

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 81 OF 2020

STATE

-v-

- 1. REVONI YALAYALA**
- 2. ALEXIO MOLI**
- 3. ISAIA BOBO**
- 4. KELEPI RATU**

Counsel: Mr. A. Singh
Accused in Person.
Ms P. Reddy of LAC as a friend of Court

Dates of Hearing 15 - 29 July 2024
Date of Judgment : 05 August 2024

JUDGMENT

(Rights of an unrepresented Accused/ Trial *in absentia*/ withdrawing legal instructions)

1. This case involves another horrifying nighttime Robbery committed in Western Fiji. The Narayan couple went to bed while their watchmen guarded their house in Naikabula. After midnight, a group of robbers entered the compound and attacked the watchman and disabled him. Ms Narayan suddenly woke up to see a masked man enter their house through a window. Her yell woke her husband up. He tried to grab a knife underneath the bed, but was

hit with a pinch bar making him unconscious. The house was ransacked. Valuable jewelry, a collection of expensive foreign liquor and money were stolen. The robbers fled the scene in the Narayan's brand-new Ford Ranger.

2. The Accused persons were arraigned on the following information filed by the Director of Public Prosecution:

REVONI YALAYALA, ALEXSIO MOLI, ISAIA BOBO & KELEPI RATU are charged with the following offences:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

REVONI YALAYALA, ALEXSIO MOLI, ISAIA BOBO & KELEPI RATU on the 18th day of April 2020 at Lautoka in the Western Division, robbed **SATISH NARAYAN** of monies amounting to \$17,310.00 (Both foreign and Fiji currency), 150 x assorted liquor bottles, 3 x wrist watches, 1 x Jeans (blue long), Assorted Jewelries, 1 x Camera decoder, 1 x Ford Ranger twin cab registration number "I BOSS" and at the time of the robbery, did use personal violence on the said **SATISH NARAYAN**.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

REVONI YALAYALA, ALEXSIO MOLI, ISAIA BOBO & KELEPI RATU on the 18th day of April, 2020 at Lautoka in the Western Division robbed **DEO RAJ GOUNDER** of monies amounting to FJD\$70.00 and 1

Nokia phone and at the time of the robbery, did use personal violence on the said **DEO RAJ GOUNDER**.

3. In the presence of his Counsel, the 4th Accused pleaded guilty to both counts of his own free will. He understood the consequences of the guilty pleas. The pleas were informed and unequivocal. He agreed with the summary of facts read in Court. The facts satisfied each element of Aggravated Robbery as charged on each count. The charges against the 4th Accused are proved on his admissions. The Court found him guilty and convicted him. He is in remand pending sentence.
4. The 1st, 2nd and 3rd Accused (hereinafter referred to as the Accused) pleaded not guilty to the charges. At the ensuing trial, the Prosecution presented the evidence of 14 witnesses and tendered 39 exhibits and documents. At the close of the case for the Prosecution, having been satisfied that there was a case for each Accused to answer on each count, the Court put the Accused to their defence. The Accused elected to give evidence under oath and call four witnesses for Defence.

Rights of an unrepresented Accused/ Trial *in absentia* against the 1st Accused.

5. The Accused were unrepresented at the trial. They waived their right to legal representation and legal aid. (Most seasoned accused persons appear to think that a waiver of this right would somehow help them in their appeals to the appellate courts if the trial Court's decision went against them).
6. Although the 3rd Accused had retained counsel from the Legal Aid Commission, he failed to give instructions to his counsel. The Court repeatedly advised the 3rd Accused to give proper instructions to his counsel. But he deliberately failed to do so. The Director of the Legal Aid Commission decided to discontinue the sanction for legal representation. Although the application to withdraw legal instructions was made at the last moment, having considered

the Ruling of the Court of Appeal in Nadim v State¹ and the Judgement in Nadim v State², the Court was careful not to force the Legal Aid Counsel to appear for the 3rd Accused. The Court observed in the latter at [63] - [65] as follows:

[63] He has cited R v. Cunningham (supra) and the Practice Direction No.1 of 2011 dated 06 April 2011 in support his decision to refuse the application for withdrawal.

[64] It is pertinent to consider the relevant sections of the Practice Direction No.1 of 2011 dated 06 April 2011 issued by His Lordship the Chief Justice. It sets out some instances in which a counsel may be obliged to withdraw from a case. Instructions being withdrawn by the client, inability to represent the client satisfactorily, conflict of interest vis-à-vis the client or client and court, physical incapacity, hospitalisation are some examples. This is not an exhaustive list. However when a counsel needs to withdraw he should as a matter of courtesy and good practice appear personally and seek leave of court to withdraw on the mention or hearing date but preferably well before the next court date, particularly if that date is a trial date. Leave may not be easily granted at the commencement or during a trial and the court is unlikely to permit withdrawal inter alia where, though for valid reasons, the application is made at the last minute causing postponement of trial, waste of court time, counsel's fee is whole or in part has not been paid etc.

[65] Allowing or disallowing a withdrawal involves a consideration whether or not counsel may be able to continue to serve his or her client's best interests if he or she were ordered to continue and if leave were declined (see Ram Sharan v. Kanyawati [1969] 15 Fiji LR 220 at p. 223; Lockhart-Smith v United Republic [1965] E.A. 211 at p.265).

7. The Court of Appeal in the said Ruling referred to the Canadian Supreme Court decision of R –v- Cunningham³ and observed at [18] as follows:

It is not a matter for the Appeal Court to consider whether Counsel had properly conducted the trial on behalf of the Appellants but to consider whether as a result of the refusal by the learned trial Judge for Counsel to withdraw from the case that any prejudice was caused to the Appellants in not having a fair trial. This is a matter that is arguable and therefore leave is granted on this third ground as the Full Court may consider the effect of the Practice Direction No.1 of 2011 and the guidelines set out in the decision of R –v- Cunningham (Supra).

8. The 3rd Accused's deliberate refusal to instruct his Counsel would be tantamount to a withdrawal by him of his instructions and hence constitutes an instance where a counsel may be obliged to withdraw from a case as per the Practice Direction No.1 of 2011 dated 06 April 2011 issued by the Chief Justice. Given this, I allowed the application of the Counsel of the

¹ FJCA 34; AAU0080.2011 (14 March 2014)

² FJCA 130; AAU0080.2011 (2 October 2015)

³ 2010 SCC 10 [2010] 1 SCR 331

3rd Accused to withdraw instructions. However, I appreciate Ms Reddy's participation in the proceedings as a friend of court to assist her former client in conducting his defence.

9. The Accused were explained their rights in defence and the right to cross-examine the witnesses called by the Prosecution. They exercised their right to cross-examine. The case theory of the Prosecution and the important points of contest were explained to the Accused. The Accused identified all the vital issues involved in the trial and challenged the evidence of the Prosecution in the process of cross-examination.
10. A *voir dire* inquiry was conducted to test the admissibility of the caution interview of the 1st Accused where he had made admissions to the Robbery. The 1st Accused made various attempts to get postponements alleging that he was ill and ill-treated by the police and that he was not served with some *voir dire* disclosures (station diaries of the Nadi Police Station where he had been interviewed for another offence soon after the interview of the matter before this Court). When served well in advance of the hearing, he refused to accept the documents. He was making various excuses and attempts to sabotage the trial which had to be thwarted in the interests of justice. The alleged offence occurred four years ago in 2020 and there is already a considerable delay.
11. This Court is constitutionally bound to ensure that the right of the accused to have trial begin and conclude without unreasonable delay is not violated⁴. When the matter was fixed for *voir dire* hearing, the 1st Accused participated peacefully until the Prosecution closed its case. He elected to give evidence under oath in his defence. After his evidence was over, he blamed the Court and the Prosecutor in a somewhat unruly manner for not giving him a fair trial.
12. His allegation was based on the Court's refusal to allow his late application to call a prosecution witness Mosese as a Defence witness. Mosese is said to be the witnessing officer at the interview of the 1st Accused. When the Prosecution indicated that they did not intend

⁴ Section 14 (2) (g) of the Constitution

to call this witness, the 1st Accused made no application for this witness to be called so that he could be subjected to cross-examination. As the Accused is unrepresented, I considered if any prejudice would be caused to the 1st Accused if the Court did not call this witness. Since the 1st Accused had not raised any ground concerning the manner the interview was conducted or complained of any ill-treatment on the part of the police during the interview, I did not see any prejudice being caused to the 1st Accused by this witness not being called.

13. The unruly behaviour of the 1st Accused hindered the smooth functioning and decorum of the Court. He finally sought permission to refrain from participating in the hearing which he thought was unfair. The permission was readily granted.

