

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL DIVISION

Criminal Case No. HAC 260 OF 2020

STATE

VS

THOMAS HOYT

Counsels:	Mr. Zunaid Z	-	for State
	Mr. Ravu S	-	for Accused

JUDGEMENT

1. The Accused in this matter, **Thomas Hoyt**, was charged with two counts by the Director of Public Prosecutions, as below:

FIRST COUNT

Statement of Offence

AGGRAVATED ROBBERY Contrary to section 311(1)(a) of the Crimes Act 2009.

Particulars of Offence

THOMAS HOYT with another on the 23rd day of August 2020 at Nakasi, in the Central Division in the company of each other stole 1 x Samsung Galaxy 10s, mobile phone and 1 x Casio G-Shock wristwatch, from **DEV LAL SINGH** and immediately before stealing from **DEV LAL SINGH** used force on him.

SECOND COUNT

Statement of Offence

ATTEMPTED ROBBERY Contrary to section 44(1) AND 310(1)(a)(i) of the Crimes Act 2009.

Particulars of Offence

THOMAS HOYT with another on the 23rd day of August 2020 at Nakasi, in the Central Division attempted to steal 2 x cans of Joskeys Brew (440ml), from **DEV LAL**

SINGH and immediately before attempting to steal from **DEV LAL SINGH** used force on him.

2. Upon reading of the charges in Court on 15/10/2020 **Thomas Hoyt** understood and pleaded not guilty to the charges filed against him. The trial commenced on 24/04/2023 and at the trial, the Prosecution led the evidence of 2 witnesses, including the evidence of the victims **DEV LAL SINGH**. At the end of the Prosecution case, since the Court was convinced of the availability of a prima facie case for the Prosecution, acting under **Section 231** of the **Criminal Procedure Act of 2009**, Defense was called from the Accused and all the available options were explained to the Accused.
3. At this juncture, the Accused gave evidence for the Defense under cross-examination. At the end of the Defense case, the Court heard oral submissions from Counsel representing the Prosecution and the Defense. Having carefully considered the evidence presented at the trial, this Court now proceed to pronounce the judgment in this matter, as below:

Nature of the Offences

4. **Aggravated Robbery** is committed when a person commits Robbery in the company of one or more other persons. The offence of **Aggravated Robbery** is defined in **Section 311(1)** of the **Crimes Act 2009** as, “A person commits an indictable offence if he or she a) commits a robbery in the company of one or more other persons; or b) commits a robbery and, at the time of the robbery, has an offensive weapon with him or her.”
5. In this matter, the accused is also charged with attempting to commit **Robbery**. **Section 44** of the **Crimes Act of 2009** states, “a person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed”. However, according to **Section 44 (2)**, for the person to be guilty, the person’s conduct must be more than merely preparatory to the commission of the offence, which is a matter of fact. Further, according to **Section 44 (3)**, intention and knowledge are fault elements in relation to each physical element of the offence attempted.

Elements of the offences

6. The main elements of the offence of Aggravated Robbery under **Sections 311(1)(a)** of the **Crime Act 2009** applicable to this matter are:
 - i) The Accused;
 - ii) In the company of another;
 - iii) Robbed from Dev Lal Singh one Samsung Galaxy 10s, mobile phone and one Casio G-Shock wristwatch.

Burden of Proof

7. The Accused is presumed to be innocent until he is proven guilty. As a matter of law, the onus or burden of proof rests on the prosecution throughout the trial, and it never shifts to the Accused. There is no obligation or burden on the Accused to prove his innocence. The Prosecution must prove the guilt of the Accused beyond reasonable doubt. If there is a reasonable doubt, so that the Court was not sure of the guilt of the Accused, or if there be any hesitation on the part of the Court of the establishment of the ingredients or on the of evidence led by the Prosecution the Accused must be found not guilty of the charge and accordingly acquitted. The Accused has given evidence in this case. Thus, if this court accepts the Defense evidence or is unable to reject or accept the Defense evidence, then too the Accused is entitled to a finding in his favour.

Prosecution Case

8. For the Prosecution, **PW1** was **Dev Lal Singh**. In giving evidence in Court, **PW1** claimed that he is a barber by profession maintaining his business at center point in 2020. He confirmed that he is married, and he knew the Accused for about 15 years and maintained a good relationship with him, where he used to come to his barber shop for haircuts. According to him, on 23/08/2020 at around 3pm he had been in Nausori at a friend's place for a birthday party with his wife. He alluded that he had a couple of drinks at this party, but he was not drunk. Since the party finished by about 7 pm, he had called a taxi and left to Nakasi with his wife and friend named Kunal. However, on the way they have stopped at a bus stop since they wanted to buy more liquor before going home. Though he developed an argument with his wife at that juncture, on settling the raw with the wife, they have got off the taxi and crossed the road to the liquor shop to buy Joskey's burban and cola.
9. According to this witness, reaching the liquor shop the Accused had called him. He had seen the Accused clearly near the liquor shop since there were streetlights and shop lights in the vicinity. At that moment the Accused had approached this witness and asked for some money, where the Accused had been drunk and aggressive. This witness had told the Accused, 'sorry not today maybe next time' and entered the liquor shop and bought 6 cans of Joskey's. Outside the shop the Accused had approached this witness and pulled the cans from his hand, ending up taking 2 cans by force against his resistance. It is the position of this witness that then he complained to the security guard of the liquor shop of what the Accused did, where the security guard and some other by standers told the Accused to return the cans, resulting in the Accused returning one can. His wife and Kunal had been by him during this altercation.
10. This witness testified in Court that since the Accused started swearing at him, his wife and Kunal at this juncture, with a view of leaving this locality they walked towards New World in search of a taxi followed by the Accused. Regardless of their efforts, the Accused had managed to catch up and pushed him, where he had yelled for help. Hearing his cry, an i-taukei baker had come out and punched the Accused making him

fall on the ground. When they reached the Mobile Service Station in search of a taxi, the Accused had reached this locality and grabbed this witness from the back. It is the contention of this witness that at this point of this scuffle an i-taukei man with blond hair came up and punched him on the face and took his phone out of his pocket, while the Accused also assaulted him and grabbed his watch and took to their feet running towards Nausorj. Aggrieved by this incident, this witness had lodged a police complaint on the same night to the Nakasi police station and had been medically examined on 24/08/2020 by a doctor.

