

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 41 of 2024

STATE

-v-

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|--------------------------|--------------------------------------|
| SOLOMONE BONESEVA | <u>1ST ACCUSED</u> |
| VARINAVA NAMUMU | <u>2ND ACCUSED</u> |
| JOJI NASEDRA | <u>3RD ACCUSED</u> |

Counsel: **Ms. E. Thaggard for the State**
 Ms. K. Marama and Mr. M. Savou for the 1st and 2nd Accused
 Mr. I. Rusaqoli for the 3rd Accused

Date of Trial: **4, 5, 6, 7, 12, 13 August 2025**

Date of Judgment: **26 September 2025**

JUDGMENT

1. Mr. Solomon Bonaseva (“the 1st accused”), Mr. Varinava Namunu (“the 2nd accused”) and Mr. Joji Nasedra (“the 3rd accused”) were jointly charged with, and pleaded not guilty to, two counts of aggravated robbery, contrary to section 311(1)(a) of the Crimes Act 2009, the particulars being that, on 1 April 2024, at Bua, they robbed Mr. Lote Tuwaqa of his mobile phone, and at the time of such robbery used personal violence on Mr. Tuwaqa (count 1). On the same date, they robbed Mr. Shainal Prasad of cash in the amount of \$6000.00 and a mobile phone, and at the time of such robbery used personal violence on Mr. Prasad (count 2).

The prosecution case in outline

2. Mr. Jay Kumar and his family live in the settlement of Cobue, Bua, where he owns a logging and timber business. The 3rd accused also lives in Cobue, and had worked for Mr. Kumar's business. The 3rd accused was the ringleader in planning with the 1st and 2nd accused to break into Mr. Kumar's house and rob him.
3. In the early hours of 1 April 2024, Mr. Tuwaqa was at Mr. Kumar's family home, together with his daughters and son, and Mr. Kumar's elder sister. Mr. Kumar had earlier fallen ill and was not at home. Mr. Tuwaqa was sleeping in the sitting room with Mr. Kumar's 14-year-old son, Shainal Prasad, and the girls were sleeping in their bedroom with their aunt.
4. Mr. Tawaqa was attacked by two men as he slept face-down. His legs and wrists were tied with rope. His mouth and eyes were covered with masking tape. Shainal was also assaulted and tied up. His mouth and eyes were covered with masking tape.
5. Upon hearing the intruders, aunt Malti and the girls locked themselves in the ensuite bathroom. The intruders threatened them with sexual assault and attempted to break open the bathroom door. They demanded to know where the money was kept. One of the daughters very sensibly told them where they could find cash in the house.
6. The robbers stole \$6000.00 and a number of mobile phones.
7. As no one saw the intruders, the prosecution case against the accused persons relies on circumstantial evidence. The 2nd accused was found in possession of one of the stolen mobile phones when he was arrested a few days after the robbery. Items belonging to the 3rd accused, including a hammer, were found at Mr. Kumar's house. The 3rd accused made unchallenged statements against interest, including that he was present inside Mr. Kumar's house at the time of the robbery. The prosecution also rely on Mr. Tawaqa's voice recognition of the 3rd accused.