14. Under Section 14(2)(h) of the Constitution, the Accused has the right to be present when being tried unless-

(i) the court is satisfied that the person has been served with a summons or similar process requiring his or her attendance at the trial, and has chosen not to attend;
or

(ii) the conduct of the person is such that the continuation of the proceedings in his or her presence is impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence;

15. Having been served with a process requiring his attendance, the 1st Accused chose not to attend the hearing. He is entitled to waive his right. Further, the conduct of the 1st Accused was such that the continuation of the proceedings in his presence was impracticable. Therefore, I decided to proceed to trial *in absentia*.

16. The decision to hold a trial *in absentia* against the 1st Accused placed a heavy burden on the Court to ensure a fair trial for him. I took all precautionary measures to safeguard the rights of the 1st Accused in his defence at the trial. The State relied on the admissions by the 1st Accused in his caution and charge statements and the presumption arising from the possession of recently stolen property to prove the charges against him.

17. Since the Prosecution at the close of its case had made out a *prima facie* case against the 1st Accused *vis-a-vis* the said presumption, it was incumbent on the part of the 1st Accused to

come up with a plausible explanation to account for the possession of stolen property. In that context, the Court issued a production order to inform him of the defences that were available to him and consulted him if he still maintained his previous stance to refrain from participating in the trial. He apologized to Court and expressed his willingness to participate in the trial. The Court allowed him to adduce evidence to explain his possession of the stolen items.

18. The circumstances of this case had less prejudicial effects on the 1st Accused in having him being tried *in absentia* for two reasons. First, he had the opportunity to adequately cross-examine the witnesses for Prosecution at the *voir dire* hearing to challenge the admissibility of his caution statement. Second, he had the opportunity to give evidence on the only remaining issue for the trial proper, namely whether those admissions were truthful.

Burden of Proof and Standard of Proof

19. The Accused are presumed innocent until they are proven guilty. The onus or the 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 their innocence. The presumption arising out of possession of recently stolen items does not shift the burden of proof to the Defence. Prosecution must prove each Accused's guilt, beyond a reasonable doubt. If there is a reasonable doubt, so that the Court is not sure of the Accused's guilt, the Accused must be acquitted.

The Elements of Offence of Aggravated Robbery

20. The Prosecution must prove beyond reasonable doubt that the Accused in the company of each other committed the robbery. A person commits robbery if he immediately before or at the time 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. A person commits theft if that person dishonestly appropriates the property belonging to another with the intention of permanently depriving the other of that property.

21. After a *voir dire* inquiry, the confession allegedly made by the 1st Accused to police was held to be admissible. There are four Accused, and they are charged jointly based on the doctrine of joint enterprise. Therefore, the evidence against each Accused must be considered separately.

Circumstantial Evidence

22. The circumstantial evidence can, and often does, clearly prove the commission of a criminal offence, but two conditions must be met. Firstly, the primary facts from which the inference of guilt is to be drawn must be proved. No greater cogency can be attributed to an inference based upon particular facts than the cogency that can be attributed to each of those facts. Secondly, the inference of guilt must be the only inference which is reasonably open on all the primary facts that are so proved. Equally, it must be shown that when taken together, the only reasonable inference that can be drawn is incompatible with the innocence of the Accused. The drawing of the inference is not a matter of evidence: it is solely a function of this court based on its critical judgment of men and affairs, common sense, experience, and reason.
23. In a circumstantial case, the factfinder must look to the combined effect of several independent items of evidence when considering the charge. While each separate piece of evidence must be assessed as part of the inquiry, the ultimate verdict on each charge will turn on an assessment of all items of evidence viewed in combination. The underlying principle is that the probative value of several items of evidence is greater in combination than the sum of the parts. The analogy that is often drawn is that of a rope. One strand of the rope may not support a particular weight, but the combined strands are sufficient to do so.
24. The State relies on the factual presumption arising from the possession of the recently stolen Property to prove the charges against each Accused. In Rokodreu v State⁵, the Supreme

⁵ FJSC 36; (25 August 2022)

Court, comprehensively discussed the common law principle of recent possession of stolen property as follows:

In common law jurisdictions there is a presumption that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. In order to apply this presumption, the prosecution is required to establish several requirements.

- i. Stolen property
- ii. Recent possession
- iii. Exclusive and conscious possession

When the above factors are established, the possessor has to give an account as to how he came to possess. In other words, he should give a reasonable or plausible explanation.

25. In Wainiqolo v State⁶ the Court observed as follows:

The principal ground relates to the so-called doctrine of recent possession which is that where property has been stolen and is found in the possession of the Accused shortly after the theft, it is open to the Court to convict the person in whose possession the property is found of theft or receiving. It is no more than a matter of common sense and a Court can expect assessors properly directed to look at all the surrounding circumstances shown on the evidence in reaching their decision. Clearly the type of circumstances which will be relevant are the length of time between the taking and the finding of the property with the Accused, the nature of the property and the lack of any reasonable or credible explanation for the Accused's possession of the property. What is recent in these terms is also to be measured against the surrounding evidence.

26. Having discussed the legal principles involved in this case, I shall now summarise the salient parts of evidence led in the trial which I consider to be important to resolve the issues in this case.

The Case for Prosecution

PW- 1 Satish Narayan

27 Satish Narayan is a businessman and a professional welder. In 2020, he resided in Naikabula, Lautoka with his wife Ranjani Archari (PW 2). On the night of 17 April 2020 after taking

⁶ FJCA 49; AAU0061.2005 [28 July 2006]

sleeping pills he went to bed with his wife at around 9 p.m. The watchman was outside. After midnight he heard his wife shouting. She had seen somebody enter the house through the window of the sitting room. He bent down to grab the knife under the bed. No sooner he got hit with the pinch bar on his back. The light in the room was switched off. But the light was coming from flood lights of the passage. Two or three people had come inside the house. He did not see who they were as they were masked.

28. When he got hit with a pinch bar, he fell asleep as he was already dosed with the sleeping pills. He didn't know what happened after that because he was unconscious. When he regained consciousness, he had blood on his shirt from an injury. The watchman was tied to the sofa. He went to a doctor and could not be at home for 3 to 4 days because they were afraid.
29. The robbers had loaded everything in his brand-new van and fled. He found the van later in the evening from a slope in a nearby pine forest. It was written off because it was fully damaged. It was bought for \$85,000 on a loan. The police came around 3 to 4 hours later because it was Covid lockdown time.
30. The robbers had taken a lot of things, including his liquor collection which included bottles of whiskey, rum and gin and jewelry, perfumes, foreign and local currency (FJD USD, AUD, NZD, and Indian Rupees) and bags. It took 2 to 3 days to find out what things went missing.
31. He went to the police station with his wife 2-3 days after the incident to identify the stolen items the police had recovered. He and his wife identified bags [Blue and black Puma backpack (PE1)], black Woolworth brand Cooler bag,(PE2), 8 bottles of liquor [JW Black Label (PE3), Tanqueray London Dry Gin (PE4), Appleton Estate Jamaican Gin (PE5), Regal Whiskey (PE 6), Bounty Rum (PE7), Chivas Regal Whiskey (PE8), Grants whiskey (PE 9), Bombay Sapphire Gin (PE 10), 5 bags, two Nike bags, jewelry, cash, rings, watches and gave a statement. The robbers were caught within a week. He could easily identify those liquors which were not sold locally. He bought them when he went overseas. His wife identified her jewelry, watches, clothes, and perfumes.

32. Under cross-examination by the 2nd Accused, Satish admitted that he could not recall if he had stated to police that he saw only one person.

PW- 2 Ranjani Devi Archari

33. Ranjani is married to Satish Narayan (PW1). On the night of 17 April 2020, the security officer, Raj was sitting at the security booth. She went to bed with her husband after 10 p.m. She woke up after midnight and saw a person jump inside after cutting the screen. He was fully masked. She yelled out to wake Satish up. When Satish bent down to get the knife, he was hit with an iron rod. Satish fell and became unconscious. The intruder told her to give all the cash and the jewelry in English.
34. She was escorted by a robber to the living room where her handbag was to take the bunch of keys. She opened the safe inside the closet and gave all her jewelry and the money. Then he told her to give him the empty bags to fill up the loot.
35. She gave him a black bag and a Puma brand bag. He picked all Satish's perfumes and jewelry. He told her to take off all the jewelry. He gave her *mangle sutra*, (the gold chain that signifies her marriage), two thick gold bangles and a thick gold chain. The jewelry was in a small, maroon-coloured bag 'Mona Jewelers' printed on it and a white and pink pouch. She gave USD, NZD, AUD, 30,000 Indian Rupees and FJDs from the safe. They also took her husband's diamond rings, watches (Seiko, Pulsar, Rip-curl), perfumes (Joop, Chanel, Eternity, One Million) and alcohol (Shivas, JW Black Label, JW Red Label, Bounty Rum, Blue Label). He had about 150 to 160 bottles in his collection.
36. She saw two people inside the house and heard somebody open the fridge in the kitchen. They left at around 2 a.m., having spent about 1 hour in the house. Before they left, they took the security camera decoder with them. They loaded the things inside the brand-new Ford Ranger and left. The person who talked to her was very tall and slim. It was a scary

experience for her. She even forgot how to recite the prayer for protection. It took her two months to get normal again.

