

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 254 of 2021**

**STATE**

vs.

**FILIKESA DEKITA ROKODINADINA**

**Counsel:** Mr. L. Baleilevuka for the State  
Trial in Absentia [Unrepresented]

**Date of Hearing:** 09<sup>th</sup> February 2023

**Date of Closing Submission:** 09<sup>th</sup> February 2023

**Date of Judgment:** 12<sup>th</sup> February 2023

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**JUDGMENT**

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Introduction

1. The Director of Public Prosecutions has charged the accused for the following offences as per the Information dated 22<sup>nd</sup> December, 2021:

**COUNT ONE**

*Statement of Offence*

**AGGRAVATED ROBBERY:** Contrary to Section 311 (1) (b) of the Crimes Act, 2009.

*Particulars of Offence*

**FILIKESA DEKITA ROKODINADINA** on the 30<sup>th</sup> day of October, 2021 at Nadera, in the Central Division, stole 1 x Red Samsung J6 Plus Mobile Phone, the property of **KAJOL LINGAM** and at the time of the robbery, had with him a kitchen knife, as a weapon.

**COUNT TWO**

*Statement of Offence*

**AGGRAVATED ROBBERY:** Contrary to Section 311 (1) (b) of the Crimes Act, 2009.

*Particulars of Offence*

**FILIKESA DEKITA ROKODINADINA** on the 30<sup>th</sup> day of October, 2021 at Nadera, in the Central Division, stole 1 x Samsung A20 Mobile Phone, from **AGNES MISHRA** the property of **AGNES MISHRA** and at the time of the robbery, had with him a kitchen knife, as a weapon.

**COUNT THREE**

*Statement of Offence*

**AGGRAVATED ROBBERY:** Contrary to Section 311 (1) (b) of the Crimes Act, 2009.

*Particulars of Offence*

**FILIKESA DEKITA ROKODINADINA** on the 30<sup>th</sup> day of October, 2021 at Nadera, in the Central Division, stole cash of \$554.00 from **KAJOL LINGAM** the property of **GO FRY RESTAURANT** and at the time of the robbery, had with him a kitchen knife, as a weapon.

2. This matter had been first called in the High Court on 19<sup>th</sup> November, 2021. The Accused was then produced from the remand and the information and disclosures were served on him 4<sup>th</sup> February, 2022. Then on the 23<sup>rd</sup> February, 2022 when the Accused was arraigned he pleaded not guilty to all three counts. Thereafter, this matter was mentioned on several dates for PTC and on the 25<sup>th</sup> March, 2022 the trial dates were set from the 6<sup>th</sup>-10<sup>th</sup> February, 2023. This was followed by a further mention date and the Accused continued to be in remand. The Accused was represented by Legal Aid Counsel Mr. Waqanivalagi. On the 3<sup>rd</sup> May, 2022 when this matter was mentioned the Accused was not present and a production order has been issued. However, on the 3<sup>rd</sup> June, 2022 the Accused had been brought from the remand but when this matter was mentioned again on the 27<sup>th</sup> September, 2022, he was absent.
3. When this matter was called on the 6<sup>th</sup> February, 2022 to be taken up for trial the defence counsel Mr. Waqanivalagi informed court that the Accused contacted him the previous day and informed that he will be present and that he may take a progressive approach. It was also brought to the notice of the court that the Accused had been granted bail in respect of another matter and he has been released from the Remand Centre notwithstanding the remand order in this case. The defence counsel was granted time to contact the Accused and was adjourned for the afternoon.
4. When this was mentioned at 2.20pm the Accused was not there and the learned counsel has contacted and conveyed to the Accused of the proceedings in court. However, the Accused had informed through his aunt that he does not wish to attend court as he believes that he may be remanded. A bench warrant was issued and the matter was rescheduled for 7<sup>th</sup> February, 2023. On which day the Accused was absent and the State informed that the police was not able to locate the Accused and that he is not found in his known place of residence. However, further time was granted to execute the warrant and the matter was adjourned for the 9<sup>th</sup> February, 2023.
5. On the 9<sup>th</sup> February the Accused continued to be absent and the State Counsel informed that all attempts to locate and arrest the Accused had been unsuccessful. The defence counsel informed that he has no instructions and moved that he be permitted to withdraw

