

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 331 of 2018

STATE

vs.

- 1. ASESELA NAUREURE**
- 2. MAIKA TOVAGONE**

Counsel: Ms. U. Tamanikaiyaroi with Mr. U. Lal for the State
Ms. L. Ratidara for 1st Accused
Ms. S. Hazelman with Mr. K. Skiba for 2nd Accused.

Date of Hearing: 26th, 27th, 28th 29th, 30th October, 2020, 3rd and 4th November 2020

Date of Closing Submission: 05th November 2020

Date of Summing Up: 11th November 2020

SUMMING UP

1. The hearing of this case has now reached its conclusion. I have to sum up the case for you. As I explained to you before the commencement of the hearing, we have different functions. It is my task to ensure that the trial is conducted according to law. As part of that, I will direct you on the law that applies to this action. You must accept the law from me and apply all directions I give you on matters of law.

2. Your function is to determine the facts of the case based on the evidence that has been placed before you in this courtroom. That involves deciding what evidence you accept or refuse. You will then apply the law, as I explain it to you, to the facts as you find them to be, and in that way, arrive at your opinion.
3. I may comment on the facts if I think it will assist you when considering the facts. However, you are not obliged to accept any comment I make about the facts. Hence, it is entirely upon you to accept or disregard any comment I make about the facts unless it coincides with your own independent opinion.
4. You must reach your opinion on evidence and nothing but on the evidence itself. Evidence is what the witnesses said from the witness box and the exhibits tendered as evidence. This summing up, statements, arguments, questions, and comments made by the parties are not evidence. The purpose of the opening address by the learned counsel for the Prosecution is to outline the nature of evidence intended to be put before you. Therefore, the opening address of the Prosecution is not evidence. The closing addresses of the counsel of the Prosecution and the Defence are not evidence either. They are their arguments, which you may properly consider when you evaluate the evidence, but the extent to which you do so is entirely a matter for you.
5. If you heard, read, or otherwise learned anything about this case outside of this courtroom, you must exclude that information or opinions from your consideration. You must have regard only to the testimony put before you in this courtroom. Ensure that no external influence plays a part in your deliberation. You are allowed to talk, discuss, and deliberate facts of this case only among yourselves. However, each one of you must reach your own opinion. You are required to give merely your opinion but not the reasons for your opinion. Your opinion need not be unanimous. I must advise you that your opinion does not bind me, but I assure you that I will give your opinions the greatest possible weight when I make my judgment.

Burden and Standard of Proof

6. I now draw your attention to the issue of burden and standard of proof. The accused are presumed to be innocent until they are proven guilty. The presumption of innocence is in force until you form your own opinion that the accused guilty of the offence.
7. The burden of proof of the charge against the accused is on the Prosecution. It is because the accused are presumed to be innocent until they are proven guilty. In other words, there is no burden on the accused to prove their innocence, as their innocence are presumed by law.
8. The standard of proof in a criminal trial is "proof beyond a reasonable doubt." It means that you must be satisfied in your mind that you are sure of the accused's guilt. If there is a riddle in your mind about the accused's guilt, that means the Prosecution has failed to satisfy you the guilt of the accused beyond a reasonable doubt. If you find any reasonable doubt about the commission of the offence as charged or any other offence by the accused, such doubt should always favor the accused.

Information and elements of the offences

9. 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 in the information. Hence, I do not wish to reproduce them in the summing up.
10. The main elements of the offence of the Aggravated Robbery are that:
 - (i) The accused person,
 - (ii) In the company of each other and two other persons,
 - (iii) Committed the robbery on Roy Ferreles, stealing \$100 cash, one brown leather wallet and one "Oakley" bag.

11. The first element involves the identity of the offenders. The Prosecution has to prove beyond a reasonable doubt that the two accused with two others or one of the accused with three others, have committed this offence and no one else.
12. Then the Prosecution has to prove that the accused committed this offence in the company of each other's. Hence, the Prosecution's case is that the two accused committed this offence together with two others. Where two or more persons commit a criminal offence, each of them may play a different part, but if they are acting together as part of a joint plan or agreement to commit the offence, they are each guilty.
13. The word plan and agreement do not mean that there has to be any formality about it. An agreement to commit an offence may arise on the spur of the moment. Nothing needs to be said at all. It can be made with a nod and a wink or a knowing look, or it can be inferred from the parties' behaviour. The essence of joint responsibility for a criminal offence is that each accused shared a common intention to commit the offence and played his part in it, however, great or small, to achieve that aim.
14. Robbery is an aggravated form of theft. Theft becomes a robbery if the accused with two others, immediately before committing theft, or at the time of committing theft, or immediately after committing theft, use force or threaten to use force on another person with the intent to commit theft or to escape from the scene.
15. A person commits theft if that person:
 - (i) Dishonestly
 - (ii) Appropriates the property belonging to another,
 - (iii) With the intention of permanently depriving the other of that property.
16. The elements of 'dishonestly' and "the intention of permanently depriving the other of the property" is the state of mind of the accused at the time of committing the offence.

Inferences of the state of mind of the accused could be drawn from the conduct of the accused.

17. 'Appropriation of property' means taking possession or control of the property without the person's consent to whom it belongs. At law, the property belongs to a person if that person has possession or control of the property.
18. Accordingly, the Prosecution has to prove beyond a reasonable doubt that:
 - (i) The two accused,
 - (ii) In the company of each other's and two other persons,
 - (iii) Dishonestly appropriated \$100 cash, one brown leather wallet and one "Oakley" bag belong to Roy Ferreres,
 - (iv) With the intention of permanently deprive it,
 - (v) And used force on Roy Ferreres and Priya Kumar immediately before or after stealing the said items.
19. The prosecution case against the two accused are based on two different evidential grounds. The case against the first accused is based upon the circumstantial principle of the "recent possession of stolen items, where the case against the second accused is founded on the evidence of video footage and other circumstantial evidence. Hence, you have to consider these two approaches separately. If you find the prosecution has proven beyond a reasonable doubt that the first accused was found in possession of the stolen property a few minutes after the incident at a location closer to the place of the incident, you could find him guilty of this offence, but that does not automatically proves the guilt of the second accused. You have to satisfy separately beyond a reasonable doubt that the man dressed in the blue shirt in the video footage is the second accused. Likewise, if you find the prosecution failed to prove the case against the first accused, that does not automatically make the second accused not guilty.

Evidence of the Prosecution

20. Let me now remind you briefly of the summary of the Prosecution and Defence evidence presented during the hearing. This is a lengthy hearing where the Prosecution presented the evidence of thirteen witnesses, and the two accused gave evidence for the Defence. Therefore, I will take some time to summarize the evidence adduced during the hearing.