Prosecution evidence

8. Mr. Tawaqa was employed in Mr. Kumar's business as a logging supervisor. After Mr. Kumar separated from his wife, he asked Mr. Tawaqa and his wife to help look after his children. On Sunday 31 March 2024, Mr. Tawaqa was drinking grog with Mr. Kumar and others when Mr. Kumar suffered a mental health episode and was taken away by the police.
9. Mr. Tawaqa slept over in Mr. Kumar's sitting room together with Shainal. Mr. Kumar's daughters slept in their bedroom with their aunty.
10. As he was sleeping face-down, he felt two big punches and some kicks to his head and back. He felt one man sit on his neck and another man sit on his back. His arms and legs were tied with rope and his eyes and mouth were covered with masking tape. He heard another man tell them not to put tape over his nose. He heard Shainal shouting for help and the sound of the intruders punching him.
11. He heard a man talking loudly giving instructions to the others. He heard this man asking the girls for money. He was speaking in English and Hindi. He heard one of Mr. Kumar's daughters tell that man where the money was kept. He then asked for more money. Mr. Tawaqa recognised the voice of the man speaking loudly to be the 3rd accused. He has known the 3rd accused for 12 years. He is related to him through his wife, and worked with him at the saw mill. They spoke to each other almost daily. After about 1 hour, he heard the 3rd accused tell the others to leave the house. When the Court sought to clarify in which language he spoke to the 3rd accused, Mr. Tawaqa said they spoke in the Buan dialect. The 3rd accused recognised the tone of his voice and his manner of speaking. He also recognised the way the 3rd accused spoke in English and Hindi. The 3rd accused spoke to the other robbers in the Buan dialect.
12. After the robbers left, the girls and aunt Malti helped to untie him. They looked around the house and found it ransacked. Five mobile phones and cash had been stolen. He also saw the ropes, a hammer and a metal implement for husking coconuts that did not belong at Mr. Kumar's house.

13. In cross-examination, Mr. Tawaqa confirmed that he had never met the 1st and 2nd accused.
14. In response to a question from Mr. Rusaqoli, Mr. Tawaqa said that, for a long time, he had heard rumours about Mr. Kumar practicing witchcraft. He added that, having stayed at Mr. Kumar's house for more than 2 months, he did not see any evidence that Mr. Kumar was practicing witchcraft. When it was put to him that he was mistaken about recognising the 3rd accused's voice, Mr. Tawaqa replied that he was "100% sure".
15. Shainal testified that he was 14 years of age at the time of the robbery, and was at home with Mr. Tawaqa, his aunty and his three sisters. On 31 March 2024, his father was suffering with mental illness, and the police took him away. He slept on the settee and Mr. Tawaqa slept beside him on the sitting room floor. His sisters slept in the master bedroom with their aunty. As he awoke to use the washroom, he was hit on his back and his face as he lay face down. He was tied up and his mouth was covered with tape. His eyes were covered with cloth. When he moved, he was kicked in the face. He heard men talking in the Buan dialect about going to rob a nearby shop. He was losing consciousness. He did not hear the robbers leave. His sister and aunty shook him awake and untied him. His wallet containing \$1000.00 and mobile phone were missing.
16. Ms. Nivashni Kumari testified that she is 13 years of age. On 31 March 2024, she was at home with her two sisters, her brother, her aunt Malti, and Mr. Tawaqa. The police took her father as he had mental illness. She slept in the master bedroom with her sisters and aunt. At around 3am, she woke up and saw her aunt panicking. Someone was pounding on the bedroom door. Her aunt told her and her sisters to go to the bathroom. They locked the bathroom door and pressed their bodies against the door. People were pounding on the bathroom door, telling them to open the door and to give them money. They threatened to break down the door and record videos with them. She heard 3 or 4 voices. One man spoke in Hindi asking for money. She panicked and told them there was \$5000.00 cash inside a white purse in the middle drawer. The incident lasted for about 1 hour.

17. Ms. Malti Devi gave evidence largely consistent with Ms. Kumari's account. When she heard Shainal cry out, she woke the 3 girls and they locked themselves in the bathroom. Men were banging on the door demanding money and threatening to rape them.
18. Ms. Nileshni Devi testified that she is married to Mr. Jay Kumar and they have 5 children together. She identified the mobile phone recovered from the 2nd accused as her husband's phone. Her evidence was not challenged.
19. Sergeant 3202 Iliapeci was the Crime Scene Investigator and took photographs of the scene and produced a photographic booklet which was tendered as Prosecution Exhibit -1.
20. Mr. Semi Bolanitabua works at Mr. Kumar's saw mill. On 31 March 2024, he drove the 3rd accused and a man named Solomone from Cobue to Dreketi. He had first met Solomone briefly at the 3rd accused's house on 27 March 2024. The drive to Dreketi Shopping Centre took about 2 hours. They then drove to Irrigation Road, where two men arrived in a fiberglass boat. One of those men got in his vehicle and they drove back to Cobue. He did not introduce himself. He heard the three men talking about doing a job, but he did not know what job they were talking about. He dropped the three men at an unoccupied house near Cobue at around 9.30pm. Mr. Bolanitabua's evidence was not challenged.
21. Corporal 4634 Nasilivata interviewed the 3rd accused after caution. She read a redacted record of interview into the record, which was tendered as Prosecution Exhibit – 3. Corporal Nasilivata was also the officer who received the exhibits in the investigation and handed them to the Exhibit Writer, WPC Salaseini.
22. When Mr. Rusaqoli put to the witness that she had torn up the record of interview signed by the 3rd accused, and had handed the 3rd accused his record of interview to sign on the following day, Corporal Nasilivata denied that. When it was suggested to Corporal Nasilivata that she had fabricated a number of the answers in the record of interview, and the 3rd accused had given answers which were not recorded, she denied that.

