

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 069 OF 2008S

STATE

VS

ADRIU TULAGI

Counsels : **Ms. M. Fong and Ms. S. Navia for the State**
Accused in Person
Hearings : **31 March, 1 to 3 April, 2014**
Summing Up : **4 April, 2014**
Judgment : **4 April, 2014**
Written Reasons: **24 April, 2014**
Sentence : **24 April, 2014**

WRITTEN REASONS FOR 4 APRIL 2014 JUDGMENT AND THE SENTENCE

1. On 31 March 2014, the first day of the trial proper, and in the presence of the three assessors and his lawyer, the accused pleaded not guilty to the following information:

COUNT 1

Statement of Offence

ROBBERY WITH VIOLENCE: *Contrary to section 293 (1) (b) of the Penal Code Cap. 17.*

Particulars of Offence

ADRIU TULAGI together with others, on the 3rd day of March, 2008 at Navua in the Central Division, robbed **J. B. W. L** of assorted jewelry valued at \$5,000.00, 2 ladies wristwatch valued at \$500.00, 1 Orotan leather handbag valued at \$300.00, 1 Angle grinder valued at \$50.00 and Eveready torch valued at \$30.00, all to the total value of \$5,880.00 and immediately before such robbery did use personal violence to the said **J. B. W. L**.

COUNT 2

Statement of Offence

UNLAWFUL USE OF MOTOR VEHICLE: Contrary to section 292 of the Penal Code, Cap. 17.

Particulars of Offence

ADRIU TULAGI together with others, on the 3rd day of March 2008, at Navua in the Central Division, unlawfully and without color of right but not so as to be guilty of stealing, took to his own use motor vehicle registration number DI 789, the property of **J. B. W. L**.

COUNT 3

Statement of Offence

ROBBERY WITH VIOLENCE: Contrary to section 293 (1) (a) of the Penal Code, Cap 17.

Particulars of Offence

ADRIU TULAGI together with others on the 5th day of March 2008, at Nasinu in the Central Division, robbed **P.A.S** s/o SINGH of FJD \$1,200.00 cash, one PHILIPS radio and one PHILIPS DVD Player valued at \$350.00, 2 NOKIA mobile phones valued at \$200.00, one Sagem mobile phone valued at \$100.00 and 14 bottles of assorted duty free alcohol valued at \$1,260.00, all to the total value of FJD \$3,110.00, the property of the said **P. A. S**.

COUNT 4

Statement of Offence

ROBBERY WITH VIOLENCE: *Contrary to section 293 (1) (a) of the Penal Code, Cap. 17.*

Particulars of Offence

ADRIU TULAGI together with others, on the 5 day of March 2008, at Nasinu in the Central Division, robbed **S.W.** d/o LAUTON of one pair of gold bangles valued at \$400.00, one pair of thin gold bangles valued at \$1,000.00, one Seiko wrist watch valued at \$250.00, one Mangal Sutra valued at \$1,500.00, one gold chain valued at \$300.00, one diamond engagement ring valued at \$1,500.00 and one pair of gold earrings valued at \$200.00, all to the total value of FJD \$5,150.00, the property of the said **S. W.**

2. The prosecution called the following witnesses:

- (i) Ms. J.B.W.L (PW1 – complainant No. 1);
- (ii) Mr. P.A.S (PW2 – complainant No. 2);
- (iii) Ms. S.W. (PW3 – complainant No. 3);

The three complainants' names had been suppressed to protect their privacy.

- (iv) Mr. Ifereimi Tauva (PW4 – caution interview officer);
- (v) PC 966 Lui Daurewa (PW5 – caution interview officer);
- (vi) D/Cpl 2496 Filipe Puamau (PW6 – Charging Officer);
- (vii) Cpl. 1753 Farook Mohammed (PW7 – Charging Officer);
- (viii) Amani Bosenawai (PW8 – Arresting Police Officer); and
- (ix) DC 4327 Samu Bola (PW9 – Arresting Police Officer).

3. The accused gave sworn evidence, in his defence, but called no other witness.

4. At the end of my Summing Up on 4 April 2014, the three assessors retired to deliberate on the matter, at 3pm. At 4.20 pm, they returned with the following opinions. Assessor No. 1 and 2 found the accused not guilty as charged on all counts. Assessor No. 3 found the accused not guilty as charged on counts nos. 1 and 4, but guilty as charged on counts no. 2 and 3.

