

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 411 of 2018

STATE

vs.

1. ALIKI KAIKOSO
2. TIMOCI SORO

Counsel: Mr. S. Shah for the State
Mr. K. Cheng for the 1st Accused
Ms. N. Mishra for the 2nd Accused

Date of Hearing: 03th, 04th, 05th and 06th February 2020

Date of Closing Submission: 07th February 2020

Date of Summing Up: 10th February 2020

Date of Judgment: 11th February 2020

JUDGMENT

1. The prosecution has charged the two accused persons with two counts of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act and one count of Attempted Aggravated Robbery, contrary to Section 44 (1) and 311 (1) (a) of the Crimes Act. The particulars of the offences are that:

COUNT 1

Statement of Offence

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

Particulars of Offence

ALIKI KAIKOSO and TIMOCI SORO with others on the 27th day of October 2018, at Nasinu in the Central Division, robbed one NITYA NAND SINGH and stole 1 x Nokia mobile phone, cash \$295.00 (FJD), 1 x taxi registration LT 6468, the property of NITYA NAND SINGH and immediately before stealing used force on NITYA NAND SINGH.

COUNT 2

Statement of Offence

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

Particulars of Offence

ALIKI KAIKOSO and TIMOCI SORO with others on the 27th day of October 2018, at Suva in the Central Division, committed theft of assorted properties namely a handbag containing 1 x iPhone and \$520, the property of NOOR FARIDA FLEMING, and at the time of committing theft used force on NOOR FARIDA FLEMING.

COUNT 3

Statement of Offence

ATTEMPTED AGGRAVATED ROBBERY: *Contrary to Sections 44 (1) and 311 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

ALIKI KAIKOSO and TIMOCI SORO with others on the 27th day of October 2018, at Suva in the Central Division, attempted to commit theft of a handbag belonging to MEREONI CHUNG and at the time of attempting to commit theft used force on MEREONI CHUNG.

2. The hearing commenced on the 3rd of February 2020 and concluded on the 6th of February 2020. The prosecution presented the evidence of 8 witnesses, and the defence exercised their right to remain silent. The learned counsel for the prosecution and the defence then made their respective closing addresses. After that, I delivered the summing up.
3. The three assessors in their unanimous opinions found the two accused guilty of all three counts.
4. Taken into consideration the evidence presented during the hearing, the closing addresses of the counsel, the summing up, and the opinions of the assessors, I now proceed to pronounce the judgment as follows.
5. The prosecution alleges the two accused, together with others, had robbed Mr. Singh at the Bal Govind Road on the morning of the 27th of October 2018. The two accused had then gone to Mad Hatter Coffee Shop and tried to rob Ms. Chung but failed to execute their plan. Afterward, they had gone to the town and robbed Ms. Fleming when she was walking to the town from the Holiday Inn hotel.
6. The main issue, in this case, is to determine whether Mr. Singh, Ms. Chung, and Mr. Soqeta had mistaken in their respective identifications of the two accused as the two suspects who involved in the two alleged incidents of Aggravated Robberies and one incident of Attempted Aggravated Robbery.
7. Mr. Singh had traveled in his taxi to the scene of the incident from Tacirua East with the four suspects. The said journey took about seven to ten minutes. During the journey, one of the accused was sitting next to him in the front passenger seat. His view of that accused was not obstructed or impeded with anything. Another accused got off from the car and stood beside the door of the driver's side. He saw this accused about 20 to 30 seconds. His view of the accused was not obstructed or impeded with anything. The defence did not challenge the accuracy of evidence of the identification of Mr. Singh in cross-examination. Neither had they suggested otherwise.


8. Two days after the incident, Mr. Singh identified the two accused at the identification parade held at the Totogo Police Station as two of the four suspects who robbed his money, mobile phone, and the taxi. He was kept alone with a Police Officer at the Police Station before he went to the room of the identification parade. According to his evidence, no one helped or assisted him in making the identification of the two accused.
9. Ms. Chung had seen the face of the first accused when he tried to grab her bag. He was facing her. She then saw the second accused when she tried to push him to the door with her mother. Her view of the two accused was not obstructed or impeded by anything. She saw the two suspects were fleeing the scene in a taxi. The defence in cross-examination did not challenge the accuracy of the evidence of identification by Ms. Chung. Ms. Chung also identified the two accused at the identification parade as the two suspects who tried to rob her at Mad Hatter Cafe. She had not spoken to or met any of the witnesses before or after the identification parade. Furthermore, she had not seen or met; the two suspects when they were escorted into the room by the police.
10. Mr. Soqeta said that he saw the first accused when he was getting off and then getting into the taxi from a distance of ten metres. He then saw the second accused when he came to their taxi and spoke to them after the robbery. His view of the two suspects was not obstructed or impeded by anything. As in the case of the first two witnesses, the defence in cross-examination did not challenge the accuracy of the evidence of identification by Mr. Soqeta. Mr. Soqeta also identified the two accused at the identification parade as the two men who committed the robbery in the town.
11. The defence suggested to Mr. Singh, Ms. Chung, and Mr. Soqeta during the respective cross-examinations whether they saw or met the two accused before they entered the room, which the three witnesses denied. The three witnesses had not met each other and discussed anything before they have made their respective identifications at the identification parade.
12. ASP Nand said that the eleven civilians who took part in the identification parade had similar appearances in terms of their size, and built. However, Mr. Singh found it differently, as he

observed the size, built, and appearance of the people in the line was different. Ms. Chung found, though one person looked a bit old, others appeared in the same age group. They all appeared the same to her.

13. The description given by the three witnesses about the two suspects matches with the physical appearance of the two accused. The police arrested them a few hours after the alleged incidents and within the proximity of the crash site of the taxi.
14. I am mindful of the inconsistent nature of the evidence of Mr. Soqeta with the statement he made to the Police. The statement contains no descriptions of the two suspects. Moreover, there is no mention in the statement about the conversation he had with the second accused. Mr. Soqeta explained in his re-examination that he explained everything to the Police Officer, but he has not correctly recorded it in the statement. I accept the explanation; hence, the reliability and credibility of Mr. Soqeta's evidence of identification are not adversely affected by the said inconsistencies.
15. There is no evidence or any suggestion of interference by the few Police Officers who were present during the identification parade. Therefore, I do not find the presence of those police officers has affected the fairness of the identification parade.
16. Given the above-discussed reasons, I accept the evidence of the witnesses of prosecution as reliable, credible, and truthful evidence. Accordingly, I find the prosecution has successfully proved beyond a reasonable doubt that the two accused have committed these three offences as charged. Hence, I do not find any cogent reasons to disagree with the unanimous opinion of guilty given by the three assessors.
17. In conclusion, I find the first accused Mr. Aliko Kaikoso guilty of two counts of Aggravated Robbery contrary to Section 311 (1) (a) of the Crimes Act and one count of Attempted Aggravated Robbery contrary to Section 44(1) and 311 (1) (a) of the Crimes Act. Accordingly, the first accused is convicted to the same.

18. Moreover, I find Mr. Timoci Soro guilty of two counts of Aggravated Robbery contrary to Section 311 (1) (a) of the Crimes Act and one count of Attempted Aggravated Robbery contrary to Section 44(1) and 311 (1) (a) of the Crimes Act. Accordingly, the second accused is convicted to the same.




R.D.R.T. Rajasinghe
Judge

At Suva

11th February 2020

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the 1st Accused.
Officer of the Legal Aid Commission for the 2nd Accused.