

IN THE HIGH COURT OF FIJI

AT LAUTOKA

IN THE WESTERN DIVISION

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 34 OF 2014

STATE

V

1. PITA NATEKURU

2. LAITIA NALAWA

3. JALE FATIAKI

Counsel: Mr. J. Niudamu for State

Ms. K. Vulimainadave with Ms Manueli for 1<sup>st</sup> and 3<sup>rd</sup> Accused

Mr. R. Vananalagi for 2<sup>nd</sup> Accused

Date of Summing Up : 16<sup>th</sup> July, 2018

Date of Judgment : 19<sup>th</sup> July, 2018

## JUDGMENT

1. Accused were charged on following information before three assessors.

### FIRST COUNT

#### *Statement of Offence*

**AGGRAVATED ROBBERY:** Contrary to Section 311(1) (a) read with Sections 45 and 46 of the Crimes Act, 2009.

#### *Particulars of Offence*

**PITA NATEKURU, LAITIA NALAWA and JALE FATIAKI**, on the 10th day of March 2014, at Volivoli, Rakiraki, in the Western Division, dishonestly appropriated (stole) 1 x Dell laptop valued at \$900; 1 x Acer Tablet valued at \$600; 1 x Toshiba Laptop valued at \$300; 1 x FUJI camera valued at \$300; 1 x CANON camera valued at \$300; 1 x APPLE I-phone valued at \$500; 1 x Ladies purple bag valued at \$100; 1 x Prada ladies bag valued at \$100; 1 x Gold plated watch valued at \$29; 2 x Sunglasses valued at \$175; 2 x Hats valued at \$30; Car keys with tags valued at \$300; \$260 cash in Fijian currency; \$300 Canadian currency, \$140.00 cash in US Currency, 1 x ALCATEL phone valued at \$800; Assorted cigarettes valued at \$99; 1 x Wi-Fi device valued at \$200; 7 x 350ml Fiji Bitter Stubby valued at \$21; 1 x Phillips DVD deck valued at \$800; and 1 bottle of wine valued at \$15, all to the total value of \$6269.00 and being the property of Marian Lavictoire and William Masek, and prior to stealing the said items **PITA NATEKURU, LAITIA NALAWA and JALE FATIAKI** used force on **MARIAN LAVICTOIRE** and **WILLIAM MASEK**.

## SECOND COUNT

### *Statement of Offence*

**RAPE:** Contrary to Section 207(1) and (2)(a) of the Crimes Act, 2009.

### *Particulars of Offence*

**PITA NATEKURU**, on the 10th day of March 2014, at Volivoli, Rakiraki, in the Western Division, had carnal knowledge of **MARIAN LAVICTOIRE** without the said **MARIAN LAVICTOIRE**'s consent.

2. Assessors unanimously found that the accused guilty as charged. Having reviewed evidence led in trial with my own summing up I have decided to accept the unanimous opinion of assessors. I give my reasons as follows:
3. Prosecution called 12 witnesses including four lay witnesses and seven police witnesses. At the close of the prosecution case, 2<sup>nd</sup> and 3<sup>rd</sup> accused elected to give evidence while the 1<sup>st</sup> accused exercised his right to remain silent.
4. On the 2<sup>nd</sup> count in the information, only the 1<sup>st</sup> accused is charged with rape. Prosecution relies on the evidence of the complainant, Marion, and the confession said to have been given by the 1<sup>st</sup> accused in his caution interview.
5. Complainant Marion said that one of the robbers who entered the room was armed with an item and he took her forcefully to the bathroom and penetrated her vagina with his penis. She had not identified the person who penetrated her. She said that she was in a state of shock and found herself wet due to fear. Prosecution led evidence to show that she made a prompt complaint to police soon after the incident.
6. PW.1 and PW.2 confirmed that Marion was in a state of shock and crying when they received the report of the incident. They did not say that they received a

complaint about a rape from Marion. However, soon after the incident, the police team had arrived and she had made a complaint to police about the rape. She maintained her consistency and conduct in her evidence. I observed the demeanor of the complainant whose face was clearly visible on the screen. She was straightforward and not evasive. She had no apparent motive to fabricate this story. I am satisfied that Marion had told the truth that she was raped that night by one of the intruders.

7. Prosecution adduced the caution statement of the 1<sup>st</sup> accused to establish the identity of the rapist. 1<sup>st</sup> accused in answer to question 40 admits that he is the one who penetrated the vagina of the European lady with his penis. In the charge statement also he admits that he raped that lady. For reasons given in this judgment, I am satisfied that the 1<sup>st</sup> accused told the truth to police in his caution interview. Prosecution proved the 2<sup>nd</sup> count beyond reasonable doubt.
8. To prove the 1<sup>st</sup> count (Aggravated Robbery) against each accused, Prosecution relies on circumstantial evidence and the confession said to have been given to police by each of them.
9. In their respective interviews, all three accused admit that they planned to break into the Starfish Blue Villa at Volivoli and in execution of that plan they entered the said villa on the 10<sup>th</sup> of March 2014, used force on occupants, and took away their belongings.
10. None of the eye witnesses had identified the robbers who entered the villa that night. Prosecution relies on circumstantial evidence and respective caution statement of each accused to prove the 1<sup>st</sup> count against each accused.
11. The truthfulness of cautioned interviews and charge statements was challenged on the basis that they was obtained by police officers using torture practices. 3<sup>rd</sup> accused in addition also denies making any admission to police. He blames the police for fabricating his interview. Police officers who were involved in the interview and charging process vehemently denies that they had obtained those confessions by practicing torture or using any other illegal means. They also

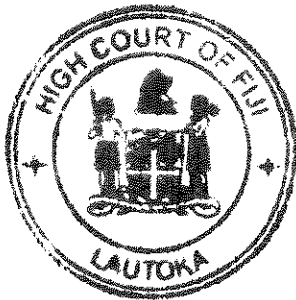
deny having fabricated the statements. Evidence of police officers under cross examination was not discredited.

12. I looked for supporting evidence to satisfy myself that the accused had told the truth to police in their respective caution statements.
13. In answer to questions 35, 44, 45, in his caution statement, the 1st accused admits that he used force and robbed some items from Starfish Blue Villa on the 10<sup>th</sup> March 2014. In answer to question 34 of his caution statement, the 2nd accused admits that he used force and, in answer to question 37, he admits that he took an Acer tablet, a Black DVD player from the European's possession. In his charge statement also he admits that he robbed the complainants. 3rd accused in his interview at Q 35, 36 37 and 39 admits that he used force and robbed some items including a pocket wi-fi device, foreign currency and some cigarette packets.
14. Other evidence led in trial from eye witnesses and police officers confirm the truthfulness of caution statements of the accused. Statements of the accused are consistent with the sequence of events during the robbery as was narrated by two eye witnesses.
15. Certain stolen items had been recovered by police officers on the information provided by 1<sup>st</sup> and 3<sup>rd</sup> accused in their respective interviews and also when being pointed out by them. That confirms the accuracy and truthfulness of the information provided by each accused at their respective interviews.
16. In answer to question 47, the 1st accused reveals that some of the stolen items were hidden inside an empty house, besides his house. Being pointed out by the 1<sup>st</sup> accused and also as a result of the information provided at his interview, some of the stolen items were recovered by the investigating officer. The recovery confirms the truthfulness of the information provided by the 1<sup>st</sup> accused at the interview.

17. Furthermore, no explanation was forthcoming from the 1<sup>st</sup> accused as to how he acquired the knowledge about those items and the place they were hidden. Therefore, the only reasonable inference that this could draw is that it is the 1<sup>st</sup> accused that had hidden those items after the robbery.
18. Being pointed out by the 3<sup>rd</sup> accused, some of the stolen items, namely, a pocket wi-fi device, some foreign currency and cigarette packets have been recovered by the investigating officer. The recovery of those items dismisses the allegation of police fabrication of his statement. The inference that was drawn in respect of 1<sup>st</sup> accused can also be drawn against the 3<sup>rd</sup> accused as to the knowledge he had of the stolen items.
19. 2<sup>nd</sup> Accused admits at in his evidence that police recovered the DVD player from his house and it was handed over to police by his father. He also admits that he went with a friend to sell the Acer tablet. At his interview he admits at Q. 37 robbing the European couple's black DVD player and Acer tablet. Officer Senitiki had recovered the white Acer tablet from a receiver in Lautoka.
20. Both items were exhibited at the trial. The black DVD player was identified by the manager of the hotel as the one that was stolen from the Villa. He had purchased it and was associated with it for some time when he provided guidance to the guests as to how they should operate it. It was a part of the home theater system of the villa. Even though it did not have serial number or any specific mark for identification, the assessors were satisfied with manager's acquaintance with this item and found it to be a stolen property of this case. I am satisfied that the black DVD deck is a stolen property of this case.
21. Having made admissions, 2<sup>nd</sup> accused in his evidence gave some explanations as to how he was associated with those items. However, his explanations are not appealing to the assessors. In his interview, the 2<sup>nd</sup> accused had never given that explanation. Therefore, the only inference this Court could draw is that the 2<sup>nd</sup> accused robbed those items from the Villa.

22. The investigating officer recovered the pocket wi-fi device and foreign currency upon being pointed out by the 3<sup>rd</sup> accused. The Manger Jay Ram identified the pocket wi-fi device as the one that was stolen from the villa. No explanation was forthcoming from the 3<sup>rd</sup> accused to explain his knowledge about the device and the place it was hidden.
23. The Counsel of the Defence dispute the fact that one of the recovered items namely the HP brand computer exhibited at the trial is not a stolen property of this case because the complainants, in their statements, had told police that they had lost a Dell brand computer. The investigating officer said that Marion and her husband were in a shock and were in a rush to go back to her country when complainant's statement was being recorded.
24. Unfortunately the Complainants had left the country by the time those recoveries were made. The learned Counsel for Prosecution miserably failed to show or ask any question about the exhibits to the complainants when they were giving evidence via Skype. However, investigating officer's evidence was never discredited when she said that the complainants had confirmed that what was exhibited is the stolen property when photographs of those items were emailed to the complainants. Those photographs that were sent to the complainant's by the investigating officer were exhibited and identified by the investigating officer. Non-production of the email messages allegedly exchanged between the investigator and complainants (due to a lapse on the part of the prosecution) did not discredit the version of the investigating officer.
25. I accept the evidence of the Prosecution and reject that of the Defence. Prosecution proved that the Accused entered the villa acting on a joint enterprise and appropriated the property belonging to the villa and two complainants by force using offensive weapons, with the intention of permanently depriving the complainants of their property.

26. Prosecution proved the 1<sup>st</sup> charge against each accused beyond a reasonable doubt. They also proved the 2<sup>nd</sup> charge against the 1<sup>st</sup> accused beyond a reasonable doubt. I accept the unanimous opinion of the assessors and convict the accused accordingly.
27. I find the 1<sup>st</sup> accused guilty of Rape as charged. I find all the accused guilty of Aggravated Robbery.
28. I convict the accused accordingly.



Aruna Aluthge

Judge

**AT LAUTOKA**

**On 19th July, 2018**

**Counsel: Office of the Director of Public Prosecution for Prosecution  
Office of the Legal Aid Commission for 1st, and 3rd Accused  
Vananalagi Lawyers for 2nd Accused**