

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 392 of 2018

STATE

vs.

SAMISONI LELE BILOLEVU

Counsel: Ms. S Tivao for the State
Ms. A Singh for Accused

Date of Hearing: 30th November 2020, 1st December 2020 and 2nd December 2020

Date of Closing Submission: 2nd December 2020

Date of Summing Up: 3rd December 2020

Date of Judgment: 3rd December 2020

JUDGMENT

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

Statement of Offence

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

Particulars of Offence

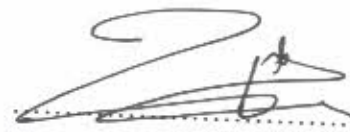
SAMISONI LELE BILOLEVU with others on the 15th day of October 2018, at Nasinu in the Central Division committed theft of assorted properties, namely a black Sharp J7 mobile phone and cash of \$4400.00 belonging to HIRASHMI DEEPA MANI and at the time of committing theft, used force on NAVANTIKA SINGH and PAWAN SINGH.

2. The hearing commenced on the 30th of November 2020 and concluded on the 2nd of December 2020. The Prosecution presented the evidence of seven witnesses, and the accused exercised his right to remain silent. The learned counsel for the Prosecution and the Defence then made their respective closing addresses. Subsequently, I delivered the summing up.
3. Having considered the evidence presented in the hearing, the closing addresses of the counsel, the summing up and the opinion of the assessors, I now proceed to pronounce the judgment as follows.
4. According to the evidence of the first three witnesses, who were the victims of this alleged robbery, they have not identified the accused as one of the robbers who invaded the shop and robbed therein. Their evidence only establishes the occurrence of the alleged robbery. The Prosecution relies on the confessionary statement made by the accused during his caution interview, admitting that he took part in this alleged robbery with three other accomplices. Accordingly, the Prosecution suggests that the accused had admitted the committing of this offence with three other accomplices in his caution interview. Furthermore, the Prosecution claims that these admissions are true.
5. The learned counsel for the Defence cross-examined the interviewing officer DC Pita Moce and the witnessing officer PC Peniasi, to establish and point out that the caution interview had never taken place.

6. If an accused had confessed in his caution interview, admitting that he had committed the alleged offence, the court could consider that confession in evidence. In deciding whether the court could safely rely upon the admissions, the court must decide two issues:
 - (i) Did the accused, in fact, make the admissions?
 - (ii) Whether the admissions are true?
7. DC Moce admitted, during the cross-examination, that this caution interview had never taken place with the accused and the witnessing officer. He then said that the accused and the witnessing officer were present at the commencement of the interview; still, he could not recall whether the accused and the witnessing officer were present during the recording of the interview. This was further confirmed by PC Peniasi, who in his evidence, admitted that he could not recall where he was during the second day of the interview. He also admitted that he was not present at the interview on the 18th of October 2018.
8. The record of the caution interview states the accused was taken to the Nausori Health Centre for medical examination during the time between 1210 hours and 1320 hours on the 17th of October 2018. However, the medical examination report of the accused states the examination commenced at 11.50 am and concluded at noon. The interviewing officer did not explain the reasons for this inconsistency.
9. In view of the reasons discussed above, it appears to me that there is a reasonable doubt whether this caution interview with the accused had actually taken place. Hence, I find it is unsafe to rely on the admissions of the accused as evidence.
10. Accordingly, I find the Prosecution has failed to prove beyond a reasonable doubt that the accused had committed this alleged crime. Therefore, I do not find any cogent reasons to disagree with the unanimous opinion of the assessors.
11. In conclusion, I find the accused not guilty of this offence as charged in the information and acquit from the same accordingly.

12. Thirty (30) days to appeal to the Fiji Court of Appeal.




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

At Suva

3rd December 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.