

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 210 OF 2018

STATE

-v-

- 1. KEPERIELI KETEWAI**
- 2. JOSAIWA WARODO VATUNICAOKO**
- 3. LUKE TAVAIALU**

Counsel:

**Ms. L. Lodhia with Mr. Z. Zunaid for Prosecution
Ms. L Ratidara with Mr. N Chand for 1st Accused
Mr. R. Goundar for 3rd accused**

Date of Summing Up: 3 April, 2019

Date of Judgment : 8 April 2019

JUDGMENT

1. The accused persons were jointly charged with one count of Aggravated Robbery. The information reads as follows:

Statement of Offence

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

Particulars of Offence

KEPERIELI KETEWAI, JOSAIWA WARODO VATUNICOKO & LUKE TAVAIALU on the 4th day of April 2018 at Vunisea, Kadavu, in the Southern Division in the company of each other robbed **UTTAM KUMAR** of 1X green bag containing \$50 worth of coins, 1 green bag containing \$100 worth of coins, \$500 cash, 1x Samsung band J5 mobile phone valued at \$ 500, 1x return boat ticket valued at \$ 350, Hawkers License valued at \$ 30; all to the total value of \$ 1530, the properties of **UTTAM KUMAR**.

2. The 2nd accused pleaded guilty to the charge and was sentenced. The 1st and 3rd accused maintained their not guilty plea and the trial proceeded only against the 1st and 3rd accused.
3. At the ensuing trial, the Prosecution called 7 witnesses. At the end of the Prosecution's case, the accused were put to their respective defences. Both the accused opted to give evidence under oath.
4. After my Summing-Up, the assessors unanimously found both accused guilty of Aggravated Robbery as charged.

5. Having concurred with the unanimous opinion of assessors, I give my reasons for my judgment as follows:

6. The Prosecution relies on direct evidence of the complainant Uttam Kumar (PW1), Josaia Warodo (Waro) (PW.7) (who was the 2nd accused in this case), circumstantial evidence, caution and charge statement of each accused and the medical report of the complainant.

7. The Prosecution's case against the 1st accused is that on the 4th April, 2018, he planned this robbery and he robbed the complainant of his cash and property in the company of the 2nd and 3rd accused.

8. The 1st accused admits assaulting the complainant at the crime scene but he denies having participated in the robbery with others. He says that he was acting alone when he assaulted the complainant. The Counsel for 1st accused took up the position that whilst the 1st accused was assaulting the complainant, the 2nd and 3rd accused took this opportunity to rob the complainant, without any involvement of the 1st accused. The 3rd accused completely denies any involvement in the robbery. His defence is that he was elsewhere at the time of the alleged robbery

9. The Prosecution relies on the evidence of PW.7 and caution statements (caution interview and charge statement) of the 1st accused to establish that the 1st accused was the mastermind and principal culprit of this robbery.

10. The complainant had not identified the robbers at the crime scene. The identity of the accused was established by the evidence of PW7. PW 7 confirmed that the 1st accused was the one who planned and played the leading role in assaulting and robbing the complainant with the assistance of others.
11. In law, PW.7 is an accomplice. Therefore I gave the common law direction generally given to assessors on how to approach the evidence of an accomplice, although it is not particularly required in this case given the fact that the 2nd accused had not been given any incentives by the authorities to testify for Prosecution.
12. PW 7 said that he voluntarily pleaded guilty to the charge and was giving evidence on his own free will. He is already serving a prison sentence of 5 years. He confirmed that no pardon was offered to him in return. He had nothing to lose or gain by lying to this court.
13. There is no apparent motive for PW 7 to falsely implicate others. The theory advanced by the Defence that PW.7 was assaulted by the 1st accused within court premises and therefore he is not in good terms with the 1st accused was never established. PW 7 said that he had no animosity towards the 1st and 3rd accused. The proposition that PW.7 had a sinister motive to lie against the accused because he was already serving a prison term is not rational and therefore not acceptable. Such a proposition was not even put to the PW.7. I am satisfied that the evidence of PW 7 is consistent and reliable.

14. The evidence of PW 7 was sufficiently corroborated by other independent evidence. The evidence of the complainant and 1st accused's own caution statements are consistent with the evidence of PW.7. Although the 1st accused had not made specific admissions in his caution statements in respect of the robbery, the evidence led in trial does not permit the court to deny his involvement in the robbery.

