

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

High Court Criminal Case No. HAC 118 of 2015

BETWEEN : STATE

AND : AISEA TURUVA

Counsel : Mr Seruvatu for the State
Ms N Sharma for the Accused as duty Solicitor

Dates of Hearing : 13 and 14 June 2019

Closing speeches : 14 June 2019

Date of Summing up: 17 June 2019

Judgement : 20 June 2019

JUDGMENT

1. The Accused is indicted for one count of aggravated robbery and another count of resisting arrest. The amended Information filed on 13 June 2019 reads as follows;

First Count

Aggravated robbery: contrary to Section 311(1)(b) of the Crimes Act 2009.

Particulars of offence

Aisea Turuva with others on the 13th day of July, 2015 at Nadi, in the Western Division robbed Lales Service Station of \$ 41,429.00 cash and at the time of the robbery used force and offensive weapons namely, cane knife and pinch bar.

Second Count

Resisting arrest: contrary to Section 277(a) of the Crimes Act 2009.

Particulars of offence

Aisea Turuva with others on the 13th day of July 2015 at Nadi, in the Western Division, resisted arrest of Corporal 3015 Opeti Lolo whilst effecting arrest in the due execution of his duty.

2. The Accused pleaded not guilty to both counts on 13 June 2019. The Prosecution called four witnesses at the trial. The Accused decided to remain silent and no witnesses were called for the Defence. After the summing up the assessors returned with a unanimous opinion. They found the Accused not guilty to both counts.
3. The assessors were given directions on the elements of each offence. They were directed on the degree of proof, how to evaluate evidence on identification, how to assess credibility of a witness and on other general considerations.
4. Having directed myself in accordance with the summing up, I concur with the opinions of the assessors. I will now give the reasons for my judgement.
5. The case for the Prosecution was that on 13 July 2015 the Accused with other persons entered Lale's Service Station and robbed around \$ 41000 cash. The Accused is alleged to have used a cane knife to threaten those who were inside

the service station while another person at the counter was putting money in to a bag. The Accused and the other persons are alleged to have arrived in a red colour vehicle. According to the Prosecution evidence the Police had arrived soon after the robbery. Shortly after that some Police officers had gone to look for the Accused and the Accused had allegedly resisted arrest when the two officers tried to arrest him after a chase.

6. According to the Prosecution witnesses the two persons who entered the service station for the robbery had covered their faces with pompom masks. Therefore, the witnesses had not identified the two persons. However according to the evidence of Inspector Opeti Lolo, he had received information of a possible robbery at a service station prior to this incident. He said that he received the name of the Accused as well and that was the reason for him to arrest the Accused soon after the incident.
7. The Prosecution witness, Ratu Epeli Naliva said that when the Police came to the service station for the second time, he saw the Accused sitting inside the Police vehicle. According to the witness he had known the Accused as he was living with the witness's previous wife at that time. The witness said that the colour of the Accused's shirt was similar to the shirt of one of the persons who came to rob with a cane knife.
8. Further he said that "the tone of his voice is like when he calls me on the phone, when he threatens me". The witness said that it is the same tone the Accused used that night. The witness said that he had met and had spoken with the Accused prior to the incident. However, the witness did not say that the voice of the person with the cane knife was similar to the voice of the Accused when he spoke with the Accused during other times. He also did not say that he could identify that person at the time of the robbery by that person's voice.
9. During the cross examination the witness said that everything was fresh when he gave the statement to the Police. When the witness was asked whether he

told the Police that the man was wearing a black hood, the witness said that what he meant was a black pompom. Again, the witness was asked whether he has stated in the statement that the person was wearing a dark blue shirt and not a sky-blue shirt. The witness admitted that he said it was a dark blue shirt. But again, the witness said that he did not inform the Police that it was a dark blue shirt.

10. It appears that the witness had not identified the Accused at the time of the robbery by his voice or by his built. Only after he saw the Accused in the Police vehicle he has assumed that it could be the Accused. Although the witness said that he recognized the Accused by his shirt, he was not certain what exact colour was it. The witness replied to the questions put by the Accused regarding identification as follows;

Q: I put it to you that your wife left you to come and stay with me, that's the reason you mentioned my name in this robbery?

