

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 284 of 2020

STATE

V

UATE TADULALA TURAGANIVALU

Appearances : Mr. Zunaid, Z for the State
: Ms. Singh, M and Mr. Patel, A for the Accused

Date of Judgment : 3 May 2022

JUDGMENT

1. The accused faces one count of aggravated burglary and a count of theft.
2. On the charge of aggravated burglary, the State alleges that the Accused with others, in the company of each other, between the 25th day of September 2020 and the 26th day of September 2020 at Suva in the Central Division, entered into the property of Kamal Deo as trespassers with intent to commit theft.
3. In the second count, the State alleges that the Accused with others at the same time and same place as that alleged in Count 1, dishonestly appropriated 1x Casio brand ladies writ watch, 1x36 inch LG brand television screen, 1 x Modyl brand DVD player, assorted jewellery, bed-sheets and a blanket, the properties of Kamal Deo, with the intention of permanently depriving the said Kamal Deo of the said properties.
4. To both charges, the accused pleaded not guilty and the matter proceeded to trial.

5. The charge is brought by the State and the burden therefore lies with the State to prove the Accused person's guilt. The standard is beyond a reasonable doubt.
6. The following facts are agreed to by both counsel and the Accused:
 - (i) Uate Tadulala Turaganivalu was 22 years old and resided at Cunningham Stage 1 at the time of the alleged offence.
 - (ii) On the 26th day of September 2020, after 1.18am, Uate Turaganivalu was arrested by police officers.
 - (iii) Uate Turaganivalu was then escorted to the police station where he was searched and a Casio wrist watch was found in his left pocket.
 - (iv) Uate Turaganivalu was later caution interviewed by D/Cpl 3835 Wili Naqura Buka.
 - (v) Uate Turaganivalu was treated fairly by the interviewing officer.
 - (vi) Uate Turaganivalu was given his rights during the caution interview and he freely gave his answers and he also exercised his right to "answer in court".
 - (vii) Uate Turaganivalu was then charged by DC 5420 Apenisa.
 - (viii) The complainant identified the Casio brand ladies wrist watch at the police station.

The Prosecution case

7. The complainant's evidence is that on 25 September 2020, he was at his house at Cunningham Stage 1 and returned in the afternoon to Nausori where he was living at the time. Before leaving the house at Cunningham that day, he had turned off the lights and locked the door. Around midnight, a neighbor living about 6 feet away from his house called to say there was a break in at his place. He asked this neighbour to tell her brother to call and inform the Police.
8. The next morning, he went to Cunningham and found his house ransacked. Louvre blades had been removed from the rear of the house and a number of things were missing: the TV and deck, bed sheets, blankets, and his late wife's jewelries and wrist watch, all with an approximate value of more than \$800.

9. From his house, he went to the Valelevu Police Station to report the stolen items. He gave a statement to the Police. He was shown a wrist watch which he recognized as his wife's Casio watch. It had a gold face with a silver band which was a bit faded. His wife had had this watch for 18 years and used to wear it whenever she went out. He identified the watch and tendered it in Court saying it was his wife's watch which had been stolen from his house. He did not see and does not know who had entered his house and stole the items from inside it.
10. In cross-examination, the Complainant stated there are no street lights on the main Cunningham road and also on the path leading to the settlement where his house was. The only source of light was from the houses in the settlement. The path is made of a mixture of gravel, concrete and soft stone. He said at the Station, a watch was shown to him and he recognized it as his wife's Casio watch. He gave a second statement to the Police in respect of the watch.
11. The Police officers who had arrested the Accused also gave evidence. Both were based at the Valelevu Police Station and were manning a road block at the Nokonoko roundabout at Laucala Beach during the early hours of 26 September 2020. At 1.18am, a Corporal Mika drove in in a Police vehicle identified as Fleet 260 saying there was a break in in progress at Cunningham Stage 1. The two of them got into the vehicle and went ~~to~~ with Cpl Mika to attend to the report. At Cunningham Stage 1, they saw 4 i-Taukei youths jump over a fence. They were able to see the youths from the lights of the Police vehicle, the streetlights and also the moon. PC Suliano said when he saw the youths, he thought the youths had broken into the house and that it was also during curfew. He told Cpl Mika to stop the vehicle so they could chase after the youths. The 2 Police prosecution witnesses say they then got out of the vehicle and gave chase.
12. PC Suliano said they were 15 – 20 metres from the youths who ran into a settlement at Cunningham Stage 1. They were able to see them with the light from the Police vehicle, their flashlights, street lights and also the moon. They lost sight of 3 of them and continued to pursue the 4th one. They lost sight of him briefly, for about 2 seconds and nearby neighbors pointed underneath a house where the iTaukei youth was hiding. They had their