his appearance. This application was allowed. The State Counsel made an application to proceed in the absence of the Accused on the basis that the Accused had sufficient notice of the trial date and he has informed the defence counsel of his reluctance to be present in court. The police too had confirmed that the Accused is not found in his usual place of residence. Considering this application as the court was satisfied that the Accused who had inadvertently been released from the Remand Center is now deliberately absconding and evading court with sufficient and clear notice of the trial dates and of the proceedings of this court. Accordingly, this court by virtue of Section 14 (2) (h) of the constitution made order to proceed with the trial in his absence.

### The Trial

6. The prosecution commenced the trial and led in evidence 6 witnesses during the course of the day. Thereafter, made an amendment to correct the typographical error in the statement of offence in all three counts by substituting sub section (b) for sub-section (a) and then the prosecution closed its case. As the trial was proceeding in absentia upon the close of the prosecution case as there was prima facie evidence upon hearing the submissions of the prosecutor this set was for judgement. Having carefully considered the evidence presented during the hearing and the submission of the state, I now proceed to pronounce the judgment.

### Elements of the offence

7. To establish the charges of Aggravated Robbery preferred against the Accused the prosecution required to prove that; the accused Filikesa Dekita Rokodinadina; armed with an offensive weapon; did commit robbery on the persons named and stole the items referred to in the respective charges.
8. Robbery is an aggravated form of theft. Theft is committed if that person dishonestly appropriates the property belonging to another with the intention of permanently depriving the other of that property. The elements of 'dishonestly' and "the intention of permanently depriving the other of the property" is the state of mind of the accused at the time of committing the offence which could be drawn from the conduct of the accused.

'Appropriation of property' is taking possession or control of the property without the consent of the person who has possession or control of the property. Theft becomes robbery if the accused, immediately before, or at the time of, or immediately after, committing theft use force or threaten to use force on another person with the intent to commit theft or to escape from the scene. If more persons than one are involved or is armed with an offensive weapon in committing robbery it is Aggravated Robbery.

9. Accordingly, the Prosecution has to prove beyond a reasonable doubt that:
  - (i) the accused,
  - (ii) with a kitchen knife,
  - (iii) dishonestly appropriated the items referred to in the respective charges
  - (iv) with the intention of permanently depriving it,
  - (v) and used force on the victims immediately before or after stealing the said items.
  
10. The first element requires the proof of the identity of the offender and to prove beyond reasonable doubt that Filikesa Dekita Rokodinadina with others committed this offence having with him a kitchen knife, as a weapon.

#### Presumption of innocence

11. No adverse inference may be drawn from the absence of the accused and it will be considered as being akin to the exercise of the right to silence by the Accused. The accused is presumed to be innocent until he is proved guilty. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation or burden on the accused to prove his innocence. The prosecution must prove the accused's guilt, beyond reasonable doubt. If there is a reasonable doubt, so that the court was not sure of the accused's guilt, or if there be any hesitation in my mind on any of the ingredient or on the of evidence or led by of the prosecution the Accused must be found not guilty of the charge and accordingly acquitted.

#### The Evidence

12. The prosecution led the evidence of two eye witnesses namely PW1 Agnus Mishra and

PW2 Kajal Lingham. Other four were police witnesses namely PW3 PC 6383 Kameli, PW4 PC 5255 Lawrence, and PW5 PC 5453 Tamani. The prosecution also led the evidence of PW6 Doctor Roshika Pande.

