

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 17 of 2020

STATE

V

SIMELI BIAU

Counsels : Mr. Baleilevuka for the State
: Mr. Singh of LAC for the Accused

Dates of Trial : 12th, 13th June 2025
Date of Judgment : 24th June 2025

JUDGMENT

The accused person is charged with the following offence: (a copy of the information is with you).

FIRST COUNT

Statement of Offence

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

Particulars of Offence

SIMELI BIAU with others on the 5th day of January, 2020 at Lautoka in the Western Division stole 3 x 22ct Gold Chain, 3 x pair 22 ct Gold Earring, 1x 22 ct Baby Bangle, 1 x 22ct Single Gold Bangle, 2 x 9ct Gold Ring, 2 x 22 ct Gross Locket, 1 x HP Laptop, 1 x Black Amazon Tablet with magnetic case, 1 x Rip Curl Watch , 1 x Car Key and Assorted Cards being the property of **FEROZA BI ARMED**.

1. The matter was called and the accused was arraigned on the Aggravated Robbery charge against him. The accused pleaded not guilty. Disclosures

were fully served. Pretrial conference proceeded and the matter was ready for trial. Trial proceeded on the 12th of June 2025. At the end of the prosecution case the Court finds that there was a case to answer. Matter proceeded for defence case. At the closure of the defence case, both parties have opted to rely on the court record and matter was adjourned for judgment.

BURDEN OF PROOF AND STANDARD OF PROOF

2. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no obligation on the accused persons to prove their innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he or she is proven guilty.
3. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means that the Court must be satisfied and sure of the accused persons guilt, before the it can express that the accused is guilty.

ELEMENTS OF THE OFFENCE

4. The accused Simeli Biau is charged with others on one count of Aggravated Robbery contrary to section 311(1)(a) of the Crimes Act 2009.
5. For the accused person to be found guilty of the offence of aggravated robbery the prosecution must prove, beyond reasonable doubt the following elements:
 - (a) The accused;
 - (b) in company with one or more other persons;
 - (c) dishonestly appropriates the complainant's properties;
 - (d) with the intention of permanently depriving him of the ownership of those properties; and
 - (i) Immediately before committing theft uses force on another person; or
 - (ii) threatens to use force then and there on another person with intent to commit theft; or to escape from the scene;
 - (iii) at the time of committing theft or immediately after committing theft, he or she;
 - (iv) Uses force on another person; or

(v) threatens to use force then and there on another person with intent to commit theft or to escape from the scene.

PROSECUTION CASE

6. The prosecution called two (02) witnesses to prove its case against all the accused person.

PW1 Feroza Bi Ahmed

7. The first prosecution witness was the complainant Feroza Bi Ahmed who recalled on 5th of January 2020 she was residing at Musuniwai Road, Lautoka. She said on that day they slept early and he daughter fell off the couch. She said their house is a two bedroom house. It is a Tin and three layer block base house colored purple. The house has three other flats co joined to each other. She said the main door to the house is located at the living room. The back door is located at the kitchen. She said when you enter from the front door you enter into the living room, there is a corridor which connects the living room to the bedrooms.
8. Thus on that day her daughter got hurt and they slept without dinner. Around 1.am she woke up and she made wheetbix for her. Whilst doing so, she heard funny sounds and voice outside her than peeked through the sitting room, the dogs were barking. After feeding her daughter she than switch of the lights and went to bed.
9. Hence within 40 minutes from that time, she fell asleep at her bedroom. She said her mum and her partner was asleep bedroom two. In the morning she was woke up by a tap on her shoulder. That was about 4.30 am. The light was shooting from the ceiling and she could hear a voice saying "if you fear for your life and your daughter tell us where the money and the jewelry is.
10. She said by the accent of the voice she believe s that it is a voice of an iTaukei man. She could sense that there were about three people in the room. The person who spoke to her had a mask on his face and the mattress was put over her. She could not see anyone because a mattress which was put over her was blocking the view but she could sense d that there was three people in the house altogether. She said she pointed out she had \$70.00 in the glass.
11. According to her they also search her five-layer drawer, where she kept her jewelries and her cosmetics there. Her jewelries were both gold and imitation. She said the robbers took everything as we were about 30 minutes lying still unable to do anything.
12. They reported the robbery to the police and when police came and take a look around the house. She said the thieves went into the house through the window of the living room. He said the thieves had levered the grill using

a pinch bar. The men stole watches, 3 gold chain, 3 pairs of gold 22 ct, 2 cross locket. 1 single bangle and 22 ct cross locket, bangles her daughters bangles, single bangle, earrings and 9 carat gold. her HP laptop, her daughter's tablet and rip curl watches.

13. The following items were returned after the investigation; 1 pair on Bangles and a few others were returned.

Cross Examination

14. She agreed and said that the reason she did not see any of them is because of she was covered by the mattress.
15. She said she could feel there were three people there. She did not see them entering the room. She walked around in the living room and found out that the grill and the windows were opened. The police had said that that's the only entrance that was opened. She confirmed that the items she identified belongs specifically to him.

