

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 001 OF 2019

STATE

-v-

USAIA DELAI

Counsel : Ms. B. Kantharia for Prosecution
Ms. L. Manulevu with Ms. E. Sowata for Defence

Date of Summing Up : 13 February 2020

Date of Judgment : 14 February 2020

JUDGMENT

1. The accused was charged on the following information and tried before three assessors:

COUNT 1

Statement of Offence

AGGRAVATED BURGLARY: Contrary to section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

USAIA DELAI with others between the 15th and 16th day of December, 2018 at Wailoku in

Suva in the Central Division, entered into the house of **PENI RATAUKALA**, as trespasser, with intention to commit theft therein.

COUNT 2

Statement of Offence

THEFT: Contrary to section 291 (1) of the Crimes Act 2009.

Particulars of Offence

USAIA DELAI with others between the 15th and 16th day of December, 2018 at Wailoku in Suva in the Central Division, dishonestly appropriated 2 x Bluetooth speakers with charger, black leather cover, 1 x New Balance canvas (pair of shoes) orange and grey in colour, 1 x Adidas canvas (pair of shoes) grey and sky blue in colour, 1 x Puma bag, black and white in colour, 1 x electric fry pan Sunbeam brand, 1 x brown jacket (unbranded), various food items including 15 chickens, 1 kg sausages, peanut butter, potatoes, onions, 5 x pack noodles, 1 x 24 units Rewa UHT milk, Wheatbix, 1 x Cabbage, 5 x Sunbell tuna and clothes including – 3 x trousers hot ocean brand colour brown with Nike symbol and green prints, grey trousers with black prints of hot ocean design, the property of **PENI RAITAUKALA** of his properties.

COUNT 3

Statement of Offence

AGGRAVATED BURGLARY: Contrary to section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

USAIA DELAI with others between the 15th and 16th day of December, 2018 at Wailoku in Suva in the Central Division, entered into the house of **SANJAY REDDY**, as trespassers, with intention to commit theft therein.

COUNT 4

Statement of Offence

THEFT: Contrary to section 291 (1) of the Crimes Act 2009.

Particulars of Offence

USAIA DELAI with others between the 15th and 16th day of December, 2018 at Wailoku in Suva in the Central Division, dishonestly appropriated 1 x TCL Television (32 inch), 1 x Philips DVD Player, 1 x 5 piece stainless steel pots and coloured bed sheet with two pillows, the property of **SANJAY REDDY** with the intention of permanently depriving **SANJAY REDDY** of his properties.

COUNT 5

Statement of Offence

AGGRAVATED BURGLARY: Contrary to section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

USAIA DELAI with others between the 15th and 16th day of December, 2018 at Wailoku in Suva in the Central Division, entered into the house of **RUKSHANA BIBI**, as trespassers, with intention to commit theft therein.

COUNT 6

Statement of Offence

THEFT: Contrary to section 291 (1) of the Crimes Act 2009.

Particulars of Offence

USAIA DELAI with others between the 15th and 16th day of December, 2018 at Wailoku in Suva in the Central Division, dishonestly appropriated 2 surf shorts (one blue in colour and the

other black) and 2 black vests, the property of **RUKSHANA BIBI** with the intention of permanently depriving **RUKSHANA BIBI** of her properties.

2. Two assessors unanimously found the accused guilty on each count as charged. One assessor expressed a mixed opinion whereby she found the accused guilty only on the 1st, 4th, 5th and the 6th counts and found the accused not guilty on the 2nd and 3rd counts.
3. I direct myself in accordance with my own Summing-Up and review evidence led in the trial.
4. The Prosecution called five witnesses; the three complainants and two police officers. At the end of the Prosecution's case, the accused was put to his defence. The accused elected to give evidence under oath to tell his said of the story.
5. There are no eye witnesses to these alleged burglaries and thefts. To prove the charges, the Prosecution substantially relies on the alleged confession made to police at the police interview and the circumstantial evidence led in the trial.
6. As per the record of interview, the accused at Q 26 has admits that he committed the alleged offences in the company of two other persons. From answers to Q 47 to Q 53 the accused has described how they entered the flats and removed the items from those flats. The accused during the scene reconstruction has allegedly pointed out the flats that were broken into.
7. The Defence challenges the truthfulness of the caution interview on the basis that the admissions recorded therein were extracted illegally by using police brutality and giving a false promise. The accused also says that certain parts of the record of caution interview have been fabricated by the police officers.
8. Sgt. Peter Voi is the team leader of the arresting team that arrested the accused. He also conducted the interview. PC Isireli is the officer who arrested the accused. He also charged the

accused and escorted the accused to the scene reconstruction and to and from the Totogo Police Station.

