

IN THE HIGH COURT OF FIJI AT SUVA
[CRIMINAL JURISDICTION]

CASE NO: HAC. 84 of 2018

BETWEEN : **STATE**

AND : **EMINONI BULUBULUTURAGA**

Counsel : *Mr. Z. Zunaid & Ms. S. Lodhia for State*
: *The accused absent and unrepresented*
(Trial in Absentia)

Hearing on : *12th November 2019- 13th November 2019*
Summing up on : *14th November 2019*
Judgment : *15th November 2019*

JUDGEMENT

[1] The accused, Mr. Eminoni Bulubuluturaga was charged as follows;

COUNT 1

Statement of Offence

Aggravated Burglary: contrary to section 313(1)(a) of the Crimes Act 2009.

Particulars of Offence

Eminoni Bulubuluturaga with others, between the 18th day of November 2017 and the 19th day of November 2017 at Nadera in

the Central Division, in the company of each other, entered into the property of Ratu Orisi Bolenaivalu, as trespassers, with intent to commit theft.

COUNT 2

Statement of Offence

Theft: contrary to section 291 (1) of the Crimes Act 2009.

Particulars of Offence

Eminoni Bulubuluturaga with others, between the 18th day of November 2017 and the 19th day of November 2017 at Nadera in the Central Division, dishonestly appropriated 6 x Tabua's (Whales-tooth), 1 x Straw bag and 1 x 40 inch TCL brand television, the properties of Ratu Orisi Bolenaivalu, with intention of permanently depriving Ratu Orisi Bolenaivalu of the said properties.

- [2] The accused was tried in absentia as he has escaped from the remand custody and various attempts to apprehend him has failed. The State has filed an application to try this matter in absentia and the court being satisfied of the submitted material, allowed the same. The ensuing trial lasted for 2 days. The complainant Mr. Ratu Orisi Bolenaivalu, an eye witness of the incident Mr. Nikhil Satish Lal and 3 Officers attached to the Fiji Police Force, gave evidence for the prosecution.
- [3] At the conclusion of the evidence and after the directions given in the summing up, the assessors unanimously found the accused guilty to the counts of Aggravated Burglary and Theft.
- [4] I direct myself in accordance with the law and the evidence inclusive of which I discussed in my summing up to the assessors.

Analysis

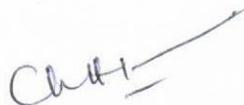
- [5] The main witness presented by the prosecution in this case is the PW2, Nikhil Satish Lal. The accused Eminoni was well known to him. He has met the accused

on the same day some time before the alleged incident. At the time of the incident, he has observed the accused from a distance of 10-12 meters away, without any obstruction and under the street lights for about 2 minutes.

- [6] Though I have considered and also directed the assessors to consider the possibility of mistaken identity, having observed the demeanor of the PW2, I am convinced without a reasonable doubt that the witness has seen the accused and properly identified him at the time of the incident. I am certain that the assessors too were convinced enough on the identity of the accused.
- [7] Furthermore, when considered the place of the incident, the PW1 states that it was a green coloured cement house on Yasiyasi Road, with a fence right round. The PW2 and rest of the witnesses too confirms the same. The description of the stolen items matches with the description of the items seen by the PW2. Assessors as the representatives of the society, with their knowledge and experiences of life seem to have satisfied that all the witnesses and the evidence relate to the same incident.
- [8] The court having explained all the relevant legal principles and the applicable law to the assessors, they unanimously held the accused to be guilty of the alleged offences. Each one of the assessors has obviously has had no doubt of the involvement and the guilt of the accused. Therefore, the Court sees no reason to deviate from the opinion of the assessors.
- [9] From my point of view, the assessor's opinion was not perverse. It was open for them to reach such conclusion on the available evidence. Therefore, I concur with the opinion of the assessors.
- [10] I, having seen and heard the testimonies of the witnesses, am satisfied that evidence of the prosecution presented through the witnesses 1 to 5, is sufficient to establish the elements of Aggravated Burglary and Theft beyond any reasonable doubt. The prosecution also established the identity of the accused beyond a reasonable doubt. In these circumstances, I am satisfied without a doubt that the accused has committed the offences of Aggravated Burglary and Theft.

[11] Therefore, I convict the accused, Eminoni Bulubuluturaga to the counts of Aggravated Burglary and Theft.

[12] This is the Judgment of the Court.


Chamath S. Morais
JUDGE



At Suva

This 15th Day of November 2019

cc: Solicitors: Office of the Director of Public Prosecutions, Suva for the State