- 37 On the same day at about 3 a.m., the police officers came. She informed them about the items stolen and their description. The police officers visited the house the next day also. They showed her some jewelry and asked if they belonged to her. When she came to the police station, she saw the rest of the stuff including foreign currency notes. She went to the police station twice, first to lodge a report and then to verify her stuff.
38. She identified and tendered the following items in her evidence. Rip-curl watch (PE 11), Perfumes [Joop (PE12), One Million (PE 13), Gucci sunglasses (PE14), Jewelry, Maroon Mahakali Jewelers pouch (PE15), New Mona Jewelers pouch (PE16), thali with gold chain (PE17), pair of gold bangles [PE18], a pair of gold bangles without screw [PE19], gold ring with stone (PE20), men's silver ring [PE21], gold and silver cut ring [PE22], money box [PE23], a pair of gold bangles with a crew [PE24], *mangal sutra* chain with a thali [PE25], thick gold chain [PE26], Guess handbag (PE 27).
39. Under cross-examination by the 2nd Accused, Ranjani said that one person she saw was slim and tall and the other one, short. She could not remember if, in her statement to the police, stated that she saw three people and that two people were short and dark and the other one tall and dark. She agreed that she could not confirm that the currency notes shown to her at the police station were the same ones stolen from her house. She agreed that she was not shown currency notes in Court.
40. Under cross-examination by the 3rd Accused, Ranjani said that she is unaware if some other people in Fiji would have owned the same kind of jewelry. She identified the jewelries (PE7, PE 19, PE 24) she had bought from India. She agreed that she had no receipts or distinguishing marks to prove that she owned them. In the first statement to the police, she did mention the stolen items whatever came up in her mind.

PW-3 Deo Raj Goundar

41. Raj Goundar was the security guard at Satish Narayan's garage from 17-18 April 2020. On the 17th between 12 midnight and 1 a.m. (18th) somebody suddenly punched him on the right-hand side. He saw two masked men wearing black T-shirts. They hit him with something hard on his stomach. When he fell, they tied him up with a cloth. He became conscious. When he regained consciousness, he was in his boss's sitting room. The masked men took his Nokia phone and \$70. He received injuries on his cheek and a cut on his stomach. The police officer took him to the doctor.

PW-4 Elic McComber

42. Elic interviewed Revoni Yalayala under caution on 20 and 21 April 2020 at the Lautoka Police Station. Revoni was in good health and his appearance was normal. He received no complaints of Revoni being assaulted or threatened. All the rights of an accused were afforded. Witnessing Officer PC Mosese was present throughout the interview although his signature was not present in the record. He read the record interview in evidence (PE 28).
43. At the end of the interview, after Q & A 108, Revoni was allowed to read the record of the interview. Upon being questioned by the Court, he maintained that he did not fabricate the record of the caution interview. He denied that Mosese's signature was not present because the interview was fabricated. He asked the questions and Revoni gave all answers. He confirmed that the personal information of the Accused was given by the Accused himself.

PW-5 Eileen Atemala

44. In 2000, she was residing at Stage 1, Delainavesi, Lami, Suva. She is a mother of 8 children and Taina Atemala is one of them. Alexio Moli (Alexio) is her nephew. Alexio had never visited her before. It was surprising for her to see him on 19 April 2020 at her place at around 7.45 p.m. He had come with a couple, Isaia Bobo, and a girl. Alexio asked if he could spend the night because it was almost curfew. He informed her that they were expecting a parcel

and once it was delivered, they would go back. She agreed to the request. After having dinner, she went to bed. Alexio and the couple were lying in the sitting room.

45. The next morning (20 April 2020), she woke up at 6 o'clock and went to work. When she returned, they were still home. She asked Alexio what time they were going. Alexio said they would leave as soon as the parcel is delivered. After having dinner, she went to bed.
46. On 21 April 2020, at around 5.30 she heard somebody talking at the top of his voice inquiring *-who's the owner of this house?* She got up and came to the sitting room. He saw the policemen in civilian clothes inside her house. She was questioned as to why Alexio and the couple were there. All of them were then taken to Nabua Police Station. The package Alexio expected never arrived at any time after that.
47. Under cross-examination by Alexio, Eileen said that she didn't see Alexio and Bobo being assaulted or anything done to them. From Nabua they were taken to Muanikau Police Post in different cars. She saw Alexio at Muanikau when she recorded her statement. The police brought her daughter -Taina also to Muanikau Police Station.
48. Under cross-examination by Isaia Bobo, Eileen said that she didn't see a search warrant or Bobo being searched by the police. Under re-examination by the State Counsel, Eileen said that she was sent home from Muanikau and that was when the search was conducted at her house. She saw a search warrant when the police searched, but nothing was found in her house.

PW-6 Romeo Nasila

49. In 2000, he was based at the Crime Intelligence Unit in Suva. On 21 April 2020, he received information that Isaia Bobo and Alexio Moli, the two suspects involved in an aggravated robbery at Lautoka, had fled and were residing somewhere in Suva. At around 6 a.m. on 21 April 2020, a combined team led by Sgt. Tabalailai raided the house in Delainavesi where Alexio's aunty Eileen was residing.

50. They met Alexio's cousin who told them that Alexio was sleeping in the sitting room. He opened the door for the officers. When the police team entered the house, they saw Isaia Bobo, Alexio Moli and a Fijian lady sleeping in the sitting room. Alexio Moli and the lady woke up when they were already inside the house. He woke Isaia Bobo whom he knew before the raid. He identified himself and informed Bobo of the reason why they were there. He asked Bobo to stand up. Bobo just complied. He then searched Bobo.
51. Upon the search, he found a small pink and white bag (pouch) 'Mona Jewelers' written on it, tucked inside in front of Bobo's ¾ jeans. When he opened that pouch he could see a gold chain, two thin gold bangles, one thick gold bangle, one gold ring with a diamond head and one thick silver ring, \$20 and \$5 notes, and some coins. The pouch was opened in the presence of everyone. He asked Bobo where the jewelries were from. Bobo said he just got them from Lautoka. He cautioned, gave Bobo his rights and arrested him. They escorted him to the Totogo Police Station where Sgt. Tabalailai prepared a search list.
52. He was present when the search list was prepared in front of Bobo. His name and those present (APC Peni, PC Inoke, PC Vilikesa Isaia) were written on that search list. Bobo refused to sign the search list. All the items found on Bobo were listed in the search list and handed over to the Lautoka Police Station. He identified the search list dated 22 April 2020 and tendered it in evidence (PE29).
53. The search was conducted on 21 April 2020 at 6 a.m. but he could not explain why the search list is dated 22 April 2020 because Sgt. Tabalailai was the one who prepared it. He identified the pink and white pouch (PE16) found on Bobo and all jewelries [thick gold bangle (PE 19), two thin gold bangles PE18, thick silver ring PE21, a gold ring with diamond head (PE9), gold chain (PE17)], money and other items found inside it. Bobo cooperated with the police. They searched Alexio and the Fijian lady, but nothing was found on them.
54. Under cross-examination by Alexio, Romeo admitted that there was no search warrant when they entered the house on 21 April 2020. The police went there to arrest the suspects. To

search a person, they don't need a search warrant. He agreed that the documents were done after the search. He denied that the search warrant was tainted because the search list is dated 22 April 2020.

PW-7 DC Vilikesa

55. In 2020, Vilikesa was attached to the Crime Intelligence Unit based at Nabua Police Station. On 21 April 2020, he was instructed to assist the Lautoka CID Team in arresting Isaia Bobo and Alexio Moli. They received information that the two suspects were in Eileen Wate's house in Delainavesi. The raid was conducted at around 6 a.m. on 21 April 2020. The team included Sgt. Tabalailai, Constable Inoke and Constable Romeo.
56. They met Osea, the son of Eileen, who informed them that Alexio and Bobo were sleeping inside the house. Osea opened the door and let them in. When they entered the house, they saw Alexio, Bobo and Bobo's girlfriend sleeping in the living room. They woke them up and explained the reason for their visit. He cautioned, arrested, and searched Alexio. Constable Romeo woke Bobo up, searched him and arrested him. A small pink bag was found inside Bobo's undergarment. He could not recall what was inside the bag because he was concentrating on Alexio. The search list for Bobo was prepared by Sgt. Tabalailai who led the search. He confirmed that PE-29 is the search list prepared by Sgt. Tabalailai. The items were put on top of the floor to be itemized to prepare the search list. Then only he saw the jewelries that were inside the pouch.
57. Under cross-examination by Alexio Moli, DC Vilikesa agreed that the items found in Alexio's possession were not the stolen items. Under cross-examination by Bobo, DC Vilikesa agreed that the search list was filled on the 21st, the same day the search was conducted. The date 22nd may have been put by mistake.