23. Corporal 4259 Tuiwainikai serves as a Crime Intelligence Officer in the Northern Division. He assisted the Investigating Officer to apprehend the 2nd accused at Nakalou Village on 6 April 2024. The 2nd accused was cooperative, and voluntarily handed over to the Investigating Officer a Samsung A53 smart phone.
24. Detective Sergeant 3630 Nakuna is the Investigating Officer. He arrested the 2nd accused at Nakalou Village on 6 April 2024. He seized the mobile phone handed to him by the 2nd accused, which he took to be identified by the owner. As Mr. Kumar was in hospital, the mobile phone was positively identified by his wife. He then handed the phone to the Exhibit Writer. Ms. Marama did not challenge that her client had handed over the mobile phone to the police on 6 April 2024, which was identified as having been stolen from Mr. Kumar's house.
25. WPC 6899 Sereseini tendered a number of prosecution exhibits and was not cross-examined.

Defence submission of no case to answer

26. At the close of the prosecution case, Ms. Marama submitted that the 1st accused had no case to answer. I acceded to that application and acquitted the 1st accused accordingly.
27. I found that the 2nd accused and 3rd accused had a case to answer on both counts and explained their options to them. The 2nd accused elected to give evidence and to call his father in support of his alibi. The 3rd accused elected to give evidence and did not call any witnesses.

Defence case – 2nd accused

28. The 2nd accused testified that he went fishing with his wife and father for 3 days during the last week of March 2024. They returned home on the afternoon of Sunday 31 March 2024. At around 7am the following morning, he and his wife went to Dreketi to sell fish. He was approached by a man who asked whether he wished to buy a Samsung smart phone. The 2nd accused had been wishing to buy a smart phone to make use of GPS to navigate his boat at night. This man said that it was his phone and that he had forgotten the password. It did not enter

the 2nd accused's mind to ask whether the phone was stolen. He bought the Samsung phone for \$70.00. He intended to take the phone to an internet shop in Labasa to unlock, but he was arrested and handed the phone to the police before he had the opportunity to do so. He told the police that he had purchased the phone in Dreketi. He does not know the 3rd accused.

29. When it was put to the 2nd accused that he did not go to sell fish at Dreketi on 1 April 2024, and did not purchase a Samsung phone there on that day, he maintained that he was telling the truth about that. He denied that he got the phone when he participated in a robbery at Mr. Kumar's house together with other men, including the 3rd accused.
30. The 2nd accused's father, Mr. Ruveni Qelo, testified that he was out fishing with the 2nd accused and his daughter-in-law, and they returned home on the afternoon of Sunday 31 March 2024. At around 7am the following morning, his son and daughter-in-law went to Dreketi to sell their catch.

