

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 228 OF 2019

STATE

-v-

- 1. ATUNAISA KOROI JUNIOR**
- 2. ANANAIASA VEISERE KOROI**

Counsel: Ms. S. Lodhia for State
Mr. K. Prasad for 1st Accused Mr. K. Cheng for 2nd Accused

Date of Ruling: 15 July 2020

RULING ON NO CASE TO ANSWER

1. At the conclusion of the prosecution's case the counsel for the Defence made an application for no case to answer in terms of section 231 (1) of the Criminal Procedure Act.
2. Section 231(1) of the Criminal Procedure Act provides:

When the evidence of the witnesses for the prosecution has been concluded, and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence that the accused person (or any one of several accused) committed the offence.

3. The test for a no case to answer application in the High Court is whether there is some incriminating evidence, direct or circumstantial, on all the essential ingredients of the charged offence or offences (*Sisa Kalisoqo v R* Criminal Appeal No. 52 of 1984, *State v Mosese Tuisawau* Cr. App. 14/90, *State v Woo Chin Chae* [2000] HAC 023/99S).
4. The accused are jointly charged as follows:

Count 1

Statement of offence

AGGRAVATED BURGLARY: contrary to Section 313 (1) (a) of the Crimes Act 2009.

Particulars of offence

ATUNAIISA KOROI JUNIOR & ANANAIASA VEISERE KOROI on the 12th day of June 2019 at Suva in the Central Division in the company of each other entered into the recording studio of **RATU JOSEFA TABAKAUCORO** as trespassers, with intent to commit theft therein.

Count 2

Statement of Offence

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

Particulars of Offence

ATUNAIISA KOROI JUNIOR AND ANANAIASA VEISERE KOROI on the 12th day of June 2019 at Suva in the Central Division in the company of each other dishonestly appropriated the 1 x squirer Stratocaster electric guitar with case, 1 x case containing connecting cables, 1 x GT100 effects processor with case, 1 x yellow level, 1 x black bag containing GT 100 effects with cables and guitar straps, 1 x drumstick bag with accessories, 1 x blue HP laptop with charger, 4 x packets of grog, 1 x black Tuscan TH02 Headphone, 2 x amour black hand gloves, 1 x orange multimeter, 2 x soldering iron, assorted screw drivers and pliers, 2 x multi tools, 1 x multi bright light, 4 x cables, 2 x cutters, 3 x long nose pliers, 1 x clamp pliers, 1 x 32 inches grundig

TV screen and 1 x gretsch acoustic electric guitar, the properties of **RATU JOSEFA TABAKAUCORO** with the intention of permanently depriving **RATU JOSEFA TABAKAUCORO** of his properties.

5. The Prosecution solely relies on circumstantial evidence to prove the charges. It invites the court to draw the inference in respect of recent possession of stolen property.
6. In order to draw the presumption of recent possession of stolen property, the Prosecution must establish beyond reasonable doubt that:
 - a. the accused was found in possession of the goods;
 - b. the goods were recently stolen
 - c. the goods found in the possession are the subject matter of the complaint.
 - d. there is no reasonable explanation by the person found in possession of the goods in regards to his possession of the said goods.
7. The Prosecution called the complainant and 5 police witnesses. The complainant Ratu Josefa was called to prove that the goods recovered by the police officers are the stolen property which is the subject matter of the complaint. The arresting officers PC Esava, PC Rusiate and Atekini were called to prove that the goods were in the possession of the accused soon after the alleged offences.
8. The police officers testified that the alleged stolen goods were recovered from the possession of the accused soon after the alleged offences. Some of the alleged stolen items had been seized from the bags found in the possession of the accused. Some of the items were seized from the bags that were found sitting just in front of the accused where they were sitting together at the Suva Carrier Stand.
9. The complainant testified that he, at the Totogo Police Station, identified all the stolen items, except for a guitar and the television. The photographs of the seized goods and the search lists signed by the police officers who had executed the search were tendered in evidence. The goods had been released to the complainant after they were photographed by the police photographer. The investigating officer Arieta adduced evidence as to the release of goods to the complainant and the photographer Sabina as to the photographs she had taken. The complainant, through the

photographs tendered in court, identified the goods and confirmed that they were the stolen items that were released to him by the police.

10. There is *prima facie* evidence that the property stolen from complainant's studio were found in the possession of each accused soon after the alleged theft and the burglary. It is for the assessors to weigh the evidence and draw the necessary inferences. It is open for them to find that the goods seized by the police officers were the stolen property of the complainant and that they were in the possession of the accused soon after the alleged offences. The offence of Burglary is an associated offence of Theft and therefore the inference as to stolen goods can also be drawn in respect of the offence of Burglary.
11. I hold that there is a case for the accused to answer in respect of each count. I put the accused to their defences and I proceed to explain to the accused the rights in defence.



Aruna Kluthge

Judge

At Suva

15 July 2020

Counsel: Office of the Director of Public Prosecution for State.
Legal Aid Commission for Defence.