flashlights with them and when they went in underneath the house where the neighbours were pointing, they found an iTaukei male, all sweaty and breathing heavily, with mud on his feet. There was also a heavy smell of liquor on him. PC Suliano says he recognized the youth as Uate Tadulala Venuki, someone he knew. They arrested the Accused and took him to Valelevu Police Station.

13. He said the distance from where the youths had jumped over the fence to the complainant's house is about 10 metres.
14. At the Station, PC Suliano searched the Accused and found a wrist watch in the left pocket of his shorts. The watch had a brownish gold face and silver band. He identified the wrist watch tendered by the Complainant as the watch found on the Accused. He prepared a search list and gave the watch in to be exhibited.
15. DC 7166 Solomone gave evidence along the same lines as that given by PC Suliano: that he was able to see the youths running from the street light at Cunningham Stage 1 junction, and also from the light of the police torch. They chased the youths through a short cut. The path had gravel and muddy soil. They lost sight of 3 of the youths and they kept chasing the tall, slim iTaukei male which he identified as the accused. The accused was wearing green shorts, was without a shirt, and had a rainbow colored cloth tied on his forehead. They lost sight of him for a split second and were able to find him because the neighbours who had been drinking grog pointed underneath the house where they found the Accused. When they arrested him, the Accused was wearing green pants and had no shirt on.

The defence case

16. The Accused chose to give evidence. He has no obligation to prove his innocence as the burden of proving his guilt rests with the prosecution throughout. Whether I accept or reject his version of events does not relieve the prosecution of this burden.
17. In his defence, the Accused said that between the 25th and 26th September 2020, he was staying with his sister at Cunningham Stage 1. He denies being amongst the youths chased by the Police officers between the 25th and 26th September 2020, saying that on 25th

September, he had been drinking alcohol with his alibi, Tanoa, at the bottom of Tanoa's relative's house. The house was surrounded with nursery netting material and had a mud floor which was wet at the time they were drinking. There was no light where they drank and he had not worn shoes at the time. At around 11pm, he went to sleep on a bed in this place until he was awakened by the Police who then accused him of being involved in a robbery somewhere. He was wearing a pair of green shorts and a pink t-shirt at the time. He was arrested and taken to the Complainant's house where the Police accused him of breaking the louvre blades. He denied the allegations and was taken to the Police Station. This incident was the first time for him to meet the Police officers who had given evidence for the Prosecution.

18. At the Station, the Police searched him and found a watch in the left pocket of his shorts. It was the same watch that was tendered in as a prosecution exhibit. He said the watch was his, given to him by someone at the bus stand in exchange for 2 cigarette rolls, two days prior to his arrest.
19. As to lighting, the Accused says there are no street lights along the main Cunningham road at Stage 1. Nor is there any lighting along the path to the settlement where he and Tanoa had been drinking.
20. He denies breaking into the complainant's house and denies stealing the watch from the complainant's home.
21. The Accused called an alibi witness, Tanoa, who gave evidence that the Accused had been drinking with him and his cousin Tuilevuka under Tuilevuka's home on the evening before the Accused was arrested by the Police. The place had a mud floor which was a little bit wet. The Accused was wearing only shorts. Tanoa said by 7pm, he was already "full drunk". After drinking, he had gone to the bathroom and when he came back, he saw the Accused with the Police outside the house. He had asked the Police what happened and the Police replied they were taking the Accused to the Police Station.
22. In cross examination, Tanoa said he could not remember the date these things happened and that he had been "full drunk". He said there were 4 Police officers altogether, with a Police dog that had smelt him when he was sleeping.

