

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 100 of 2024

BETWEEN : STATE

AND : ETUATE KOROISAU

Counsel : Ms N Ali & Mr Kumar for State
Mr S Ravu for Accused

Hearing Dates : 5 & 6 August 2025

Closing Submissions : 7 August 2025

Judgment : 8 August 2025

EXTEMPORE JUDGMENT

[1] Etuate Koroisau is charged with one count of aggravated robbery. The Information reads:

Count One

Statement of Offence

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

Particulars of Offence

ETUATE KOROISAU on the 19th day of March, 2024 at Nasinu in the Central Division, being armed with an offensive weapon, robbed ASHNEET PANDE of 2x shop Balancing book, 1x red JBL Speaker, 1x black & Silver J2 Prime Digicel Post

Pay Phone, 1x Samsung brand phone charger. 1x Remax brand phone charger, 10 packets of (BH 10) cigarettes and 1x packet (BH 20) cigarettes, the property of ASHNEET PANDE.

[2] The Information was amended before the close of the prosecution case to add the words, ‘*and used force before committing the said robbery on ASHNEET PANDE*’. The defence did not object. I granted the application.

[3] The accused denies the offence.

[4] The prosecution must establish each element of the offence beyond reasonable doubt. The elements are as follows.

1. On 19 March 2024, the accused (identification);
2. Whilst armed with an offensive weapon (in this case being a pocket knife);
3. Robbed Ashneet Pande of several items of personal property as itemised in the Information; and
4. Immediately before the robbery, the accused used force on Ashneet Pande (that is, he stabbed Mr Pande multiple times with the pocket knife) with the intention to commit the robbery.

Burden of proof and assessment of the evidence

[5] The accused is presumed to be innocent until he is proven to be guilty. As a matter of law, the onus or burden of proof rests on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation or burden on the accused to prove his innocence.

[6] The accused chose to give evidence, but he does not carry any burden to prove or disprove anything. The burden is on the prosecution to prove the charges beyond a reasonable doubt.

[7] Each element of the charge must be proved. If there is a reasonable doubt, so that the Court is not sure of the accused's guilt, or if there is any hesitation in my mind on any of the elements, the accused must be found not guilty of the charges and, accordingly, acquitted

Prosecution Case

[8] The prosecution called eight witnesses, being:

- PW1 - Ashneet Pande
- PW2 - Litia Aduitawaqa
- PW3 - Krishneel Chand
- PW4 - Dr. Navneel Lal
- PW5 - Praneet Pande
- PW6 - Acting Inspector Maharaj
- PW7 - DC5420 Apenisa Lovodua
- PW8 - DC5579 Lemeki

[9] The complainant, PW1, was working at his brother's shop, which is called 24/7 Tash Kava, situated at Visako, Nadera. As per its name, the shop is open 24 hours a day, 7 days a week.

- [10] On 18 March 2024, at 4pm the complainant started an 8 hour shift at 24/7 Tash Kava. He finished at 12 midnight, at which time PW2 took over. At 12.19am. PW1 left the shop and made his way to his car parked outside the shop. We know it was 12.19am because there were CCTV cameras situated inside and outside the shop. One of the outside cameras recorded the robbery of PW1 and the time is recorded on the footage. As PW1 was walking to his car, with his laptop bag on his shoulder, he was attacked by a lone assailant. The assailant approached PW1 from the darkness, asking for matches. PW1 said that the assailant was wearing a black jacket, a black bucket hat, black pants, and something covering his knee. There was good light immediately outside the shop as this area was lit by two floodlights. The assailant proceeded to stab PW1 multiple times with a pocket knife to the right arm, chin, and cheek in order to grab the laptop bag that PW1 was carrying. Both the assailant and PW1 fell to the ground. There was a scuffle. After the assailant managed to grab the laptop bag, he fled the scene, back into the darkness.
- [11] Next to the kava shop is a bakery. PW3 was working at the bakery at the time of the robbery. Immediately before the robbery, PW3 was outside the bakery and saw the assailant walking toward the kava shop. PW3 then made his way back inside the bakery. As he did so, he heard a commotion, returned outside, and saw the assailant fleeing after the robbery.
- [12] PW2 and PW3 went to the aid of PW1 and assisted PW1 back into the shop. They called PW1's brother, **Praneet** Pande (PW5), who arrived at the shop within minutes - Praneet lives close to the shop in the same house as PW1. Praneet cleaned the blood from his brother's wounds. They then called the police who were very quickly onto the scene, within 20 to 30 minutes. Whilst waiting, Praneet viewed the CCTV footage of the robbery and extracted the footage, which he subsequently supplied to the police - a version of this footage was produced in evidence at trial. The footage is not clear enough to show the face of the assailant.

