

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC117 of 2018

STATE

vs.

- 1. EMOSI BALEDROKADROKA**
- 2. LOTE WAISALE**

Counsel: Mr. E. Samisoni for the State
Ms. N Mishra for the 1st Accused
Ms. L David with Ms. Prasad for the 2nd Accused

Date of Hearing: 11th, 12th and 13th March 2019

Date of Summing Up: 15th March 2019

Date of Judgment: 15th March 2019

JUDGMENT

1. The two accused are charged with one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act. The particulars of the offence are that:

Statement of Offence

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

Particulars of Offence

EMOSI BALEDROKADROKA and LOTE WAISALE on the 11th day of March, 2018 at Nasinu in the Central Division, in the company of each other, robbed NILESH CHAND of \$40.00 cash and an Alcatel mobile phone valued at \$79.00 all to the total value of \$119.00, the property of NILESH CHAND.

2. The hearing of this matter was commenced on the 11th of March 2019 and concluded on the 13th of March 2019. The prosecution adduced the evidence of three witnesses. The first and the second accused gave evidence for the defence. Moreover, the second accused called a witness for his defence. Subsequently, the learned Counsel for the prosecution and the defence made their respective closing addresses. I then delivered my summing up.
3. The three assessors in their opinion unanimously found the two accused guilty to the offence.
4. Having considered the evidence presented during the hearing, the respective closing addresses of the parties, the summing up and the opinions of the three assessors, I now proceed to pronounce my judgment as follows.
5. The prosecution alleges that the two accused acting in the company of each other, robbed Nilesh Chand in the evening of 11th of March 2018. The first accused claims that he was not present at the scene of the alleged crime as he was drinking with some others from 12 midday till 1.00 a.m. on the 12th of March 2018 at Co-Op. The second accused claims that he was at home with his mother and sister during the time that is material to this alleged crime.
6. Accordingly, the main contention of the defence is that Vasemaca had mistaken in her recognition of the two robbers as the two accused. Therefore, the case against the two accused mainly depends on the correctness of the recognitions of the robbers by Vasemaca.

7. The learned Counsel for the second accused cross examined Vasemaca about the inconsistent nature between her evidence and the statement given to the police in relation to the colour of the t-shirt that the second accused was wearing in that evening. Vasemaca had stated in her statement to the police, that the second accused was dressed in a blue colour t-shirt. However, she said in court that it was like a grey colour. According to her evidence she had seen Emosi and Lote few minutes before this incident took place. They were seated under a mango tree when she walked down to the canteen. Emosi had made a joke at her. She has known the two accused since Emosi is one her cousins and Lote had been grown up together with her in the neighbourhood. Therefore, she knew the two accused when she saw them under the mango tree.

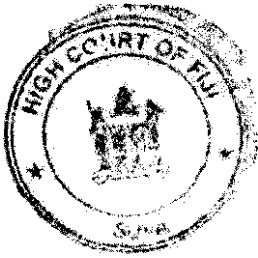
8. Mr. Nilesh Chand in his evidence explained the physical descriptions of the two robbers which match the physical descriptions of the two accused given by Vasemaca in her evidence. Apart from the colour of the t-shirt that the second accused was dressed in, her description of the colour and the nature of the clothings that the two accused were dressed in matches with the description given by Nilesh. Nilesh said that one robber was dressed in red vest and a short and other one was dressed in a grey colour t-shirt and a short. Vasemaca in her evidence said that Emosi was dressed in a red colour vest and a short and Lote was dressed in grey colour t-shirt and a short. She has stated in the statement made to the police the same description of the colour and nature of the clothing apart from the colour of the second accused's t-shirt. Hence, I do not find this inconsistency is fundamentally affecting the credibility of the evidence given by Vasemaca.

9. Moreover, the learned Counsel for the defence in their closing addresses urged that Nilesh Chand never said that Vasemaca had called him by his name and waved at him while he was walking along the road. Having closely considered the evidence given by Vasemaca, I do not find that she had stated that Nilesh responded to her call and waved her back. Therefore, this inconsistency has no adverse effect to the credibility and reliability of the evidence of Vasemaca.

10. Vasemaca explained that Emosi was holding Nilesh from his waist and Lote was squeezing the mouth of Nilesh when they dragged Nilesh to the car-wash. Nilesh in his evidence did not specifically explain the details of the dragging. He just said that he was dragged across to the car-wash. Then he fell down and the robber in the red vest punched him twice on his face. The same person then tried to strangle him. The other robber who was dressed in the grey colour t-shirt took his money, mobile phone and the key of the taxi. It is obvious that a person cannot see everything in details when he is suddenly encountered with such an assault in the night. I find the evidence of Vasemaca and Nilesh are actually consistent with each other in respect of the main issues of this incident. She has seen the robbers were punching Nilesh. This incident took place in the dark. The light of the car did not last more than a minute or two. Even though the place was dark, Vasemaca knew the two robbers as Emosi and Lote as she had been observing them since she met them under the mango tree until this incident took place.
11. Making her statement to the police after her brother was arrested in connection of this matter, does not establish anything to discredit the evidence of Vasemaca.
12. In view of these reasons, I accept the evidence of Vasemaca and Nilesh as reliable and credible evidence. I accordingly accept their evidence as true evidence.
13. The first accused in his evidence actually said that he was not at the drinking place at around 8.00 p.m. as he has gone to drop his brother at home. How can the second accused forget the presence of his brother at home in that evening of 11th of March 2018. His mother in her evidence first said that she had three sons and then during the cross examination she said that she has four sons. In view of these inconsistencies and also with the acceptance of the evidence of Nilesh and Vasemaca as truthful, credible and reliable evidence, I refuse to accept the defence of alibi put forward by the two accused as true or may be true. I accordingly refuse the defence of alibi.
14. Accordingly, I find the prosecution has successfully proven beyond reasonable doubt that the two accused in company with each other have committed this offence of aggravated

robbery as charged. Therefore, I do not find any cogent reasons to disagree with the unanimous opinion of guilty given by the assessors.

15. In conclusion, I hold that the first accused and the second accused guilty to the offence of Aggravate Robbery, contrary to Section 311 (1) (a) of the Crime Act and convict them to the same accordingly.



A handwritten signature in black ink, appearing to be "R.D.R.T. Rajasinghe".

R.D.R.T. Rajasinghe
Judge

At Suva

15th March 2019

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for both Accused.