva. On 12 October, 2015 the witness received some jewellery from two iTaukei men namely 4 bangles, a pair of earrings, a pendant and a mangal sutra which he had sold to a jeweller. The witness was able to recognize the jewellery when shown to him in court.

132. The final witness Detective Constable Misidomo Baseisei the Investigating Officer informed the court on 11 October, 2015 he was on duty at the Sigatoka Police Station. At about 4 am he received a report of a robbery in a house at Malaqereqere, Sigatoka. At the scene of the robbery the witness met the complainant and his wife who relayed what had happened.
133. Later in the day the witness received information that the stolen vehicle of the complainant had been found abandoned in the mountains of Rakiraki. Two men had been arrested and there were some recoveries made. An investigation was conducted a visit was made to the place where the vehicle was found.
134. As investigations progressed three people were arrested they were interviewed and their alibis checked. On 18th October, the team left for Suva where the houses of the accused were searched from Navua to Suva, including other places where they were told some of the stolen items were sold. Most of the stolen items were recovered at Namarai and some from Suva. All the exhibits were given to the witness which were sealed, marked and kept in safe custody.
135. The witness was able to recognize all the exhibits in court and he confirmed that all the items were kept in safe custody by him. The two Canterbury bags were recognized by the witness as been in his custody. The two bags were marked and tendered as prosecution exhibit no. 13. The witness stated the three suspects were Kelepi Salauca the first accused, Vereti Waqa the second accused and Tui Lesi Bula the third accused. The witness was able to identify the first and third accused in court as for the second accused the witness stated that this accused was not in court.
136. In cross examination by the first accused the witness stated that the first accused was arrested since he was seen with the other suspects at Nabukadra Village on the day the offence was committed and he was positively identified by witnesses from Nabukadra Village. Furthermore the black SFIDA canvas recovered from Nabukadra Village was given by the first accused to Siteri Levers and finally he had evaded police arrest from

Nabukadra Village. The first accused had fled from Nabukadra Village but was later arrested in Suva.

137. The witness further stated that as soon as the canvas was recovered on the same day it was shown to the complainant who identified it as his. He also mentioned that all the three accused persons were caution interviewed and all items recovered were believed to be stolen and that the accused persons took part in the robbery.
138. The witness agreed that when the first accused was caution interviewed and charged the allegation put to the accused did not mention anything about the stolen SFIDA canvas.
139. In cross examination by the third accused the witness stated that he could not confirm if the finger prints of this accused was found at the crime scene, there was no identification parade conducted or any evidence that the accused had robbed the complainant and stolen his car. The witness stated that the bags found were searched when Etuwini Sivo was not present.
140. In re-examination the witness clarified that when the first accused was caution interviewed he did not offer any explanation.
141. This was the prosecution's case.

DEFENCE CASE

Madam and Gentlemen Assessors

142. At the end of the prosecution case you heard me explain options to the first and third accused persons who were present in court. They have those options because they don't have to prove anything. The burden of proving the guilt of all accused persons beyond reasonable doubt remains on the prosecution at all times. The first and third accused persons gave evidence and were subjected to cross examination. The first accused also called two

witnesses whereas the third accused did not call any witness. You must consider their evidence and give such weight as you think fit.

SECOND ACCUSED

143. On 26 November, 2015 the information was put to the second accused he had pleaded not guilty to the charge. When the information was read in court on the first day of the trial a not guilty plea was entered for this accused in his absence.
144. At the end of the prosecution case, a case to answer was ruled which required the second accused to open his defence although he was not present in court the options that were made available to the other two accused persons was also made available to the second accused. The second accused was deemed to have exercised his right to remain silent.
145. As mentioned earlier the burden to prove the guilt of all the accused persons beyond reasonable doubt remains with the prosecution. The absence of the second accused is not an admission of guilt and adds nothing to the prosecution case it does not make this burden any lesser on the prosecution remember you are not to draw any negative inference against the second accused because he is not here to defend his case.
146. The first and the third accused are unrepresented by counsel and they should not be disadvantaged so I will identify the important features of their defence and explain it to you.
147. The first and the third accused decided to give evidence and also the first accused called two witnesses on his behalf. You must then take into account what both the accused persons and the witnesses adduced in evidence when considering the issues of fact which you are determining.