A: I didn't know it was Aisea Turuva who was holding to the cane knife during the robbery. I only came to know when the Police brought him and the cloth he was wearing and his built and his voice.

11. Further under cross examination the witness admitted that he assumed that the voice he heard could be Aisea Turuva's voice after he saw Aisea in the Police vehicle. The witness further responded under cross examination as follows;

Q: Now Mr Naliwa, I will tell you what happened on that day. You went outside, you saw Aisea sitting at the back seat of the Police vehicle, you assumed that it was the same person holding the cane knife and that's when you mentioned his name to the Police?

A: Yes

12. The third Prosecution witness, Tiko Luva said that the person who was holding the cane knife was wearing a blue shirt and black long pants. However, during the cross examination, he admitted that the person with the cane knife was wearing an overall with black shoes. The witness further explained that he was scared, and he thought it was an overall as it all looked joined together. The witness did not seem confident when he explained the reason for the discrepancy in his description of clothes.
13. The main piece of evidence that the Prosecution relied on to link the Accused to the alleged incident is the similarity of the shirt. However, the witnesses did not convincingly describe the clothes of the person who was holding the cane knife. Undoubtedly, there are different shades of blue and the two main witnesses were not sure about the exact colour of the shirt. At different times the colour of the shirt was described by different witnesses as blue, light blue, sky blue and dark blue. Moreover, Tiko Luva was not certain whether it was an overall or a shirt that the person with the cane knife was wearing.
14. Although the Accused was arrested by the Police on some information they received, it is the duty of the Prosecution to link the Accused to the alleged robbery. The only way to establish the link was the identification of the Accused as the person who came with the cane knife. But there are issues regarding the identification of the Accused. I am not satisfied that the witness, Ratu Epeli Naliva has positively identified the Accused. His evidence was not convincing and consistent on identification. The identification evidence has left a serious doubt in the Prosecution case in respect of the first count. I am of the view that the Prosecution failed to prove the identity of the Accused in respect of the first count.
15. Inspector Opeti Lolo was the only witness who gave evidence in respect of the second count. He said that; "initially we tried to arrest him. But he pushed us. But at the end we managed to overpower him and call for assistance and the Police vehicle arrived." Under cross examination the witness said that; "the

resisting part was the pushing. When we tried to hold his hand, he pushed us.” Apart from that the witness did not give any evidence regarding the second count. The Prosecution did not call the other Police officer who was involved in the arrest of the Accused to confirm the allegation.

16. As per the second count in the amended Information the Prosecution alleges that he Accused with others resisted arrest. There was no evidence presented by the Prosecution that there were others apart from the Accused at the time of the arrest. The only Police officer who gave evidence did not categorically say that the Accused pushed him. In a very vague manner he said that the Accused pushed “us”. He did not say how were they pushed. It is the duty of the Prosecution to adduce clear evidence to prove a charge against a person. There had been another officer present at the time of the arrest. The Prosecution did not call the other Police Officer to give evidence although his evidence seems to be crucial as Inspector Lolo maintained that the Accused pushed both of them. The Accused challenged that he resisted arrest. He suggested that the witness gave false evidence to cover up the injuries that he received at the station.
17. It should be noted that merely saying that the Accused “pushed us” is not very convincing in the absence of other evidence to corroborate the evidence of the witness on resisting arrest. I am not satisfied that the Prosecution proved beyond reasonable doubt that the Accused pushed the Police officers at the time of the arrest.
18. Having reviewed the evidence thoroughly it is my considered opinion that the Prosecution failed to prove the first and the second counts beyond reasonable doubt. I do not have any reason to disagree with the unanimous opinion of the assessors. I am of the view that the opinions of the assessors are not perverse. Their opinions are explicable, and I agree with the unanimous opinion of the assessors.

19. In the circumstances, I find the Accused not guilty to the first and the second counts. He is acquitted of both counts accordingly.



A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Rangajeeva Wimalasena
Acting Judge

Solicitors

Solicitors for the State: Office of the Director of Public Prosecutions

Solicitors for the Accused: Legal Aid Commission