- [13] One of the first police officers on the scene was PW8, DC Lemeki. He completed the first page of a Fiji Police Medical Examination Form in order for the complainant to be medically examined. The background information recorded by DC Lemeki reads, '*It was alleged that he [PW1] was being robbed and stabbed by a knife at the same time by an **unknown person** sometime this evening*'.¹ It was PW8's evidence in court that it was PW1 that told him that the offender was an unknown person. PW8 also informed the court that when he spoke to PW1 at the scene, PW1 gave no indication that he knew the person that had robbed him.
- [14] Praneet transported PW1 to the local medical centre, where PW1 was seen by Dr Lal (PW4), at about 2am that morning. Dr Lal also took a history which is recorded in the Medical Examination Form and reads '*According to pt [patient], he was stabbed multiple times at around 12.30am today as he was being robbed in front of a shop by an **unknown person***'.² Dr Lal stated in his evidence that the words 'unknown person' were not his words but the words PW1 used. Dr Lal stitched PW1's multiple lacerations. The medical practitioner expressed the opinion that the injuries sustained by PW1 were consistent with being stabbed by a pocket knife.
- [15] Following treatment, Praneet then took PW1 to the Valelevu Police Station. PW1's written statement was recorded by a police officer. PW1 states that he signed the written statement after it was recorded. There is no dispute by the parties that PW1 completed a written statement and signed it that morning. However, that written statement has not been made available in this proceedings and cannot be located by the police. It is not known whether PW1 indicated in that statement that he knew the assailant or that the assailant's name was 'Eddy' - more about this below. Having carefully listened to the audio of PW1's evidence during the trial, PW1 did not state in his evidence that he had informed the police when he provided his first statement on 19 March, that the assailant was Eddy or that he knew the assailant. When he was asked in re-examination if the first

¹ My emphasis.

² My emphasis.

statement was the same as his second written statement to the police (prepared on the morning of 20 March) PW1 stated that it was almost the same.

[16] After giving his statement to the police on the morning of 19 March, Praneet then drove PW1 home to rest. Praneet then went back to the shop and reviewed the CCTV footage from the previous days in order to ascertain whether he could identify the assailant from the description provided by his brother of the assailant. Based on that description, Praneet found footage from the previous day, 18 March, 2024, of a person wearing a green camouflage jacket, a bucket hat, shorts and a knee cap. At 9.31pm, Praneet sent an image of that person by Viber to his brother with the question '*This fella?*' - that image is of a person named 'Gerald' who is known to PW1. There was no response from PW1 to the Viber message. At 12.13am on 20 March 2024, Praneet sent a further Viber message asking, '*U awake*' and 2 minutes later a further Viber message with '?'. It is Praneet's evidence that shortly after sending the Viber message at 12.15am, he received a phone call from PW1 who advised Praneet that 'Gerald' was not the person that robbed him. However, PW1's evidence in cross-examination was that after being sent the image by his brother, he advised his brother that it '*it seems like the offender*'. I accept PW1's evidence on this matter as it is consistent with Acting Inspector Maharaj's evidence on that image when he took PW1's second statement at 9.50am on 20 March, 2024.

[17] Acting Inspector Maharaj, then a Detective Sergeant, was supervising the police investigation. He went to PW1's house on the morning of 20 March, 2024 in order to record a written statement from PW1. Praneet had earlier sent an image of Gerald, along with the footage of Gerald from 18 March 2024, to the police. Acting Inspector Maharaj showed the image of Gerald to PW1 who told the officer that Gerald was the offender. Acting Inspector Maharaj then showed the footage of Gerald to PW1 at which time PW1 stated that Gerald was not the offender. The footage of the robbery on 19 March was then shown to PW1 who then stated that the offender was 'Eddy'. This is the first time that I can glean from the evidence produced at trial that PW1 first indicated that the offender was Eddy. PW1 explained to the police officer that Eddy was a customer at the shop and had come into the shop several times before the robbery. PW1 also informed the officer

that he had recognised that the offender was Eddy at the time of the robbery when he saw his face and heard his voice asking for matches.