PW-8 Cpl Amelia

58. On 21 April 2020, Cpl. Amelia charged Revoni Yalayala at the Lautoka Police Station in the presence of the witnessing officer Sgt. Ranadi. Revoni signed each page of the charge

statement. The rights of an accused were given. Revoni made a statement under Q16. Revoni was not assaulted, threatened, or put pressure on him to get the statement. She tendered the charge statement in evidence (PE35). Revoni agreed to the contents and signed the charge statement of his free will after everything was explained to him.

PW-9 Faleiwai Baleiono

59. Faleiwai works for Fiji Ports Terminal Limited. On 18 April 2020, when he had just finished his breakfast at around 8-9 a.m., his friends - Revoni Yalayala and Kelepi Ratu came in a taxi to his house where he was running a canteen. They spent there for 30 minutes and bought a packet of cigarettes. Two police Hilux twin cabs approached them. Revoni and Kelepi ran to the cassava patch leaving a sock they had with them behind in his house. He didn't see what was inside the sock. He just kept it because he knew it was theirs and they would come to collect it.
60. The police came again in the evening and asked for the jewelry. He told them that he didn't have any jewelry. The police then said that Kelepi Ratu informed them that he kept their sock with jewelry at his house. Then he said, *okay I got the sock, but I didn't know that the jewelry were inside*. He gave the sock to the police which they opened to find gold jewelries inside it. He handed the jewelries over to the police. Faleiwai identified PE24, PE25, and PE26 and confirmed that those were the jewelries that were found in the sock. Kelepi Ratu was already with the police when they went near Kelepi Ratu's house at Field 40 where they recovered some bags containing alcohol and other stuff.

PW-10 Cpl. Penaia Drauna

61. In 2000, he was attached to the Western Divisional Task Force as a Corporal. On 18 April 2020, his team was instructed to follow up on a case of robbery at Naikabula. They received information that a black taxi was transporting Revoni Yalayala and Kelepi Ratu, the two suspects in the case. They managed to locate the taxi at around 10 a.m. at Tomuka, 10

minutes from Faleiwai's house where the taxi was parked. But Revoni and Kelepi were not there.

62. Upon receiving information about the suspects from the taxi driver. They proceeded to Balawa where Revoni Yalayala's ex-wife Amelia was residing. Amelia was not home. They contacted her over the phone. They instructed her to wait for them at the Market Police Post and explained to her the reason why they wanted to see her. Amelia handed two AUD 50 notes and a packet of BH 20 over to the officer. She informed it was Revoni who gave them to her. He went to Lautoka Police Station with Amelia and prepared a search list which she signed. He handed the money and the packet of BH 20 over to the investigating officer. The search list (PE 36) and two AUD 50 notes were tendered (PE 39).

PW-11 Cpl. Ratu Meli

63. In 2020 Cpl. Ratu Meli was stationed at the Lautoka Police Station. On 18 April 2020, his team led by Detective Sgt. Silio received instructions to follow up on a case of robbery at Naikabula. He received information that Kelepi Ratu was involved in the alleged incident. They proceeded to where Kelepi was, and he arrested Kelepi between 10 p.m. to 11 p.m.
64. After being arrested under caution, Kelepi led them to an open area under a lemon tree in Kalecraft where some stolen items were kept. His team (Sgt. Silio, Penaia Drauna, Taniela) found assorted bottles of alcohol, packets of cigarettes, perfumes and some other items packed in a light blue Puma backpack, a black Countdown shopping bag and a Guess lady's handbag.
65. He prepared a search list on 19 April 2020 which Kelepi Ratu signed. He identified the bags [PE1, PE2], bottles of alcohol [PE3-PE 8] and bottles of perfumes [PE 9- PE13] a money box (PE23), Gucci ladies' sunglasses (PE14) that were found inside a Guess ladies' handbag (PE27), Rip curl wristwatch (PE 11) Red Mahakali jewelry pouch (PE15) and some foreign currency notes, 2x 50 USD, 2x AUD 50 recovered from Tomuka (PE 39).

PW-12 Amelia Ravatu

66. Revoni Yalayala was Amelia's ex-husband. Revoni worked for Kasabia delivering timber. They have two children. After the separation, she was in Balawa with the children. On 18 April 2020, Revoni called her at around 9 a.m. and wanted to come and drop money for bread for the kids. Revoni arrived in a taxi with another person at around 10 a.m. He dropped ADU 100 (2x 50 ADU), and a packet of cigarettes (BH20). She went to town to change the money and do some shopping. The police came and asked about the money. She gave them the money with the packet of cigarettes. She identified the packet of cigarettes (PE 37) and the search list (PE36).

PW-13 Taniela Vuniwai Dakai

67. In 2020, Taniela was residing at Matavolivoli in Votualevu, Nadi. Back then he was driving a private car. On 19 April 2020 (Sunday) after lunch, Panapasa Tuilau, whom he knew from his childhood asked if he could drive him to Lautoka to pick a job. He agreed and drove Panapsa to Lautoka at around 2.30 p.m. They went near a house at Field 40, Kashmir in Lautoka.
68. Three iTaukei people, two males and one female came and got into his vehicle. One of them was Bobo whom he knew from childhood. He later came to know from the police that the other person was Moli. Bobo and the girl sat in the back seat and Panapasa at the front. They wanted him to drive them to Nadi. When they reached Votualevu roundabout, Panapasa got off.
69. On the way, Bobo asked him to drive to Nadromai settlement, interior before Sigatoka and had a look at a house. Bobo got off and had a look at the house. They then decided to go right down to Suva. After a drive of 2 hours and 45 minutes he dropped them off at Delainavesi, just before the curfew came into effect at 6 p.m. Bobo had a small suitcase with him. Bobo paid FJD 200.00 fare for the car.

70. He identified the 2nd Accused Alexio Moli as the other man whom he drove from Lautoka to Delainavesi. Before coming to Court, he had identified Alexio Moli through a photo shown by the police, but no identification parade was conducted. On the next day (Monday, 20 April 2020) he was arrested and taken to Namaka Police Station and interviewed. The police suspected that he was involved in the robbery. He was threatened to get information about the driver. He maintained that he told the truth to the police and Court as to what transpired on 19 April 2020.

PW-14 Panapasa Tuilau

71. Panapasa was residing at Matavolivoli, Votualevu in 2020. He and Taniela (Dan) grew up in the same neighbourhood since childhood. He also knew Isaia Bobo who also lived around Votualevu. On 19 April 2020 around mid-day, he received a call from Bobo and asked if he could find a driver and come to Lautoka to pick them up. Then he went to Taniela and convinced him for the job. When they reached Lautoka Bobo gave the directions over the phone to locate where he was. Bobo and two others boarded the car. He was seated at the front and just looking at the driver. He didn't see the people sitting at the back. He knew one who boarded the car was a female from her voice. He got off at Votualevu Roundabout. When he got off, he received money (NZD 10 ADU 50) from the back. He was not sure whether the money was given by Bobo or the female. In his statement on 20 April 2020 to police, he said it was Bobo who gave that money. The money would have been for arranging transport for them.

The case for Defence

DW1- Alexio Junior Moli (2nd Accused)

72. Alexio said he was with his sister Akata Moli the whole week from Tuesday to Sunday including 17 and 18 of April 2020 in Legalega, Nadi during the lockdown. The lockdown in Lautoka was lifted on Tuesday so he could go to Nadi and he was with his sister from Tuesday till Sunday.

73. He left Legalega on the 19th (Sunday) April 2020 for Lautoka when Bobo rang his sister and asked if he could accompany Alexio to Suva to arrange a house to stay in Suva for him to go and pick up one parcel coming from Kadavu. He agreed and came to Lautoka on Sunday (19 April 2020) and went with Bobo to Suva. He arranged a house, her aunt's place, in Suva so they could stay there. When they went to his aunt's place, his aunt asked him what made him come to Suva. He said they were there to collect a parcel and once it was received, they would go back. They stayed there for two nights as the parcel did not come. While they were in Suva, they were arrested at his aunt's place on Tuesday (21st).
74. Under cross-examination by Bobo, Alexio agreed that on Monday the 20th Bobo left Alexio's aunt's house for Raiwaqa where his kids were staying. He didn't see the exhibits tendered in Court on Bobo that day. He agreed that the police came, without a search warrant and that it was dark in the sitting room when the police raided the house. When the police arrived, he was still sleeping. The police searched him and took him outside.
75. Under cross-examination by the State Counsel, Alexio said he lived in Votualevu where he grew up with Bobo. Bobo had gone to Lautoka because the police were looking for him for another matter. From the 17th to the 19th, he was at his niece's house in Legalega which was being looked after by his sister Akata. He came from Nadi to Lautoka in a minibus on his own to meet Bobo at a house in Kashmir. He travelled in a private car to Suva with Bobo and another girl.
76. He had no special reason to go to Suva on the 19th. Bobo arranged the car. He did not see any money being given to Panapasa when he (Panapasa) got off at Votualevu. He went to Suva in order to get his share of smoke (Indian hemp). He agreed that he had never visited his aunt before. He denied having seen Bobo being searched by a police officer. The light from outside was coming inside the house when the police arrived. He was assaulted by police outside the house. He denied having given Taina AUD 200. He can't recall if he told the police that he gave money to Taina. He was not in a good state of mind when he was interviewed.

