

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CASE NO.: HAC 403 OF 2018

STATE

-v-

TERENCE EDWIN ANTHONY

Counsel: **Ms. S. Lodhia with Mr. Z. Zunaid for Prosecution**
Mr. S. Singh for Accused

Dates of Hearing: **20-20March 2019**

Date of Summing Up: **21 March 2019**

SUMMING UP

Ladies and Gentleman Assessor,

- 1 . We have now reached the final phase of this case. The law requires me, as the Judge who presided over this trial to sum up the case to you. Each one of you will then be called upon to deliver your separate opinion, which will in turn be recorded. As you listened to the evidence in this case, you must also listen to my summing up of the case very carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused person.
2. I will direct you on matters of law which you must accept and act upon.
3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, these are matters entirely for you to

decide for yourselves. So, if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.

4. In other words you are the judges of fact. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.
5. The counsel for Prosecution and the Defence made submissions to you about the facts of this case. That is their duty as the counsel. They were their arguments, which you may properly take into account when evaluating the evidence. It is a matter for you to decide which version of the facts to accept, or reject.
6. You will not be asked to give reasons for your opinions. Your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions. But I will give them the greatest weight when I deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law that accused person is innocent until he is proven guilty. The burden of proving his guilt rests on the Prosecution and never shifts.
8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find an accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty. However, the doubt must be reasonable and not be based on mere speculation.
9. Your opinions must be solely and exclusively upon the evidence which you have heard in this Court and upon nothing else. You must disregard anything you might have heard or read about this case, outside of this court room. Your duty is to apply the law as I explain it to you to the evidence you have heard in the course of this trial.
10. The both counsel submitted to you about emotions and obsessions associated with certain behaviors of a person. An incident of robbery would certainly shock the conscience and feelings of our hearts and you may, perhaps, have your own personal, thoughts about such an incident. You may perhaps have

your personal experience of such a thing, which would undoubtedly be bitter. You must not, however, be swayed away by such emotions and or emotive thinking. That is because you act as judges of facts in this case not to decide on moral or spiritual culpability of anyone but to decide objectively on legal culpability as set down by law.

11. This summing-up is not evidence. Statements, arguments, questions and comments by the counsel are not evidence either. A thing suggested by a counsel during a witness' cross-examination is also not evidence of the fact suggested, unless the witness accepted the particular suggestion as being true. You may take into account arguments and submissions made by counsel when you evaluate the evidence.
12. Documentary evidence is evidence presented in the form of a document. In this case, the medical report is an example. You can rely on the contents of the medical report as it was tendered by consent. The purpose of tendering the medical reports would be to corroborate complainant's evidence and to show the extent of the injuries caused.
13. In evaluating evidence, you should see whether the story relayed in evidence is probable or improbable; whether the witness is consistent in his or her own evidence or with his or her previous statements or with other witnesses who gave evidence. It does not matter whether that evidence was called for the Prosecution or for the Defence. You must apply the same tests and standards in applying them.
14. In the course of cross-examination, the Defence counsel referred to previous statements of witnesses recorded by police. A previous statement made by a witness is not evidence in itself unless it is adopted and accepted by the witness under oath as being true. You can of course use those statements to test the consistency and credibility of the witness if you are satisfied that such a statement was made.
15. Another relevant aspect in assessing truthfulness of a witness is his or her manner of giving evidence in Court. You have seen how the witness' demeanour in the witness box when answering questions. But, please bear in mind that many witnesses are not used to giving evidence and may find court environment distracting.

16. Your duty is to find the facts based on the evidence and apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
17. Proof can be established only through evidence. Evidence can be direct evidence that is the evidence of a person who saw it or by a victim who saw, heard and felt the offence being committed. You are also free to draw reasonable inferences in the circumstances of this case if such inferences are based on facts proved by evidence.
18. In testing the consistency of a witness you should see whether he or she is telling a story on the same lines without variations and contradictions. You should also see whether a witness is shown to have given a different version elsewhere and whether what the witness has told court contradicts with his/her earlier version. You must however, be satisfied that such contradiction is material to the core issues of this trial and significant so as to affect the credibility or whether it is only in relation to some insignificant or peripheral matter. If there is an inconsistency you should see if there is a reasonable explanation for the inconsistency. You must remember that merely because there is a difference, a variation or a contradiction or an omission in the evidence on a particular point or points that would not make witness a liar. You must consider overall evidence of the witness, the demeanour, the way he/she faced the questions etc. in deciding on a witness's credibility.
19. In assessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole.
20. You may also see whether there is a motive to fabricate a false allegation against the accused. If there is an obvious reason to make up a case, then you may think that this allegation has been fabricated.
21. Interviewing Officer WDC Lorini tendered in her evidence the record of caution interview of the accused. I now direct you as to how you should approach caution statement tendered in evidence. In the caution interview, the accused has admitted assaulting the complainant but he has denied that he participated in the alleged robbery.
22. The record of caution interview was tendered by consent. Please go through the caution interview carefully which is an important piece of evidence in this case. The Defence does not dispute the truthfulness of the caution interview.