PW2 SGT Netava Yalayala

16. The officer had served in the Fiji Police Force for the last 13 years. He is the interviewing officer in this case. On the 10th of January 2020 he was directed to conduct recording of the caution interview notes of the suspect. The caution interview notes was signed by the accused.
17. Caution interview notes shown to the witness. The interview than reads out Questions and Answers on the caution Interview notes belong to the accused commencing from Q: 50. The accused said one Lasarusa Rakula came to pick him up at his residence. The time was about 3.00 am in the morning.
18. He saw one Ronil in the private car parked beside the road. He knew Ronil from prison when they had served time together there. He saw another Fijian of Indian descendant as a driver and Lasarusa Rakula seating at the backseat with him. As soon as he boarded the vehicle they proceeded Musuniwai road. He said Lasarusa and Ronil were talking about the location of the house which is on top of Dravi. The accused said they stopped at Musuniwai Road and they walked while Ronil pointed to the house.
19. The house was on top of a drive away a blue concrete house. He said at that time he was wearing a black round neck and a black three pants. He said the accused started to opened the grill and the window. Ronil was wearing a black long sleeve t- shirt with short pants. After levering the grills, he removed the three louvre blades.
20. He said they entered the main door. He said they entered the first room and Ronil whispered into the Indian lady's ear to face the wall. They stared

searching the first room. There was nothing much found in the first room but the second room which searching the wardrobes found a tray of gold jewelries.

21. All the jewelries were removed and kept in a shopping bag. Ronil was holding the shopping bag. There was also two mobile phones and a laptop. The accused with others left the said property withal the items seized. They went straight to Ronils house and shared the gold jewelleries amongst themselves including cash.
22. He tendered the caution Interview notes of Simeli Biau as Prosecution exhibit one (PEX 1). H said the accused was not assaulted whilst in police custody.
23. The witness disagreed that the accused had no idea of what was happening that day.
24. End of Prosecutions case and Defence concedes that there is a case to answer.
25. Defence opted to give evidence and will call the accused to the stand.

DW 1: Simeli Biau

26. He resides at Tomuka and is living together with his sister. There are five members of the family. He said during the 10th of January 2020 he was at home. He said when the police arrested him, they assaulted him and swear at him.
27. The witness described in his evidence how the Robbery at the house of the complainant was done on the 5th of February 2020. He had admitted that it was Ronil, Lasarusa and himself who had left to the house of the complainant and robbed the complainant of her personal belongings.
28. He said he was the one who found a tray of gold jewelries which they stole later on.

Cross Examination

29. He alleged that he was assaulted but he did not lodge a complaint or ask to be of examined by a doctor. He said he lodged a complaint at Topline Police Post was put to him that the reason why he did not ask to be medically examined and reason why there is no documentation was because no assault had happened to him. He agreed that he admitted the offence in his caution interview statement. He said he was at Tavakubu when he was arrested on the 10th of January 2020.
30. In re-examination he said he was at home during the robbery. He denied he left his residence on the 5th of January 2020.

Analysis

31. The prosecution alleges that the accused with others entered into the house of the complainant at night of 5th January, 2020 and stole her personal properties.
32. The complainant was asleep in at around 1.30 am in the morning of the 5th of January, 2020 when the accused with others broke and entered into the house, went into the bedroom of the complainant whispered into the ears of the complainant, threatening her not to move and look straight to the wall.
33. The prosecution stated that the accused persons searched the house and stole the following jewellerys from the second drawer of the wardrobe belonging to the complainant.
34. The prosecution are saying that the jewelries are 3x 22carat gold chain, 3 x pair 22 ct Gold earrings, 1x pair 22ct Cross Locket, 1x HP laptop, 1 x black Amazon Fire Tablet with magnetic case, 1x Rip curl watch, 1 x car key and assorted cards.
35. The prosecution confirmed that the caution interview notes tendered in as (Prosecution exhibit 1) of the accused has been held admissible as evidence for the prosecution.
36. The accused has confirmed that he was with others that when they broke into the house of the complainant and stole from there above mentioned items from there in.
37. Question 80 to 87 of the caution interview statement of the accused he had admitted that he remove the screws from the grills and remove 3 louvre blades to allow them to enter into the house of the complainant.
38. The accused confirmed in his caution interview statement that whilst searching the complainant's room he found a tray of jewelries inside the second drawer.
39. The prosecution are saying that all the items was stolen from the complainants home was put into a shopping bag and conveyed to the house of one Ronil and was shared amongst.
40. The defence are saying that the accused was assaulted during the recording of his caution statement interview where he admitted to the offence.
41. Defence are saying that the accused admitted to the offence because he was assaulted by police during the recording of Caution Interview Statement.

42. The defence said that the accused had no medical report because he was not taken to the hospital. His claims of being assaulted cannot be substantiated as there was no medical report to confirm the same.
43. The Prosecution are saying that there are evidence of admission and confession in the caution interview statement of the accused Simeli Biau.

Determination

44. The accused had admitted in his caution interview statement that they broke into the house of the complainant with two others on the 5th day of January 2020.
45. The accused in his caution interview described how they stole assorted jewelleries, a HP laptop and an amazon fire tablet, Watchers and how they shared the properties amongst themselves.
46. The accused said that he admitted to the offence in his caution interview that he and others broke into the house of the complainant and stole from there in because he was assaulted by Police to admit.
47. The accused confirmed that there was no medical report to confirm that he was assaulted by police.
48. I accept the admissions made by the accused in his caution interview statement tendered in as Prosecution exhibit 1 that he and two others broke and entered into the house of the complainant and stole from there in.
49. I do not believe that the accused was assaulted as there was no evidence to substantiate his claim.
50. I am of the view that prosecution presented evidence proving all all the elements of the offence of Aggravated Robbery contrary to section 311(1) (a) of the Crimes Act 2009.

Conclusion

51. In light of the above discussions, I find the accused Simeli Biau guilty as charge for one count of Aggravated Robbery and I convict him for the same.


.....
Sekonaia V Vodokisolomone
Acting Judge



At Lautoka
24th June 2025

Solicitors

For the State: Office of the Director of Public Prosecutions
For the Accused: Office of Legal Aid Commission