9. The police witnesses testified that the accused was properly accorded his constitutional rights and no assault or intimidation took place during the arrest, transportation or at the police station. They said that no unfair tactics, threats, force or promise was used to extract a confession. They also said that the accused was treated well and that the answers were given voluntarily.
10. The evidence of the police officers is consistent and reliable. There is no credible evidence that the accused was assaulted or harassed by the police officers. The accused admits that he did not have any visible injuries on his body when he was produced before the magistrate. According to the evidence of the accused, he had been assaulted with a torch on his head and the knees; he had been dragged and punched by three police officers on several occasions. If he was assaulted in such a manner, he would have received some injuries. The accused has signed the record of interview to acknowledge that he was accorded the right to be seen by a doctor which he had waived. Accused's evidence that he had complained to the magistrate and that the magistrate ordered him to be taken for a medical examination was not supported by the Record of the Magistrates Court. The accused admits signing the record of interview at each page and also underneath the acknowledgements that he was accorded his constitutional rights. The truthfulness of the admissions made to police was further established when it was proved that some stolen items were recovered on the directions of the accused.
11. It is open for the assessors to accept that the accused had told the truth to police at the interview.
12. Apart from the alleged admissions made to police by the accused, the Prosecution relies on the circumstantial evidence in particular the inference that is generally drawn by courts as to recent possession of stolen property. Certain items were recovered on the 28th December, 2018, that was approximately two weeks after the alleged offences were committed. The recoveries had been made on the directions of the accused when those items were in the possession of the accused at his cousin's house. Some of the recovered items were identified by two complainants as being those stolen from their respective flats.

13. The Defence does not dispute that the property recovered from the possession of the accused is the stolen property pertaining to this case. The fact that the stolen property was recovered from the possession of the accused within a period of two weeks of the alleged offences is established beyond a reasonable doubt. Therefore, this is a fit case for the Court to draw the inference that the accused is either the thief or the culprit of the offence incidental to theft, (in this case burglary) or the person who received stolen property, unless a reasonable doubt is created.

14. The explanation of the accused is that he had purchased those items from Waisiki without having any knowledge that they were stolen property. The accused said that he bought all those items for \$200.00. It is hardly believable that a 32'' flat screen TV, a branded double bluetooth speaker and two branded travelling bags were sold for mere \$200. It can be argued that Waisiki was dating accused's cousin and he (waisiki) was in need of money to go to the village and that is why this transaction had taken place in such a way. However, the assessors would have had reasonable cause to disbelieve this story. According to the accused's evidence, he had given the same explanation to Sgt. Peter when he was questioned at the Samabula Police Station. The accused admits that Waisiki was also arrested along with him from the same house and brought to the same police station where he advanced this excuse. Then why only the accused was charged and Waisiki is not before this court to face the charges?

15. In an apparent attempt to justify his income and lavish spending on those items, the accused contradicted in his evidence with that of his previous statement to police. He had told the police that he was not employed and did part time cleaning jobs for an European man. In his evidence he denied having told this and told court that he had been a carpenter. Under cross-examination he said that he was earning as a cane cutter also.

16. I observed the demeanour of the accused. He was not straightforward. When his counsel asked if he had inquired Sgt. Peter why he was being taken back to the Samabula Police Station when he had already handed over the property to police, the accused first answered in the negative and then changed the answer to 'yes'. The accused apparently changed his answer to make his story look more trustworthy.

17. The evidence of the Defence is not plausible. It is open for the assessors to reject the version of the accused. At the end of the day, the evidence of the Prosecution remained unshaken.
18. Rukshana Bibi's evidence that some of the trousers she had pinned in the line were found missing simultaneously when the break-in happened at Sanjay Reddy's flats has not been challenged. Although there is no evidence either in the caution interview or the exhibits recovered from the possession of the accused that the accused and the gang had entered the veranda of Rukshana Bibi and her cloths were taken, the only inference that the assessors could have drawn in the circumstances is that the accused in the company of others had entered the veranda of Rukshana which is part of Raddy's building and stolen her cloths.
19. According to the evidence of the two police officers, the accused had pointed out the flats he and his colleagues had broken into which is the crimes scene of this case. It is reasonable for the assessors to infer that the accused knew about this place because he was involved in these crimes.
20. The Prosecution proved each count beyond a reasonable doubt. The accused is found guilty on each count as charged. The Accused is convicted accordingly.
21. That is the judgment of this court.


Aruna Aluthge
Judge

At Suva
14 February 2020

Solicitors: Office of the Director of Public Prosecution for State
Legal Aid Commission for Defence