In other words, the Defence does not deny that the answers contained in the caution statements were true answers given by the accused.

23. The accused admits that the caution interview was conducted fairly and he gave the answer voluntarily. However, in his evidence, the accused said that he was assaulted by a police officer at the police station and that some of the answers given by him were not recorded by the interviewing officer.
24. It is entirely a matter for you to assess what weight you should give to the admissions made by the accused in his caution interview. It is your duty to consider the caution statements as a whole and other evidence led in trial in deciding where the truth lies.
25. There is no rule that the complainant's story must necessarily be corroborated by independent evidence for you to be satisfied as to the credibility of complainant's evidence. The complainant's evidence alone may be sufficient if you believe his evidence to be true. However you may look for supporting evidence if you have some doubts about complainant's version of events. It is in this context you have to consider the argument of the Defence counsel that the prosecution has failed to call a vital witness to fill the gaps in the prosecution's case. At the end of the day, it is the burden of the Prosecution to make you sure that the complainant told the truth in court.
26. In this case the Prosecution and the Defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth. **Agreed facts in this case are that:**
 1. The complainant in this matter is Amon Preetivi Chand. 22 years old, bus driver.
 2. The accused is Terence Anthony, 29 years old, unemployed, resides at 448 Ratu Mara Road, Nabua.
 3. The accused is known to the complainant.
 4. On 19th October 2018, the accused was arrested at the junction of Luke Street.
 5. On 19th October 2018, the complainant was medically examined by Dr. Shackley at Valelevu Health Centre.
 6. On 20th October 2018, the accused was interviewed under caution by WDC 3714 Lorini Chan at Nabua police station.

27. Let us now look at the information, a copy of which has been given to you.

Statement of Offence

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

Particulars of Offence

TERENCE EDWIN ANTHONY in the company of others, on the 19th October, 2018 at Suva in the Central Division, in the company of each other robbed **AMON PREETIVI CHAND** of 1x Samsung brand J2 mobile phone, wallet containing cards and \$200 cash, 25x disposable e-ticketing cards and 1x flash drive, the properties of **AMON PREETIVI CHAND**.

28. To prove the offence of Aggravated Robbery the prosecution must prove the following elements beyond reasonable doubt;
- a the accused, Terence Edwin Anthony
 - b committed robbery ; and
 - c the robbery was committed in the company of one or more other persons; or at the time of robbery, has an offensive weapon with him.
29. The first element involves the identity of the offender. The prosecution must prove beyond reasonable doubt that the accused Anthony and no one else committed the offence in the company of others.
30. The offence of Robbery is defined in the Crimes Act. A person commits robbery if he immediately before committing theft; or at the time of committing theft; or immediately after committing theft, uses force or threatens to use force on another person with intent to commit theft or to escape from the scene.
31. A person commits theft if that person;
- a dishonestly;
 - b appropriates the property belonging to another;
 - c with the intention of permanently depriving the other of that property.

32. The element 'dishonestly' is about the state of mind of the accused. So is the element, 'intention to permanently deprive'. Inferences may be drawn from the conduct of the accused, with regard to an accused's state of mind.
33. 'Appropriation of property' means taking possession or control of the property without the consent of the person to whom it belongs. At law, property belongs to a person if that person has possession or control of the property.
34. Aggravated Robbery is the aggravated form of robbery. Robbery when committed in the company with one or more other persons or if at the time of robbery the accused had an offensive weapon with him, that amounts to Aggravated Robbery. This is the third element of the offence of Aggravated Robbery.
35. An offence may be committed by one person acting alone or by more than one person acting together with the same criminal purpose. In this case, the Prosecution says that the accused committed the offence in the company of two other persons. I must explain to you the liability of a number of people who commit a crime together. If several people decide to commit an offence together, and all of them participate and assist each other in doing it, each of them is guilty of the crime that is committed. This is so, even though individually, some of them may not actually do the acts that constitute the offence. The offenders' agreement to act together need not have been expressed in words. It may be the result of planning or it may be a tacit understanding reached between them on the spur of the moment. Their agreement can be inferred from the circumstances.
36. Those who commit a crime together may play different parts to achieve their purpose. The prosecution must prove that the accused took some part in committing the crime. If you are sure that the Robbery was committed by more than one person and that the accused acted together with the others to commit that offence and took some part in that offence you should find the accused guilty of the offence of Aggravated Robbery.
37. If you are not sure that the accused did commit a robbery or steal anything from the complainant by force in the company of others, but you are sure that he did assault the complainant causing bodily harm you should consider if the accused can be found guilty of the offence of Assault Occasioning Actual Bodily Harm.

