

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 114 OF 2018

THE STATE

-v-

- 1. MATAIYASI NAVUGONA**
- 2. KEVERIELI DUIGIGIDIGO WAQA
(GABERIELI WAQA)**

Counsel: Ms. W. Elo for Prosecution
Mr. L. Qetaki for Defence

Date of Summing Up : 25 March 2019
Date of Judgment : 29 March 2019

JUDGMENT

1. The accused persons were jointly charged on one count of Aggravated Robbery and tried before three assessors. The information reads as follows:

Statement of Offence

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

Particulars of Offence

MATAIYASI NAVUGONA and **KEVERIELI DUIGIGIDIGO WAQA** on the 11th day of March, 2018 at Kinoya in the Central Division, in the company of each other robbed, Reapi Kawanikailekutu of \$249 in case cash, the property of Reapi Kawanikailekutu.

2. The 1st accused was tried *in absentia* as he waived his right to be present at his trial. The assessors were cautioned as to the weakness of the evidence against the 1st accused that it was not tested by cross examination. The assessors were properly directed not to draw a negative inference against the first accused merely because he failed to attend court to face his trial.
3. The Prosecution called three witnesses. At the end of the Prosecution's case, the 2nd accused was put to his defence. The 2nd accused exercised his right to remain silent and two witnesses were called for the Defence.
4. After a short deliberation, the assessors in their majority opinion found both the accused guilty of Aggravated Robbery as charged.
5. Having concurred with the majority opinion of assessors, I give my reasons for my judgment as follows:
6. There is no dispute in this case that Kinoya Car Wash run by the complainant was robbed by two people on the 11th of March 2018. The only dispute is with regard to the identity of the accused.
7. Reapi, the complainant in this case said that she clearly recognised the two boys who robbed the car wash on the 11th March 2018. She said that, before the alleged

robbery, she had seen these two boys quite often loitering around the car wash. She observed the offenders during day time. On the day of the robbery, she had observed the offenders in close proximity as they entered the room. The offenders were under her observation before the incident for 10 minutes when they were loitering around the car wash. Nothing was obstructing her view.

8. The Prosecution also led evidence of photograph identification done nearly one month after the alleged incident. The Prosecution relies on photograph identification to bolster the identification evidence of the complainant who had said that she had known the suspects already.
9. The Defence alleges that the photograph identification parade was not conducted properly. PC Thomasi who conducted the photograph identification parade admits that it was not conducted strictly in accordance with the Fiji Police Standing Orders. However the photograph identification process in this case was conducted only to get a confirmation from an eye witness who had said that she already knew the suspects.
10. The complainant had not mentioned in her first statement to police that she knew the 1st accused prior to the incident. She said that she knew 1st accused's appearance before but she came to know of his name only after the incident when his husband who had pursued the accused had said that it was Mataiyasi. She recognised the 1st accused as being one of the robbers when his photograph was shown to her with some other photographs of likely suspects. The photographs were shown nearly one month after the alleged robbery. After a consideration of the directions I had given in the Summing Up, two assessors were satisfied that the complainant had correctly identified the 1st accused.

11. The 2nd accused completely denies that he took part in this robbery. The Defence took up the defence of *alibi* to discredit the version of the Prosecution.
12. The complainant said that she knew the 2nd accused very well before the incident as a person who used to hang around in the area. She had given 2nd accused's nickname Gabby to police soon after the incident. Both 2nd accused's mother and sister confirmed that the 2nd accused is referred to as Gabby. The complainant had even seen the 2nd accused being engaged in a fight with an Indian girl at the car wash on an earlier occasion. That is when she had come to know of his nickname.
13. The two *alibi* witnesses are close relatives of the 2nd accused. They appeared to be interested witnesses as far as the Defence case is concerned. They admitted that they will do anything to protect the 2nd accused. The statements of *alibi* witnesses had been recorded even after the trial had begun. After a passage of time, there is no special reason for them to remember the date on which the robbery took place and say that the accused was home on that particular date. The alibi witnesses are not reliable. They failed to create any doubt in the identification evidence the Prosecution.
14. I reject the version of the Defence.
15. I am satisfied that the complainant is an honest and reliable witness and she had positively identified both the accused. After a careful consideration of all the evidence, I am satisfied that the quality of the identification remains good and the danger of mistaken identification is eliminated.

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



AT SUVA

29th March, 2019

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