

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 172 of 2015

STATE

V

- 1. KELEPI SALAUCA**
- 2. VERETI WAQA**
- 3. TUI LESI BULA**

Counsel : Mr. J. Niudamu for the State.
: Accused 1 in person.
: Accused 2 trial in absentia.
: Accused 3 in person.

Dates of Hearing : 31st May, 1, 4,5,8,11,12 June, 2018
Closing Speeches : 13th, 14th June, 2018
Date of Summing Up : 14th June, 2018
Date of Judgment : 15th June, 2018

JUDGMENT

1. The Director of Public Prosecutions charged all the accused persons by filing the following information:

FIRST COUNT

Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311 (1) (a) of the Crimes Act, 2009.

Particulars of Offence

KELEPI SALAUCA, VERETI WAQA & TUI LESI BULA in the company of another on the 11th October, 2015 at Sigatoka in the Western Division robbed **KAVITESH KIRIT PRASAD** of the following items: Nissan Navara (Registration HA 448) valued at \$60,000.00, \$300.00 cash, Assorted cards namely Westpac, Westpac Debit Card, Australian Master Card, Australian Drivers Licence, Joint FNPF/FIRCA, Black SFIDA pair of canvas, Gym

Gloves, White iPod, Nokia Lumia Phone, Euphoria Calvin Klein Perfume, Encounter Fresh Calvin Klein perfume, Mangal Sutra valued at \$10, 000.00, Bangles valued at \$6,000.00, Hair set valued at \$9,000.00, Bracelet valued at \$2,000.00, Ear ring valued at \$3,000.00, Bedstone Necklace valued at \$900.00, Wedding Ring (Female) valued at \$2,000.00, Wedding Ring (Male) valued at \$1,200.00, Gold Chain (22 carat) valued at \$1,200.00, Wrist Watch (Fossil-Citizen) valued at \$800.00, Ladies Watch (Pulsar) valued at \$300.00, Black Label (x 15 bottles) valued at \$1,350.00, Bombay Sapphire (x 5 bottles) valued at \$400.00, Galaxy Samsung S5(x2) valued at \$2,400.00, ITB Hardware (x2) valued at \$1,000.00, 1 Flash Drive valued at \$500.00, 1 Toshiba laptop valued at \$1,800.00 and assorted branded BLK Clothing valued at \$80.00 all to the **Total Value of Approximately \$93, 930.00.**

2. The three assessors had returned with a unanimous opinion that all the accused persons were guilty of one count of aggravated robbery as charged.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The prosecution called fifteen (15) witnesses, the first accused gave evidence and called two witnesses, the second accused was deemed to be silent, and the third accused gave evidence but did not call any witness.
5. The complainant and his wife informed the court that at about 2 am on 11 October, 2015 after securely locking their house they were awoken by the sound of someone breaking into their bedroom. They saw four iTaukei men enter their bedroom with knives and golf clubs. The complainants were asked to cooperate so that no one was harmed. Blankets were thrown over the complainants, curtains drawn and the lights in the house were turned on.

6. As a result the complainants could not see what was happening but could only hear what was going on in their bedroom, they were threatened as to the whereabouts of their valuables in the house. The pregnant wife of the complainant was grabbed by her hair with a knife put on her neck and dragged from one room to the other so that she could show them where the valuables were kept in the house.
7. The robbers searched the house for about an hour they tied the hands and legs of the complainants with bed sheets and also had gagged them. The complainant was also kicked two times after been pushed on the floor. The robbers while escaping stole the complainant's red Nissan Navara with mobile phones, assorted jewellery, assorted liquor, wallet, Cash \$300.00, credit cards, perfumes, laptops, few BLK clothes, shoes, black and white SFIDA canvas, watches etc all to the value of about \$93,000.00.
8. After the matter was reported to the police and upon investigation items recovered by the police were Samsung Galaxy S5 phone, some jewellery, wallet, black and white SFIDA canvas, Haar set, earnings, mangal sutra pendant, credit and identification cards and BSP gym glove including the red Nissan Navara. As a result of the robbery the complainant and his wife were traumatised and psychologically affected.
9. The complainants were able to identify the items recovered by the police as theirs. On the day of the robbery the motor vehicle of the complainant was found in the mountains of Rakiraki. The first accused was found in possession of the stolen Black SFIDA canvas and the other accused persons were found in possession of the Canterbury bags that contained stolen items after the bags were searched by the Police Officers.
10. The prosecution alleged that all the accused persons committed the offence of aggravated robbery jointly as a group in the company of each other after threatening to use force on the complainant and his wife and

dishonestly appropriated the complainants properties with the intention of permanently depriving them of the ownership of those properties.