5. I delivered a short judgment thereafter and disagreed with the not guilty opinions of all assessors on all counts. I found the accused guilty as charged on all counts and convicted him accordingly on all counts. I said I would give my reasons later. Below are my reasons.
6. The law at this stage of the trial is section 237 (1), (2), (4) and (5) of the Criminal Procedure Decree 2009, which reads as follows:

“...237 (1) When the case for the prosecution and the defence is closed, the judge shall sum up and shall then require each of the assessors to state their opinion orally, and shall record each opinion.

(2) The judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors...

(4) When the judge does not agree with the majority opinion of the assessors, the judge shall give reasons for differing with the majority opinion, which shall be –

(a) written down; and

(b) pronounced in open court.

(5) In every such case the judge’s summing up and the decision of the court together with (where appropriate) the judge’s reasons for differing with the majority opinion of the assessors, shall collectively be deemed to be the judgment of the court for... all purposes...”

7. In Ram Dulare, Chandar Bhan and Permal Naidu vs Reginam [1956 – 57], Fiji Law Report, Volume 5, pages 1 to 6, page 3, the Fiji Court of Appeal, said the following, on an equivalent section of the then Criminal Procedure Code:

“...In our opinion learned counsel for the appellants is confusing the functions of the assessors with those of a Jury in a trial. In the case of the King v. Joseph 1948, Appeal Case 215 the Privy Council pointed out that the assessors have no power to try or to convict and their duty is to offer opinions which might help the trial Judge. The responsibility for arriving at a decision and of giving judgment in a trial by the [High Court] sitting with the assessors is that of the trial Judge and the trial Judge alone and in the terms of the Criminal

Procedure Code, section 308, he is not bound to follow the opinion of the assessors...

8. In **Sakiusa Rokonabete v The State**, Criminal Appeal No. AAU 0048 of 2005, the Fiji Court of Appeal said as follows:

“...In Fiji, the assessors are not the sole judge of facts. The judge is the sole judge of fact in respect of guilt, and the assessors are there only, to offer their opinions, based on their views of the facts...”

9. I have reviewed the evidence called in the trial and I have directed myself in accordance with the Summing Up I gave the assessors on 4 April 2014.
10. During the trial, the three complainant's evidence (ie. PW1, PW2 and PW3) that, each of them were violently robbed of their properties, as itemized in counts nos. 1, 3 and 4, at the material times, were not seriously disputed by the parties. In my view, the complainants were credible witnesses, and I accept their evidence that, each of them were violently robbed by a group of men, at the material times, and the items stolen were those described in counts nos. 1, 3 and 4. I also accept complainant No. 1's (PW1) evidence that, a group of men, unlawfully used her motor vehicle, when they used the same as their get-away vehicle on 3 March 2008 (count no. 2), after fleeing from her house.
11. The only evidence, which appear to connect the accused to the crimes in counts no. 1, 2, 3 and 4, were his alleged confessions to the police. On 6 March 2008, at Nabua Police Station, the accused was caution interviewed by then police officer Ifereimi Tauva (PW4). The interview started at 2.45pm and concluded at 8.35pm. He was asked 115 questions, and he gave 115 answers. The standard caution was given to him, and his right to counsel was explained to him. There was a 1 hour 5 minutes break to visit the crime scene. In the interview, the accused admitted he was part of the group of men that, violently robbed complainants No. 2(PW2) and No. 3 (PW3), at the material times. [Please, refer to Questions and Answers 45 to 94 of Prosecution Exhibits 1(A) and 1(B)]. These alleged confessions relate to counts no. 3 and 4 of the information.