38. A person commits a summary offence if he or she commits an assault occasioning actual bodily harm. 'Actual Bodily Harm' has been defined as any injury which is calculated to interfere with the health or comfort of the victim. "Harm" means any bodily hurt, disease or disorder whether permanent or temporary, and includes unconsciousness, pain, disfigurement, infection with a disease and physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time);
39. I will now deal with the summary of evidence in this case. In doing this, I do not propose going through all the evidence. It should still be fresh in your minds. If I refer to only some aspects of a witness's evidence it does not mean that the rest is unimportant. You must weigh up and assess all the evidence in coming to your decision in this case.

Case for prosecution

PW.1- Amon Chand (The Complainant)

40. Amon is the complainant in this case. In October 2018, he was employed as a bus driver by a passenger transport company. He said that he started a relationship with Maureen who is the ex-girlfriend of Terence, the accused in this case. He said that Terence was angry on him because he was dating with his ex-girlfriend. Terence used to make threatening calls and once he tried to punch him when he met Terence at his place at 7th miles Nasinu, two weeks before the alleged incident.
41. On 19th October, 2018, Amon was driving his bus. At around 5.40 pm he received a threatening call from Terence who had asked him to come to Nabua to take out all his body parts. He got scared. He parked the bus at the bus stop behind the Nabua Police Station and went to the Nabua Police Station to lodge a complaint.
42. Amon said that, after lodging the complaint, he was asked to go back to the bus by a police officer who promised that he will come to the place where the bus was parked. When he returned to the bus, his boss Rajju was waiting near the bus and Rajju told him to park the bus at the garage. When he started the bus he saw Terence and two iTaukei boys coming. Only the two Fijian boys got in the bus first. He thought they are passengers. At that time Terence was not to be seen. After that Terence came inside the bus and started swearing at

him. Terence was very angry and he got hold of his neck and started punching him for twenty minutes. At that time the two Fijian boys were standing at the bus stop. Terence told those two Fijian boys to take his mobile phone, wallet and rest of his belongings. Then the two Fijian boys took his mobile phone, wallet, \$ 200 contained in it, his flash drive and disposable e-transport cards and all of them fled the scene by the time the police arrived. He said that the bus checker was sitting at the back of the bus when the incident happened.

43. Amon said that all three people assaulted him on the head and punched on his lips. Two of his friends asked Terence why he was assaulting. Terence said that Amon is having an affair with his girl friend. The medical report was tendered in his evidence.
44. Amon said that he informed the police officer who arrived at the scene of what had happened whereupon the police officer gave a chase after Terence and managed to arrest him. He said that he did not see police chasing after other two iTaukei boys who robbed the phone and his stuff. He said he also chased after Terence and confirmed to police that 'he is the person' when Terence was arrested.
45. Under cross examination, Amon admitted that Terence asked him to come to Nabua Bus Station near the Shop-N-Save Supermarket which is crowded. Amon said that he could not recall the name of the checker. He said that the checker also accompanied him to the police station and he even gave checker's telephone number to police. He denied that there were more than five people other than the checker in the bus when the incident happened. He denied that no eye witness had come to support his version because he was lying to this court. He admitted that he had never mentioned to police that the checker was seated at the back seat. He denied that he had not mentioned about the checker in his statement to police because he wanted to frame the accused in a robbery. He denied that he made up this story to please his girlfriend who had come to him deserting Terence. He denied that he parked the bus in an isolated place to create a story against the accused when the accused had asked him to come near the Shop-N-Save supermarket which is a crowded place. He denied that the two iTaukei boys were his accomplices and he created a scene with them to frame the accused. He admitted that nothing was recovered from accused's possession. He admitted that he was fired from his job after this incident, but he denied that he had damaged the bus when he was trying to run over the accused and the resultant accident caused him to lose his job.