Defence case – 3rd accused

31. The 3rd accused's defence can fairly be described as both novel and intriguing.
32. The 3rd accused testified that he entered Mr. Kumar's house in the early hours of 1 April 2024. Whilst 3 other men also entered Mr. Kumar's house at around the same time as the 3rd accused, he was not a party to a joint enterprise with those men. Rather, the 3rd accused was on a solo mission to liberate a human skull, which he believed Mr. Kumar kept at home for use in the practice of witchcraft.
33. At around 9.30pm on 31 March 2024, the 3rd accused went for a nap at his second home in Cobue. After his nap, he walked back to his family residence. He encountered a group of men at the roadside and engaged them in conversation. He told these men about the skull at Jay Kumar's residence. He then went to Jay Kumar's house together with 3 other men. When he entered the house, he saw 2 people sleeping in the sitting room who he recognised as Lote and Mr. Kumar's son. He went straight to the box he believed contained a skull. The other men were behind him inside the house. The 3rd accused used his hammer, which he had taken with him, to open the box. There was no skull inside the box. He then

retraced his steps to the verandah. He saw the other men tying up the 2 men in the sitting room. When he asked what they were doing, they told him to “shut up”. He then went outside straight away. He did not have any further conversation with those men inside the house. He stood outside for some time, and then the other men came out of the house. He told them that he could not find the skull, and they told him that they did not find any money. They went their own way and the 3rd accused returned home. He forgot to take his hammer.

34. On the Wednesday following this incident, he was arrested and taken to Nabouwalu Police Station, where he was interviewed under caution. Despite there having been no challenge to the admissibility of his record of interview, the 3rd accused testified that there were a number of irregularities in the manner in which he came to sign his record of interview. He also testified that a number of the answers were fabricated by the police.
35. In cross-examination, the 3rd accused denied that he was the ringleader in planning the robbery at Mr. Kumar’s house. He only went there to get the skull, and did not know that the other men intended to commit a robbery.

Closing submissions

36. I heard closing speeches on 13 August 2025. Ms. Marama and Mr. Rusaqoli also filed comprehensive and helpful written submissions for which the Court is grateful.
37. I will not address each and every point made in this Judgment, but I have considered everything advanced in the oral and written submissions.
38. In the absence of any direct formal identification, the prosecution relies on circumstantial evidence to prove that it was the 2nd accused and the 3rd accused who, together with others, committed two robberies on 1 April 2024. The prosecution also relies on the 3rd accused’s statements against interest and Mr. Tuwaqa’s voice identification of the 3rd accused.
39. Ms. Thaggard very properly acknowledges that the only evidence supporting the 2nd accused’s involvement is the fact that, 5 days after the robbery, he was found in possession of a Samsung smartphone, which he now accepts was stolen from

Mr. Kumar's house. Ms. Thaggard submits that the 2nd accused's explanation for his possession of the stolen phone ought to be rejected as wholly implausible. She also invites me to reject the accused's alibi.

40. The main plank of the prosecution case against the 3rd accused is that he accepts that he entered Mr. Kumar's house as a trespasser on the night of the robbery. Also, reminding the Court of the need for caution in weighing voice recognition evidence, Ms. Thaggard submits that the voice recognition is strong evidence. The 3rd accused's voice is well-known to Mr. Tuwaqa, he heard the 3rd accused giving instructions to the other men, and making threats and demands to Ms. Devi and the 3 girls in the bathroom, over a prolonged period. Mr. Tuwaqa was "100% sure" that it was the 3rd accused he heard speaking that night. That recognition is also supported by Mr. Bolanitabua's evidence about driving the 3rd accused and another man to pick up a third man in Dreketi and driving them back to Cobue, during which time they were discussing about a "job".
41. In a nutshell, Ms. Marama submits that the 2nd accused has provided a reasonable explanation for his possession of the stolen smart phone. The prosecution has failed to make the Court sure that his explanation is untrue. That being the only evidence linking her client to the offending, the prosecution has failed to meet its burden.
42. The thrust of the 3rd accused's defence is that he is guilty of aggravated burglary on the basis that, together with 3 other men, he entered Mr. Kumar's house as a trespasser intending to steal a skull. When he saw the others assaulting Mr. Tawaqa and Shainal, he immediately withdrew by leaving the scene. He was never a party to a joint enterprise with others to commit robbery. Mr. Rusaqoli also submits that the voice recognition evidence is weak.