13. According to the evidence of PW1 Ms. Mishra. On the 30<sup>th</sup> October, 2021 she was working at the Go Fry Restaurant at Nadera with PW2 Ms. Kajal Lingham. Both of them have been working in the afternoon shift and around 8pm when the customers have left she had been washing some dishes and Kajal had been nearby attending to the garbage. She had then seen a somewhat of a stocky I-Taukei man coming to the restaurant and has come up to them and shouted “give me money, give me money”. At this point the person had taken a kitchen knife which was there and directed Mishra and Kajal towards the till which was behind the counter. The key of the drawer had been in the key hole and this person himself had opened the till. He had put the money including most of the coins into a black little bag which was with him. Apart from the money he had also taken the two mobile phones of Mishra and Kajal. After doing so he appears to have uttered some bad language and told them to remove their clothes. Kajal has resisted and at this point Kajal had sustained a cut injury to her arm towards the wrist and she had also fallen down. The person had then taken to his heels and gone towards the front door to get away. Ms. Mishra had then jumped onto the counter and thrown a glass vase which hit that person as he ran out.
14. Mishra had too run behind and pursued this person towards the car park and she had been shouting in I-Taukei “*butako, butako*” (meaning thief, thief). The said person had run towards the car park. There have been several persons in and around, and as this person was running across the car park there were some police officers who have immediately reacted and stopped this person and caught him. Mishra had stopped there for a minute or so and then returned up to the restaurant borrowed a phone from a bystander and informed the owner of the restaurant.
15. During the course of her evidence the following exhibits were produced; Samsung J20 phone as PE1 which belong to PW1; the black colour bag which the person had with him

as PE3; and the kitchen knife that person took to his hand as PE4. The witness described the intruder or the thief as being rather stocky and somewhat of a short i-Taukei man. He had been wearing a cap but his face had been clearly visible. She specially described that person as having rather a broad nose. She had seen him whilst in the restaurant and the restaurant had been very well lit. She also had the opportunity to observe him at close proximity. She claimed that she is able to identify him if seen again. The prosecutor sought the permission of court to show the photograph in the Accused identification detail which was in the original Magistrates Court record. After examining the photograph the witness identified the person in the photograph as the person who entered the restaurant and stole the money and the mobile phone on the 30<sup>th</sup> October, 2021. The said Accused identification detail form was marked as exhibit PE2.

16. PW2 Kajal Lingham in her evidence narrated the above sequence of events and facts as narrated by PW1. She had been disposing off garbage close to the sink where PW1 was washing. According to her the kitchen area, the till, the counter and the restaurant are all within the same room. She had been in-charge of the till. She herself has seen the Accused taking the cash and putting it into the black bag and also Mishra's phone which was in the drawer and the Accused has also taken her phone from her hand. She says that he demanded the same and as he was armed with a knife she handed it over to him.
17. After taking the money and the phones the said person had used vulgar language and has tried to touch her chest area and some pushing each other had taken place. During this Kajal has sustained a cut injury to her wrist which she showed to be a little above the wrist in the lower aspect of her arm. She confirm that the said person then ran off and Mishra chased behind him. Kajal herself has followed and has shouted "Butako, Butako" when the people around as well as the police officers who happened to be there have been alerted. The said person had been then caught by the police officers who were out at the car park. She had come back to the restaurant and she had then made a statement to the police.
18. According to her the collection during the morning had been around \$700 and in the afternoon \$1400 and there have been some coins too. The Accused had grabbed and taken this money which was in the till before he ran out. She too described the intruder and

identified the photo in PE2 to be that of the person who came in. she identified a Samsung J6 plus phone as being her phone which was taken by the Accused. The said phone was marked as exhibit PE5. She also identified the black bag as exhibit PE4.

#### Police Evidence

19. According to the evidence of PW3 PC Kameli, PW4 PC Lawrence, PW6 PC Tamani. They have all been attached to a special unit called the 30 Men Team. Their special duty is to patrol populated areas and assist the local police when assistance is required. On the 30<sup>th</sup> October, 2021 the government had paid out \$360 payment as assistance to the general public. As such there had been a large influx and gathering of people in and around supermarkets and restaurants. It is also in evidence that there was substantial consuming of alcohol. In view of this this team of police officers have been on patrol and has come to the car park of Nayan's Supermarket and been observing for any mischief makers. Around 8.40pm the officers have heard some shouting and seen an I-Taukei man running towards the car park being pursued. He was having a black bag held close to his chest with one hand and a kitchen knife in his other. Observing this the police officers have realized that the I-Taukei youth is running away after committing some offence and something wrong. PC Tamani has stepped out of the vehicle and commanded and instructed the suspect to stop by shouting "kua, kua" (meaning stand still or stop). Despite so commanding this I-Taukei man had continued to run and also had swung the knife towards PC Tamani. PC Tamani has evaded the knife and has dealt a blow and then tackled him to the ground and jumped on him. He was nailed to the ground but was still having the knife in his hand and was trying to swing it when PC Kameli has kicked his hand and dislodged the knife. Then PC Tamani had handcuffed him and taken control and apprehended this person.
  
20. After which he had been put into the rear tray of the twin cab and had been taken and handed over to the Valelevu Police Station. PC Lawrence has observed that when the man was running some coins falling and been thrown to the ground. After he was apprehended PC Lawrence has taken charge of the knife as well as the bag which he identified as being exhibit PE3. PC Kameli said the knife taken from the said person was similar to PE4. PC



Kameli confirm that the person in the photograph PE2 is that of the person apprehended by them and his name is Filikeasa Rokodinadina. This person when questioned has admitted this fact. The three police officers have taken this Accused to the Valelevu Police Station and handed him along with the black bag, the knife and the money which was around \$540 with the two mobile phones to Corporal Jiten and the police station.

#### Medical Evidence

21. PW5 Doctor Roshika Pande have examined Kajal Lingham on 30<sup>th</sup> October, 2021 between 8.40 and 9pm and observed a superficial laceration of about 4 centimeters on her left lower arm (the wrist). She had also observed some tenderness on her left shoulder area of the upper arm. She said that the laceration could have been caused by a sharp instrument such as the kitchen knife PE4. She went on and expressed the opinion that though this injury is superficial a cut in the wrist area can be extremely dangerous due to the presence of arteries and tendons being present in that region.

#### Evaluation of the Evidence

22. As the Accused was absent and unrepresented there was no cross-examination. However, I will consider the evidence of these witnesses separately and collectively and consider with special care and attention to identify any possible inconsistencies or improbabilities. The two eye-witnesses Mishra and Lingham have promptly made their statements and giving evidence I observed that both of them were very forthright and prompt in responding to the questions. When they were narrating the incident I clearly observed that they were recapitulating and reliving a true experience which they have gone through. There was no exaggeration. The two witnesses narrated a series of events however with no contradiction *inter se*. Accordingly, the two witnesses clearly are truthful and credible witnesses.
23. That being so based on their evidence the fact that an I-Taukei man coming into the restaurant and using a knife and taking away money and two phones is proved to start with. There are two important issues that need be addressed. Firstly, the identity and the recognition of the thief. Secondly, the actual amount of money that was taken away from

the till and stolen. As to the identity of the intruder it is clearly proved that the I-Taukei man who took the money and the phones was pursued by Mishra and Kajal. They followed him up to the point of his arrest by the three police witnesses. As for Mishra and Kajal they had a sufficient space and reasonable time in extremely good conditions of light to observe and see this person. They were in close proximity and in fact this person did try to touch Kajal. Therefore, Mishra and Kajal certainly did have the opportunity and occasion to clearly observe and identify the facial and other features of this person. Both of them did describe that he was a stocky person with rather flat or broad nose. When they were shown his photograph they clearly identified that to be the said person with no hesitation.

24. Apart from these two witnesses the two policemen clearly identified photograph PE2 to be that of the person apprehended that day. These two policemen namely PC Tamani, and PC Kameli caught the Accused red handed when he was in hot pursuit so to say. They had sufficient light and considerable time to see, observe and identify the suspect. The two officers were seated with the Accused in the tray of the twin cab. The Accused has on his own given his name to the police officers after being apprehended.
25. No doubt both the eye witnesses and the police witnesses making a virtual dock identifications after the lapse of 1 year and 4 months by identifying the photograph as the Accused was tried in absentia. In the circumstances of this offending especially the Accused being caught red handed immediately after committing the offence did provide the witnesses had sufficient and a reasonable opportunity to observe and identify the suspect. It was certainly not a fleeting glance. Especially the police officers who are to some degree persons with special training and experienced in identification of persons in these circumstances are certainly reliable as far as identity is concerned. As for Mishra and Kajal the unique feature of the broad nose and the physic has enabled them to clearly identify this Accused with a great degree of certainty and reliability. Further there to cash and mobile phones robbed from the restaurant were found in his possession. This further proves the identity or the connection of this Accused to this incident with certainty and reliability.

#### Visual identification

26. The English Court of Appeal in **R v Turnbull** [1977] QB 224 prescribed rules to guide Judges faced with contested visual identification evidence. When a case depends wholly or substantially on the correctness of one or more identifications of the accused which the defence claims are mistaken, or it is a dock identification the judge should be cautious before convicting the accused in reliance on the identification. The judge should examine closely the circumstances in which the identification by the witness came to be made. This may include considering inter alia as to how long did the witness have the accused under observation, at what distance, what light, was the observation impeded in any way, had the witness ever seen the accused before and had he any special reason for remembering the accused. Further the time elapsed between the original observation and the subsequent identification to the police and if there be any material discrepancy between the description given by the witness and the actual appearance of the accused are matters to be considered as per the *Turnbull* guidelines. The *Turnbull* guidelines are now accepted in Fiji; vide- *Semisi Wainiqolo v The State* [2006] FJCA 70; AAU0027.2006 (24 November 2006); and in *Mesake Sinu v The State* [2013] FJCA 21; AAU37.2009 (13 March 2013)
27. The two victims Kajal and Mishra positively identified the photograph PE2 as depicting the person who came to the restaurant that night. Similarly, two police officers PC Kameli and PC Tamani two identified the said photograph. The necessity to show the photograph arose due to the Accused absconding. The photograph shown was the photo on the Accused identification detail filed in the Magistrate Court. It is quite a clear photograph of a person from his stomach or wrist upwards.
28. All these witnesses did positively identify the person in PE 2 has been the person who took the money and the phones and ran away. The police officers clearly said that he gave his name as Filikeasa Rokodinadina. This evidence thus prove the identity of the Accused and the identification of the person in the photo. However, all 4 witnesses makes this identification almost one year and four months after the incident all four them have seen him only on that day and not before or thereafter. As such their identification is akin to dock identification.

29. Dock identification is generally considered unreliable however if the witnesses had sufficient opportunity and the occasion to observe him and if their evidence is reliable such identification may be accepted and acted upon [R v Oakwell [1978] 1 WLR 32]. I have considered the evidence of four witnesses and I am satisfied that they are truthful and credible witnesses.
30. In the aforesaid circumstances, I am inclined to consider that said 4witness are truthful witness. Merely by deciding that the evidence as being is credible will not be sufficient to determine the testimonial trustworthiness of these witness. In considering the testimonial trustworthiness of a witness there are two aspects that a court is required to consider. One is the *credibility or veracity* and the other is the *accuracy and reliability*. The former relates to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns and relates to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously, a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is an honest witness, may, however, still be unreliable. [vide; R. v. Morrissey (1995), 22 O.R. (3d) 514 (C.A.), Doherty J.A. (at p. 526): 2014 MBCA 74 (CanLII) and R. v. H.C., 2009 ONCA 56, 244 O.A.C. 288 R. v. H.C., 2009 ONCA 56, 244 O.A.C. 288]
31. Thus, I will now consider if they are reliable. I will first consider the reliability of evidence of Kajal and Mishra. Both of them had ample opportunity to observe the intruder almost standing face to face in extremely good conditions of light. He was in the restaurant for a considerable length of time. After he ran out both these witnesses followed him up to the point of arrest by the policemen. There too they had the opportunity to observe him. This is certainly not a fleeting glance. The intruder has been even in conversation with these two witnesses. Even tried to touch Kajal. In these circumstances I am satisfied that these two witnesses evidence as far as identity of the Accused is concern is extremely reliable.

32. As for the two policeman apart from apprehending the accused then have accompanied him in the vehicle up to the police station and was instrumental in handing over him to the police. They have even questioned him as to his name and identity. This clearly has afforded these 2 policemen sufficient opportunity and proximity to observe with facial features to enable them to reliably identify the photograph at the trial. I am satisfied their evidence too is reliable.
33. Considering the totality of these circumstances I am satisfied that the evidence of identification is reliable and credible. As for the identity of the photograph I observe that the unique features as described by the witnesses is clearly visible. As such I am satisfied that the person in the photograph PE2 is the person who committed the robbery and seen by the prosecution witnesses.

#### Proof of Charges

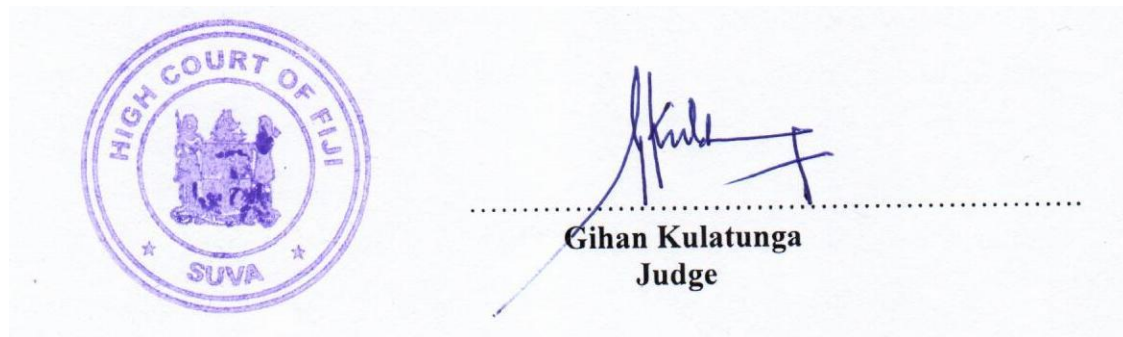
34. According to the evidence of Kajal and Mishra the Accused appearing in photo PE2 has entered the shop, taken a knife and taken the day's collection of \$2100 and J6 Samsung phone of Kajal (count No.1) along with Samsung A20 phone of Mishra (count No. 2). These items were taken and in taking these items he has used a kitchen knife. Though the witnesses Kajal and Mishra say that a sum of almost \$2100 was taken away the police when the Accused was handed over has found only around \$540. Count No. 3 alleges that a sum of \$554 was stolen from Kajal. Kajal was the cashier in charge of the till. The question arises as to what happened to the \$2100 between the restaurants and reaching the policemen.
35. It is in evidence that when the Accused was on the run some coins were seen falling off his bag. The Accused was running through a crowded area. He was apprehended by using force and being thrown on the ground. There was a great possibility that some of the money may have been displaced in the course of this melee and the commotion. This explains the difference in the amounts. The exact sum is a matter of detail and considering the fact that some coins were heard falling will account for the difference of the sum in the charge and recovered by the police (count No. 3). The above evidence clearly proves

that the Accused had committed theft and in order to taking the money and phones used force or threatened force and he has used a knife and thus the ingredients of aggravated robbery are satisfied and proved beyond reasonable doubt.

36. The person who committed the aggravated robbery is proved to be Filikeasa Dekita Rokodinadina by virtue of police evidence and PE2 beyond reasonable doubt.

Conclusion

37. Accordingly, I hold that the prosecution has proved beyond reasonable doubt all three counts of Aggravated Robbery as charged. As such I find the Accused guilty of the said three counts of Aggravated Robbery and accordingly the Accused is hereby convicted for the said three offences of Aggravated Robbery separately.



At Suva

12<sup>th</sup> February 2023

Solicitors

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