[18] On the basis of PW1's identification of two potential suspects, the police arranged for both Gerald and the accused, who is known as Eddy, to be taken into custody.

[19] The accused was interviewed by the police on 21 March – the interview was not produced in evidence so I can only assume that the accused made no admissions. The accused agreed to participate in an identification parade which was organised by the police at the Valelevu Police Station on 22 March. Both Gerald and the accused were in the line up along with 10 other persons. According to DC 5420 Apenisa (PW8), who recorded the names of the persons in the line up, all of the persons in the identification parade were of similar features to the accused, as did Gerald, as this is how line ups are selected.

Defence case

[20] The defence called three witnesses, including the accused, Paula Rawiriwiri (DW2) and Merenia Korotuku (DW3).

[21] The accused's evidence is that he did not rob the complainant. On the evening of 18 March 2024, he was watching TV at DW3's house at Kinoya Koro and fell asleep on the couch. He slept on the couch that evening and was woken up the next morning by his sister. According to the accused's evidence DW3's house is about a 15-minute walk from the shop where the robbery occurred. The two other witnesses called by the defence, supported the accused's evidence that he was sleeping on the couch that night.

Analysis of the evidence

[22] There is no real dispute that PW1 was robbed at 12.19am on 19 March by a lone assailant. The assailant stabbed the complainant multiple times with a pocket knife in

order to effect the robbery. The assailant stole PW1's laptop bag containing the items that are recorded in the Information.

[23] I am satisfied that the offence was committed. There is only one question. Was the accused the assailant? Did the accused commit the robbery?

[24] The prosecution relies entirely on the evidence of PW1, the complainant, to identify the accused. The accused denied committing the offence. I must, therefore, assess the veracity of this evidence. I will start with PW1's evidence but before doing so, I note the following helpful remarks by Kulatunga J in *State v Rokosuka* [2022] FJHC 408 (28 July 2022) at [24]:

'...In considering the testimonial trustworthiness of a witness, there are two aspects that a court is required to consider. One is the credibility or veracity, and the other is the accuracy and reliability. The former relates to the witness's sincerity, that is, his or her willingness to speak the truth, as the witness believes it to be. The latter concerns and relates to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall, and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously, a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, an honest witness, may, however, still be unreliable....'

[25] The complainant was adamant in his evidence in court that the offender was the accused. He stated that he recognized the offender immediately when the offender approached him and asked for matches. The complainant stated that he had known the accused previously and recognized his face as a customer in the shop.

[26] I am satisfied from the evidence provided by the complainant, PW2 and PW3, as well as the CCTV footage, that the area where the robbery occurred was sufficiently well lit for the complainant to see the face of the offender. I am also satisfied, despite a suggestion by the defence to the contrary, that while PW1 had drunk two cans of Fiji Gold immediately before the robbery he was not drunk. That said, the complainant would have been tired at the time of the robbery as he had just finished an 8 hour shift which started at 4pm and it was then the early hours of the morning. That combined with the small amount of alcohol he drank would have made the complainant somewhat sluggish.

[27] Having listened to the complainant's evidence and observed his demeanour, I am satisfied that the complainant believes that the offender was the accused. However, I must be sure of the reliability of his evidence. I must be sure that the accused actually saw the accused and recognised him when the complainant was robbed – as the complainant has stated in his evidence. Witnesses can genuinely believe a fact to be true yet be mistaken. A witness may convince themselves of the truth of a fact that may in fact not be true. Having carefully considered the evidence from the prosecution witnesses I have a reasonable doubt, in fact a considerable doubt, over the reliability of PW1's identification of the accused as the person that robbed him on 19 March 2024. The reasons are set out below:

- i. The complainant's evidence that he recognised the accused as being the offender at the time of the robbery simply cannot be reconciled with PW1's conduct on 19 March 2024. Despite stating that he recognised the accused immediately, PW1 did not inform his colleague (PW2) or Krishneel (PW3) who immediately came to his aid. PW1 did not inform his brother who arrived at the scene only minutes later and washed his injuries. PW1 did not inform the first police officer on the scene, DC Lemeki (PW8) who arrived less than 30 minutes after the robbery.
- ii. To make matters worse, the complainant told DC Lemeki and the medical practitioner who examined him that the offender was '*an unknown*

person'. Both DC Lemeki and Dr Lal expressly stated these were the complainant's words. This clearly contradicts PW1's evidence he recognised the offender immediately after the robbery.

