

IN THE HIGH COURT OF FIJI AT SUVA
[CRIMINAL JURISDICTION]

CASE NO: HAC. 364 of 2018

BETWEEN : **STATE**

AND : **SAKEASI RADRAVU**

Counsel : *Mr. Kumar R. and Mr. Sharma N. for State*
: *Mr. Prasad K. for the accused*

Hearing on : **02nd July – 03rd July 2019**

Summing up on : **04th July 2019**

SUMMING UP

Ladies and gentleman assessors;

1. It is now my duty to sum up the case to you. I will now direct you on the law that applies in this case. You must accept my directions on law and apply those directions when you evaluate the evidence in this case in order to determine whether the accused is guilty or not guilty. You should ignore any opinion of mine on the facts of this case unless it coincides with your own reasoning. You are the Assessors of facts.
2. As the representatives of the society, your role is to assist this legal system to serve justice. In doing so, you are guided by two equally important principals of prudence. To wit;
 - i) If a person has committed an offence, he should be meted out with an adequate punishment.

In other words, if you are sure that the accused has committed the alleged offence, then it is your duty to find him guilty. If an offender goes scot-free, he'll be ridiculing this legal system. It is your duty to not to let that happen.

ii) An innocent person should never be punished.

There is a saying that it is better to let 100 offenders go free than to punish one innocent person. That is, unless you are very sure that the accused has committed the alleged offence, you should not find him guilty.

If any of the said principles are violated, it would amount to a failure of the system, thus you have failed in your duty to the society. Having reminded you of your duty, let us proceed.

3. Evidence in this case is what the witnesses said from the witness box inside this court room, the exhibits and admissions submitted. As I have told you in my opening address, your opinion should be based only on the evidence presented inside this court room. If you have heard, read or otherwise come to know anything about this case outside this court room, you must disregard that information.
4. A few things you heard inside this court room are not evidence. This summing up is not evidence. The arguments, questions and comments for the prosecution and the defense are not evidence. A suggestion made during the cross examination of a witness is not evidence unless the witness accepted that suggestion. The arguments and comments made in their addresses are not evidence. You may take into account those arguments and comments when you evaluate the evidence only to the extent you would consider appropriate.
5. A statement made by a witness to the police can only be used during cross-examination to highlight inconsistencies. That is, to show that the relevant witness on a previous occasion had said something different to what he/she said in court. You have to bear in mind that a statement made by a witness out of court is not evidence. However, if a witness admits that a certain portion in the statement made to the police is true, then that portion of the statement becomes part of the evidence.
6. You must not let any external factor influence your judgment. You must not speculate about what evidence there might have been. You must approach the evidence with detachment and objectivity and should not be guided by emotion. You should put aside all feelings of sympathy for or prejudice against, the accused or anyone else. Your emotions should not influence your decision.
7. You and you alone must decide what evidence you accept and what evidence you do not accept. You have seen the witnesses give evidence before this court, their behavior when they testified and how they responded during cross-examination. Applying your day to day life experience and your common sense as representatives of the society,

consider the evidence of each witness and decide how much of it you believe. You may believe all, a part or none of any witness' evidence.

8. When you assess the testimony of a witness, you should bear in mind that a witness may find this court environment stressful and distracting. Witnesses have the same weaknesses you and I may have with regard to remembering facts and also the difficulties in relating those facts they remember in this environment. Sometimes we honestly forget things or make mistakes regarding what we remember.
9. In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies in his evidence. That is, whether the witness has not maintained the same position and has given different versions with regard to the same issue. You may also find inconsistencies between the evidence given by different witnesses. This is how you should deal with inconsistencies. You should first decide whether that inconsistency is significant. That is, whether that inconsistency is fundamental to the issue you are considering. If it is, then you should consider whether there is any acceptable explanation for it. If there is an acceptable explanation for the inconsistency, you may conclude that the underlying reliability of the account is unaffected. You may perhaps think it obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you might not expect every detail to be the same from one account to the next.
10. However, if there is no acceptable explanation for the inconsistency which you consider significant, it may lead you to question of reliability of the evidence given by the witness in question. To what extent such inconsistencies in the evidence given by a witness influence your judgment on the reliability of the account given by the witness is a matter for you to decide.
11. Therefore, if there is an inconsistency that is significant, it might lead you to conclude that the witness is generally not to be relied upon; or, that only a part of the witness' evidence is inaccurate; or you may accept the reason the witness provided for the inconsistency and consider him/her to be reliable as a witness.
12. You may also consider the ability and the opportunity a witness had, to see, hear or perceive in any other way what the witness said in evidence. You may ask yourself whether the evidence of a witness seem reliable when compared with other evidence you accept. These are only guidelines. It is up to you, how you assess the evidence and what weight you give to a witness' testimony.
13. Based on the evidence you decide to accept, you may decide that certain facts are proved. You may also draw inferences based on those facts you consider as proved. You

should decide what happened in this case, taking into account those proved facts and reasonable inferences. However, when you draw an inference you should bear in mind that, that inference is the only reasonable inference to draw from the proved facts. If there is a reasonable inference to draw against the accused as well as one in his favour based on the same set of proved facts, then you should not draw the adverse inference.

14. As a matter of law you should remember that the burden of proof always lies on the prosecution. An accused is presumed to be innocent until proven guilty. This means that it is the prosecution who should prove that an accused is guilty and the accused is not required to prove that he is innocent. The prosecution should prove you the guilt of an accused beyond reasonable doubt in order to find him guilty. You must be sure of the accused person's guilt.
15. In order to prove that an accused is guilty, the prosecution should prove all the elements of the offence against the accused beyond reasonable doubt. Having carefully considered the evidence if you have a reasonable doubt on whether the prosecution has proved a particular element of the offence against the accused, then you must find the accused not guilty. A reasonable doubt is not a mere imaginary doubt but a doubt based on reason. I will explain you the elements of the offence in a short while.
16. You are not required to decide every point the parties in this case have raised. You should only deal with the offence the accused is charged with and matters that will enable you to decide whether or not the charge is proved against the accused.
17. You will not be asked to give reasons for your opinion. In forming your opinion, it is always desirable that you reach a unanimous opinion. But it is not mandatory.
18. Let us now look at the Information. The Director of Public Prosecutions has charged the accused for the following offence;

Statement of Offence

ROBBERY: contrary to section 310(1) (a) (i) of the Crimes Act 2009.

Particulars of Offence

Sakeasi Radravu on the 18th day of August 2018 at Nasinu in the Central Division, robbed James Mani of \$56.00 cash, the property of the said James Mani.

19. You heard me reading the said charge to the accused, to which the accused pleaded not guilty. Since the said charge is of an indictable, triable summarily offence, the accused has a right of election as to the court he should be tried at. The accused exercising his right has elected the High Court to try his case.

20. To prove the offence of robbery the prosecution must prove the following elements beyond reasonable doubt.
 - a) The accused;
 - b) Committed theft, and;
 - c) Immediately before; at the time; or immediately after, used force or threatened to use force on another with intent to commit theft or to escape from the scene.
21. The first element involves the identity of the offender. The prosecution should prove beyond any reasonable doubt that the accused, committed the offence and no one else.
22. A person commits theft if that person;
Dishonestly;
Appropriates the property belonging to another;
With the intention of permanently depriving the other, of that property.
23. The element 'dishonestly' is about the state of mind of the accused. So is the element, 'intention to permanently deprive'. Inferences may be drawn from the conduct of the accused, with regard to an accused's state of mind.
24. 'Appropriation of property' means taking possession or control of the property without the consent of the person to whom it belongs. In law, property belongs to a person if that person has possession or control of the property.
25. Theft becomes robbery, if the accused has used force or has threatened to use force on the victim at that time or immediately before/after the theft or to escape from the scene.
26. In this case it is an admitted fact that the complainant, Mr. James Mani was robbed of \$56.00 on 18th of August 2018. The all important question would be whether that was done by the accused or not. If there happened to be any reasonable doubt as to the identity of the person who committed the robbery, the accused should be entitled to the benefit of such doubt.
27. The following were agreed by the parties as admitted facts:
 - i) Based on Police investigations and the filed disclosures it is not disputed that James Mani was a taxi driver who was driving a taxi registration LT 4252 on 18 August 2018.

- ii) Based on police investigations, the filed information and disclosures, it is not disputed that James Mani was robbed of cash of FJ\$56.00 by one of his taxi passengers in the evening of 18 August 2018.
- iii) Based on police investigations and the filed disclosures, it is not disputed that James Mani was medically examined on 18 August 2018 at about 8.00pm at Valelevu Health Centre by Dr. Jolyn Buadromo.
- iv) Based on police investigations and the filed disclosures, it is not disputed that James Mani took part in a photographic Identification at Valelevu Police Station on 22 September 2018 regarding the person who allegedly robbed him in the evening of 18 August 2018.
- v) It is not disputed that Sakeasi Radravu is accused or only alleged to have been the person to have robbed James Mani in the evening of 18 August 2018.
- vi) It is not disputed that Sakeasi Radravu was interviewed under caution on 21 September 2018 at Valelevu Police Station by DC 4647 Pita Gaunatalei.
- vii) There is no dispute as regards the authenticity, contents and admissibility of the following said documentary exhibits which can be tendered into evidence by consent as Prosecution Exhibits 1 and 2 respectively.
 - a) Medical report of James Mani, dated 18 August 2018 by Dr. Jolyn Buadromo of Valelevu Health Centre; and
 - b) Record of interview of Sakeasi Radravu dated 21 September 2018, conducted at Valelevu Police Station by DC 4647 Pita Gaunatalei.

Summary of the evidence

28. The first witness called on behalf of the prosecution was Mr. James Mani. His evidence was that;
- (a) He is the owner and the driver of taxi No. LT4252.
 - (b) On the 18th of August 2018 at about 5.30pm he was robbed of \$56.00 by a passenger.
 - (c) On that day he was driving his taxi from Lami. A boy and a girl has got into it from Lami and wanted to go to Kinoya.
 - (d) As he reached the AOG School in Kinoya, they told him to stop for the female passenger to get down. Once the female passenger got down he was asked by

the male passenger to take him to Vesivesi Road as he lives there. When at Vesivesi Road he was asked to turn to the right and later to the left to Kokila Drive. At the roundabout, he was asked to stop the car and the said passenger has got down and come around and asked of the fare. When informed that it was \$12.60, the witness was punched on the side of the face and opening his door, was dragged out on to the tar sealed road. The person, who punched, has got into the car and it was moving slowly as it was in a running gear. The witness has got up, gone behind and hanged on to the T-Shirt of the assaulter and pulled him out. Then both of them have fallen down on to the road and assaulter has got on top of the witness and while pressing him down has taken his money from the shirt pocket. They have fought thereafter for a while and the assaulter has tried to run away. The witness has held on to the assaulter's T-Shirt and it has torn. Then two persons have come and the assaulter has run away. Those persons have called the police and the police came and assisted him.

- (e) The witness affirms that he has been fighting with the assaulter for about 5-6 minutes, face to face, and the at a very close proximity under day light, around 5.30 pm. The witness further states that while he was fighting with the assaulter, his car went into the drain and got damaged.
- (f) The witness states that while driving them from Lami, which was about a 45 minute drive, he has looked at them for about 6-7 times. Further the witness states that it was the day of the Hibiscus Festival, it was a bright day, and it had sufficient day light at the time of the incidence.
- (g) Further, having dropped the female passenger while driving with the male passenger for about 10 minutes, he has been talking to him and looked at him 2-3 times in the rear view mirror.
- (h) When the assaulter pulled him out and he fell on to the road, he fell sideways and saw his vehicle moving. At that time the assaulter kicked him and he tried to block the kicks.
- (i) Describing the assaulter the witness states that it was an I-Taukei man of about 6 feet tall, and of medium complexion. He further states that the assaulter was wearing a black round neck T-Shirt and $\frac{3}{4}$ pants, in addition to a pom-pom, while he was in the taxi and when he got down at the place of the incident, he has put his pom-pom in his pocket.
- (j) The witness has reported the matter to the police on the same day at the Valelevu Police Station. Thereafter as informed he has gone to the Valelevu

Police Station on 22nd of September 2018 and was shown 8-9 photographs. The witness has identified the person who robbed him from those photographs. The shown 9 photographs at the police station were marked and produced as PE3(a-i).

- (k) The witness identifies PE3 (b) as the photo from which he identified the accused at the Valelevu Police Station. The witness states he identified the accused from his tattoos visible there in the photo, in addition to having had a face to face fight with him and travelling together with him for more than 45 minutes. The witness identifies the accused as the person who robbed him.

29. In answering the cross-examination, the witness states;

- (a) The witness admits making a statement to the police while the incident was fresh in his mind.
- (b) When asked whether he told police of the female passenger getting down near the AOG School, the witness answers that it was the accused who told him that she is going to her in-law's place. In answering to the question whether he informed of his taxi fare in the statement, the witness states that though he informed of it, the police have not taken it down.
- (c) In a similar manner the defense highlights few omissions' in his statement to the police which the witness admits. However defense fails to elicit a single contradiction in the said statement with his evidence.
- (d) The witness has seen the tattoos on the accused at the time his t-shirt was torn. The witness admits that out of the 9 photos shown to him at Valelevu Police Station, only photo with visible tattoos is of the accused's'.
- (e) The witness states that he was shown a photo of the accused in a mobile phone of a police officer on 18th of August 2018, from which he identified the accused initially.
- (f) When examined whether he managed to identify the accused through photo PE3 (b) since he was shown a photo of the accused previously, the witness states that he saw the accused with his own eyes at the incident.
- (g) When queried of what he has informed to the doctor at the medical examination, and suggested that he informed that 3 persons have assaulted him, as for D(10) of the PE1, the witness denies it and states that he told the doctor that only one person robbed him.

- (h) The witness affirms that the accused was the one who assaulted him and robbed him of the money on the 18th of August 2018.
30. The next witness called by the prosecution is Inspector Isireli Ravulolo. His evidence is that;
- (a) He is an Inspector of Police attached to the Fiji Police Force, and was on duty at the Valelevu Police Station on 22 September 2018.
- (b) He has held a photo identification on 22 September 2018 at the Valelevu Police Station. He has conducted it and the complainant, Mr. James Mani has participated for the identification.
- (c) In cross examination the witness states that he and the complainant only were there and no one else.
- (d) Showing 5 photos with imprinted 2017 dates on them, the defense suggests since the incident happened in 2018, including them would assist the complainant to isolate the accused. The witness denies such.
- (e) In answering a question by the Court, the witness states the criteria used in selection of the photos was the description by the complainant and accordingly, ethnicity, hair and beard was used in selecting the photos.
- (f) The witness concedes that only photo with the visible tattoos is of the accused's. The witness denies of any knowledge of the presence of accused at Valelevu Police Station on the 22 September 2018.
- (g) The defense suggests that due to the presence of the accused at Valelevu police station on 22 September 2018, he was falsely implicated and the witness denies.
31. With leading of the above witnesses and marking and producing the exhibits PE1 to PE3 (a-i), the prosecution has closed their case. The Court being satisfied that the prosecution has apparently (*prima-facie*) adduced sufficient evidence covering the elements of the offence, acting under the virtue of Section 231 (2) of the Criminal Procedure Act, has called for the defense.
32. At the end of the prosecution case you heard me explain his rights and giving several options to the accused. He had those options because he does not have to prove anything. The burden of proving his guilt beyond reasonable doubt remains on the prosecution at all times.

33. The accused elected to give evidence. His evidence is that;
- (a) He has been living in Chadwick Road, Nakasi. Since two months prior to the alleged incidence.
 - (b) Prior to that he was living at Kaloa Street, Kinoya at his mother's house.
 - (c) The accused states what the PW1 stated is incorrect and on the said particular date he was at home in Chadwick Road.
 - (d) The witness further states that he has never had a fight with a taxi driver and he has been falsely framed.
 - (e) In cross examination, the Accused concedes that his consent was sought by the police for an identification parade and he refused to consent to such, and he was not forced to take part in an identification parade.
 - (f) The explanation offered by the accused for his refusal is that it was not properly done. Yet he refrains from explaining improperness of the said identification. The accused further admits that officers at the Valelevu Police Station have treated him fairly.
 - (g) Answering a question by the Court, the witness admits having a relationship with a girl-friend named Tofua Fotofili. He further admits having a child born as a result of the said relationship in 2015.
 - (h) The witness denies any knowledge of Tofua having a relation who is living at close proximity to AOG School in Kinoya.
34. The final witness called or the DW2 was Mr. Ilaitia Radravu. He is the father of the accused. His evidence is that;
- (a) He lives in Chadwick road, Nakasi for about 5 years now.
 - (b) Sakeasi (the accused) has been living with him since two months prior to the alleged incident.
 - (c) The witness states that on the day of the alleged incident, Sakeasi was at home with him.
 - (d) Answering a question by the court the witness states that he is well aware of Sakeasi's girl-friend Tofua, having a relation living near AOG School in Kinoya.