12. On counts No. 1 and 2 of the information, the accused was caution interviewed by police officer PC 966 Lui Daurewa (PW5), at Navua Police Station on 10 March 2008. The interview started at 8.35 am and concluded at 2.20pm. He was asked 63 questions, and he gave 63 answers. The standard caution and his right to counsel were given to him. A break of 2 ½ hours was taken to visit the crime scene. When interviewed, the accused admitted, he was part of the group of men, that violently robbed complainant No. 1(PW1), at the material time. He also admitted, he was part of the group that unlawfully used her vehicle, as their get-away vehicle, at the material time. [Please, refer to Questions and Answers 5 to 59 of Prosecution Exhibit No. 2 and 3].
13. The voluntariness of the above confessions was hotly disputed by the parties. The accused made several allegations against the police, from the point of arrest to his production in court. He said, he was assaulted, threatened and intimidated by the arresting police officers, including the caution interview officers. As shown in paragraph 2 hereof, all the caution interview, charging and arresting police officers were called in court, and cross-examined by the accused. The accused produced a copy of his medical report, dated 7 March 2008, as evidence of police assault. This report was tendered as Defence Exhibit No. 1. The accused did not call the doctor who wrote the report, as his witness. The doctor gave evidence, on the report, during the “trial within a trial”, on 25 November 2010. [see pages 52 to 55 of hand written court record]. Because the doctor was not called by the accused to speak on the report, in the trial proper, the medical report was thus strictly speaking, a documentary hearsay evidence, and therefore inadmissible evidence. As such, I rejected the medical report, as evidence of police assault.
14. The police witnesses (ie. PW4, PW5, PW6, PW7, PW8 and PW9) said that, they did not assault, threaten or intimidate the accused, while he was in their custody. Both caution interview officers (ie. PW4 and PW5) said, the accused was very co-operative during the interview, and he looked well. They said, they saw no injuries on him. The charging officers (ie. PW5 and PW6) also said the above. The arresting officers (ie. PW8 and PW9) also said, they saw no injuries on the accused when they arrested him, and he co-operated with the police.
15. Given the totality of the evidence, I find that the prosecution’s witnesses, as mentioned in paragraph 2 hereof, were credible witnesses and I accept their evidence. As for the accused, he was very evasive as a witness, and I find him not to be a credible witness. I reject his assertions that he was assaulted and threatened by police to admit the offences. I find that he voluntarily

admitted the offences to the police when caution interviewed, and he gave his statements out of his own free will. I find that the accused voluntarily admitted counts nos. 1, 2, 3 and 4 to the police, when caution interviewed on 6 and 10 March 2008.

16. Because of the above, I found the accused guilty as charged on all counts on 4 April 2014, and convicted him accordingly. It was for the above reasons that I disagreed with the not guilty opinions of the assessors.
17. I now proceed to sentence.
18. As I have said in **State v Josese Tuwaqa**, Criminal Case No. HAC 012B of 2010S, High Court, Suva, "...Robbery with Violence carries a maximum sentence of life imprisonment. The tariff for the offence is a sentence between 6 to 15 years imprisonment: see **State v Sakiusa Rokonabete & Others**, Criminal Case No. 118 of 2007, High Court, Suva; **Sakiusa Basa v The State**, Criminal Appeal No. AAU 0024 of 2005, Fiji Court of Appeal; **Semisi Waqiniqolo v The State**, Criminal Appeal No. AAU 0027 of 2006, Fiji Court of Appeal; **Baleinakeba v The State**, Criminal Appeal No. HAA 008 of 2010, High Court, Lautoka. The actual sentence will depend on the aggravating and mitigating factors..."
19. The aggravating factors were as follows:
 - (i) The violent robberies on the three complainants were well planned and executed;
 - (ii) The level of violence done on the complainant were extremely unpleasant. All were attacked by a group of men, in the early hours of the morning, in their own house. They were physically and verbally abused. No member of society needed to be treated like this;
 - (iii) The accused and his friends showed no regard whatsoever, to the complainants' rights as human beings, when they offended against them;
 - (iv) They stole the complainants' properties.
20. The mitigating factors were as follows:
 - (i) 39 years old, married with 2 young children;
 - (ii) been remanded in custody for approximately 2 years.
21. On Count No. 1 (Robbery with Violence), I start with 13 years imprisonment. I add 4 years for the aggravating factors, making a total of 17 years imprisonment. For the mitigating factors, I deduct 3 years, leaving a balance of 14 years imprisonment.

22. I repeat the above process and sentence for Counts Nos. 3 and 4 (both robbery with violence).
23. On Count No. 2 (Unlawful use of a motor vehicle), I sentence you to 3 months imprisonment.
24. In summary, your sentences are as follows:
- | | | | | | |
|-------|-------------|---|-------------------------------|---|-----------------------|
| (i) | Count No. 1 | : | Robbery with Violence | : | 14 years imprisonment |
| (ii) | Count No. 2 | : | Unlawful use of Motor Vehicle | : | 3 months imprisonment |
| (iii) | Count No. 3 | : | Robbery with Violence | : | 14 years imprisonment |
| (iv) | Count No. 4 | : | Robbery with Violence | : | 14 years imprisonment |
25. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, that is, a total sentence of 14 years imprisonment.
26. Adriu Tulagi, for violently robbing the three complainants (ie. PW1, PW2 and PW3) on 3 and 5 March 2008, at Navua and Nasinu in the Central Division, I sentence you to 14 years imprisonment, with a non-parole period of 13 years, effective forthwith.




Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **In Person**