IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 230 of 2018

[CRIMINAL JURISDICTION]

STATE

V

1. ILIMOTAMA TIKO
2. TAITUSI YALAYALA

Counsel	:	Ms. B. Kantharia and Ms. M. Konrote for the State
		Ms. T. Kean for the first Accused
		Ms. L. David for the second accused
Hearing on	:	02 - 04 July 2019
Summing up on	:	04 July 2019
Judgment on	:	08 July 2019

JUDGMENT

1. The accused are charged with the following offence;

Statement of Offence

Aggravated Robbery: contrary to section 311(1) (a) and 3 of Crimes Act of 2009.

Particulars of Offence

ILIMOTAMA TIKO AND TAITUSI YALAYALA with others on the 3rd day of June, 2018, at Suva in the Central Division, in the company of each other, robbed **PONIPATE NAMARALEVU** OF $15.00 cash and 1 x White Vido Mobile Phone valued at $100.00 all to the total value of $115.00 the

property of **PONIPATE NAMARALEVU**.

2. The assessors have returned with the unanimous opinion that both accused are not guilty of the offence.

3. I direct myself in accordance with the summing up delivered to the assessors on 04th July 2019 and the evidence adduced during the trial.

4. The prosecution led the evidence of three witnesses. The first accused gave evidence in his defence and the second accused chose to remain silent.

5. In my view, the prosecution case was riddled with inconsistencies.

6. It is pertinent to note that, even though it was clear from the PW1's evidence that he had an opportunity to see the person who choked him and the person who searched his pockets, he did not identify any one of the two accused present in court as his assailants.

7. According to the evidence, PW1 realised for the first time that his belongings are stolen when the two police officers came in search of him and asked him whether he has lost something. If the $15 and the phone which PW1 claimed as having stolen from him on the day in question were in fact in his pocket and if his pockets were searched by someone when he was being choked by another as he said in his evidence, upon being rescued by the police, the first thing that would be reasonably expected for PW1 to do was to check his pockets and then complain to the police if anything is stolen. To the contrary, according to the evidence, he complained about losing the items only after the police officers came searching for him and questioned him.

8. PW1 had been medically examined soon after the incident and the medical report was tendered with consent as DE1. According to the said medical report, PW1 had told the doctor who examined him that one 'Epeli' robbed him. Though PW1 denied telling this to the doctor, given that the medical report was tendered with consent and because there cannot not be a plausible reason for the doctor who appear to be an independent person to fabricate evidence in that regard, this evidence suggests that PW1 may have mentioned that name to the doctor.

9. Further, the fact that this name 'Epeli' is found in the medical report as the person who robbed PW1 supports the position taken by the two accused that PW1 mentioned that name to the police at the market police post and that PW1 identified one of the three persons brought to the police post as 'Epeli' that morning. In this light, the fact that PW2 said he can't remember when it was suggested to him that three other persons were brought to the police post under arrest questions the veracity of the account given by PW2.

10. One of the main challenges against the prosecution case brought forward by the defence is the fact that none of the items alleged to have been stolen was found on either accused though the first accused was said to have been arrested while still strangling PW1 and the second accused just about 5 meters away from PW1 within few seconds after he was allegedly seen searching PW1's pockets.

11. According to PW2 and PW3 there were altogether four persons involved and two fled while they ran towards PW1. PW2 initially said that while one person was strangling PW1, the other three were touching PW1's pockets. Later on he said that one was touching the pockets and two were lookouts. He also said that he was not able to see properly what exactly the three persons were doing. PW3 on the other hand said that 2 persons were going through PW1's pockets and one was standing as the lookout. It was his evidence that PW1 was surrounded and everything

happened so fast so that he could not clearly see what happened. PW1 did not mention about him being surrounded. Though he said that he saw four persons, his evidence relates to the conduct of 2 persons only. PW1's evidence was not consistent with the accounts given by PW2 and PW3.

12. Given this background, the assumption of PW2 and PW3 that the second accused may have passed the items alleged to have been stolen to the two individuals who said to have fled the scene does not stand out as an irresistible inference to be drawn.

13. The inconsistencies in the evidence presented by the prosecution taken together with the fact that the items alleged to have been stolen were not recovered from either of the two accused creates a strong doubt as to whether the two accused have committed the offence they are charged with.

14. All in all, I find that the prosecution has failed to prove their case against both accused.

15. Therefore, I agree with the unanimous opinion of the assessors and I find each accused not guilty of the charge.

16. Both accused are acquitted accordingly.

Vinsent S. Perera
JUDGE

Solicitors;
Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for Accused