148. It is for you to decide whether you believe the evidence of the first accused and his witnesses and the third accused. If you consider that the account given by the defence through the evidence is or may be true, then you must find the first and the third accused not guilty.

FIRST ACCUSED

149. The first accused informed the court on 10 October, 2015 he was at his sister's house at Khalsa Road, Nasinu. In the morning when he woke up his sister was about to leave for town and he was at home with her children.

150. At around 10am his father called on his mobile phone asking him to accompany him to Nabukadra Village since he had a lot of things to be taken to the village. The accused informed his father that he was able to assist. The accused met his father at the Suva Bus Stand. The bus left Suva at around 2pm reaching Nabukadra at about 7pm. After completing the household chores, mixing a basin of Kava for his father and after having dinner the accused went to bed.

151. The next morning the accused woke up late so he missed his bus as a result he asked his father if there were any vehicle that could take him to Suva. His father told him to get benzine and ask for a boat in the village to be dropped off at Burewai or Natovi to catch a bus to Suva.

152. The accused left Nabukadra on foot went to his uncle at Verevere, his uncle did not have any and suggested that he should get benzine from Namarai. At Namarai he went to his relative and school mate Epi Kolinivala at around 8am. Epi was at his grandfather's house when Epi came the accused asked him for benzine but Epi did not have any.

153. While the accused was talking to Epi a boat came the accused went to the sea shore and saw that the boat owner was his uncle Sakiusa Yavala at this time he saw three iTaukei men. While the accused was talking to his uncle

these three men also asked if they could board the boat to be dropped off at Nabukadra and from there they would walk to Nayavutoka.

154. Since the accused had met his uncle after a longtime he gave his uncle a souvenir of Australian \$100.00. At Nabukadra he informed his father there was no benzine. The three men who had accompanied the accused went on foot to Nayavutoka.
155. The accused was on his way to one of his uncle's house when he met a group of men drinking at Nabukadra Creek some of them were from Nabukadra and some were from Verevere, since he knew some of them he joined them drinking. At about 10.30am he left and went to Vucunivola. As he was leaving the drinking party three iTaukei men came asking the accused to take them to Manoa's house.
156. All went together to Vucunivola the accused went to his cousin brother's house and at this time Manoa saw the accused with three others. Manoa came and greeted two of them, all started drinking. The accused called Etuwini Sivo asking him to come to Vucunivola after a while Sivo came. The accused asked for a boat to be taken to Burewai or Natovi to catch the bus to Suva. Manoa who overheard the conversation asked the accused if he could assist two of his friends who wanted to go to Korovou, Tailevu.
157. After drinking more alcohol they all went to Nabukadra where they joined another group drinking there. Before Sivo arrived one of the accused's cousin and another man started arguing and throwing punches since the accused was drunk all ended up punching each other. When Sivo came with the boat the accused went and boarded the boat and some others also boarded the boat. When the boat was moving the accused saw another boat chasing their boat. Since all were in civilian clothes the accused thought it was those boys with whom he had just had a fight so he went and took control of the boat to run away from them to avoid any trouble so he steered the boat to Nukudavia beach. After stopping the boat he jumped out of the

boat and left. Later he was able to stop a vehicle and he came to Nausori at 9pm and then arrived at his sister's house.

158. The accused denied the allegation saying he knew nothing about the incident.
159. In cross examination by the State Counsel the first accused informed the court in the morning of 11 October, 2015 he was eager to go back to Suva but he did not find any fuel in the village for a boat ride so he walked to Namarai Village. He met Tui Lesi Bula and two others and had met his uncle along the beach of Namarai.
160. The accused agreed that he gave a souvenir of Australian \$100 to his uncle Yavala. When he met his uncle he was only talking to his uncle and he was not bothered about talking to the other iTaukei boys. The first accused stated that they were drinking at Vucunivola he assisted by taking Tui Lesi Bula to Manoa. When the police intercepted the boat the accused did not recognize his cousin Police Officer Eremasi since he does not meet his cousin a lot.
161. In respect of the accused taking control of the boat he states that he thought the boys that he had assaulted were in the boat following them so to avoid trouble he steered the boat to the mainland and made his way to the bush.
162. The accused denied the allegation stating that he has not aware of the allegation since at 2am on 11 October, 2015 he was sleeping at Nabukadra Village with his father. The allegation was a lie and he was not part of it.
163. To the suggestion that Manoa had informed the court that the accused had brought the three iTaukei men with him when he met Manoa the accused stated that since Manoa was arrested by police he had made up a story to implicate the accused.

