

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 195/2023**

STATE

V

EREMASI RINASAU

Counsels:

Ms. Kantharia	- For State
Ms. Ratidara	- For Accused

---

**JUDGMENT**

1. The accused in this matter, **EREMASI RINASAU** was charged with one count of **Aggravated Robbery** 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*

**EREMASI RINASAU** with others on the 2<sup>nd</sup> day of April 2002 at Nadawa in the Central Division in the company of each other stole 1 x Dessert Boot, 1 x Puma brand canvas, 1 x Adidas hand carry bag, assorted clothes and \$95.00 in cash from **RONAL RITESH PRASAD** and immediately before stealing from **RONAL RITESH PRASAD** used force on him.

2. Accused pleaded not guilty to the charge on the 19<sup>th</sup> of April 2022 and the accused had been granted bail by this Court on 07/07/2022. The trial to this matter commenced on 07/06/2023 and at the end of the Prosecution case since the Court was satisfied that a prima facie case has been established against the accused, acting under **Section 231** of the **Criminal Procedure Act of 2009**, the Defense was called from the Accused and the standard options available for the Defense were spelt out. For the Defense case, the Accused opted to give evidence in Court under cross-examination.

### Nature of the Offence

3. The offence of Robbery is defined in **Section 310** of the **Crimes Act 2009**; accordingly, a person commits robbery if he immediately before committing theft; or at the time of committing theft; or immediately after committing theft, uses force or threatens to use force on another person with intent to commit theft or to escape from the scene. According to **Section 291** of the **Crimes Act 2009**, a person commits theft if that person; a. dishonestly; b. appropriates the property belonging to another; c. with the intention of permanently depriving the other of that property.

### Elements of the Offence of Aggravated Robbery

4. The elements of the offence that need to be established by the Prosecution beyond reasonable doubt, are as follows:
  - a. the accused,
  - b. committed robbery; and
  - c. the robbery was committed in the company of one or more other persons; or at the time of robbery, has an offensive weapon with him.

### Burden of Proof

5. The Accused is presumed to be innocent until 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 elements of the offence or on the evidence led by the Prosecution the Accused must be found not guilty of the relevant charge and accordingly acquitted. Accused has given evidence in this case. Thus, if this court accepts the Defense evidence or is unable to reject or accept the Defence evidence, then too the Accused is entitled to a finding in his favour.

### Prosecution Case

6. For the Prosecution two witnesses testified in Court, including the victim of the alleged incident and a bystander who came to the rescue of the victim hearing his cries for help.
7. The first witness summoned for the Prosecution was witness **Mohammed (PW1)**, who was employed as a police officer (**SC 6875**) attached to the Samabula police station. While affirming that he had been employed in the Fiji Police for the last 7 years, he also confirmed that he had been living at 21 Nasilivata Road, Nadera for the past 26 years. According to him, on 02/04/2021 when he was having dinner at around 7 pm he had heard someone screaming for help. Learning that somebody had been robbed on the road, he had taken his police pepper spray and proceeded towards Kamalesh Chand Store, which is located 7 to 10 meters away from his house.

8. Reaching the scene of the incident witness **Mohammed** had seen an Indian man lying on the road facing down, where he was assaulted by 2 men and the Indian man had called for help. He had seen one guy trying to grab the bag from the Indian man while assaulting this man. At this juncture, this witness had approached the scene and pulled the man who tried to grab the bag from the Indian boy and sprayed paper spray on him. At this point this Accused had told him “Sorry” in Fijian and runaway. This witness claimed that he knew the man who tried to grab the bag from the victim for more than 10 years, because they lived on the same street. He contended that sometimes he sees him daily. This witness further claimed that he identified the Accused very well, since there were streetlights and flood lights illuminating the area at that time. This witness identified the Accused on the dock at the trial as the man he knew who was at the scene.
9. The second witness for the Prosecution was the victim of this incident **Ronald Ritesh Prasad**. According to him, at the time of the incident he had lived in Nausori. By 2021 he had been living in Nandera for about 1 year working at Nandera bakery. He claimed in Court that on 02/04/2021 he got robbed at around 7 pm when he was going to work. He claimed that when he was walking to work, he noticed 3 drunk boys near the one stop shop. He claimed that the 3 boys assaulted him and pushed him to fall on the ground. He contended that thereafter the boys had taken his two pairs of shoes, bag and \$95. He also alluded that when these boys pushed him, he threw his phone to the grass. He further informed Court that when he fell on the ground one assailant was sitting on him and another was pulling his hands when the third was pulling his legs, causing injuries to his face, hands, and elbow.
10. Describing the arrival of **PW1 Mohammed** at the scene, this witness alluded that then a police officer came and sprayed paper on one person. This had been the person who was in front of him, which prompted this person to run away from the scene. This witness was not hesitant to admit in Court that though he saw the persons who attacked him, he didn’t know them since he was new in that area. Nevertheless, this witness claims that he witnessed the acts of the Accused due to streetlights and flood lights of the shop. He further informed Court that nothing robbed from him were recovered.