Directions/warnings

43. The prosecution must prove that the accused are guilty. The accused do not have to prove anything to me. The defence does not have to prove that the accused are innocent. The prosecution will only succeed in proving that the accused are

guilty if I have been made sure of their guilt. If, after considering all of the evidence, I am not sure that the accused are guilty, my verdict must be not guilty.

44. Since the accused elected to give evidence in their own defence, I remind myself that even if I reject their evidence the prosecution must still prove its case to the criminal standard.
45. There is no prescribed form of direction when the prosecution's case is based on circumstantial evidence alone. The essential point is that, when the different pieces of evidence are taken together, I must be sure of the accuseds' guilt because there is no reasonable explanation for them other than their guilt.
46. Mr. Tawaqa gave evidence that, during the course of the robbery in the early hours of 1 April 2024, he heard the 3rd accused speaking loudly, giving instructions and demanding money. The 3rd accused does not deny being present at the material time, but denies that he spoke the words attributed to him. He says that Mr. Tawaqa is mistaken in thinking that the voice was his.
47. When considering this evidence I need to be especially cautious because experience has shown that any witness who gives evidence of identification can be mistaken and this is so even when the witness is honest and convinced that they are right. Such a witness may well seem convincing but this does not mean that the witness cannot be wrong. This is so even when a witness knows a person well and says that they have recognised that person.
48. In this case, where the evidence is that Mr. Tawaqa recognised the voice but did not see the speaker, the danger of such recognition being wrong is even greater.
49. Before I could decide that it was the 3rd accused speaking loudly during the robbery, I would have to be sure that Mr. Tawaqa's evidence that he recognised the 3rd accused's voice is accurate and reliable. I need to look carefully at all the circumstances in which Mr. Tawaqa heard the voice.
50. I keep well in mind that, whilst he knows the 3rd accused very well, Mr. Tawaqa does not have any training or experience in voice recognition. Also, the

circumstances in which he heard the voice would have been very stressful for Mr. Tawaqa.

Analysis and determination

51. It is not disputed that there was a robbery committed by at least 3 men at Mr. Kumar's house in the early hours of 1 April 2024, and that mobile phones and \$6000.00 cash were stolen. The 2nd accused accepts that he was in possession of one of those stolen mobile phones 5 days after the robbery. The 3rd accused admits that he entered Mr. Kumar's house as a trespasser that night in the company of 3 other men. The 3rd accused also accepts that he and another man were driven to Dreketi on 31 March 2024, where they picked up a third man and drove back to Cobue.
52. In relation to the 2nd accused, the central issue for my determination is whether I am sure that he was one of the men who committed the robberies.
53. Whilst I am somewhat sceptical about the 2nd accused's explanation for his possession of a smartphone stolen in the robbery, I am not sure that he did not come into possession of the stolen phone in the way he explained under oath. His account of having travelled to Dreketi to sell his catch on 1 April 2024 finds support in his father's testimony. It strikes me as odd that the 2nd accused would purchase a locked phone, but his wish to own a smartphone, and the attractive price of \$70.00, means that I cannot rule out that he bought a second hand phone from an unknown man in the street. It is possible that the man selling the phone had stolen it during the robbery earlier that day, or had himself purchased it from one of the robbers.
54. It follows that I am not sure of the 2nd accused's guilt, and I acquit him accordingly.
55. However, for the reasons I shall explain, I am sure that the 3rd accused is guilty of count 1 and count 2.
56. There is no doubt that violent aggravated robberies took place at Mr. Kumar's house in the early hours of 1 April 2024. Violence was used against both Mr. Tawaqa and Shainal.