Analysis

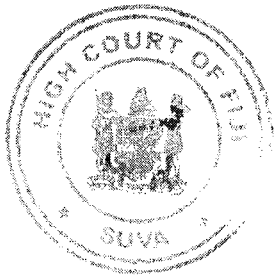
23. The Prosecution case is that the Accused had been one of the youths the Police had seen jump the fence onto the main road and gave chase to in the early hours of 26 September 2020. When he was searched at the Station, a Casio wristwatch was found in the left pocket of his shorts. This watch was identified by the Complainant as belonging to his late wife.
24. If I find that the watch was, as the Complainant said, his late wife's watch, this piece of evidence will link the Accused to the burglary and theft at the Complainant's place.
25. The doctrine of possession of recently stolen object is this. If an accused is found with property very recently stolen and he fails to explain how he came to have it, or the explanation given is not true, the Court may be justified in inferring, looking at all the relevant circumstances, that the accused had stolen the property in question, or was party to its theft. (*Timo v State* Criminal Petitions No. CAV 0022 & CAV 0026 of 2018, 25 April 2019)
26. In *Timo* (supra), the Court stated:

And if the property had been stolen in a burglary or a robbery, the court is entitled to infer, again looking at all the relevant circumstances, that the defendant took part in the burglary or the robbery in which the property was stolen: see, for example, *Blackstone's Criminal Practice 2016*, paras F.63-F.64, and applied in Fiji in *Wainigolo v The State* [2006] FJCA 49 and *Rokodreu v The State* [2018] FJCA 209.
27. The Complainant said the Casio wristwatch shown to him at the Police Station belonged to his late wife. When he checked the missing items at home after the break in, he did not realize the watch was missing. It was only when he was shown the watch at the Police Station that he recognized it as his wife's watch which had been kept in a drawer.
28. I am satisfied beyond a reasonable doubt that the watch found on the Accused shortly after the break in and not far from the Complainant's home, belonged to the Complainant's late wife. While the Complainant may not have realized it was missing when he went through the things in his home the morning after the break in, he recognized and identified it as his

wife's when it was shown him at the Station. With a house ransacked, it is not reasonable to expect even the most careful of homeowners to be able to identify at once every single item missing from the home.

29. I have considered the evidence of identification. The Police officers say they had given chase to the youths and followed the Accused, a tall slim iTaukei youth when the other 3 got away. Both witnesses said the fugitive was wearing green shorts, was without a shirt and had a cloth tied around his forehead. They said they could see him from the light from their flashlights and the moon. They briefly lost sight of him around a house, and neighbours drinking grog had pointed to where they found the Accused lying in bed, breathing heavily and sweating. His feet were muddy. He was wearing the same colour shorts when they arrested him.
30. I accept the evidence of the Police Officers that the Accused was one of the youths they had chased and eventually arrested.
31. I do not consider anything hangs on the fact that the Accused and company had been seen by the Police jumping over a fence from the opposite side of the road.
32. The doctrine of recent possession requires the person found in possession of a recently stolen item to give an explanation as to how he came to be in possession of the item. The explanation must be a reasonable one.
33. The Accused person says that it was given to him by someone at the Suva bus stand two days prior to his arrest. This essentially means the watch was already stolen before the break in. I do not consider this a reasonable explanation and I reject it as being untrue.
34. I reject the alibi evidence for the same reason, as well as for the inconsistencies between the evidence of the Accused and his alibi, and the inherent contradictions in their own evidence. It did not help that counsel asked leading questions to prompt answers on contested facts, such as the reasons for the ground under the house being wet, and whether the alibi witness had been with the Accused at the time in question.

35. The alibi witness struck me as someone who had been told what to say.
36. I bear in mind that disbelieving the alibi evidence does not automatically lead to a conviction. Neither does rejection of the Accused person's explanation for possession of the recently stolen item.
37. Throughout, the Prosecution bears the burden of proving the charges and to do so beyond reasonable doubt.
38. I have considered whether there is any other reasonable explanation for the wrist watch being in the Accused's possession, and finding none, I am led to the inescapable conclusion that the Accused is guilty of both charges against him.
39. I convict him accordingly.




Siainiu F. Bull
Acting Judge

Solicitors:

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