11. In cross-examination, this witness confirmed that he didn't leave his wife behind during his altercation with the Accused or the Accused didn't ask him not to assault his wife and attacked him to defend his wife. It was his position that the Accused was the aggressor during his altercation with the Accused and he was the victim.
12. The second Prosecution witness was the wife of the complainant, **Angela Devi**. While confirming the version of events narrated in Court by **PW1** in her evidence with no noticeable contradictions, this witness confirmed in this Court that she knew the Accused through her husband for over 2 years and she had regularly spoken to the Accused since he was a family friend. In this regard, she acknowledged identifying the Accused having an altercation with her husband and witnessing the Accused and the i-taukei man with blond hair grabbing the phone and the wristwatch of her husband. In cross-examination, she informed this Court that they were not drinking with the Accused that night and she was not joking with the Accused or was protected by the Accused from her husband.
13. In addition to these two witnesses, Prosecution also marked the Medical Report that was issued to **PW1**, which was not challenged by the Defence. In this Medical Report marked **PEX1**, the doctor had examined PW1 the next day and observed 4 injuries of the nature of abrasions around his face and head. As the background to the injuries, PW1 has mentioned in the Medical Examination Form that he was assaulted and robbed by Thomas and another.

Evaluation of Prosecution Evidence

14. The Prosecution witnesses who gave evidence in Court were cross examined and were challenged in line with the Defense version of events that occurred. It was the Defense position that the Accused got involved with an altercation with the complainant, since he was trying to defend the wife of the complainant against the complainant abusing her. However, this position was rejected by both the complainant and his wife.
15. In observing the demeanor and deportment of the two Prosecution witnesses and the manner in which they promptly answered the questions put by the Defense most of the time in corroborating the testimonies of each, there is no reason for this Court to doubt and disbelieve these witnesses. In this regard, their evidence was unchallenged that the Accused robbed the complainant with another.

16. Further, the Medical Report tendered by the Prosecution in relation to **PW1** as **PEX1** independently corroborates the evidence of **PW1** of the Accused punching him on the face on the night of the incident.

Defense Case

17. For the Defense case the Accused gave evidence under cross-examination. In testifying in Court, the Accused mentioned that he knew the victim and his wife well. Referring to the evening of 23/08/2020, he alluded that he was near the liquor shop drinking liquor when he met the complainant and his wife there, where they started drinking together. According to him, at that juncture the complainant had got angry with him, since his wife was joking with him, where Dave started assaulting his wife and she sought cover behind him. At this moment, he had told Dave not to assault his wife resulting in Dave swearing at him and assaulting him for which he responded with a punch on Dave's face. He affirmed this Court that at no point did he take any phone or watch from Dave.
18. In cross-examination though the Accused confirmed that he was cautioned interviewed at the Nakasi police station allowing him to freely express his version, he also admitted that he had not mentioned at this interview of the jokes that he made to the wife of the complainant, which resulted in instigating complainant to start a scuffle with him.

Evaluation of the Defense Evidence

19. According to the trajectory of events narrated by the Accused, the main reason for the complainant to start an altercation with him was him joking with his wife. In this regard, the testimony of the Accused comes into question as to why he didn't inform the police the main reason for the altercation with the complainant when he had the opportunity at the caution interview, which was not made under duress. Further, observing the demeanor of this witness, this Court noticed that he was not certain about certain facts divulged in Court. Therefore, this Court is of the view that it is not safe to accept the evidence of the Accused in arriving at its final determination.

Finding of Court

20. In considering the elements that need to be established for count 1, at the very onset, there is no doubt about the identification of the Accused, since the complainant and the Accused were family friends. In relation to the second and the third elements, this Court perceives that they have been established by the unchallenged evidence of PW1 and PW2, where the injuries sustained by the complainant in the cause of this incident had been corroborated by the medical report tendered as **PEX1**, which was in furtherance of a medical examination done on the next day. Therefore, this Court is of the view that all the required elements for Count 1 have been established by the Prosecution beyond reasonable doubt.
21. With regard to count 2 also this Court see that it can reach the same conclusion as count 1, since this happened during the same chain of events involving the same

individuals303. In this regard, the identity of the Accused is not in question and the evidence of PW1 and PW2 are unchallenged. Therefore, this Court finds that the elements for the second count have also been established beyond reasonable doubt by the Prosecution.

Conclusion

22. In the circumstances highlighted above, this Court finds the Accused guilty of Count No. 1 for **AGGRAVATED ROBBERY** and Count No. 2 for **ATTEMPTED ROBBERY** and the Accused is hereby convicted of the said Count No1 and No. 2 separately.

23. Parties have 30 days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read "Thushara Kumarage", is written over a horizontal dotted line.

Hon. Justice Dr. Thushara Kumarage

At Suva

This 5th day of May 2023

*cc: Office of Director of Public Prosecutions
Office of Legal Aid Commission*