

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

CRIMINAL CASE NO: 299 OF 2018

BETWEEN : **STATE**

AND : **JAMES ASHWIN RAJ**

Counsel : **Ms U Tamanikaiyaroi for the State**
Mr K Chang & Ms M Singh for the Accused

Date of Ruling : **28 January 2020**

RULING

[1] The Accused is charged with aggravated robbery. It is alleged that the Accused in the company of others robbed the complainant of his mobile phone and cash.

[2] The prosecution case is wholly depended upon the evidence of the complainant. His evidence is that in the early hours of 3 February 2018 he was walking home with a friend at Omkar Road when the Accused stopped his vehicle and had a conversation with him. There were three other boys sitting at the back seat of the vehicle. The Accused was the driver. The front passenger seat was vacant. The complainant recognized the Accused when he switched on the light inside the vehicle before the conversation. After that conversation when the complainant was about to leave, the Accused got off and had a further conversation. While he was having the conversation the three passengers also got off and started bothering the complainant's friend. They took his friend's belongings. At that point the Accused snatched the complainant's mobile phone and hand bag with

\$30.00 cash and fled the scene together with his passengers in the vehicle. The complainant's identification of the Accused is based on recognition. They are childhood friends and are from the same neighbourhood.

[3] After the close of the prosecution case, the defence seeks no case to answer. Mr Chang's submission is two-fold. Firstly, there is no evidence of the aggravation, that is, the robbery was committed in company. Secondly, there is no evidence of the use of force to steal.

[4] After hearing arguments I ruled the Accused has a case to answer. My reasons are as follows.

[5] Section 231(1) of the Criminal Procedure Act allows the court to consider whether an accused has a case to answer or not, regardless of whether an application is made by the accused. The test for a no case to answer application in the High Court is settled. The test is whether there is some incriminating evidence, direct or circumstantial, on all the essential ingredients of the charged offence or offences (*Sisa Kalisoqo v R* Criminal Appeal No. 52 of 1984, *State v Mosese Tuisawau* Cr. App. 14/90, *State v Woo Chin Chae* [2000] HAC 023/99S).

[6] The elements of aggravated robbery are as follows:

- (i) The Accused
- (ii) In the company of others
- (iii) Robbed the complainant

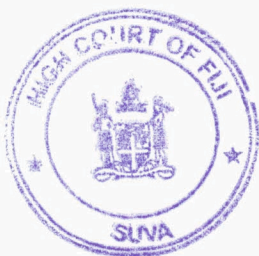
[7] To rob is to steal using force and to steal is to unlawfully take away someone's property with no intention of returning it.

[8] There is some evidence that the Accused was in the company of others when the alleged incident took place. Whether the Accused was acting in concert with others is a matter of inference for the assessors.

[9] As for the element of force, there is some evidence that the Accused snatched the property of the complainant from his hand. The force used may have been minimal but one cannot say at this stage that no force was used to remove the property of the complainant from his person.

[10] The credibility of the complainant and reliability of his recognition are matters for the assessors.

[11] There is a case to answer.



A handwritten signature in blue ink, appearing to be "D. Goundar", followed by a horizontal line.

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Hon. Mr Justice Daniel Goundar

Solicitors:

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