21. The first witness of the Prosecution is Ms. Rubina Akbar, who is the owner of the Rubina Medical Centre. Her husband and Doctor Roy are the doctors working at the Medical Centre. She lives upstairs while the Medical Centre and the Pharmacy at the downstairs of the compound. The entire compound is secured with CCTV cameras. It has nine cameras altogether. The main decoder of the CCTV system is at her house. Each camera has given a number. Camera number six is located at the Medical Centre's reception, focusing on the Clinic's reception area. Camera number seven focuses on the outside area of the Clinic. Camera number three, located at the upstairs' balcony, covers the front gate and surrounding area.

22. Ms. Rubina states that all these cameras were working on the 20th of August 2018. The CCTV system has already been installed by the previous owner when she purchased the Clinic. She has not made any changes to the settings of the CCTV system. The previous owner had set the time of the CCTV system one hour ahead of the actual time. The date of the CCTV system has been set correctly.

23. On the 20th of August 2018, at around 1.30 p.m., she was at home. She heard the Receptionist was shouting. Ms. Rubina came out and saw the thieves were going out of the compound and crossed the road. She had then seen a police vehicle was passing the area. She shouted at them, informing them about the robbery. The police vehicle then went after the thieves and caught them. The thieves had just run to the top of the hill, then the police vehicle followed them.

24. Camera 3, 6, and 7 have recorded everything that happened during the robbery. The Police retrieved these footage of cameras 3, 6, and 7. Ms. Rubina explained the locations and the people who were recorded in the three video footage. She further explained the time and the date of those footage.
25. The second witness of the Prosecution is James Lali. He is a police officer who is attached to the Crime Statistic Unit. He had retrieved the three video footage from cameras 3, 6, and 7 of the CCTV system of Rubina Medical Centre on the 21st of August 2018. He had first viewed the relevant video footage and then copied them to a USB stick, which he tendered in evidence as protection exhibit 5. The files' names of the copied video footage were generated by the system itself, denoting the recording's date and time. The three video footage were marked as Prosecution exhibits 1, 2, and 3.
26. During the cross-examination by the learned counsel for the second accused, Mr. Lali said that the investigating officers usually ask him to record his statement if only they need it. Sometimes they record it soon after he retrieved forensic evidence. After recovering the video footage, he had made a statement and saved it in his computer, which was later given to the Investigation Officer.
27. The third witness of the Prosecution is Dr. Roy Ferreles, who is practicing medicine as a General Medical Practitioner at the Rubina Medical Centre. He was on duty on the 20th of August 2018. He had gone to the reception area to inquire about the number of patients they had done in the morning. It was a brief conversation. He then went back to his consultation room. In his consultation room, he had his backpack. It was an "Oakley" branded bag. The bag was green in colour with orange colour stripes. You may recall Doctor Roy explained the items in the bag. Apart from the bag, he had his mobile phone and brown colour leather wallet, which he usually put in his trousers' back pocket.
28. Suddenly, two i-taukei men came into his consultation room; one of them was carrying a cane knife, asking for money. Doctor Roy had told them to wait and then took his wallet. He had given them \$100. The two men had seen more money in the wallet and asked them.

Doctor Roy had refused it and put his wallet back. Another i-taukei man came into the room, who was a bit taller than the first two. He had grabbed Doctor Roy's neck and pulled him down. Doctor Roy had to struggle for his life when they started to punch him on his face. One of the assailants had put his knees on Doctor's chest and the abdomen. Doctor Roy had managed to get himself free from the assailants. The assailants then went away, grabbing his "Oakley" bag. While they were punching him, they had taken his wallet as well.

29. Doctor Roy had followed them when they left and saw them crossing the road and went up to Church Street. The neighbours had called 911, and the Police had responded quickly. A police twin cab came, and they also went after the robbers. Doctor Roy had seen the robbers were entering a cassava patch along the road. On the same afternoon, he was medically examined by Doctor Ali. Doctor Ali had prepared a medical examination report. Doctor Roy had then gone to the Valelevu Police Station as the Police had already recovered his bag. At the Police Station, the Doctor had identified his "Oakley" backpack. Last year, he had visited the Valelevu Police Station to identify his brown colour leather wallet.
30. You have seen Doctor Roy explained the three video footage, pointing out the locations and the people in it. Doctor Roy identified his bag when the robbers were leaving the Clinic in the footage. According to the video footage of camera 7, the robbers left the Clinic at 1.21.52 p.m. During his evidence, Doctor Roy identified the green and orange colour "Oakley" backpack, which is later tendered as Prosecution Exhibit 11, and the brown colour leather wallet, which is later tendered as Prosecution Exhibit 12, as to the same bag and the wallet stolen by the robbers on the 20th of August 2018.
31. The fourth witness of the Prosecution is Ms. Priya Kumar. She was the Receptionist at the Rubina Medical Centre on the 20th of August 2018. According to her evidence, at around 1.00 p.m., she had tea with Doctor Roy. After that, he went to his consultation room, and she was on her mobile phone. Then a man dressed in a blue shirt and black shorts came in. He was wearing sunglasses and a hat. He was going to sit, but when he saw Priya, he came to her. The person asked her whether he can fix his gold tooth. When she replied that he

could get it fixed at another medical clinic, three more men walked into the Clinic. The man dressed in the blue shirt then came to her and pulled her down to the floor. Another man then came and pulled her chain. He then dragged her to the surgical room. While she was dragging to the surgical room, Priya held on to the man's pants and tried to get up. She saw the blue shirt man was wearing pants with blue stripes. Priya further saw other men were hitting Doctor Roy. The robbers then left the Clinic.

32. You may recall that Priya explained and identified the people and the incident at the Medical Centre by taking us through the video footage. She pointed out the man dressed in a blue shirt and black short pants with blue stripes. She identified the blue shirt that was later tendered as Prosecution Exhibit 15 and the black shorts with blue stripes that were tendered as Prosecution Exhibit 14 as the same blue shirt and the shorts that the man was wearing when he came to the Clinic.
33. Doing the cross-examination, Priya said that she did not describe the man in the blue shirt in her statement to the Police. It was because the Police never took her to the police station, and her statement was recorded at the Clinic. You may recall the Defence counsel asked Priya whether she saw any distinguishing mark on the man in the blue shirt, such as a tattoo for which Priya said the man has a gold tooth.
34. The next witness of the Prosecution was Doctor Ali. He had conducted the medical examination of Doctor Roy on the 20th of August 2018 at the Rubina Medical Centre.
35. The sixth witness of the Prosecution is Peceli Tuisese. He was residing at Sagali Place, Nadera, in August 2018. On the 20th of August 2018, at around 1 p.m., he was getting ready to go to town. He then heard yelling, which came from outside. It was about a robbery. He came out and saw some children, and also the people involved in the robbery were running. The children pointed him out a skinny and tall i-taukei man running towards the main road. That man was carrying a green coloured bag. The man was wearing the bag sideways as he put both the bag's stripes on his right side. Peceli ran after him and managed to get him held from his collar when he tried to run through a cross-cut through a plantation.