164. Furthermore the accused denied confessing to Manoa saying that it was not true and that Manoa had made it up. As for leaving the black SFIDA canvas at the house of Siteri the accused said it was a lie and a made up story.
165. The accused also stated that he had been drinking with villagers and some others at Ana Sera's house including Tui Lesi Bula and Vereti Waqa, however, he came to know their names when they were produced in court.
166. The witness for the first accused Adi Tubuna Salauca informed the court that she was the sister of the first accused. On 10 October, 2015 at about 7am she took her mother in law to the hospital with her husband. She left her three children with her niece, a cousin and Kelepi at home. When she returned from the hospital at around 1pm she was informed by her children that Kelepi had left for Nabukadra Village with her father.
167. The witness made a call to her father and he confirmed that Kelepi had gone with him.
168. In cross examination by State Counsel the witness agreed that she did not see the first accused on the night of 10th October and early morning of the 11th. Furthermore in the afternoon of the 10th she had made a call to her father to confirm if the first accused was with him.
169. When the witness met Kelepi in the morning of 12 October, 2015 he was carrying a black knapsack bag.
170. The final witness for the first accused was his father Kelepi Salauca Senior. On 10 October, 2015 the witness was in Suva getting ready to go to the village in the afternoon. The things he wanted to take with him were too much so he called his son Kelepi to assist him by taking the things to the village with him.

171. Kelepi came and both went to the Nabukadra village arriving at about 7pm. After cooking dinner the witness had four bowls of kava. During this time Adi Tubuna the daughter of the witness called asking if Kelepi was with him in the village. The witness replied they were both in the village. After drinking Kava and having their dinner both slept.
172. The next morning both woke up late so Kelepi could not catch the 6am bus to Suva. The witness told Kelepi to go to Verevere to buy two gallons of benzine which will be enough for the boat to take him to Burewai to catch a bus. The witness gave Kelepi a bag to put the gallons inside. This was the last time the witness saw his son. The witness stated that from 6pm on 10 October, 2015 to 6am on 11 October, 2015 Kelepi was at home.
173. In cross examination by the State Counsel the witness agreed that Kelepi has helped him a lot and that Kelepi did not come back to tell him that he was unable to get benzine. The witness agreed there was a village boat but he had told Kelepi to go and buy benzine. The witness denied making up a story.
174. The second accused was absent from the proceedings so he was taken to have exercised his right to remain silent.

THIRD ACCUSED

175. The third accused informed the court that on 10 October, 2015 after spending Fiji Day with his family in Lami he went to his home at Nasinu. In the afternoon his boss Jone Talemaitoga called to say that he is going to pick fish he had ordered from Nataleira, Nasinu and Delakado. In the morning of 11 October, 2015 the third accused and Jone left Suva at 6.30am.
176. At Nataleira there wasn't enough fish so they reached Nabukadra Village. Jone went to see the Headman Esira and then Jone went to Namarai alone to get ice for the fish. The third accused got off at Nabukadra Village went

to the creek where he saw a group of village boys drinking he did not know them so he went to the village asking for Esira. At the village he was told Esira was drinking at the village creek with the village boys.

177. The third accused met up with the group and asked Esira about the fish that was supposed to be delivered by him. The Accused was told to wait for the boat and the divers to come he was invited to join the group which he did.
178. While drinking Esira introduced the accused to Manoa, Manoa invited him to his house. After a while the group decided to go and drink at Manoa's house at Vucunivola Settlement. Whilst drinking the accused forgot about his boss so he continued drinking at Manoa's house. He then heard that one Etuwini Sivo was going to drop them in the boat to Natovi so they proceeded to the village jetty. At the sea shore there was a fighting and a scuffle between the men.
179. While going in the boat from Nabukadra the Fisheries boat came chasing the boat the accused was in. At the Nukudavia beach all the village boys including the accused jumped out of the boat since the Fisheries boat had police officers in it. Vereti Waqa was arrested at the sea shore.
180. The accused went to the house of Manoa and he was arrested with Manoa from the house of Manoa and taken to Namarai Police Post. In respect of the allegation the accused told the police that the black Canterbury bag was not his and that he did not know anything about the allegation.
181. In cross examination by the State Counsel the third accused stated that he was told by his supervisor Jone to look for Esira the Village Headman at Nabukadra who was the one taking the order for the purchase of fish. At the creek it was Esira who had introduced him to Manoa and they all started drinking.