77. He did not know why he was asked to come to Lautoka when he could have joined Bobo somewhere in Nadi on the way to Suva. He denied that he took part in the robbery with Bobo at Satish Narayan's house on 18 April 2020 and that's why he took a private car and went from Lautoka to Suva to hide at his aunt's place in Delainavesi. He denied that he knew of the items that were found on Bobo.

DW2 - Akata Frances Moli

78. Akata is the sister of Alexio Moli. During a lockdown period in 2020, she was staying in Legalega, looking after the house of her niece. Alexio came either on a Tuesday or a Wednesday. She is not sure which date he came. She guessed it was the 17th. Alexio was with her from Wednesday till Sunday. On Sunday, while at home, she received a call from Bobo after lunch. After receiving the call, Alexio said he was going to meet Bobo. He left her after spending 3-4 days with her in Legalega. Her aunt Irene from Delainavesi called and informed her that the police had come and arrested Alexio whilst they were sleeping.
79. Under cross-examination by the State Counsel, Akata said that in 2020, she was residing in Votualevu with Alexio at the family house but on that week, she was in Legalega. Alexio was in Lautoka during the lockdown and came home when the lockdown was lifted. She recorded her alibi statement in July 2024. She agreed that in that statement, she did not specify the dates Alexio was with her in Legalega. Alexio did not say that he was going to Suva with Bobo.

DW-3 Isaia Bobo (3rd Accused)

80. Bobo said that in 2020, he was selling Indian herbs (Indian hemp) and resided both in Votualevu and Raiwaqa, Suva. All his children were schooling in Suva. On 17 April 2020, (Friday) Aliti called and told him to come to Kashmir side in Saru, Lautoka. When he reached Lautoka by 7 to 8 pm. Aliti took him to her cousin's house. On the way, he met Umesh Chand who was with him in prison a long time ago. They went to one of her friend's

houses in Kashmir and started drinking grog. They finished drinking at around 5 a.m. or 6 a.m. on the 18th. On Saturday (18) morning, Aliti went to where she had met Kelepi. She came back as if something had happened. That Saturday, afternoon he went again to check some Indian hemp towards Ba. Since the stuff was finished, he came back and slept there.

81. On the next day (19th Sunday), he called Alexio because he wanted to help him in his business as he had just out from remand. He called Panapasa to arrange a driver whom he knew from his village. The driver came with Panapasa after lunch. They went down to Suva with Alexio and Aliti. They dropped Panapasa at the Votualevu roundabout. He gave Panapasa money before he got off. That money was given to him by Aliti.
82. On the way, they went to a farm farmhouse at Nadroumai in Nadroga to collect Indian hemp. It was not available, so they went directly to Suva. By then, it was curfew. He asked Alexio if he had a family there so they could sleep until another parcel of Indian hemp arrived from Kadavu. They went to Alexio's aunt's place and slept that night. The next day he went to see his family in Raiwaqa. In the afternoon he came back to Delainavesi to wait for the shipment.
83. The next morning, the cops came when they were still sleeping. It was still dark around 5 a.m. He got a shock when an officer gave him a good kick. When he got up, he could see plenty of police officers there. The thing (pouch) was with Aliti, who was sleeping next to him. As soon as the police entered the house, she put the bag inside his $\frac{3}{4}$ pants. He didn't even know what was inside that bag because she had just passed it on to him when the police raided the house. The police never gave him a search warrant. They just started yelling to blame him for stealing. The Police did not ask anything about the bag. They just said, hey, what was this? This was stolen from Lautoka. He told the officers that Aliti had put it on him. The officer took the bag. All of them were arrested. They took him to Nabua Police Station in two separate rooms and assaulted him. They then took Alexio to Muanikau Police Station. He was kept in police custody for more than 74 hours. He filed a constitutional redress application. He knew nothing about this crime. He was just selling Indian hemp.

84. Under cross-examination by the State Counsel, Bobo admitted that, despite having a house and family in Raiwaqa, he sought assistance from Alexio for accommodation in Suva because the curfew was on when they reached Suva. He admitted that back in 2020, Aliti was his girlfriend. He could not hire a car from Lautoka because he didn't know any driver in Lautoka. He told the driver the destination when they started the journey in Lautoka. He accompanied Aliti because she too wanted some Indian hemp. She also wanted to go and see one of her kids staying with her elder sister in Suva. Panapasa was the only passenger who came with the driver from Votualevu because Alexio had gone to Legalega. He wanted Alexio to come to Lautoka to pick his share (hemp) from the Indian guy.
85. He agreed that the money she gave Panapasa was Australian and New Zealand currency. This money was for taxi fare. He denied that the foreign currencies were money stolen on 18 April 2020. He admitted that he gave FJD 200.00 to Taniela as the taxi fare when they reached Delainavesi. When they reached Suva, Aliti said that she got the money from Dee. When he woke up, the police were already inside the house.
86. He admitted that small pink and white bag written *Mona Jewellries* tucked in front of his pants when the police searched him. He saw and felt the bag being introduced by Aliti. He is sure that it was not put by Alexio. Aliti was also arrested and interviewed, but not charged. He did not know that the jewelries were inside that purse, but he felt something inside it. The contents of the purse were shown to him only at the police station. He didn't refuse to sign the search list.

DW 4 Umesh Chand

87. Chand said that he could recall 17 April 2020 because, on that day, he went to his brother's house near Kalacraft to participate in a Pooja (prayer). At around 7 to 8 p.m. he met Bobo who informed him that somebody was selling Indian hemp. They went to one house there and called the dealer. The dealer asked them to come the next morning. Then they decided to have a grog session in which one lady also joined. They drank till midnight. Answering a leading question, Chand said they drank the hot stuff to wash down till the next day because

it was curfew. The next day they went to the dealer in Tropik to buy Indian Hemp. He never gave a statement to the police.

88. Under cross-examination, Chand said that Bobo came to meet him one week prior when he was in the Magistrates Court cell and requested him to give evidence. He first met Bobo when he was on remand in 2015 and has become a friend since then.

DW- 5 Revoni Yalayala (1st Accused)

89. Revoni said that on the night of 16 April 2020, he was at his brother's place and on the 17th morning he returned home in Vitogo, Lautoka. On 17 April 2020, he went with a friend to his brother Naulu's farmhouse at Naikabula beside the forest. He helped them put manure on the cane farm and spent the night there. On the 18th in the morning, he met Kelepi Ratu at Tomuka, Kelepi came in a car and requested him to join. He agreed and sat in the car. He had known Kelepi when they were in remand. Kelepi told him that he got some 'stuff', He gave him that stuff and foreign currency. He didn't know that stuff was stolen. He went and gave his partner Amelia Ravato the stuff and two notes of AUD 50 and came back. Kelepi then asked him if he could find Faleiwai, his cousin, for them to smoke weed. He didn't know Alexio and Bobo or anything about the incident. He was being forced and verbally abused at the caution interview and forced to sign the record. He did not read it before signing.
90. Under cross-examination, Revoni admitted that he was arrested on the morning of 20 April 2020 but denied having been interviewed by DC Eliko. He admitted to signing the record of the interview. He admitted receiving disclosures after one month and filing grounds of *voir dire* to challenge the admissibility of the caution interview. He denied that he took part in the *voir dire* enquiry in which the record of the interview was tendered.
91. He admitted the charging process having been conducted by two female officers. He signed the charge statement because he was forced. He denied having planned and robbed a house at Naikabula with Kelepi Ratu, Alexio Moli and Isaia Bobo. He admitted going to Amelia

with Kelepi Ratu and giving her money and a packet of Benson & Hedges 20. He denied that he ran from Faleiwai's house as police approached. He admitted that he was not arrested from his home at Vitogo but not in Naikabula. He does not know how to drive a vehicle.