15. 1st accused's evidence is completely inconsistent with the theory advanced by his counsel. 1st accused's evidence was that he was acting alone and no one else was present at the time of the assault. His counsel advanced a proposition that when the 1st accused was assaulting the complainant, 2nd and 3rd accused had taken the opportunity to steal from complainant's van, without 1st accused's knowledge.

16. 1st accused's evidence that he did not drag the complainant to the roundabout but he was only chasing the complainant who was running away from the van is not believable. 1st accused said that he was scared when he saw the complainant running away from the scene. If that is the case, it is hardly believable as to why he wanted to catch the complainant who was already running away from him. If the 1st accused really wanted to prevent the complainant from going to police, as suggested by his counsel in his closing, he would not have later released the complainant to run to the police.

17. The State Counsel's proposition that the 1st accused being a police officer, having known the consequence of the aggravated robbery was admitting a lesser offence is tenable.
18. I am satisfied that the Prosecution proved beyond reasonable doubt that the 1st accused assaulted the complainant in the execution of the plan to rob the complainant in the company of the 2nd and 3rd accused.
19. The 3rd accused completely denies that he had ever taken part in this robbery. The position of the 3rd accused is that, at the time of robbery, he was away from the alleged crime scene. The 3rd accused however does not deny that he was drinking beer and grog with the 1st and 2nd accused that night. His evidence is that the 1st and 2nd accused had gone to commit the robbery while he was still having a conversation with Aunty Finau and massaging her. He says that he was wrongly implicated by the 2nd accused because he is already serving a prison term.
20. In his caution statement and the charge statement 3rd accused is alleged to have made admissions to the robbery. 3rd accused denies making any admissions in his caution interview and making admissions in his charge statement on his own free will. His position is that some parts of the caution interview has been fabricated by the interviewing officer. He admits making admissions to the police in his charge statement. His position is that he was lying to the police in his charge statement because he was given a promise that he would be made a State's witness.

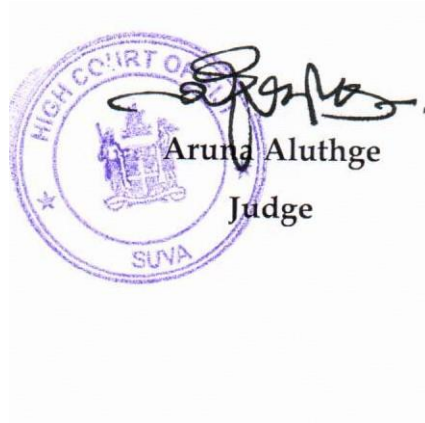
21. The evidence of the 3rd accused is not plausible. There is no cogent reason for the interviewing officer to fabricate the caution interview against the 3rd accused who was one of his colleagues in the police force. The 3rd accused as a police officer is conversant with the legal process and the consequences of lying to a police officer in the charge statement. It is open for the assessors to reject the evidence of the 3rd accused.

22. The complainant had seen only two people taking part in this robbery. The Counsel for 3rd accused used this evidence to argue that the 3rd accused was never a party to this robbery. The complainant said that when the 1st accused was assaulting him near the roundabout, 3rd accused ran quickly to search the van for money. The version of the Prosecution is that PW.7 was to be the lookout while 1st and 3rd accused went and assaulted the complainant. PW.7 in his evidence said that the complainant did not see him and he confirmed that all three accused participated in the crime. PW. 7 confirmed that and 3rd accused came to assist him when the complainant was being held by the 1st accused near the roundabout. There is no inconsistency in the version of events of the prosecution's case.

23. The version of the Defence is inconsistent and implausible. Two accused contradicted each other in their respective evidence. 1st accused and PW. 7 confirmed that the 3rd accused was drinking with them that night. Aunty Finau was not called to show that the 3rd accused was with her at the material time. The accused failed to create any doubt in prosecution's version.

24. I reject the version of the Defence.

25. I endorse the unanimous opinion of the assessors. Prosecution proved that the accused robbed the complainant in the company of each other. I find both the accused guilty of Aggravated Robbery and convict them accordingly.
26. That is the judgment of this court.



AT SUVA

8th April, 2019

**Solicitors: Office of the Director of Public Prosecution for State
Legal Aid Commission for Defence**