57. The issue I must determine is whether I am sure that the 3rd accused was one of the men who perpetrated those robberies.
58. In determining this issue, I reject the 3rd accused's evidence that some of the answers in his Record of Interview were fabricated. I accept Cpl Nasilivata's evidence that the Record of Interview is an accurate record of the questions asked and the answers given by the 3rd accused. I am sure that the answers given by the 3rd accused were given voluntarily. The natural flow of the questions and answers does not allow for the possibility of fabrication. Also, many of his answers reflect what he said under oath at trial. He, no doubt, considered those answers to be exculpatory, in the sense that he was seeking to downplay his involvement in the robbery. For example, at Q/A 47, when asked why he was after the skull inside Jay Kumar's house, he replied: *"Jay Kumar is known for his witchcraft in which he is using the said skull to kill people and gain power from it. I wanted to get hold of that skull and to destroy it as it killed one of my cousins during the fatal road accident"*. Also, at Q/A 49, when asked whose idea it was to go and rob Jay Kumar's house, the 3rd accused answered: *"It was my idea to get the skull, but if they find any money they can take it, but I only want the skull."*
59. There are several strands to the prosecution case:
- (i) On the afternoon of 31 March 2024, at the request of the 3rd accused, Mr. Semi Bolanitabua drove the 3rd accused to Dreketi. A short distance from the 3rd accused's house, the 3rd accused asked him to stop at J D junction to pick up another man. At around 6.30pm, the 3rd accused and the other man got out of the car at Dreketi Shopping Centre. A third man arrived by boat, and all four of them drove back to Cobue. During the drive back, Mr. Bolanitabua heard them talking about doing a "job". He dropped off the 3 men at an unoccupied house near to Cobue at around 9.30pm
 - (ii) The 3rd accused voluntarily confessed to having entered Mr. Kumar's house unlawfully in the early hours of 1 April 2024, together with three other men, with the intention of stealing items from the house. He also confessed to hearing female voices screaming for help from behind a closed door,

telling one of his accomplices to try to open the door, and then walking out of the house to act as a lookout.

(iii) Mr. Tuwaqa, recognised the loud voice of the 3rd accused giving instructions to the other men to break into the room where the girls were sleeping. He also heard the 3rd accused asking the girls for money.

(iv) The 3rd accused's hammer was recovered from Mr. Kumar's house.

60. In my considered view, the prosecution case is overwhelmingly strong.

61. I am satisfied that Mr. Tawaqa's evidence that he recognised the 3rd accused's voice is accurate and reliable.

62. Mr. Tawaqa has known the 3rd accused for several years, and spoke with him on an almost daily basis. Whilst he was not able to fully articulate the ways in which the 3rd accused's voice is distinctive, Mr. Tawaqa said that the 3rd accused voice, and his manner of speaking, is distinctive. The voice was loud and clear, and he heard the 3rd accused speaking for a prolonged period, giving instructions to the others and demanding money. The 3rd accused was speaking the Buan dialect, and also in the Hindustani and English languages, all of which were familiar to Mr. Tawaqa. His evidence that the speaker was taking a commanding role is consistent with the evidence that it was the 3rd accused who organised the return journey to Dreketi on 31 March 2024. It is also consistent with the 3rd accused's admission that he was present inside Mr. Kumar's house at the material time.

63. There is no doubt in my mind that the 3rd accused shared a common purpose with the other men to rob the occupants of Mr. Kumar's house in the early hours of 1 April 2024. I am sure that they acted together in carrying out the robberies reflected in count 1 and count 2. I am also sure that the 3rd accused played a leading role in planning and executing the robbery.

64. In my view, the skull is a red herring. Whilst the 3rd accused may have believed rumours about Mr. Kumar, that is irrelevant in the context of his full and active involvement in the robberies.

65. At the close of the prosecution case, I allowed an amendment to the particulars of count 2 to reflect that there was evidence of 1 Samsung smartphone and \$6000.00 cash being stolen. The evidence was unclear as to which family member the cash belonged to, but this is immaterial. I am sure that \$6000.00 cash was stolen by the robbers.
66. It is also immaterial that the prosecution were not able to prove the identity of the other robbers. I am sure that the 3rd accused acted with other persons unknown.
67. It follows that I find the 3rd accused guilty as charged, and he is convicted accordingly.
68. 30 days to appeal to the Court of Appeal.




Hon. Mr. Justice Burney

At Labasa

26 September 2025

Solicitors

**Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused**