

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 174 OF 2014S

STATE

VS

JEKESONI VULI

Counsels : Mr. T. Qalinauci for State
Ms. L. Raisua for Accused

Hearings : 8, 9, 10 and 11 February, 2016

Summing Up : 12 February, 2016

SUMMING UP

A. ROLE OF JUDGE AND ASSESSORS

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of fact.
2. State and Defence Counsels have made submissions to you, about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsels, in this case. Their submissions were designed to assist you, as the judges of fact. However, you are not bound by what they said. It is you who are the representatives of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.

3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

B. THE BURDEN AND STANDARD OF PROOF

4. 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 on the accused to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he is proved guilty.
5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is not guilty.
6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accused or the victim. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

C. THE INFORMATION

7. You have a copy of the information with you, and I will now read the same to you:

"... [read from the information]..."

D. THE MAIN ISSUE

8. In this case, as assessors and judges of fact, each of you will have to answer the following question:

- (i) Did the accused, on 1 May 2014, at Nasinu in the Central Division, in company with others, steal the complainant's properties as itemized in the information, and before such stealing, use force on the complainant?

E. THE OFFENCE AND IT'S ELEMENTS

9. The accused was charged with "aggravated robbery", contrary to section 311(1)(a) of the Crimes Decree 2009. It was alleged that on 1 May 2014, at Nasinu in the Central Division, he in company with others, stole the complainant's properties worth \$31,350, and before such theft used force on the complainant. For the accused to be found guilty, the prosecution must prove beyond reasonable doubt, the following elements:

- (i) the accused,
- (ii) in company with one or more persons,
- (iii) steals,
- (iv) the complainant's property or properties, and
- (v) before the theft,
- (vi) uses force or threatens to use force,
- (vii) on another person,
- (viii) with intent to commit theft.

10. "Stealing" is the act of taking away someone's property or properties without his permission, and with an intention to permanently deprive him of the ownership of that property or properties. "Force" means "any type of force, whether or not done physically or verbally, for example, beating someone with a stick or threatening to do the same".

11. Before stealing the complainant's properties, the accused, in company with one or more persons, must use force or threaten to use force to subdue the complainant or others' resistance, and at the time, had the intention to steal. For example, I and my friend saw you withdrawing \$1,000 cash from an ANZ Bank ATM machine. I and my friend immediately came to you, told you to hand over the \$1,000 cash to me or I will punch you in the face. You refused, I punched you in the face and stole your \$1,000 cash. That was "aggravated robbery".

12. You will notice in the information that the prosecution, in their particulars of offence, began with the phrase, "...**JEKESONI VULI with others, in company of each other...**" The prosecution was alleging that the accused committed the offence as part of a group. In other words, the offence was allegedly committed by the accused, while offending in company with others. To make them jointly liable, the prosecution appeared to be relying on the concept of "complicity and common purpose".
13. "Complicity and common purpose" means as follows. When a person aids, abets, counsels or procures the commission of an offence by another person, he is deemed, as a matter of law, to have committed that offence also, and is punishable accordingly. To aid a person is simply helping a person do something easily. To abet is to help or encourage somebody do something wrong. To counsel is to advise someone to do something. To procure is to obtain something that's difficult. The prosecution was alleging in this case that the accused aided and abetted the others to commit "aggravated robbery" on the complainant, at the material time. The fact that the State was not charging the "others", does not affect the validity of the information.

F. THE PROSECUTION'S CASE

14. The prosecution's case were as follows. The complainant (PW2) was sleeping in their family residence on 1 May 2014 at 2.30 am. He lived in the house with his parents and sister. His mother came to him and told him thieves were breaking into their house. According to the prosecution, PW2 got up and went to the kitchen and grabbed two cane knives to defend himself and his family. The thieves had broken the burglar grill of the main door, and were breaking in through the main door.
15. According to the prosecution, there were 7 thieves altogether. They had come into the house. They were wearing $\frac{3}{4}$ pants, black T-shirts and masks. They were armed with crowbars and metal rods. They demanded money and jewellery. They ransacked the house and stole the items mentioned in the information. PW2 managed to confront the thieves with his cane knife and they later fled the crime scene. PW2 reported the matter to police. An investigation was carried out.

16. On 30 May 2014, the accused was arrested at Nadi by police. He was caution interviewed by police on 31 May and 1 June 2014. He admitted being part of the group that attacked and stole the complainant's properties from his residence on 1 May 2014. He was charged with "aggravated robbery" and appeared in the Magistrate Court on 2 June 2014. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged. That was the case for the prosecution.

G. THE ACCUSED'S CASE

17. On 9 February 2016, the first day of the trial proper, the information was put to the accused, in the presence of his counsel. He pleaded not guilty to the charge. In other words, he denied the allegation against him. When a prima facie case was found against him, at the end of the prosecution's case, wherein he was called upon to make his defence, he choose to give sworn evidence and called no witness. That was his right.
18. The defence's case was simple. In his sworn evidence, he denied committing "aggravated robbery" against the complainant (PW2). He said, he did not rob PW2 at the material time. He said, he did not rob him in the company of others. He said, he knew nothing of this case.
19. He acknowledged that he was caution interviewed by PC 3573 Daniele Turaga (PW3) on 31 May and 1 June 2014, and the interview notes were tendered as Prosecution Exhibit No. 1. He also acknowledged that D/Corporal 2561 Vinod Chand (PW4) witnessed the interview. However, he asks you, as assessors and judges of fact, to disregard the alleged confession in his caution interview notes because PW3 and PW4 fabricated the same, and the same were not true. He also said PW3 and PW4 assaulted him during the interview. Because of the above, he asks you, to find him not guilty as charged. That was the case for the defence.

H. ANALYSIS OF THE EVIDENCE

20. When analysing the evidence, please bear in mind the directions I gave you in paragraphs 4, 5 and 6 on the burden and standard of proof. The burden to prove the accused's guilt beyond reasonable doubt stays with the prosecution from the start to the end of the trial. There is no burden on the accused to prove his innocence. He does not need to prove anything at all.

21. Also, in analysing the evidence, bear in mind the elements of "aggravated robbery" as discussed in paragraphs 9, 10 and 11 hereof. Ask yourselves whether or not the prosecution had provided the evidence to make you sure that each element of the offence of "aggravated robbery" had been satisfied beyond a reasonable doubt.
22. In this case, the fact that the complainant (PW2) and his family were attacked in their own house early morning on 1 May 2014 at about 2.30 am by approximately seven masked man, armed with crowbars and iron rods, appeared not disputed by the parties. PW2 said his mother woke him up at about 2.30 am on 1 May 2014, and he was informed the thieves were about to get into their house. PW2 woke up and saw seven masked man breaking into their house at the time. They demanded money and jewellery. They ransacked the house and stole the items mentioned in the information. When confronted by PW2 with a cane knife, the thieves fled the crime scene. PW2's evidence was not challenged by the defence, and it appeared the prosecution had proven beyond a reasonable doubt that a group of men, armed with crowbars and iron rods, threatened PW2 and his family and stole the properties itemized in the information.
23. The next question to ask was: Was the accused part of the seven masked men mentioned above? The prosecution provided no identification evidence to link the accused to the "aggravated robbery" on PW2 and his family, at the material time. This was obviously a difficulty for the prosecution. None of the complainant's stolen properties were ever found on the accused or at his residence to link him to the crime. No witness was called to link the accused to the alleged crime. These were the difficulties for the prosecution.
24. To overcome the above, the prosecution relied on an alleged confession the accused allegedly made to the police on 31 May and 1 June 2014. You have heard PC 3573 Daniele Turaga (PW3) give evidence on how he caution interviewed the accused on 31 May 2014 at Lautoka Police Station. On 1 June 2014, he continued the caution interview at Valelevu Police Station at Nasinu near Suva. According to PW3, the accused was formally cautioned, he was given his right to counsel and the right to see his relatives, he was given the standard rest and meal breaks. According to PW3, the accused was asked a total of 97 questions and he gave 97 answers. The

interview notes were tendered in evidence as Prosecution Exhibit No. 1. According to PW3, D/Corporal 2561 Vinod Chand (PW4) witnessed the interview. PW4 confirmed what PW3 said above, when he gave evidence. According to PW3 and PW4, the accused admitted in the interview that he was part of the group of men who committed "aggravated robbery" against the complainant and his family, at the material time – please refer to questions and answers 31 to 90 of Prosecution Exhibit No.1.

25. However, the voluntariness of the above alleged confession by the accused was hotly disputed by the parties. The accused asks you, as assessors and judges of fact, to disregard the above alleged confession because the police forced the same out of him and they were the untruth. According to the accused, PW3 assaulted him during the caution interview. He said, PW3 punched his stomach, chest and head during the interview. He said, PW3 and PW4 then repeatedly swore at him and his mother. He said, he answered some of the questions PW3 asked him, but when it came to the answers to questions 31 to 90 of Prosecution Exhibit No. 1, PW3 and PW4 fabricated his answers. He said, he did not give those answers. The accused also said the police officers forced him to sign the interview notes. He said, his alleged confession were not true.
26. You have also heard the evidence of the police caution interview officer (PW3) and the witnessing officer (PW4). Both said, the accused co-operated with them during the interview. They said, they did not assault, threaten or made promises to the accused, while he was in their custody. They said, the accused answered the questions in Prosecution Exhibit No. 1 voluntarily and out of his own free will. He was given all his legal rights, given his right to counsel, cautioned and given the standard rest and meal breaks. PW3 and PW4 said the accused never complained to them on anything and never complaint to the Magistrate Court or High Court, on first call, on any alleged police misbehaviour, while in custody. PW3 and PW4 said they saw no injuries on the accused while in their custody.
27. When considering the above evidence. I must direct you as follows, as a matter of law. A confession, if accepted by the trier of fact – in this case, you as assessors and judges of fact – is strong evidence against its maker. However, in deciding whether or not you can rely on a

confession, you will have to decide two questions. First, whether or not the accused did in fact make the statements contained in his police caution statements? If your answer is no, then you have to disregard the statements. If your answer is yes, then you have to answer the second question. Are the confessions true? In answering the above questions, the prosecution must make you sure that the confessions were made and they were true. You will have to examine the circumstances surrounding the taking of the statements from the time of his arrest to when he was first produced in court. If you find he gave his statements voluntarily and the police did not assault, threaten or made false promises to him, while in their custody, then you might give more weight and value to those statements. If it's otherwise, you may give it less weight and value. It is a matter entirely for you.

28. If you accept the accused's above confession, then you will have to find the accused guilty as charged. If you don't accept the same, then you will have to find the accused not guilty as charged. It is a matter entirely for you.

I. **SUMMARY**

29. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's guilt, you must find him guilty as charged. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty as charged.

30. Your possible opinions are as follows:

(i) Aggravated Robbery : Guilty or Not Guilty

31. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.



Salesi Temo
JUDGE

Solicitor for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : Legal Aid Commission, Suva.