

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 308 of 2018

STATE

vs.

- 1. WALESY CYRIL BROWN**
- 2. SAMISONI KALOU**

Counsel: Mr. E. Samisoni for the State
Ms. A. Prakash with Ms. M. Singh for Accused 1
Mr. K. Prasad for Accused 2

Date of Hearing: 24th June 2019

Date of Summing Up: 26th June 2019

Date of Judgment: 26th June 2019

JUDGMENT

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

COUNT 1

Statement of Offence

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

Particulars of Offence

WALESI CYRIL BROWN and SAMISONI KALOU with others on the 22 July 2018 at Suva, in the Central Division, in the company of each other robbed **SIRELI KACILALA** of an S5 Samsung Phone valued at \$500 and a Huawei phone valued at \$200 all to the total value of \$700, the property of **VALERIE WAQA**.

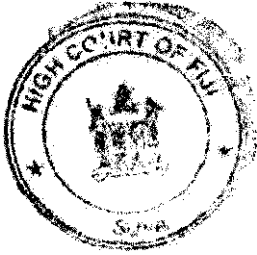
2. The hearing commenced on the 24th of June 2019 and concluded on the same day. The prosecution presented the evidence of two witnesses. The two accused exercised their right to remain silence, hence, no evidence adduced for the defence. The learned counsel for the prosecution and the defence then made their respective closing addresses. Subsequently, I delivered my summing up.
3. The three assessors in their opinion unanimously found the two accused guilty of aggravated robbery as charged in the information.
4. Having carefully considered the evidence presented during hearing, respective closing submissions of the parties, summing up and the opinion of the assessors, I now proceed to pronounce my judgment as follows.
5. The prosecution alleges that the two accused together with another came from behind when Sireli was sitting on the seawall with his girlfriend Valerie Waqa on the early hours of 22nd of July 2018. They have then pushed Sireli and his girlfriend to the sea. They have then stolen a S5 Samsung phone and a Huawei phone belonged to Valerie Waqa.
6. I first take my attention to determine whether the prosecution has proven beyond reasonable doubt that the two accused had actually taken the S5 Samsung phone and Huawei phone belonged to Valerie Waqa.

7. Sireli in his evidence said that two phones were in the handbag of his girlfriend when they were sitting on the seawall. One of them was belonged to Sireli. The handbag was belonged to Valerie Waqa who was his girlfriend. Sireli had met her when he went and get her from the night club. They have then went to the hotdogs' stand and bought hotdogs. He had paid for the hotdogs. They have then gone to the seawall. Sireli said he had an opportunity to see what was inside the handbag. However, he did not explain in his evidence when and how he had that opportunity to see what was inside the handbag which was belonged to his girlfriend. He did not explain how long he had been with his girlfriend on that day. Sireli merely said that there were two phones inside the handbag and one of them was his phone. He did not explain the make or the brand of those two mobile phones. According to the particulars of the information as charged, the two mobile phones that the two accused have allegedly robbed were belonged to Valerie.
8. In view of these reasons, there is a reasonable doubt whether such two mobile phones belonged to Valerie, as stated in the information, were actually in the handbag of Valerie during the early hours of 22nd of July 2018.
9. I now take my attention to determine who has actually taken the handbag, when was it taken and was it the same handbag that Sireli was mentioning in his evidence?
10. According to the evidence given by Sireli, he was facing the sea when he was pushed from behind. It was an unexpected push and he was shocked and surprised when he was pushed. The handbag was on the seawall when he was falling down to the sea from the seawall. He further said that he saw one of the three men picked the handbag from the seawall. However, the first accused in his caution interview, the contents of which was admitted by the prosecution and defence in the admitted facts pursuant to Section 135 of the Criminal Procedure Act, has admitted that he picked a white bag from the sea. (*vide Q & A 21*).

11. Sireli in his evidence never explained the description of the handbag of his girlfriend. Moreover, he did not explain the colour of the handbag. The prosecution did not tender in evidence the handbag that the police recovered at the time of the arrest of the two suspects. There is no reference of Sireli or Valerie Waqa in the caution interview of the first accused. It merely states an i-taukei boy and his girlfriend. (vide Q & A 6). The first accused has admitted in his caution interview that he picked a white bag from the sea. According to Sireli, he had managed to reach to the two men, who was strolling towards Suvavou house within few minutes after he fell down to the sea. The first accused has given Sireli the bag that he was carrying on his neck to check. Sireli has not found anything inside of it. Sireli did not explain how he managed to identify the bag that the 1st accused was carrying on his neck as the same handbag of his girlfriend.
12. Accordingly, there is a reasonable doubt whether it was the first accused who picked the handbag of Valerie Waqa from the seawall or someone else. Moreover, could it be possible for Sireli to clearly see the handbag, which was on the seawall, when he was falling down to the sea. He was facing the sea when he was pushed. There is no evidence about the movement of the handbag from the seawall to the sea, from where the first accused picked a white bag.
13. Furthermore, there is a reasonable doubt whether the white bag picked by the first accused from the sea was the same handbag that was belonged to Valerie Waqa. If so, has another person approached or took the handbag to the sea from the seawall? Sireli said during the cross examination that the seawall is a public place and people were walking and sitting around at that time.

14. Sireli in his evidence said the three men were wearing temptation night club t-shirts. He said that he saw them were wearing temptation t-shirts when they were approaching him. He has looked at his right side for a minute and saw three men were walking towards him. When the learned counsel for the prosecution asked Sireli whether he saw any other person wearing the temptation t-shirt apart from the two suspects, he said just a couple that was followed them
15. Sireli had stated in the statement which he made to the police that the first accused was wearing a green colour t-shirt and blue colour trousers. However, in his evidence, Sireli said that the first accused was wearing a black and orange colour t-shirt. He did not explain any reason for this inconsistency. The prosecution relies on the clothes of the suspects as circumstantial evidence in this matter. Hence, this inconsistent nature of the evidence regarding the clothes of the suspects materially affect the reliability of the evidence given by Sireli.
16. Moreover, Sireli in his evidence said that he could not recognize the second person who was with the first accused when he went and confronted the two men near Suvavou house on that morning. However, he managed to identify the first accused in the court as the person who was carrying the bag. Apart from the admission made by the second accused in his admitted facts, that he was present at the seawall during the early hours of 22nd of July 2018, there is no evidence to link him to this incident.
17. In view of these reasons, there is a reasonable doubt whether two accused with another actually robbed Sireli and his girlfriend as described in the information as charged. Accordingly, I find cogent reasons to disagree with the unanimous opinion of guilty given by the three assessors.
18. Accordingly, I find the prosecution has failed to prove beyond reasonable doubt that the two accused have committed the offence of Aggravated Robbery as charged.

19. In conclusion, I find the two accused not guilty of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act and acquit them from the same accordingly.
20. Thirty (30 days to appeal to the Fiji Court of Appeal.



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

R.D.R.T. Rajasinghe
Judge

At Suva
26th June 2019

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the 1st Accused.
Office of the Legal Aid Commission for the 2nd Accused.