11. The prosecution relied on the principle of recent possession and circumstantial evidence to prove that all the three accused persons had committed the offence as charged.
12. The first accused Kelepi Salauca was seen wearing a SFIDA black canvas when he visited the house of Siteri Levers (PW8) on 11 October. After he was lent a pair of flip flops by Siteri he left the canvas at the house of this witness.
13. Furthermore the first accused had confessed to Manoa Dugulele (PW 5) that he had committed a robbery in Sigatoka involving an Indo-Fijian couple and they had come to Rakiraki in the stolen vehicle and that this vehicle had been abandoned somewhere in Rakiraki.
14. The second accused Vereti Waqa was arrested when the boat he was in was intercepted by the police. Mr. Emori Qilu (PW12) now a former Police Officer had searched this accused and recovered a wallet containing the complainant's personal and identification cards and a piece of plastic containing \$50.00 Fijian currency.
15. When the Police Officers searched the boat in which all the three accused persons were they found two Canterbury bags. These two bags were in the possession of the second and the third accused when they were at Nabukadra Village on 11 October, 2015. According to Etuwini Sivo (PW7) the blue bag was in the possession of the second accused and the black bag was in the possession of the third accused. After the contents of the two bags were checked by police the items found in both the bags were identified by the complainant as stolen from his house.
16. The third accused Tui Lesi Bula was seen by Etuwini Sivo (PW7) to be carrying a black Canterbury bag at Nabukadra Village after the boat he was in got intercepted by the police. The accused had left the boat and gone into

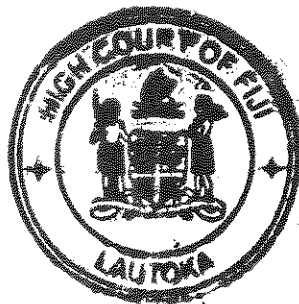
the nearby bush leaving the bag behind. This accused was arrested from the house of Manoa Dugulele in the evening of 11 October. Manoa was able to identify the third accused as the person he had met earlier in the day and who came to his house in the evening of 11 October, 2015 before being arrested by the police.

17. The prosecution witnesses who were mostly villagers had seen all the accused persons in their village on 11 October carrying the Canterbury bags with them and the liquor consumed was supplied by the accused persons.
18. All the accused persons have denied committing the offence. The first and third accused persons who were present in court gave evidence that they were not at the scene of the crime but elsewhere and that they have been wrongly alleged.
19. The first accused informed the court that after leaving his sister's house on the 10th of October, 2015 at about 2pm he went to his village with his father and stayed there until he left his village for Suva on the 11th arriving late in the night at his sister's house.
20. The first accused called his sister Adi Tubuna Salauca to give evidence that he had left her house on the 10th only to be seen by her in the morning of 12 October.
21. The final witness for the first accused was his father, who confirmed that the first accused had accompanied him from Suva to Nabukadra Village arriving at the village at 7pm on the evening of 10 October, 2015. According to this witness the first accused was at home from 6pm on 10 October, 2015 to 6am on 11 October, 2015.
22. The third accused informed the court that after celebrating Fiji Day with his family in Lami he went home at Nasinu and from there the next day in the morning of 11 October, at 6.30am he accompanied his workplace supervisor Jone Talemaitoga to secure the fish ordered by Jone.
23. I accept the evidence of the prosecution witnesses as truthful and reliable. There is no doubt that there was a robbery at the house of the complainant.

The witnesses were able to recall what had happened some three years ago and they were able to withstand cross examination and were not discredited on the other hand the witnesses were forthright and had expressed themselves clearly. There were some inconsistencies due to passage of time between what the witnesses told the court and what was stated in their police statements, however, the inconsistencies were not significant which did not adversely affect the credibility and reliability of their evidence.

24. I have no doubt in my mind that the prosecution witnesses told the truth in court their demeanour was consistent with their honesty. The prosecution had disproved the defence of alibi beyond reasonable doubt.
25. There is no evidence before the court that the prosecution witnesses had a motivation to implicate the accused persons. I therefore reject the defence suggestion that the prosecution witnesses had a motivation to fabricate a story against the first accused to implicate him.
26. Both the accused persons were not forthright in their evidence from their demeanour it was obvious that they did not tell the truth in court. It was noted in cross examination that they were very cautious in choosing their words and were not forthright in answering the questions asked they were obviously not telling the truth.
27. The first accused's sister did not take his case any further her evidence was not relevant since the accused had already left her house in the afternoon of 10 October, 2015 before the alleged robbery.
28. The final witness for the first accused had no doubt narrated his evidence to suit the evidence of his son. It was obvious to me that this witness was trying to save his son from any problems since the first accused was the witness's helpful son. This incident happened in 2015 this witness gave an account of what had happened without any moment's thought which gave me an indication of a collusion between the first accused and this witness. There was no doubt that both the first accused and his father were rehearsing what they had memorized.

29. What is puzzling is that this witness was so confident in saying that his son had not left the house from 6pm 10 October to 6am 11 October when this cannot be true looking at the totality of the evidence adduced.
30. This witness also did not tell the truth in court his demeanour was not consistent with honesty.
31. I reject the evidence of both the accused persons and their witnesses as unreliable and untruthful. The defence has not been able to create any doubt in the prosecution case.
32. I am satisfied beyond reasonable doubt that all the accused persons in the company of each other on 11 October, 2015 at Malaqereqere, Sigatoka had dishonestly appropriated the complainant's properties with the intention of permanently depriving them of the ownership of those properties and immediately before committing theft had threatened to use force on the complainants.
33. I agree with the unanimous opinion of the assessors that all the accused persons are guilty of the offence of aggravated robbery.
34. In view of the above, I find all the accused persons guilty as charged and I convict them accordingly.
35. This is the judgment of the court.




Sunil Sharma
Judge

At Lautoka
15th June, 2018

Solicitors

Office of the Director of Public Prosecutions for the State.

Accused one and Accused three in person.

Accused two absent.