182. The accused agreed that he was drinking at Vucunivola and he did not recognize the first accused until they were charged together. He only knows that Kelepi was one of the village boys.
183. The accused denied the allegation saying that he only went to Nabukadra to buy fish he did not drive the complainant's vehicle since he does not know how to drive. Furthermore he did not go to Namarai and was at all times in Nabukadra he had boarded the boat at Nabukadra in the afternoon and he does not know anything about the black Canterbury bag.

DEFENCE OF ALIBI

Madam and Gentlemen Assessors

184. The first and third accused persons have put forward the defence of alibi. They say that they were not at the scene of crime when it was committed. As the prosecution has to prove their guilt so that you are sure of it, they do not have to prove they were elsewhere at the time. On the contrary, the prosecution must disprove the alibi. Even if you conclude that the alibi was false, that does not by itself entitle you to convict the accused. It is a matter which you may take into account, but you should bear in mind that an alibi is sometimes invented to bolster a genuine defence.

Ladies and Gentlemen Assessors

185. It is obvious that passage of time can affect one's accuracy of memory. Hence you might not expect every detail to be the same from one account to the next.
186. Even if you conclude that the defence put forward by both the accused persons have not been made out that does not of itself entitle you to convict the accused persons. The prosecution must still satisfy you beyond reasonable doubt of their guilt.

187. The accused persons have denied any wrong doing their defence is they did not commit the offence of aggravated robbery as alleged.

ANALYSIS

188. The prosecution alleges that all the three accused persons in the company of each other on 11 October, 2015 at about 2am robbed the complainant and his wife at their house in Malaqereqere, Sigatoka.

189. The stolen car of the complainant was found abandoned in the interior of Rakiraki and also some of the stolen items belonging to the complainant were recovered from the three accused persons.

190. The first accused Kelepi Salauca was seen wearing a SFIDA black canvas when he visited the house of Siteri Levers (PW8) on 11 October. After he was lent a pair of flip flops by Siteri he left the canvas at the house of this witness.

191. Furthermore the first accused had confessed to Manoa Dugulele (PW 5) that he had committed a robbery in Sigatoka involving an Indo-Fijian couple and they had come to Rakiraki in the stolen vehicle and that this vehicle had been abandoned.

192. The second accused Vereti Waqa was arrested when the boat he was in was intercepted by the police. Mr. Emori Qilu (PW12) had searched this accused and recovered a wallet containing the complainant's personal and identification cards and a piece of plastic containing \$50.00 Fijian currency.

193. When the Police Officers searched the boat in which all the three accused persons were they found two Canterbury bags. These two bags were in the possession of the second and the third accused when they were at the Nabukadra Village on 11 October, 2015. According to Etuwini Sivo (PW7) the blue bag was in the possession of the second accused and the black bag was in the possession of the third accused. After the contents of the two bags were checked by police the items found in both the bags were identified by the complainant as stolen from his house.

194. The third accused Tui Lesi Bula was seen by Etuwini Sivo (PW7) to be carrying a black Canterbury bag at Nabukadra Village after the boat in which he was, got intercepted by the police the accused ran into the nearby bush leaving the bag behind. This accused was arrested from the house of Manoa Dugulele in the evening of 11 October. Manoa was able to identify the third accused as the person he had met earlier in the day and who came to his house in the evening of 11 October, 2015 before been arrested by the police.
195. The prosecution witnesses who were from Nabukadra Village had seen all the accused persons in their village on 11 October who were carrying bags with them and the liquor consumed by them was supplied by the accused persons.
196. The prosecution says the evidence of alibi adduced in court is unreliable and should be rejected. The prosecution further submits that none of the accused persons have given any reasonable explanation about the possession of the stolen items therefore it is justifiable to infer that they had robbed the complainant.
197. The first and third accused persons on the other hand say that they did not commit the offence as alleged the first accused says after leaving his sister's house on the 10th he went to his village and stayed there with his father and did not leave his house until he left his village in the afternoon arriving very late in the night at his sister's house in Suva on the 11th. The third accused says he left Suva in the morning of 11th October at 6.30 am with his boss to secure an order for fish after celebrating Fiji Day with his family in Lami. He went home at Nasinu and from there he left the next day with his boss to secure the fish ordered by his boss.
198. Both the accused say that you should not believe the prosecution witnesses because their evidence in court was inconsistent with their police statements and that they had made up a story to implicate them. They ask you to believe them and their witnesses.