### **Evaluation of Prosecution Evidence**

11. In considering the evidence led by the Prosecution in this case, it is perceptible that the main witness who contributed to the establishment of the main element of identification of the Accused in this matter was **PW1 Mohammed**. In this regard, **PW1 Mohammed** has acted as a vigilante and come forward for the protection of a fellow citizen hearing his cries for help. Though **PW1** was a police officer by profession, on this occasion he had volunteered as a vigilante armed with the pepper spray given to him by the police department. In this regard, this Court was impressed with the demeanor and deportment of his evidence in Court, where he promptly answered as to why he volunteered and came forward in hearing a call from the neighborhood. Arriving at the scene, he had identified the Accused as a person who lived with him on the same street for over 10 years.
12. The evidence of this witness was credible and reliable, especially in the absence of any cogent challenge by the defense and this Court has no reason to disbelief the claimed presence of this witness at the scene of the crime and his involvement in ameliorating the

attenuate condition of the victim. Further, this Court finds no plausible challenge from the Defense to question the veracity of the testimony of this witness.

13. In relation to PW2 **Ronald Ritesh Prasad**, his evidence in Court confirmed the robbery he experienced and what he loss in the process of three strangers dragging him onto the ground and robbing his possessions with the use of physical force.

### **Defense Case**

14. Testifying in Court, the Accused informed Court that now he lives in Nandera. He claimed that in 2021 he was living in Khalsa Road with his family and not in Nandera. He alluded that he had been living in Khalsa Road over 1 year by 2021. According to him, on 02/04/2021, at around 7 pm he had been at home with his family in Khalsa Road. He further claimed in chief that entire day he was at home. He also claimed that he didn't know the police officer Mohammed and he is the only child in his family.
15. Though the Accused claimed that he stayed at his home in Khalsa Road the entire day on 02/04/2021 in his evidence in chief, in facing cross- examination he admitted that he visited his father in Nadera on 02/04/2021. Further, the Accused admitted in cross-examination that he lived with his parents in Nandera before marriage, though he didn't know the Police Officer Mohomed.

### **Evaluation of the Defense Evidence**

16. In considering the testimony of the Accused, at the very onset, this Court questions the veracity of his evidence, since though he mentioned that he stayed in Khalsa Road the entire day on 02/04/2021 in evidence in chief, in cross-examination he admitted that he visited his father in Nandera on that day. A further reasonable question arises of the truthfulness his evidence in the light of him admitting in residing in Nandera before marriage and his denial of knowing the police officer **Mohammed**. In this regard, since **SC Mohammed** has lived in Nandera for the past 26 years and since the Accused also had lived in the same neighborhood before marriage, on the presumption that the Accused did not get married below the age of 11 since now he is 37, his claim of not knowing **SC Mohammed** does not appear to be truthful.
17. Therefore, in considering the above infirmities of the evidence of the Accused, this Court rejects the Defense case espoused in this Court.

### **Finding of Court**

18. In considering the elements that need to be established for the first count, the first element that needs to be established is the identification of the Accused. With regard to identification, this Court is satisfied with the identification of the Accused made by (**PW1**) **SC Mohammed** who claimed to have known the Accused for over 10 years as neighbours. In relation to the second and the third elements, this Court perceives that they have been established by the unchallenged evidence of (**PW2**) **Ronald Ritesh Prasad**.

Therefore, this Court is of the view that all the required elements for the first Count have been established by the Prosecution beyond reasonable doubt.

**Conclusion**

19. In the circumstances highlighted above, this Court finds the Accused guilty of the first Count **AGGRAVATED ROBBERY** and the Accused is hereby convicted of the said Count.

20. 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 dotted line.

Hon. Justice Dr. Thushara Kumarage

**At Suva**

**This 1<sup>st</sup> day of August 2023**