It was cassava, dalo, and banana plantation. Peceli then brought that man to the Sagali roundabout.

36. While Mr. Peceli was taking the man to Sagali roundabout, the bystanders shouted, saying that the man had dropped something. He found the man had dropped a brown leather wallet from his pocket. Peceli told the man to pick it up and put it back in his pocket, which he did as he was asked. Mr. Peceli explained the description of the bag and the wallet. He then identified the bag, which is Prosecution Exhibit 11, and the wallet, which is Prosecution Exhibit 12, as the same bag and the wallet he found in possession of the i-taukei man. When he brought the man to Sagali roundabout, a police vehicle came. There was only one police officer in the vehicle. Peceli had then handed over the man and the bag to the police officer. Then another police vehicle came.
37. Mr. Peceli had seen this man before as he lives in the village next to Peceli's village. He had seen him in the town as well. Mr. Peceli identified the first accused as the person he had caught at Sagali in the afternoon of 20th of August 2018, when he was running, carrying a bag. You have heard Mr. Peceli explained the area around the Sagali roundabout. It takes about 5 minutes to walk from Rubina Medical Centre to Sagali Roundabout, but it would take 2 minutes if you run.
38. During the cross-examination, Mr. Peceli said that he did not know about the facts of the robbery when he caught the first accused. He denies the Defence's suggestion that the first accused had no bag or wallet in his possession when Mr. Peceli saw him. The statement given to the Police by Mr. Peceli does not state that the accused was running with a bag. It does not state that the accused tried to drop the wallet as well. However, Mr. Peceli said, during the re-examination, that he told the police officer everything, including the colour of the bag and the incident about the wallet. Still, he has not correctly recorded it in the statement.
39. The seventh witness of the Prosecution is DC Nitesh Kumar. He was driving a police vehicle near the LTA office at Valelevu, at around 1.30 p.m. on the 20th of August 2018.

Two other police officers were in his vehicle; they were DC Inoke and DC Willy. While they were doing the mobile patrol, they received a message over the Radio Transmission about this alleged robbery at the Rubina Medical Centre. The suspects were running towards the Nasole area. They had then gone to Nasole. The two officers got off the vehicle near the short cut coming from the side of Nawanawa, Sagali Road. DC Kumar then drove his vehicle up to the Sagali roundabout. As he reaches the Sagali roundabout, he saw some people were shouting at him to inform him that the thieves were at the back of the building. DC Kumar had stopped the vehicle. As he got down from the vehicle, Mr. Peceli came to him with male i-taukei youth. Peceli told him this person was involved in the robbery. He then handed the i-taukei youth to DC Kumar.

40. DC Kumar then re-arrested the i-taukei youth and put him in the back seat of the vehicle. Mr. Peceli handed him over one green colour bag with orange colour stripes. You have seen DC Kumar identified the green colour "Oakley" bag with orange stripes; Prosecution exhibits 11 as the same bag he received from Peceli at the Sagali roundabout on the 20th of August 2018. At the same time, another police vehicle came with three police officers. They were Sgt. Tabalailai, DC Apolosi, and SC Paula. DC Kumar handed over the suspect to them as he was the only officer in his vehicle.
41. Moreover, he handed over the bag to SC Paula. DC Kumar said that he could not recall the clothing of the suspect. Sgt Tabalailai and the team then took the suspect to Valelevu Police Station in their vehicle. DC Kumar then went back to Nasole to pick DC Inoke and DC Willy. DC Kumar identified the first accused as the suspect handed over to him by Mr. Peceli.
42. During the cross-examination, DC Kumar explained the distance between Rubina Medical Centre and Sagali place. It takes nearly 10 minutes to walk to Sagali from Rubina Medical Centre if one takes the normal road. However, it would take less than five minutes to reach Sagali from Rubina Medical Centre if one takes the shortcut. He denies the Defence's suggestion that the bag was brought to him by DC Inoke and DC Willy as they found it during their foot patrol.

43. The eighth witness of the Prosecution is SC Paula Leweniwaqa. He was attached to Southern Division Task Force and doing a mobile patrol with Sgt Tabalailai and PC Apolosi in a police vehicle around Nasinu area on the 20th of August 2018. At about 1.20 p.m., they received a radio transmission message informing about a robbery at Rubina Medical Centre, and the robbers were running up to Nawanawa Road. They draw the vehicle to Sagali roundabout, which is a short cut from Nawanawa to Nasole. When they arrived at Sagali roundabout, SC Paula saw Cpl. Nitesh and his police vehicle was parked there. Cpl. Nitesh told him to take the suspect to his vehicle from Nitesh's vehicle. It was the first accused. Cpl. Paula then took the first accused to his car and made him sit in the back seat. He, too, got into the driver's seat. Cpl. Nitesh then gave him a backpack bag. It was a green coloured 'Oakley' bag with orange coloured stripes. He kept the back on the passenger seat.
44. SC Paula then asked the suspects if he has any other things in his possession. The suspect then took a brown coloured leather wallet from his pocket and handed it over to SC Paula. The suspect was dressed in a round collar t-shirt and black 3/4 shorts. SC Paula then waited for Sgt. Tabalailai and PC Apolosi for ten minutes. They came back with another suspect. Both suspects were then escorted to Valelevu Police Station in the police vehicle.
45. At the Valelevu Police Station, SC Paula got the Crime Sergeant Ofati to make a search list for the items seized from the suspect. Once Sergeant Ofati made the search list, SC Paula and the suspect signed in it. He then handed the suspect, the bag, the wallet, and the search list to Sgt. Ofati. You have seen SC Paula identified the bag, the Prosecution Exhibit 11, as the same bag Cpl. Nileshe gave him and the wallet, the Prosecution Exhibit 12, as the same wallet that the suspect gave him. He further identified the first accused as the suspect handed over to him by Cpl. Nileshe at Sagali roundabout.
46. During the cross-examination, SC Paula said the search list prepared by Sgt. Ofati does not have the station's name, the full name, the rank, and the batch number of SC Paula. He had not seen the first accused was carrying the bag. It was only DC Nitesh who gave him the bag. When he seized the wallet, he did not open it but did it when they made the search

list. SC Paula said that he did not make a statement as Cpl. Nitesh was going to make a statement. But later, he was asked to make a statement. It was recorded in his statement that he searched the suspect and found a brown colour wallet in his pocket. Moreover, the statement states that SC Paula had seized the bag from the suspect. However, SC Paula said that what he said in evidence is the actual events that happened on the 20th of August 2018.