- iii. The reason offered by PW1 for not informing Dr Lal of the identity of the offender is difficult to follow. The complainant stated in cross examination that he recognised the offender but told Dr Lal that he was 'unknown' because he did not wish to disclose anything at that time. In clarification to the Court, PW1 stated that he did not think that the offender's identify would be relevant to the doctor. The prosecution argue that these responses can be explained by the fact that the complainant was in shock at the time having been stabbed multiple times. I have no difficulty accepting that PW1 will have been in a state of shock and may have decided, for whatever reason, not to reveal the identity of the offender to the doctor. But why keep this information from the police? Indeed, the one person I would have expected the complainant to reveal the identity to would have been his brother, but he did not. His brother was at the scene within minutes. He drove the complainant to the doctor at the medical centre, then to the police station and thereafter home. Over those several hours together, at no time did the complainant inform his brother that the offender was the accused - and I note that PW1's brother also stated in evidence that he knew the accused as somebody who had come to the shop, being more reason for the complainant to have disclosed the accused's identity.
- iv. Instead of informing his brother that the offender was the accused, PW1 provided a vague description of the offender. In examination in chief, Praneet stated that shortly after arriving at the scene he asked his brother about the offender. Praneet stated that "*His [PW1] exact words were that 'it was an iTaukei guy, fair, not to fair and he was wearing a bucket hat and a jacket'*". The question was then put to Praneet whether PW1 told

him the name of this person who robbed him to which Praneet's response was 'No'. The complainant did not inform his brother of the name of the assailant at all on the 19 March. His brother took it upon himself to try to discover the identity by looking at previous footage sending an image to PW1 of 'Gerald' at 9.31pm on 19 March which Praneet also sent to the police. Still, PW1 did not reveal that the offender was Eddy.

- v. The prosecution suggests that, the complainant first disclosed the name of the accused, being 'Eddy', as the offender when the complainant provided his first statement to the police on the morning of 19 March 2024. I am unable to accept this on the evidence provided by the complainant in court. As I have indicated, having listen to the audio of the complainant's evidence during the trial, he does not specifically state this in his evidence. Moreover, it is inconsistent with the fact that he initially informed Acting Inspector Maharaj at about 9.50am on 20 March that the offender was in fact 'Gerald'.
- vi. This brings me to the evidence of Acting Inspector Maharaj. His evidence also contradicts the complainant's evidence that the complainant made out the accused as the offender at the time of the robbery. More than a day later, the complainant provided two contradictory identifications of the offender, firstly it being Gerald and then stating it was the accused.
- vii. Finally, I am unable to place much weight on the fact that PW1 identified the accused in the identification parade. By the time of the parade on 22 March the complainant had convinced himself that the offender was the accused. PW1 was familiar with the accused and will have recognised the accused in the lineup not as person who robbed him but as a person who the complainant had seen come to the shop regularly before the robbery.


Conclusion

[28] For the reasons stated, I am not satisfied beyond reasonable doubt that the complainant recognised the offender as the accused when he was robbed. This evidence cannot be reconciled with the fact that he provided descriptions only of the offender and did not identify the accused as the offender until 20 March 2024. It is contradictory to the complainant's advice to the police and Dr Lal on 19 March that the offender was an unknown person.

[29] I have not dealt with the defence's evidence. I have not addressed the veracity of the accused's denials or the quality of the evidence from his two witnesses. There is no need to do so in light of my findings regarding the reliability of the complainant's evidence as to the identity of his attacker.

[30] Accordingly, I find the accused not guilty of count 1 and he is acquitted.




.....
D. K. L. Tuiqereqere
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State

Office of the Legal Aid Commission for the accused