CONCLUSION

Ladies and Gentleman Assessors

199. You have seen the witnesses giving evidence keep in mind that some witnesses react differently when giving evidence.
200. Which version you are going to accept whether it is the prosecution version or the defence version is a matter for you. You must decide which witnesses are reliable and which are not. You observed all the witnesses giving evidence in court. You decide which witnesses were forthright and truthful and which were not. Which witnesses were straight forward? You may use your common sense when deciding on the facts. Assess the evidence of all the witnesses and their demeanour in arriving at your opinions.
201. In deciding 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 or she may be accurate in saying one thing and not be accurate in another.
202. You will have to evaluate all the evidence and apply the law as I explained it to you when you consider the charge against the accused persons have been proven beyond reasonable doubt. In evaluating evidence, you should see whether the evidence is probable or improbable, whether the witness is consistent in his or her own evidence or with his or her previous statement or with other witnesses who gave evidence. It does not matter whether the evidence was called for the prosecution or the defence. You must apply the same test and standards in applying that.

203. It is up to you to decide whether you accept the version of the defence and it is sufficient to establish a reasonable doubt in the prosecution case.
204. If you accept the version of the defence you must find the accused persons not guilty. Even if you reject the version of the defence and do not believe a single word the accused told in court still the prosecution must prove this case beyond reasonable doubt. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused at any stage of the trial.
205. Once again I would like to state what I had said earlier that the absence of the second accused is not an admission of guilt which adds nothing to the prosecution case remember you are also not to draw any negative inference against the second accused because he is not here to defend his case.
206. The accused persons are not required to prove their innocence or prove anything at all. They are presumed innocent until proven guilty.

Madam and Gentlemen Assessors

207. I would like to remind you that separate opinions must be returned in respect of each accused persons named in the information.
208. You must consider the case against and for each accused separately. Similarly all the accused persons are entitled to have the charge considered separately. This means you must carefully distinguish between the evidence against one accused and the evidence against the other. You must not for instance, use the evidence against one accused by taking into account evidence implicating another. You must not assume that because you find there is enough evidence to convict one, that the others must be guilty.

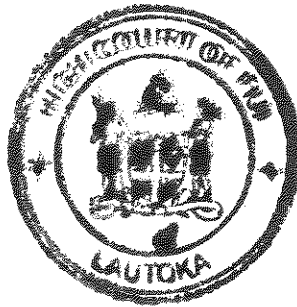
209. If you accept the version of the defence you must find the accused persons not guilty. Even if you reject the version of the defence still the prosecution must prove this case beyond reasonable doubt. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused at any stage of the trial.
210. I do not think you will have any difficulty in keeping distinct in your minds evidence which properly and fairly relates to all of them and that which relates to one of them alone.
211. What version of the facts you accept is a matter for you. If you have any doubt in respect of the above or on the role played by each of the accused persons or there is no evidence, direct or circumstantial that it was all the accused persons as alleged then you should find them not guilty.
212. You may find the accused persons guilty for the offence of aggravated robbery if you are satisfied of their guilt beyond reasonable doubt. If you have any reasonable doubt about their guilt then you must find them not guilty. Remember to consider the evidence for each accused separately.
213. Your possible opinions are:-


AGGRAVATED ROBBERY: ACCUSED ONE - GUILTY OR NOT GUILTY
ACCUSED TWO - GUILTY OR NOT GUILTY
ACCUSED THREE - GUILTY OR NOT GUILTY

Madam and Gentlemen Assessors

214. This concludes my summing up you may now retire and deliberate together and once you have reached your individual opinions please inform a member of my staff so that the court can be reconvened.

215. Before you do so, I would like to ask counsel and the two accused persons if there is anything they might wish me to add or alter in my summing up.




Sunil Sharma
Judge

At Lautoka
14th June, 2018

Solicitors

Office of the Director of Public Prosecutions for the State.

Accused one and Accused three in person.

Accused two absent.