47. Cpl. Salacieli Tabalailai is the ninth witness of the Prosecution. He was doing mobile patrol around the Nasinu area with SC Paula and PC Apolosi at around 1.20 p.m, on the 20th of August 2018. They received a Radio Transmission message regarding this alleged robbery, and the robbers were running towards Sagali Road. Upon receiving the said message, they headed to the Sagali roundabout. As they reached Sagali roundabout, Cpl. Tabalailai had seen a Fijian boy was running. He got down from the vehicle and ran after the boy. Cpl Apolosi and members of the community also followed the said Fijian boy. Having followed the boy, he managed to get hold of the boy. Cpl. Tabalailai then arrested the boy. He knew the boy as Maika Tovagone.
48. In his evidence, Cpl. Tabalailai explained the description of the clothing that Maika was wearing at the time he was arrested. He was dressed in a yellow coloured vest of Suva Grammar School and black coloured surf short with blue stripes. Moreover, Maika was wearing a pair of black coloured "puma" shoes with white stripes. Apart from that, Maika was holding a blue coloured shirt with black stripes in his hand.
49. PC Apolosi was also present when he arrested Maika. Maika was then escorted to the vehicle and then to the Valelevu Police Station. Later, Cpl. Tabalailai was informed that the police station's cell was fully occupied; hence, they had to escort Maika to Nabua Police Station. Cpl. Tabalalal, SC Paula, and PC Apolosi then escorted Maika to Nabua Police Station. Maika was still wearing the same clothes and holding the blue shirt in his hand.
50. At the Nabua Police Station, Maika was searched, and his pair of shoes were removed. He was then escorted and locked in the cell. He was still wearing the same black surf shorts

and the yellow vest and holding the blue shirt onto his hand when locked in the cell. You had seen Cpl. Tabalailai identified the black shoes with white stripes, the Prosecution Exhibit 13, as the same shoes Maika was wearing when he was arrested. He further identified the black shorts with blue stripes, the Prosecution Exhibit 14, as the same shorts Maika was wearing when he was arrested. Cpl. Tabalailai then identified the second accused as Maika.

51. Cpl. Tabalailai had seen the video footage of the incident before he made his statement to the Police. He was aware of the suspects' clothing and knew Maika's dress's descriptions was an essential factor in this matter. In his statement, there is no mention that Maika was wrapping a blue shirt around his arm. Moreover, there is no mention that Maika was wearing a pair of canvas in the statement. The statement states that Maika was wearing a blue running shorts. Cpl. Tabalailai had made another statement on the 1st of October 2020. Again, there is no mention of Maika wearing a pair of canvas in the second statement. However, the second statement states that Maika was wrapping a blue shirt around his hand.
52. Cpl. Tabalailai denied that Maika was wearing only a vest, black shorts, and flip flops. He was not wearing any sunglasses or a hat when he was arrested. Maika was not arrested when he was standing at the steps of the Sagali Housing.
53. Cpl. Tabalailai said the omission in his statement regarding the blue shirts, the surf shorts, and the black shoes with white stripes was because he overlooked it in his statement.
54. The tenth witness of the Prosecution is PC Apolosi. He was part of the team that was in the police vehicle driven by SC Paula. When they reached Sagali roundabout, he got down from the vehicle and ran towards the Sagali housing with Cpl. Tabalailai, where they found Maika. He was dressed in a yellow colour Suva Grammar School vest, black shorts, and black and white stripes "puma" shoes. A shirt was wrapped around his left hand. Cpl. Tabalailai arrested Maika. They escorted him to the vehicle, then to the Valelevu Police Station. Later, they escorted Maika to Nabua Police Station. Cpl. Tabalailai took him to

the Police Station, while PC Apolosi and SC Paula were in the vehicle. Maika was still dressed in the same clothing while the blue shirt was still wrapped around his left hand.

55. PC Apolosi identified the black shoes, which is the Prosecution Exhibit 13, as the same shoes that Maika was wearing when he was arrested. He further identified the black surf shorts with blue stripes, which is Prosecution Exhibit 14, as the same shorts that Maika was wearing at his arrest.
56. PC Apolosi made his statement to the Police on the 1st of October 2020. There is no mention in the statement about the blue and black puma canvas. It only states he was wearing shoes. Moreover, there is no mention of surf shorts, but it says that he was dressed in black shorts.
57. DC Inoke Tuiloaloa is the eleventh witness of the Prosecution. He was instructed to escort Maika Tovagone from Nabua Police Station to Valelevu Police Station on the 21st of August 2018. At the Nabua Police Station, he saw DC Jitasa was releasing Maika from the cell. Maika was wearing a blue coloured short-sleeve shirt with black stripes, black coloured surf shorts with navy blue coloured stripes, and black colour canvas with white stripes. Upon escorting Maika to Valelevu Police Station, DC Inoke had entered it in the Station Diary of the Police Station.
58. At around noon, he was further instructed to seize the clothing of Maika. He went to Crime Operation Room with changing clothes. Maika's shoes were kept at the Police Station as prisoners are not allowed to have their shoes on while they were in police custody. DC Inoke then instructed Maika to hand over his blue colour shirt with black stripes and black colour surf shorts. DC Willy was present during that time. DC Maika then prepared a search list for those seized items. Maika then signed the search list and put the date below to his signature. DC Inoke then signed the search list. Having done it, he handed over the items and the search list to DC Willy, who was the interviewing officer. You could recall that DC Inoke identified the blue colour shirt with black stripes, which is Prosecution Exhibit 15, as the same shirt he seized from the second accused. The search list was tendered in

evidence as Prosecution Exhibit No 8. DC Inoke further identified the second accused as Maika Tovagone.

59. During the cross-examination, DC Inoke said that he searched the first accused on the 20th of August 2018 at the Valelevu Police Station. Upon searching him, the first accused was locked in the cell. Afterward, he had made an entry in the cell book. According to the said cell book entry, DC Inoke found a red and black bag containing clothes in the first accused. DC Inoke had done foot patrol with DC Willy in the afternoon of the 20th of August 2018 but did not find any items during the said foot patrol.
60. DC Inoke had made a statement regarding his involvement in this investigation on the 28th of August 2018. The statement states the first accused had signed the search list. However, in his evidence, DC Inoke said that it was Maika who signed the search list.
61. The next witness of the Prosecution is DC Willy Naqura. He had instructed to conduct the caution interview of Maika Tovagone on the 21st of August 2018. He had brought Maika to the charge room. He was dressed in a blue shirt, black colour surf shorts, and black puma shoes. At around noon, the interview was suspended, and Maika was taken back to the cell. After that, Maika was taken to the Crime Operation Room to seize his clothing. DC Inoke did it in the presence of DC Willy. DC Inoke then made a search list, and DC Willy's name was entered in the search list as he was present during the seizing.
62. During the cross-examination, DC Willy said that he did not find anything during the foot patrol on the afternoon of the 20th of August 2018.
63. The last witness of the Prosecution is Inspector Edward Ofati. He was the Station Sergeant of the Valelevu Police Station in August 2018. A team of officers were deployed to arrest the suspects of the robbery at Rubina Medical Centre. They brought the first and second accused. Sgt. Ofati had assisted in preparing the search list for the items seized from the first accused. The first accused had signed the list but refused to put the date. The search

list was tendered in evidence as Prosecution Exhibit 10. On the same day, Doctor Roy came and identified his wallet and the "Oakley" bag.

64. On the 21st of August 2018, Sgt. Ofati received a cane knife, a vest, shorts, and a shirt. He cannot recall who gave him those items. He received the clothing of the first accused as well. Sgt. Ofati cannot recall the colour of the shorts and the shirt. Moreover, Sgt. Ofati said that he couldn't remember what Maika was wearing when he was brought in to the station. He can't recall who interviewed the second accused.
65. You could recall that Sgt Ofati then explained the description of the shorts, saying it was made of lee material. The shirt was a blue checked shirt with long sleeves. On the 22nd of August 2018, he had exhibited those items and entered the details in the station diary. Sgt. Ofati has not mentioned the station's name, the rank, and batch number of SC Paula in the search list. He had waited until all the documents were compiled to fill that information in the search list.
66. During the cross-examination, Sgt. Ofati said the first accused was dressed in blue coloured denim shorts and a blue coloured t-shirt with a Fiji Bitter Logo on the back. He recognized those clothes in his evidence. Moreover, Sgt. Ofati said that the officers who conducted the foot patrol found a cane knife.
67. You have seen DC Inoke Tuiloaloa was recalled to give evidence on certain issues. He tendered the black coloured shoes with white stripe as Prosecution Exhibit 13, black coloured surf shorts with blue stripes as Prosecution Exhibit 14, and the blue coloured shirt with black stripes as Prosecution Exhibit 15.

Evidence of the Defence

68. After the Prosecution's case, the two accused were explained about Defence's rights. The accused opted to give evidence. I will now proceed to summarize the evidence presented by the Defence briefly.

69. In his evidence, the first accused denied this allegation, saying that he was on his way to buy tobacco from one Kevox when this incident took place. He was living in Nausori at that time. On the 20th of August 2018, he had come to Laqere by bus to meet a friend. He then came to Nawanawa road with the said friend in a taxi. They went to the Barrack at Reba to collect some stuff. He had seen a police vehicle was coming when he was on his way to Kevox's place; he had thought that the Police were following him as he was on a bench warrant. He had then run and hid in a banana plantation. While hiding in the banana plantation, a man in civilian clothes came and arrested him. The first accused said that he was not carrying the green colour bag. Moreover, the first accused said that he did not have the brown leather wallet. He said those items were introduced to him after he was interviewed and charged.
70. The first accused further said that he was dressed in a blue coloured t-shirt with the Fiji Bitter logo on the back and black coloured denim shorts. You may recall that the accused said that there was no police officer of Indian origin, but all of them were i-taukei officers. He further said that he knew all of them. But then the first accused said that he doesn't know SC Paula as he was not there. The first accused testified that the Police took him to a place at Valelevu, where the Police Officers assaulted him. However, during the cross-examination, the accused said after he was put into the police vehicle, he was taken to the Valelevu Police Station.
71. The second accused, in his evidence, denied this allegation. He said that he was at home looking after his sickly sister as his parent were at work at around 1 p.m. on the 20th of August 2018. He then left home around 1.20 p.m. to meet a friend at Sagali Housing. He took a taxi from Tacirua to come to Sagali Housing. However, he did not meet his friend, as the friend had gone somewhere. When he was coming down on the steps, Sgt Tabalailai approached him and told him to go with him to the Police Station. He escorted him to the police vehicle; then, another police officer came to him. They then took him to the Valelevu Police Station.

72. According to the second accused's evidence, he was dressed in a yellow Suva Grammar School vest, black running shorts, and flip-flops. He said that he never signed the search list. The search list was given to him after he was caution interviewed, and charged.
73. During the cross-examination, the second accused admitted that he informed his alibi defence nine months after he was charged. He further admitted that his alibi defence was essential information. Moreover, the second accused said he has a gold tooth and also a missing tooth.
74. I have summarized the evidence presented during this hearing. However, I might have missed some. It is not because they are not important. You have heard every item of evidence. I only wanted to draw your attention to the main items of evidence and help you recall yourselves of the evidence.

Analysis and Directions

75. According to the evidence presented during the hearing, the Defence did not dispute the occurrence of the robbery at the Rubina Medical Centre. Moreover, they did not dispute that the first accused was arrested by a civilian man when he was hiding behind a banana plantation. The first accused said that he had to run and hid behind a banana plantation when he saw the police vehicle. The second accused did not dispute that the police arrested him near the Sagali housing. However, the first and second accused claim that they were not involved in this alleged robbery.
76. In his evidence, the first accused claims that he was on his way to buy tobacco from one Kevox when this alleged robbery took place. Though he is not disputing that a civilian arrested him, the first accused denies that he had the stolen "Oakley" bag and the brown leather wallet in his possession.
77. The second accused claims that he was at home looking after his sickly sister and then went to Sagali Housing to meet a friend. The second accused further said that he was not dressed

in black coloured surf shorts with blue stripes and black coloured "puma" shoes with white stripes at the time of his arrest. He claimed that he was not holding a blue coloured shirt with black stripes in his hand. According to his evidence, the second accused was dressed in a yellow vest, black running shorts, and flip-flops.

78. Accordingly, the main dispute in this matter is to determine whether both accused or one of them were involved in this alleged robbery, or they were elsewhere at the time of this incident. To do that, you have to determine the reliability and credibility of the Prosecution and the Defence's evidence.

Evaluation of the Evidence

79. I now take your attention to the direction of the evaluation of the evidence. The evolution of evidence consists of two main steps, the determination of the reliability and the credibility of the evidence.

Reliability of Evidence

80. It would be best if you were satisfied that you could rely on the evidence as reliable evidence. To do that, you have to be satisfied that evidence is free from mistakes, errors, and inaccuracies. If you find the evidence is free from such mistakes, errors, and inaccuracies, you can consider the evidence as reliable evidence.

Credibility of Evidence

81. The assessment of the credibility of evidence does not concern the unintended inaccuracy, mistakes, or errors. It focuses on the lies or inaccurate facts that are intentional and motivated attempts to deceive. The credibility depends on the individual who gives evidence, their motivations, their relationship to, and the reaction to a particular situation.

82. Evaluation of the reliability and credibility of evidence will help you determine what evidence you may accept and what part of the evidence you may refuse. In doing that, you may accept or reject such parts of the evidence as you think fit. It is for you to decide whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified.
83. In assessing the witnesses' evidence, you must consider whether the witness had the opportunity to see, hear, and or feel what the witness is talking about in the evidence. It would be best if you then considered whether the witness's evidence is probable or improbable, considering the circumstances of the case. Apart from that, you are required to consider the witness's consistency not only with his or her evidence but also with other evidence presented in the case.
84. You have to consider the witnesses' demeanour, how they react to being cross-examined, and re-examined and were evasive to decide the witness's credibility.
85. Moreover, you must bear in mind that a witness may tell the truth about one matter and lie about another; he or she may be accurate in saying one thing and not accurate in another thing.

Defence of Alibi

86. Let me now, take your attention to the accused's Defence, where both the accused claim that they were not present at the crime scene. Accordingly, both accused have raised the Defence of alibi. The first and second accused presented two different versions of the alibi. Hence, you have to consider them separately. If you find the first accused's alibi defence is true or may be true, that does not automatically make the second accused's alibi true or may be true. Likewise, if you find the first accused's alibi defence is false, that does not automatically make the second accused's alibi false.

87. The accused are not obliged to prove their innocence and are also not required to give evidence. However, in this hearing, both the accused elected to give evidence. Therefore, you have to consider the evidence adduced by the Defence when you determine the issues of this case.
88. Even though the accused has put forward the Defence of alibi, the burden of proving the case against the accused remains on the Prosecution. The Prosecution must prove so that you are sure that the accused were present and allegedly committed this crime as charged. In doing that, the Prosecution has to disprove the alibi defence put forward by the Defence. That does not mean the Prosecution is required to provide specific evidence to disprove that the first accused was not with a friend and was not going to buy tobacco, or the second accused was at home and then went to see a friend at Sagali Housing. If you believe and accept the Prosecution witnesses' evidence as credible, reliable, and truthful beyond a reasonable doubt, then the Prosecution has discharged its duty of disproving the accused's alibi defence.
89. If you conclude that the accused's alibi is true or may be true, then the accused cannot participate in this alleged crime, and you must find the accused not guilty. If, on the other hand, you are sure, having considered the evidence carefully, that the accused's alibi is false, that is a finding of fact that you are entitled to consider when determining whether he is guilty. But do not jump to the conclusion that because the alibi put forward is false, the accused must be guilty. You should bear in mind that sometimes an alibi is invented because the accused thinks it is easier than telling the truth. The main question for you to answer is: are we sure that this alleged incident involving the accused took place as claimed by the Prosecution.
90. Regarding alibi defence, the accused is not required to prove beyond a reasonable doubt his alibi defence. The burden of the accused to prove his alibi is an evidential burden. It means that the accused has to adduce or point to evidence that suggests a reasonable possibility that he was elsewhere when this alleged offence took place. If you believe or maybe believe that there is evidence that suggests a reasonable possibility that the accused

was not present at the scene of the crime and he was elsewhere, you can find the accused not guilty.

91. You have to consider the accused's evidence when you proceed to determine whether the Defence of the alibi of the accused is true or may be true or false. Both accused claims that they were present at the same location, closer to the alleged crime scene during and after this alleged incident. According to the Prosecution evidence, one can run to Sagali from Rubina Medical Centre through a short cut in a few minutes. The first accused said that he ran and hid behind a banana plantation when he saw the police vehicle. He had thought the police were following him as he was on a bench warrant. The first accused said that he was going to buy tobacco from one Kevox. However, he had got down from the taxi at Nawanawa because he had to pick some stuff. You may recall that he said that he didn't know about the Sagali roundabout during the cross-examination. He further said that he was taken to a place at Valelevu and assaulted by the police officers after he was arrested. However, during the cross-examination, the first accused said that he was directly taken to the Valelevu Police Station from his arrest.
92. The second accused said he had to look after his sickly sister as his parents had gone to work. Therefore he was at home at around 1 p.m. on the 20th of August 2019. Nonetheless, he left home at about 1.20 p.m. Did he not explain whether he had left his sickly sister alone at home or his parents came back? When you determine the credibility and reliability of the Defence of the second accused's alibi, you could consider the delay in raising his alibi defence.

Evidence of the Prosecution.

93. As we discussed above, the prosecution case against the first accused is founded on the contention that he was found in possession of the two stolen items, namely the bag and the wallet, a few minutes after this incident, at a location closer to the scene of the crime. Therefore, the Prosecution invites you to conclude that the first accused was one of the four robbers who robbed the Rubina Medical Centre. Accordingly, the prosecution case against

the first accused is founded on the principle of "recent possession," which is circumstantial evidence. The principle of "recent possession" means that if someone is found in possession of stolen property soon after it has been stolen, and he fails to give a credible or reasonable explanation of how he came by it, it is justified in inferring that he was either the thief or else a guilty receiver of that stolen property.

94. In view of the principle of recent possession, as I explained above, it is the onus of the Prosecution to prove beyond a reasonable doubt that:
- (i) The first accused was found in possession of green colour "Oakley" branded bag with orange colour stripes and a brown leather wallet,
 - (ii) The items were recently stolen from Doctor Roy,
 - (iii) The accused was found in possession of these stolen items a few minutes after the alleged incident,
 - (iv) He was found in possession of these stolen items at a location closer to the place of the incident,
 - (v) There are no reasonable explanations by the accused regarding his possession of the said items.
95. The first accused claims that he did not have the said bag and wallet when he was arrested.
96. The Prosecution claims the suspect, dressed in a blue shirt with black stripes, black surf shorts with blue stripes, and black puma shoes with white stripes in the CCTV footage, is the second accused.
97. The Prosecution presented the evidence in the forms of direct, circumstantial, and documentary.
98. In some instances, you may find that some facts can be proved by direct evidence. For example, if there is reliable evidence from a witness who actually saw the two accused were robbing the Rubina Medical Centre with two others; if there is a video recording of

such an incident that plainly demonstrates the guilt of the both accused or one of them; or if there is reliable evidence of the accused himself had admitted it, these are good examples of direct evidence against the accused. In this case, the Prosecution presented three video footage covering this alleged robbery from three different directions. The video footage is direct evidence. I will explain how you should approach analyzing the video footage in evidence in a while.

99. On the other hand, direct evidence of all the elements of a crime is often not available, and the Prosecution relies upon circumstantial evidence to prove certain elements. In this case, the Prosecution relies upon circumstantial evidence to prove the two accused's guilt. The case against the first accused is founded on circumstantial evidence of "recent possession of stolen items."
100. In respect of the second accused, besides the evidence in video footage, the Prosecution relies on the circumstantial evidence to prove that the suspect who entered into the Medical Centre, wearing a blue coloured shirt with black stripes, black coloured surf shorts with blue stripes, and a pair of black coloured "puma" canvas with white stripes is the second accused.
101. Accordingly, the Prosecution relies upon evidence of various circumstances related to the crime and the accused, which the Prosecution says, when taken together, will lead to the sure conclusion that the two accused have committed this crime with two others.
102. Circumstantial evidence can be robust evidence; indeed, it can be as powerful as, or even more powerful than, direct evidence, but it is important that you examine it with care, as with all evidence, and consider whether the evidence upon which the Prosecution relies in proof of its case is reliable and whether it does prove guilt, or whether on the other hand, it reveals any other circumstances which are or may be of sufficient to cast doubt upon the prosecution case.

103. Finally, it would be best if you were careful to distinguish between arriving at conclusions based on reliable circumstantial evidence and mere speculation. Speculating in a case amounts to no more than guessing or making up theories without adequate evidence to support them.
104. I now draw your attention to some of the circumstantial evidence that the Prosecution relies on. This list is not an exhaustive list of circumstantial evidence. I am doing this to assist you in understanding the circumstantial evidence. However, it is still your decision to identify the circumstantial evidence and what inferences you could make on them.

The first accused.

- (i) Mr. Peceli arrested the first accused at a plantation of cassava, dalo, and banana.
- (ii) The first accused also said that he was arrested by a civilian when he was hiding at a banana plantation,
- (iii) Doctor Roy saw the thieves were entering into a cassava patch along the Church road,
- (iv) The first accused was found in possession of the stolen bag and the wallet,
- (v) He was found in possession of these stolen items a few minutes after the incident at a location closer to the place of the incident,
- (vi) The Prosecution Exhibit 3, the video footage from Camera 7. The prosecution did not expressly point out any of the suspects in the footage as the first accused, but still, you can take notes of the video footage as circumstantial evidence against the first accused. In his evidence, the first accused said that he was dressed in a blue coloured t-shirt with the Fiji Bitter logo on the back and black lee shorts. SC Paula noted that the first accused was dressed in a round collar t-shirt and black shorts. You can see the third suspect who was leaving the medical centre after the robbery in the video footage of camera 7 was wearing black coloured shorts. You can also

observe something in blue colour under the round neck collar of his long sleeves t-shirt.

If you find these evidence presented by the prosecution is reliable, credible, and truthful, then you can consider these facts are proven facts against the first accused. You can then proceed to determine whether these proven facts, if you take them together, will lead to a sure and indisputable conclusion that the first accused was involved in committing this crime with three other accomplices. If then, you can find him guilty. If not, you must find him not guilty.

The second accused.

- (i) Prosecution Exhibits No 1, 2, and 3. The first man who entered the medical centre was dressed in a blue coloured shirt with black stripes, black surf shorts with blue stripes, and black coloured "puma" shoes with white coloured stripes,
- (ii) The man in the blue shirt with black stripes, black surf shorts with blue stripes, and black coloured "puma" shoes with white coloured stripes went in and talked to Priya, the Receptionist, and then he pulled her down to the ground,
- (iii) Priya was asked during the cross examination by the counsel of the second accused, if she has seen any distinguishing mark on the man, like a tattoo or scar, for which she replied the man had a gold tooth,
- (iv) The second accused in his evidence said that he has a gold tooth,
- (v) In her evidence, Priya identified the Prosecution Exhibit 14, the black surf short with blue stripes, and Prosecution Exhibit 15, the blue shirt with black stripes as the same shorts and the shirt the man in the blue shirt was dressed in during the incident,
- (vi) Sgt. Tabalalai and DC Apolosi arrested the second accused when he was dressed in black coloured surf shorts with blue stripes and black coloured

"puma" shoes with white stripes. At the time of the arrest, the second accused was holding a blue coloured shirt in his left hand.

- (vii) The second accused was arrested a few minutes after the incident at the same location where the first accused was arrested, which is closer to the place of the incident.
- (viii) You can observe the position of the hands of the man in the blue shirt when he was leaving the medical centre in Prosecution Exhibit 3 and 1 (video footage one and three),
- (ix) The second accused was dressed in the same clothing and shoes while holding the blue shirt in his hand when he was locked in the cell at the Nabua Police Station.
- (x) Both Sgt. Tabalailai and DC Apolosi identified Prosecution Exhibit 13, the puma canvas and Prosecution Exhibit 14, the black surf short as the same shoes and the shorts the second accused was wearing at the time of his arrest,
- (xi) DC Inoke and DC Willy gave evidence, saying that the second accused was dressed in a blue shirt with black stripes, black surf shorts with blue stripes, and black coloured "puma" shoes with white coloured stripes on the 21st of August 2018. The two officers then seized those items and made a search list for them.
- (xii) DC Inoke tendered the blue shirt as Prosecution Exhibit 15. The black surf shorts as Prosecution Exhibit 14 and black puma shoes as Prosecution Exhibit 13, saying they were the same items he seized from the second accused. DC Willy identified them in his evidence.

As I explained before, if you find these evidence presented by the prosecution is reliable, credible, and truthful, you can consider these facts are proven facts against the second accused. You can then determine whether these proven facts if you take them together, will lead to a sure and indisputable conclusion that the second accused was involved in committing

this crime with three other accomplices you can find him guilty. If not, you must find him not guilty.

105. Ladies and Gentleman, it is your duty to examine the evidence presented by the Prosecution and the Defence and then decide whether you accept them or not. Afterward, you can determine what inference you can draw from them.
106. Let me give you an example of drawing or forming an inference or a conclusion, which does not arise out of the facts of this case, but will illustrate the need for care in judging whether the facts proved supports the inference of guilt. If my fingerprint is found in my neighbour's home's living room, it is a sound inference that I have been in his living room at some stage. However, it would not support an inference that I was the burglar who stole his DVD recorder from his living room. Suppose you accept my neighbour's evidence that I have never been invited into his home, then, in the absence of some acceptable explanation from me. In that case, you might infer that I had been in my neighbour's home uninvited at some stage. You may or may not be driven to the further conclusion that I was the burglar. But, if you also accept that there was a second fingerprint of mine found at the point of entry or that in my shed there was a DVD recorder found, which my neighbour recognizes as the one stolen from his living room, you would, no doubt, conclude for sure that I was the burglar. You will notice how guilt's inference becomes more compelling, depending upon the nature and number of the facts and incidents proved.
107. What conclusion or inference you reach from the evidence is entirely for you to decide. However, considering what inference you should draw or what conclusion you should reach, it is important to be mindful that speculation has no part in this process. The inference must be the only and certain rational conclusion of the guilt of the accused. Suppose the evidence that you accepted as reliable suggests you some other probable inferences or conclusions, which show the innocence of the accused or create doubt about the guilt of the accused. In that case, you are then not entitled to draw any inference of guilt of the accused person.

CCTV Footage

108. In this case, no witness had seen and identified the two accused as two of the four suspects when the offence was committed. However, the Prosecution tendered in evidence three video footage of the incident, captured by three CCTV cameras from three different directions. The Prosecution claims the first person who entered the medical centre wearing a blue coloured shirt with black stripes, black coloured surf shorts with blue stripes, and a pair of black coloured "puma" shoes with white coloured stripes is the second accused. Hence, you are invited to compare the second accused and the suspect dressed in those clothes in the footage.
109. The prosecution claims that it is sure that the suspect dressed in a blue shirt with black stripes, black surf shorts with blue stripes, and black puma shoes with white stripes is the second accused. The Defence says it is impossible as the second accused was elsewhere and dressed in a yellow vest, black running shorts, and flip-flops.
110. When you compare the second accused against that particular suspect in the footage, you must carefully observe for any features common to both and any different features. You have to look for physical appearance and other characteristics, such as how a person walks, stands, uses gestures, etc. When making your comparison, you must be cautious about the following reasons.
- (i) Experience has shown that when one person identifies another, it is possible for the person to be mistaken, no matter how honest and convinced they are. Also, several people identify a person does not mean that the identification must be correct. Many people may all be mistaken, and you must have this in mind when making your comparison. The identification of a person in the course of our daily lives can be difficult. You may be convinced that you have seen someone you know well in the street or passing in a car, but it turns out you were misled by the similarity in appearance between two completely different people. Here, you are not asked to recognize someone

you know. You have to compare a person in the video footage and the physical features of the second accused.

- (ii) During the trial, you had an opportunity to observe and look at the second accused in good light, at a relatively close distance, and without any obstructions or distractions. However, none of you knew the second accused before this trial. Hence, your ability to compare him with the suspect in the footage is not based on your previous knowledge of him.
 - (iii) The second accused's appearance may have changed since the time of the incident, which took place more than two years ago. Therefore, you must not speculate about his appearance in August 2018.
111. The reliability of your comparison depends on the quality of the images of the suspect in the footage. They are captured in the daytime. The footages are in coloured. You must first consider whether these images of the suspect have sufficient quality to compare with the second accused. If you find the quality is not adequate or not sure of it, you must stop this comparison exercise. If you are sure of the quality of the images in the footage, you have to make your comparison, taking your own time and as much detail as you need. In this respect, you are in a better position than a witness watching a fast-moving and brief encounter in real-time.
112. If you conclude this suspect is similar to the second accused, it does not automatically confirm that the suspect in the footage must be the second accused. It is only a part of the evidence of this case. You must then consider all other evidence presented in the hearing to establish this particular suspect is the second accused. Having done that, if you are still sure that the suspect in the footage is the second accused, you must then find the second accused is guilty of this offence. If you are not sure, you must find him not guilty.

Inconsistencies and Omissions

113. You may recall that the learned counsel for the first and second accused cross-examined several of the prosecution witnesses about the inconsistent nature of their evidence given

in court with the statements they have given to the Police during the investigation. The Police record the statements of the material witnesses during the investigation. It would assist the investigation team to keep the records of the evidence of facts properly. However, the witnesses are not required to repeat everything they have stated in their statement given to the Police in evidence. Evidence is what the witnesses say in the court. However, you are allowed to consider such inconsistencies and omissions when you consider the witness's reliability and credibility.

114. Moreover, you may recall the evidence of Sgt. Ofati, where he gave a different description of the clothing he received from an officer, claiming they were seized from the second accused. A forgetful witness can give contradictory versions about an event or thing, which does not mean lying or dishonest. In evaluating the credibility and reliability of Sgt. Ofati's evidence, you must first determine, as you are required to do with other witnesses, whether he is a forgetful witness or intentionally contradicting other witnesses.
115. Suppose you find any inconsistency or omission in the evidence given by a witness with the statement he had made previously on the same issue. In that case, it is necessary to decide whether it is significant and whether it adversely affects the reliability and credibility of the issue you are considering. If it is substantial, you will next need to consider whether there is an acceptable explanation for it. If there is a satisfactory explanation for the change, you may conclude that the evidence's underlying reliability is unaffected. If the inconsistency is so fundamental, then it is for you to decide how to influence your judgment of the reliability and credibility of such a witness.
116. In doing so, you must consider that most humans do not have a photographic memory. Memory is fallible. A person could not be able to remember every piece of detail.

Past History of the Two Accused

117. You have heard the first accused's evidence, stating that he ran and hid when he saw the police vehicle because he thought the Police were following him as he was on a bench

warrant. Moreover, the second accused said he knew Sgt. Tabalailai as he had seen him at Nabua Police Station. The first accused was on a bench warrant, and the second accused had been to the Nabua Police Station do not make the accused guilty of this offence. You must not consider these facts against the accused, but you can consider this evidence to determine whether their respective evidence is reliable, credible, and truthful.

Final Directions

118. Madam and Gentleman assessors, I now take your attention to the final directions of the summing up.

First Accused

119. Having taken into consideration, all the evidence adduced during the hearing, if you are satisfied that the Prosecution has proven beyond a reasonable doubt that the first accused in company with three others have committed the offence of Aggravated Robbery as charged, you can find him guilty for the offence of Aggravated Robbery.

120. If you are not satisfied or have doubt whether the Prosecution has proven beyond a reasonable doubt that the first accused in company with three others have committed the offence of Aggravated Robbery as charged, you can find him not guilty for the offence of Aggravated Robbery.

Second Accused

121. If you are satisfied that the Prosecution has proven beyond a reasonable doubt that the second accused in company with three others have committed the offence of Aggravated Robbery as charged, you can find him guilty for the offence of Aggravated Robbery.

122. If you are not satisfied or have doubt whether the Prosecution has proven beyond a reasonable doubt that the second accused in company with three others have committed the

offence of Aggravated Robbery as charged, you can find him not guilty for the offence of Aggravated Robbery.

Conclusion

123. Madam and Gentleman assessors, I now conclude my summing up. It is time for you to retire and deliberate in order to form your individual opinions. You will be asked individually for your opinion and will not require to give reasons for your opinion. When you have reached your opinion, you may please inform the clerks, so that the court could reconvene.
124. Learned counsel of the prosecution and the accused, do you have any redirections to the assessors?




.....
Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

05th November 2020

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.