35. That is a summary of the evidence given by the witnesses. Please remember that I have only referred to the evidence which I consider important to explain the case and the applicable legal principles to you. If I did not refer to certain evidence which you consider important, you should still consider that evidence and give it such weight you may think fit. As I have already explained, which evidence you would accept and do not accept is a matter for you to decide.
36. Remember that you should first decide on the credibility and reliability of the witnesses who gave evidence in this case and accordingly decide what facts are proven and what reasonable inferences you can draw from those proven facts. Then you should consider whether the elements of the offence have been proven beyond reasonable doubt. You should take into account my directions where relevant, in deciding whether the prosecution has proved all the elements.
37. The PW1 states that around 5.30 pm on 18.08.2018, the accused together with another went from Lami to Kinoya in his taxi. Then he saw his face several times in the rear view mirror. Thereafter he clearly saw the accused's face when he was asking of the fare and at the time of the fight with him. Therefore, at the time of the robbery, it was recognition of a known person. Recognition is somewhat stronger than identifying for the first time. Still, mistaken recognition can occur even of close relatives and friends. Therefore, you should closely examine the following circumstances among others when you evaluate the evidence given by the aforementioned witnesses on identification of the accused;
- (i) Duration of observation;
 - (ii) The distance within which the observation was made;
 - (iii) The lighting condition at the time the observation was made;
 - (iv) Whether there were any impediments to the observation or was something obstructing the view;
 - (v) Whether the witness knew the accused and for how long;
 - (vi) Whether the witness had seen the accused before, how often and special reason to remember; and
 - (vii) Duration between original observation and identification.
38. The defense points out that the accused's photo was shown to the PW1 on a mobile phone on the day of the incidence. You should take that into your consideration and

decide whether it would have an impact upon the identification of the accused by the PW1 and if so, the amount of weight you should be giving to the identification.


39. Another area which needs your attention is the dock identification, or the identification in Court. There are many authorities to direct that relying purely on dock identification would be dangerous. In this case, the PW1 has alleged to have identified the accused from the photographs in addition to the dock identification. Having evaluated the entire evidence you should consider the credibility and the reliability of the each witness, and decide whether the identification creates a reasonable doubt in your minds.
40. However, in case you decide to not to accept the version of the accused, you should also bear in mind that you should not assume that the accused is guilty of the offence merely because you decide not to accept his evidence. You should remember that sometimes an accused may come out with a lie just because it is easier to do so rather than telling the truth. The main question remains the same. That is, whether you are sure that it was the accused who committed the offence.
41. I must again remind you that even though an accused person gives evidence, he does not bear any burden of proving his case. The burden of proving the case beyond reasonable doubt remains on the prosecution throughout. An accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.
42. The defense of the accused is an *Ali-bi*. That is to say he was not there at the scene of the incident at the relevant time. His father, the DW2 testified on his behalf. When compared the evidence of the two, the father admits knowledge of whereabouts of the accused's partners relatives while the accused denies any knowledge of such. You should take this inconsistency into consideration and give it an appropriate weight.
43. The accused's explanation was that he was elsewhere. Generally, when an accused give an explanation, one of the three situations given below would then arise;
 - (i) You may believe his explanation and, if you believe him that means that prosecution has failed to convince you, and then your opinion must be that the accused is 'not guilty'.
 - (ii) Without necessarily believing him you may think, 'well what he says might be true'. If that is so, it means that there is reasonable doubt in your mind regarding the prosecution case, and therefore, again your opinion must be 'not guilty'.

(iii) The third possibility is that you reject his explanation. That is you disbelieve the accused, yet that itself does not make the accused guilty. The situation would then be the same as if he had not given any evidence at all. You should yet consider whether the prosecution has proved all the elements beyond reasonable doubt.

44. Any re-directions?

45. Madam and Gentlemen Assessors, that is my summing up. Now you may retire and deliberate together and may form your individual opinion on the charge against the accused.. When you have reached your separate opinion, you come back to court and you will be asked to state your opinion.

46. Your opinion should be whether the accused is guilty or not guilty.


Chamath S. Morais
JUDGE



Solicitors for the State : ***Office of the Director of Public Prosecutions, Suva.***
Solicitors for the Accused : ***Legal Aid Commission, Suva.***