PW. 2 PC Ronald Naicker

46. PC Naiker said that that when he was on duty on the 19th October, 2018, he received a complaint from Amon that he received a threatening telephone call from Terence. Upon receiving the complaint he advised Amon to go back to the place where the bus was parked. In ten minutes' time, he managed to go to the place where Amon's bus was parked which is behind the police station. He saw Amon taking his head out from the driver's seat pointing towards Luke Street where Terence had gone. Amon told him that Terence punched and robbed him. He said that Amon was bleeding from his face at that time and that he saw one person seated at the back.
47. Naicker said that he immediately rushed towards the Luke Street where he saw a person running. He stopped this person and inquired why he is running. This person said that a bus driver had cut his hand with a knife. Amon was following him and he confirmed that the person he stopped is Terence. He arrested this person and took him to the police station. Naicker said that he did not see any accomplices. Amon was sent to the Valelevu Health Centre as he was bleeding. The suspect also had some scars and injuries in his hand and the suspect said that the injury in his hand was self inflicted. The suspect told the story about him being obsessed by his former girlfriend. The suspect refused to go to the health centre. Naicker confirmed that he could not find any of the stolen items.
48. Under cross-examination, PC Naikar admitted that he recorded his statement five months after the incident. He said that he arrested the accused near the Medical Centre and the accused was bleeding at that time. He said that he did not investigate into the alleged stolen items and check whether the complaint of robbery was true.
49. WDC Lorini said that she conducted the caution interview of the accused on the 20th of October, 2018. She tendered the caution interview in her evidence.
50. That is the case for the Prosecution.
51. At the close of the Prosecution's case, you heard me explain to the accused what his rights were in defence and how he could remain silent and say that the Prosecution had not proved the case against him to the requisite standard or he could give evidence in which case he would be cross-examined.

52. As you are aware, accused elected to give evidence. That is his right. Now I must tell you that the fact that an accused gives evidence in his own defence does not relieve the Prosecution of the burden to prove their case to you beyond reasonable doubt. Burden of proof remains with the prosecution throughout. Accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

Case for Defence

DW.1 -Terence Edwin Anthony

53. Terence said that Amon is the new boy friend of his ex-girl friend- Maureen. Before the alleged incident, Amon had asked him to come to Amon's place to discuss about Maureen. Maureen and Amon's father were also present when Amon tried to beat him up. Amon's father intervened and said '*don't fight over a girl*'.
54. On 19th October, 2018, Amon called him and asked him to come and meet him at the bus Station near the Shop-N-Save Supermarket at Nabua. He went there. Amon called him again and asked him to come behind the Nabua Police Station. When he reached there, he saw Amon sitting in the bus with some iTaukei friends. He said he went alone and no one accompanied him. When he went inside the bus Amon started swearing at him and asked him why he was talking to his girl friend. He said he got angry and started punching Amon. Amon scratched his hand where he already had some self inflicted injuries causing them to be bled. All people in the bus ran away. The boys inside the bus took Amon's phone and ran away. He did not see a wallet or bus tickets being taken. When he came out, Amon tried to run over him and the bus got damaged. He ran to the medical centre. He saw Amon also running after him.
55. Terence denied that he had asked Fijian boys to rob Amon. He denied that he ran away from police. He admitted that police officer Naickar came and arrested him. He said that he was not taken to a doctor although he had injuries. Only Amon was taken to the hospital. He said that he was assaulted by a police officer at the police station.

56. Under cross examination, Terence admitted that he was unemployed at that time and partially dependent on his mother. He said that he had small home run business where he was selling grog. He said that he inflicted self harm to prove his love to Maureen when he came to know that Maureen is dating Amon. He said he was not jealous but 'heart-broken'. He denied he had made threatening calls to Amon. He denied asking the iTaukei boys to beat up Amon and rob his belongings.
57. That is the case for Defence.

Analysis

58. There is no dispute in this case as to the identity of the accused. The accused admits that the complainant was known to him prior to the incident.
59. The accused also admits that he had assaulted the complainant. The medical report prepared by the doctor upon the examination of the complainant was tendered in evidence by consent as an admitted fact. In the medical report, the doctor had noted some injuries on complainant's body. Prosecution says that the injuries noted in the medical report were caused by the accused. It is a matter for you to decide.
60. The case of the Prosecution is that the accused in the company of two others committed a theft and immediately before or at the time of committing theft; the accused used force on the complainant with intent to commit theft.
61. The accused does not deny that he punched and used force on the complainant. However he vehemently denies that he had participated in the robbery and that he had assaulted the complainant with the intention of committing a theft. His evidence is that while he was engaged in the altercation with the complainant, somebody else who was in the bus took away complainant's telephone. He also denies that he had assaulted the complainant in the company of two iTaukei boys and that he had instructed the iTaukei boys to rob the complainant of his belongings.
62. The Prosecution substantially relies on the complainant- Amon's evidence. To support the evidence of the complainant, the Prosecution called the Police officer PC Naickar who effected the arrest of the accused, and it relies on the

admissions made by the accused in his caution interview and the medical report prepared by the doctor.

63. The Prosecution says that the complainant is a truthful witness. They say that the accused was jealous that his ex-girlfriend was dating the complainant and he planned this robbery and deployed two of his friends to achieve his object. They say that the complainant had made a prompt complaint to police and that the evidence of PC Naickar supported the version of the prosecution. They further say that the conduct of the accused after the alleged incident is consistent with that of a robber. You heard the evidence and observed the demeanour of the complainant. You decide if the complainant is a truthful witness and what weight you should attach to his evidence that the accused had robbed him that night in the company of others.
64. The Defence argues that the complainant created a situation to frame the accused in order to please his girlfriend and the allegation of robbery was made up to put the accused in jail. To support their version the Defence counsel advanced certain arguments to show that the accused was trapped in a well orchestrated plan of the complainant. He submitted to you that there are no eye witnesses in this case to support the version of the complainant and the checker who was sitting at the back of the bus was not mentioned in complainant's statement to police and he was not called as an eye witness because the allegation of robbery was made up. Having considered my directions given earlier, it is up to you to form your own opinions on those arguments. You decide if the robbery allegation was made up by the complainant to put the accused in trouble in order to please his girlfriend and also because he was assaulted in his bus.
65. The Defence Counsel argues that the investigation is not complete and the accused who had actually taken away the stolen goods was not apprehended and no recoveries made. He also highlighted some inconsistencies in complainant's evidence in court and also with his previous statement to police to show that the complainant is not reliable. He also says that the PC Naickar is not a reliable witness because he had recorded a statement five months after the incident and he gave evidence in favour of prosecution to cover up his own wrongdoings and loopholes in the police investigation.
66. The Defence called the accused and the accused having admitted the assault denies that he participated in a robbery with others. You heard what the accused had to tell about this allegation. He denies that he came to the bus in the company of others and says that someone in the bus took away complainant's mobile phone during the fight. He denies that he ran away

from police. His explanations are that he was trying to escape Amon's attempt to run over him. He further said that he ran to the medical centre with his wounded hand when he was being pursued by Amon.

67. The state Counsel submitted to you that the accused was lying to save his own skin. Mr. Zunaid highlighted some inconsistencies in the evidence of the accused with his answers to the caution interview. You heard the explanations given by the accused for those inconsistencies.
68. It is up to you to decide whether you could accept the version of the Defence and that version is sufficient to establish a reasonable doubt in the prosecution case. If you accept the version of the Defence, you must not find the accused guilty of Aggravated Robbery. Even if you reject the version of the Defence still the Prosecution should prove its case beyond reasonable doubt.
69. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the Prosecution throughout the trial, and never shifts to the accused, at any stage. The accused is not required to prove his innocence, or prove anything at all.
70. If you are not sure if the accused had participated in the robbery with others, you consider if the accused can be found guilty of the offence of Assault Occasioning Actual Bodily Harm.
71. That concludes my summing up of the law and the evidence in this particular trial. We have now reached the stage where you must deliberate together and form your individual opinions on whether the charge as per the information has been proved against the accused.
72. On your return you will be asked to separately state in Court whether the accused is guilty or not guilty of Aggravated Robbery or if he is guilty or not guilty of Assault Occasioning Actual Bodily Harm.
73. Would you please now retire to consider your opinions? When you have made your decisions would you please advise the Court clerk and the Court will reconvene to receive your opinions?

74. Any redirections?




Aruna Aluthge
Judge

AT Suva
On 21st March, 2019

Counsel: Office of the Director of Public Prosecution for Prosecution
Office of the Legal Aid Commission for Accused