DW 6 Aliti Tinaivatucicila

92. Aliti testified that Bobo is her long-standing friend. On 17 April 2020, Bobo called her during lunchtime and wanted her to arrange a seller for him to buy marijuana. Bobo came to Kalacraft, her friend's house at around 7 to 8 p.m. before the curfew hours. She was with some friends and some of them left when Bobo came. She asked him to stay over because it was curfew time. The grog session finished at around 10.00 p.m. and then they slept till the morning. The next day (18th Saturday), she woke up early in the morning and went to the shop to meet a friend.
93. The next day (19 April 2020), she went to Suva with Bobo and his friend whom she did not know. One of Bobo's friends arranged the vehicle for Bobo. She went to Suva to see her kids. Bobo asked her if he could also go with her because he wanted to buy smoke (marijuana) somewhere in Sigatoka. The person who was sitting in the front seat got off at Votualevu. After that, they went to Nadroumai Village and then went straight to Delainavesi in Suva. They went to Suva because Bobo told her that he had a parcel coming from Kadavu and she too could have some if she could wait for that parcel. They reached Delainavesi at 7.00 p.m. when it was almost curfew, so they spent the night there.
94. Before the person in the front seat got off at Votualevu, she gave AUD 100 and some NZDs to Bobo which she had received when she went to meet her ex-partner Kelepi Ratu. Kelepi also gave a small pencil case and told her to keep it without opening it until he came back. But she unzipped it and saw some gold jewelries inside.
95. On the next morning (20th), she went to see her kids, but they had gone to school. She returned to Delainavesi and spent another night because Bobo had told her that she could get her share from the parcel coming from Kadavu. When they were sleeping in the sitting room,

the police came between 4-5 a.m. When she woke up, the police were already standing inside the house. Bobo was lying down face up just beside her. She tried to wake him up. She still had the pencil case that was given by Kelepi Ratu. She took that purse and shoved it inside Bobo's trousers because she knew that Kelepi had stolen it. They were arrested and taken to Nabua Police Station and from there, to Muanikau Post. She gave a statement to the police, but it was not her real statement. When she gave this version, the police officers did not accept her story. They tortured her and took her to the Lautoka hospital.

96. Under cross-examination by Alexio, Aliti denied having seen Alexio any time before coming to Court. The man who sat on her left was a dark man with a beard. The statement written by the police was not given on her free will. Two male officers entered the room, and she was forced and threatened whilst she was making her statement.
97. Under cross-examination by the State Counsel, Aliti first denied that she was interviewed. She then admitted that she was interviewed on 21 April 2020 and that she later gave a statement to a lady officer Barbara at Lautoka Police Station on 23 April 2020, but it was not given on her free will. The male officers forced her to state in her statement that all the items were given to her by Bobo. She was forced to sign by two male officers. She did not make any complaint about police torture until she came to Court although she was given a chance to speak to a Legal Aid Counsel during the interview. When she was taken for a medical examination, she told the doctor that she was assaulted but the medical report was not with her. She was taken to the house where they had grog in Saru for a scene reconstruction. She did not complain to the owner of the house about police brutality because the police were present.
98. During the reconstruction, she confirmed giving a silver ring to Police. That ring was in the pencil case that was given to her by Kelepi Ratu. She admitted giving her personal information to police and that the same information is reflected in her statement. She denied having told the police that on the 17th she was with Bobo, Alexio Moli, Revoni Yalayala and Kelepi Ratu. She maintained that the statement made to the police was not true as it was taken forcefully. She admitted that she had never told the police that the bag containing

jewelries was given to her by Kelepi Ratu. She admitted stating to police that, in the early hours of Saturday the 18th, she was awoken by Dee and that she saw Kelepi sharing the money with Isaia Bobo, Alexio Moli and Revoni Yalayala when police arrived and that they ran into the bushes. She denied stating to police that Alexio Moli was with Bobo from the night before and that same Alexio Moli was in that vehicle with them.

99. She agreed that on 19 April 2020, she had spent the night at Alexio Moli's aunt's house in Delainavesi. She admitted going to town with Taina to exchange a USD 100 note and AUD 4x\$50 at Harbour Mall Foreign Exchange in Suva and to shop for her kids. She denied they went to Sigatoka to find shelter there for the night and never planned to go to Suva. She agreed that her statement recorded on 23 April 2020 is materially different from what she said in Court. The State counsel tendered her previous statement (DE-14) to prove the contradictions.

Evaluation/ Analysis

The case against the 1st Accused - Revoni Yalayala

100. To prove the charges against the 1st Accused, the State relied on the admissions he allegedly made in the caution statement, the charge statement and the factual presumption arising from the possession of the recently stolen property. The caution statement (PE 28) and the charge statement (PE 35) were held to be admissible at a pre-trial *voir dire* hearing. The Prosecution maintained that the admissions were made by the 1st Accused on his own free will and that he told the truth in his statements.
101. The 1st Accused says that the admissions were extracted by force using police brutality and therefore, they were not truthful and should not be relied upon. As I have already found in my Ruling on *voir dire* that the 1st Accused made the admissions voluntarily, I do not intend to go into detail about that finding. What remains to be decided at the trial proper is whether, for whatever reasons, the 1st Accused did not tell the truth in his statements to the police.

102. In his caution statement, the 1st Accused stated that he went to the compound of the robbed house on Saturday night with Kelepi (4th Accused) and two others, tackled the security man to the ground, told him to keep still (Q68, Q69) and was watching over the security while the others went inside the house (Q72). He also heard the screaming of the wife (Q73). He at Q 74 & Q75 admitted that Kelepi and the other two who went inside the house came out with two bags, got into the Ford Ranger of the owner and then he drove them off towards Tavakubu. In his charge statement, he stated that he had tackled the security and then carried the security into the house.
103. The Accused were charged on the doctrine of joint enterprise. If the Court accepted the said admissions as truthful statements of the 1st Accused they satisfy all the elements of the offence of Aggravated Robbery as charged as being admissions equivalent to a confession which is quite sufficient to find the 1st Accused guilty on each count.
104. To satisfy myself that the 1st Accused told the truth in his statements to the police, I carefully considered the other evidence adduced at the trial. I found his statements to be consistent with the evidence, especially that of Satish Narayan (PW1), Deo Goundar (PW 3), Ranjani Devi (PW 2), Faleiwai (PW 9) and Amelia Ravutu (PW12) which I have summarized above.
105. PW 2 said that the robbers had loaded the stolen property in the Ford Ranger and fled. PW 1 found the fully damaged vehicle on a slope in a nearby pine forest on the same evening. The 1st Accused in his answers to Q75, stated that he drove off the Ford Ranger towards Tavakubu and, at Q 98, that he drove the twin cab and rolled it down the hill to be abandoned.
106. During the scene reconstruction, he showed the house they robbed and then directed the police officers to the place where the vehicle was abandoned. His knowledge as to the whereabouts of the robbed house and the stolen vehicle confirms the truth of the statements he made.
107. Although the 1st Accused in his evidence denied having been interviewed, he admitted signing and his signature being present on the record of the interview. By filing the grounds

of *voir dire* to challenge the admissibility of the record of the caution interview he must be taken to have admitted that he was interviewed. Although he alleged that he was forced to sign the record of the interview and the charge statement, he never filed any grounds of *voir dire* to that effect. He did not file any grounds to challenge the admissibility of the charge statement that was disclosed.

108. I accept the evidence of the Prosecution on this issue. I am satisfied that the 1st Accused made those admissions in the record of the interview (PE28) and the charge statement (PE29) and that those admissions are truthful.

109. Apart from the admissions, the Prosecution relied on the factual presumption arising from the recent procession of stolen property to prove the charges against the 1st accused.

The Application of the factual presumption

110. Before the Court can draw the inference from the accused's possession of recently stolen property, it must be satisfied of five matters: (i) That the accused was in possession of the property; (ii) That the property was positively identified by the complainant; (iii). The property was recently stolen; (iv). That the lapse of time from the time of its loss to the time the accused was found it with was, from the nature of the item and the circumstances of the case, recent; (v). That there are no co-existing circumstances, which point to any other person as having been in possession (exclusive possession).

(i) Identity of the stolen property

111. The Prosecution must prove that the items taken into police custody and exhibited at the trial are the property stolen from the complainant's house. There is not much dispute that the property tendered in evidence is the property stolen from the complainant's house on 18 April 2020. PW 1 and PW 2 had given statements to police soon after the robbery itemizing the property stolen from their house and a description thereof. That description of the items recovered is mostly compatible with the description they had given to the police soon after

the robbery. They identified those items in Court and tendered in evidence (PE1 to PE 27 and PE 39).

112. Although the complainants did not have the purchase receipts for those items and they did not have distinguishing identification marks, they had either been used for a considerable period or had sentimental value attached (e.g. *mangal sutra* gifted at the time of the marriage) to them to confirm that they were theirs. PW 1 has had a collection of about 150 bottles of foreign and local liquors, most of which had been purchased for his collection during his overseas trips. The 4th Accused does not dispute that the items recovered by Cpl. Ratu Meli on his direction were the property stolen from the complainant and he pleaded guilty to the charges. Although some of those brands of alcohol and perfumes are freely available in the Fiji market, as the 3rd Accused suggested, I accept the evidence of the complainants that they are the stolen property in this case.

113. What is specifically relevant to the 1st Accused's case is whether the jewelries marked and tendered as PE 24, PE 25, PE 26, and the foreign currency notes 50x2 AUD (PE 39) were the property stolen from the complainants. I am satisfied that jewelries tendered marked as PE 24, PE 25, PE 26, and the foreign currency notes 50x2 AUD (PE39) are the property stolen from the complainants.

(ii) Was the 1st Accused in possession of the stolen property?

114. The 1st Accused in his caution interview admitted that the 4th Accused, and two others came out (of the house) with two bags and got into the complainant's Ford Ranger which he drove off with the bags and his accomplices.

115. The prosecution must establish that the accused had possession of the property in question, i.e. had had knowledge and custody of or control over that property. The notion of possession has two elements, namely, the physical element which is control and the mental element which is knowledge. A person knows something if he or she is aware that it exists or will

exist in the ordinary course of events⁷. There are circumstances in which the requisite knowledge may be imputed.

116. The 1st Accused had control over the vehicle and the bags containing stolen property. The 1st Accused no doubt knew that they were stolen. Therefore, based on the admission in the caution statement, I accept that the vehicle, PE 24, PE 25, PE 26, and the foreign currency 50x2 AUD (PE 39) were in the possession of the 1st Accused at the relevant time although they were not in his actual possession when they were recovered.
117. The vehicle was not tendered in evidence. So far as the presumption is concerned, what is relevant to the 1st Accused's case is whether the jewelries marked and tendered as PE 24, PE 25, PE 26, and the foreign currency notes 50x2 AUD (PE 39) were in the constructive possession of the 1st Accused. The 1st Accused in his caution interview admitted that he went to Balawa with the 4th Accused and gave his wife Amelia AUD 50 and two BH 20 packets (Q89, Q90). Amelia (PW12) confirmed that she received the foreign currency and a packet of BH 20 from the 1st Accused who came with another. Cpl. Drauna (PW 10) also confirmed that two AUD 50 notes and a packet of BH 20 were handed over to him by Amelia who informed that Revoni was the one who gave those items to her. He tendered in his evidence the two ADU 50 notes (PE 39), the packet of BH 20 (PE 37) and the search list relevant to the seizure (PE 36).
118. The 1st Accused further admitted in his caution statement (Q9, Q92) that he and the 4th Accused met Faleiwai and gave him some jewelries. Faleiwai testified that the 1st and the 4th Accused ran to the cassava patch, leaving jewelries packed in a sock behind and that he later handed it over to the police. Faleiwai identified PE24, PE25, and PE26 and confirmed that those were the jewelries that were surrendered to the police.
119. However, the jewelries (PE24, PE25, PE 26) were recovered by the police, not from the custody of the 1st Accused but from the custody of Faleiwai and the two 50 AUD notes (PE 39) from the custody of Amelia, the ex-partner of the 1st Accused.

⁷ Section 20 of the Crimes Act 2009

120. Section 4 of the Crimes Act describes that "possession", "be in possession of" or "have in possession " includes (a) not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person. There are circumstances in which the requisite knowledge may be imputed.
121. Amelia said that the foreign currency notes were given to her by the 1st Accused. The 1st Accused admits that he and the 4th Accused went together and gave Amelia two notes of AUD 50. His position is that it was the 4th Accused who gave him the stuff (foreign currency+ packets of cigarettes) and that he didn't know that they were stolen. (I shall later deal with his explanation as to the lack of knowledge).
122. Faleiwai said that the jewelries (packed in a sock) were left at his house by the 1st and the 4th Accused when they came by each other's company. He did not say in whose exclusive custody the sock was. According to Faleiwai, all he knew was that the sock existed at his house, but he did not know the sock contained jewelries, not to mention stolen jewelries. He believed that the Accused (Revoni and Kelepi) would come and collect the sock later, so he kept it for the benefit of the Accused. The 1st Accused admitted in evidence that he went to Faleiwai's house with the 4th Accused to buy smoke at the relevant time. Faleiwai is 1st Accused's cousin. I accept Faleiwai told the truth.
123. In the context of this case, the requisite knowledge means the knowledge that the jewelries were stolen property. That knowledge can be inferred from the conduct of the accused. The 1st Accused admitted that he was with the 4th Accused at the relevant time and that he handled the two 50 AUD notes (PE 39) and the cigarette packet (PE 37), which this Court found to be stolen property. They both ran into the cassava patch as the police vehicle arrived. From their conduct, it can be inferred that they knew the sock contained stolen property.

124. Section 4 of the Crimes Act defines the notion of joint possession as follows *(b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them.* Based on this definition, the 1st Accused shall be deemed to be in possession of PE 24, PE 25, and PE 26. There are no co-existing circumstances, which point to any other person, than the 1st and the 4th Accused, as having been in possession of the stolen property.

125. I conclude that the jewelries (PE 24, PE 25, PE 26) and the foreign currency 50x2 AUD (PE 39) notes were in the possession of the 1st Accused at the relevant time although they were not in his actual possession at the time they were recovered. I am satisfied that the said property was in the exclusive possession of the 1st Accused.

(iii). Was the property recently stolen?

126. There is no dispute that the jewelries (PE 24, PE 25, PE 26) and the two foreign currency notes 50x2 AUD (PE39) were recovered by the police soon after the robbery on 19 April 2020, the day after the robbery. I am satisfied that the lapse of time from the time of the loss of the property to the time the accused was found it with was recent.

127 The Prosecution satisfied the conditions required for the application of the factual presumption of recently stolen property where the Accused should be called upon to offer a plausible explanation to prevent the Court from drawing the inference that he was either the thief or he knowingly received stolen property.

128. The explanation of the 1st Accused was that the 4th Accused gave him that property but didn't know that it was stolen. He also took up an *alibi*. However, he has not given this explanation/ defence in his caution statement. Instead, he admitted him to be part of the robbery with the 4th Accused and two others. Further, the circumstances under which the property was recovered, his conduct and his close association with the 4th Accused whom he knew from

remand, do not allow me to believe that he did not know that the ‘stuff’, which included even foreign currency, was not stolen.

129. The 1st Accused admits that he was in Naikabula on the night of the robbery. If he was with his brother on his farm, he could have advanced his *alibi* at the first available opportunity. He has not done so. His late *alibi* is self-serving, and it does not create any doubt in the Prosecution case. I reject the explanation of the 1st Accused and his alibi.
130. The post criminal conduct of the 1st Accused does not justify the conclusion that he was not the thief but only the recipient of stolen property. He must be found guilty as a principal offender of Aggravated Robbery as charged on each count.

The case against the 3rd Accused - Isaia Bobo

131. The Prosecution solely relies on the presumption arising from stolen property to prove the charges against the 3rd Accused. They say that the 3rd Accused was one of the robbers who robbed the complainant’s house and fled into hiding in Suva where he was arrested with stolen items.
132. He denies any involvement in the robbery in Naikabula. He mounted a defence of *alibi* and placed himself at a grog session in Kashmir on the day the robbery took place. To support his *alibi*, the 3rd Accused called his ex-girlfriend Aliti (DW 6) and his friend Umesh Chand (DW 4). The 3rd Accused admits that the pouch (PE16) that contained jewelries [PE9, PE17, PE18, PE19, and PE21] was found in his possession when the police team raided the house of Eileen in the wee hours of 21 April 2020, just two days after the robbery. However, he denies conscious possession. His position is that Aliti, his ex-girlfriend, shoved the pouch inside his 3/4 pants as the police team raided the house. He also admits to having given foreign currency to Panapasa (PW14) on 19 April 2020. His explanation was that it was given to him by Aliti to be given to Panapasa.

133. There is no dispute that the pouch and the jewelries therein were the property stolen from the complainants. The Defence witness Aliti confirmed that she knew that the pouch contained jewelries and that they were stolen. Her evidence is that the pouch (PE 16) was given to her by the 4th Accused for safekeeping and that she shoved it inside the undergarment of the 3rd Accused when the police team raided the house.
134. Let me analyse the evidence of both Prosecution and Defence to determine whether the explanation advanced by the 3rd Accused to account for the possession of stolen property is plausible. Nasila (PW-6) and DC Vilikesa (PW-7), the officers who raided the house gave consistent evidence of the arrest and seizure of the stolen property from the 3rd Accused.
135. The Defence challenged the Prosecution's evidence on the basis that the police officers had no search warrant at the time of the search, and that the search list tendered in evidence (PE29) was tainted as it did not bear the date the raid was conducted, and his signature was not present on it. He denied the Prosecution's version that he refused to sign the search list.
136. The officers did not deny that they did not have a search warrant. They explained that they just went to arrest the suspects, and for that, they needed no search warrants. The search list (PE29) had been prepared by the team leader Sgt. Tabalailai. Therefore, PW 6 and PW7 had no idea as to why it was dated 22 April 2020. Even if these explanations were to be rejected, the credibility of the Prosecution's version would not be affected given the 3rd Accused's admission that the search was conducted on 21 April 2020 and that the pouch (P26) was recovered from his possession.
137. It is hardly believable that the pouch was shoved or tucked inside the 3rd Accused's pants when the police team entered the house. The door was opened by Osea who had let the officers in. The officers saw the 3rd Accused and Aliti sleeping in the living room as they entered the house. Both the 3rd Accused and Aliti admit this. That being the evidence, it was hardly possible for Aliti to shove the pouch inside 3rd Accused's pants without being detected by the officers. Therefore, I accept that the pouch containing jewelries was found on the 3rd Accused at the time of his arrest.

138. The proof of mere physical possession does not end the matter. To prove possession, as I said in the foregoing legal discussion, it is imperative to prove that the 3rd Accused knowingly possessed the stolen property. The 3rd Accused denies that he knew what was inside the pouch, not to mention stolen jewelries. Therefore, the circumstances of the possession must justify an inference that the 3rd Accused knew the pouch contained stolen property.
139. Before concluding on this issue and the credibility of his *alibi*, the Court must analyse the evidence of the 3rd Accused and that of his two witnesses, Aliti (DW 6) and Umesh Chand (DW4) and that of the 2nd Accused which I shall be doing in the following paragraphs.
140. There is no dispute that the 3rd Accused is a resident of Voatualevu, Nadi where he grew up with his long-standing friend, the 2nd Accused. According to the 3rd Accused, he went to Lautoka on 17 April 2020, on Aliti's request that she could arrange a dealer for Indian hemp. Upon his arrival in Lautoka, Aliti had taken the 3rd Accused to her cousins' house in Kalacraft where they had a grog session with Umesh Chand (DW 4). According to the 2nd Accused, the 3rd accused was in Lautoka because the police were looking for him for another offence. Whatever the reason would have been, the presence of the 3rd Accused on the day of the robbery in the vicinity of the crime scene and where many stolen items were recovered (Kalacraft) is not disputed.
141. According to the 3rd Accused, he had spent the whole night on 17 April 2020 in the grog session. Umesh Chand said they drank till midnight. However, answering a leading question by the 3rd Accused, Chand changed his evidence and said they drank the hot stuff till the next day because it was curfew. Chand is a friend of the 3rd Accused whom he met in the remand. Despite being a friend, he had never given an *alibi* statement to the police, nor was it revealed by the 3rd Accused that he had an *alibi* witness named Umesh Chand until he came to court as a witness. It is hard to believe that Umesh Chand could recall the exact date of a grog session that happened four years ago. Therefore, I conclude that Umesh Chand concocted his evidence to save his friend. His evidence should be rejected.

142. Aliti said the grog session finished at around 10.00 p.m. on 17 April 2020 and they slept till the next morning. The robbery took place after the 17th midnight. Therefore, she could not say for certain if the 3rd Accused was drinking at her cousin's place till morning. I reject the evidence of the 3rd Accused that he was having grog at Kalacraft after midnight of 17 April 2020 till the next morning.
143. The 3rd Accused's evidence of why he went to Suva on 19 April 2020 with Aliti and the 2nd Accused is inconsistent and shrouded in suspicion. The Prosecution's theory is that he went to Suva with stolen property in search of a hiding place.
144. There is no dispute that he was the one who arranged a private car from Votualevu with Panapasa and Taniela. He had no plausible reason to bring down a car from Votualevu when plenty of taxis were available in Lautoka and to employ an intermediary (Panapasa) and pay him foreign currency lavishly to arrange a car. If the foreign currency was given to Panapasa as the taxi fare, he did not explain why he gave FJD 200.00 to Taniela as the taxi fare when they reached Delainavesi. The driver Taniela confirmed that he received (FJD 200) at the destination.
145. It was revealed that they had left Lautoka for an unknown destination and an uncertain purpose. According to the 3rd Accused, the destination was Suva and the purpose of his visit was to receive a parcel of Indian hemp from Kadavu. He invited the 2nd Accused who had just come out to join him so that he could help him to earn some money. The stated purpose of Aliti joining them was to go and see her kids.
146. The 2nd Accused said he was asked by the 3rd Accused to come to Lautoka so that they could go to Suva together. There was no plausible explanation for why 2nd Accused came to Lautoka from Legalega in a minibus when the 3rd Accused had arranged a private car from Votualevu for them to go to Suva. Taniela confirmed that the decision to Suva was made only at Nadroumai. If their planned destination was Suva as the 3rd Accused said, he should offer a plausible explanation as to why they went to the interior Nadroumai to look for a

house. If they went to Eileen's house in a prearranged plan by Alexio, there was no reason for Eileen to be taken by surprise when she saw Alexio in his first visit to her place with two others. Even if they had no option but to stay at Eileen's place because of the curfew, there is no plausible explanation for staying there for two nights. If the 3rd Accused had a house in Raiwaqa, he had no reason to seek the 2nd Accused's help to arrange a house in Suva and stay at Eileen's house for two nights without staying at his own house in Raiwaqa from where his children were schooling. If Aliti's visit was to see her kids at her sister's place in Suva, there was no plausible explanation as to why she should stay at Eileen's house, instead of staying with her sister and the children. Aliti's explanation for preferring to be at Eileen's place that she was desirous of getting her share of Indian hemp is implausible because Eileen confirmed that the parcel, which Bobo claimed he expected, was never dispatched to her house.

- 147 Aliti, who was called to support the version of the 3rd Accused is equally implausible. She was initially listed as a Prosecution witness. But she could not be located until the Prosecution closed its case. She suddenly appeared in Court to give evidence for the 3rd Accused. She was the 3rd Accused's ex-girlfriend who had spent five days with Bobo before being arrested on 21 April 2020. She had all reason to proffer evidence to do favour to the 3rd Accused.
148. Aliti admitted that her previous statements given to police on 21 April 2020 and subsequently on 23 April 2020 are materially different to what she stated in Court under oath. Her explanation was that those statements were obtained by force using police brutality and were not true. However, she admitted making no complaint to anybody including the lawyer who visited her at the police station or during the scene reconstruction. She failed to substantiate her claim that she had made a complaint to the doctor when she was taken to the hospital.
149. She admitted surrendering a stolen gold ring to police during scene reconstruction; giving AUD 100 to Bobo to be given to Panapasa and going to a money exchange in Suva to change 4x50 ADUs. She knew the foreign currency to be stolen property. Although she said that the stolen property was given to her by the 4th Accused, she had never told the police that the 4th

Accused gave that money. Having spent considerable time with the 2nd Accused travelling to Suva with him and spending two nights at his aunt's place in Delainavesi, she pretended that she had never seen the 2nd Accused any time before coming to Court. However, she later admitted that it was the 2nd Accused. Aliti was inconsistent, evasive and her conduct was not consistent with that of an honest witness. I shall reject her evidence. As a result, Aliti's evidence failed to support the 3rd Accused's defence.

150. I reject the evidence of the 3rd Accused and his *alibi*. The Defence failed to create any doubt in the version of events of the Prosecution's case. I accept that the 3rd Accused had in his exclusive possession the stolen property soon after the robbery with the knowledge that they were stolen. He failed to give a plausible explanation for his possession that was inconsistent with his guilt. His conduct of travelling to Suva with the stolen items is consistent with the Prosecution theory that he fled to Suva to avoid being arrested. The only inference that can be drawn from the evidence is that the 3rd Accused was found to have been in possession of the stolen property because he took part in the robbery in Naikabula on 17-18 April 2020.

The case against the 2nd Accused - Alexio Moli

151. The Prosecution failed to produce any plausible evidence to place 2nd Accused at the crime scene on 17 through 18 April 2020. Nothing stolen was found in his possession nor was there evidence that he had any knowledge of the stolen property that was in the possession of his companions. The State Counsel submitted that based on the doctrine of joint enterprise the 2nd Accused should be found guilty. However, there is no evidence to link him to the crime scene or stolen property. The mere fact that he was in Lautoka on 19 April 2020 and travelled with the 3rd Accused to Suva where he stayed with the 3rd Accused for two nights at his aunt's place does not lead to the only inference that he is guilty.
152. In his evidence he denied being in Lautoka on 17-18 and said that he was in Legalega with his sister and came to Lautoka on 19 April 2020 only when he received a call from the 3rd Accused. He explained the circumstances under which his visit to Suva took place. He called his sister to support his version though she was not sure when his brother went to Lautoka.

His *alibi* and the explanation he provided for being in the company of the 3rd Accused from 19-21 April 2020 may not be true. However, he does not have to prove anything in this case. It is the burden of the Prosecution to disprove the *alibi* and prove the charges against the 2nd Accused beyond a reasonable doubt. The Prosecution failed to discharge that burden. Therefore, the 2nd Accused must be acquitted on both counts.

153. For aforesaid reasons, I find the 1st Accused Revoni Yalayala and the 3rd Accused Isaia Bobo guilty on each count of Aggravated Robbery as charged. The 1st and the 3rd Accused are convicted on both counts accordingly. The 2nd Accused Alexio Moli is acquitted on each count and discharged.



Aruna Aluthge

Judge

5 August 2024

At Lautoka

Solicitors:

Office of the Director of Public Prosecutions for State

The Accused in Person