

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

**CASE NO: HAC. 230 of 2018**

**[CRIMINAL JURISDICTION]**

**STATE**

**V**

**1. ILIMOTAMA TIKO**

**2. TAITUSI YALAYALA**

**Counsel** : Ms. B. Kantharia and Ms. M. Konrote for the State  
Ms. T. Kean for the first Accused  
Ms. L. David for the second accused

**Hearing on** : 02 - 04 July 2019

**Summing up on** : 04 July 2019

**SUMMING UP**

Madam and gentleman assessors;

1. It is now my duty to sum up the case to you. Please remember that you should accept the directions on law that I will be giving you in this summing up and should apply those directions when you evaluate the evidence in this case in order to determine whether the accused are guilty or not guilty. You should ignore any opinion of mine on the facts of this case unless you agree with that opinion. You are the judges of facts.
2. As I have told you in my opening address, your opinion should be based only on the evidence presented inside this court room. If you have heard, read or otherwise

come to know anything about this case outside this court room, you must disregard that information.

3. Evidence you should assess in this case is what the witnesses said from the witness box inside this court room, the admitted facts and the exhibits tendered. Few things you heard inside this court room are not evidence. This summing up is not evidence. Arguments raised by the lawyers for the prosecution and the defence during the proceedings, their questions and comments are not evidence. A suggestion made by a lawyer during the cross examination of a witness is not evidence unless the witness accepted that suggestion. The arguments and comments made by lawyers in their addresses are not evidence. You may take into account those arguments and comments when you evaluate the evidence only if you agree with them.
4. A statement made by a witness to the police can only be used during cross-examination to highlight inconsistencies. That is, to show that the relevant witness on a previous occasion had said something different to what he/she said in court. You have to bear in mind that a statement made by a witness out of court is not evidence. However, if a witness admits that a certain portion in the statement made to the police is true, then that portion of the statement becomes part of the evidence.
5. You must not let any external factor influence your judgment. You must not speculate about what evidence there might have been. You must approach the evidence with detachment and objectivity and should not be guided by emotion. You should put aside all feelings of sympathy for or prejudice against, the accused or the complainant. No such emotion should influence your decision.
6. You and you alone must decide what evidence you accept and what evidence you do not accept. You have seen the witnesses give evidence before this court, their behaviour when they testified and how they responded during cross-examination.

Applying your day to day life experience and your common sense as representatives of the society, consider the evidence of each witness and decide how much of it you believe. You may believe all, part or none of any witness' evidence.

7. When you assess the testimony of a witness, you should bear in mind that a witness may find this court environment stressful and distracting. Witnesses have the same weaknesses you and I may have with regard to remembering facts. Sometimes we honestly forget things or make mistakes when recalling past events.
  
8. In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies in his evidence. That is, whether the witness has not maintained the same position and has given different versions with regard to the same issue. You may also find inconsistencies when you compare the evidence given by witnesses on the same issue. This is how you should deal with any inconsistency you may come across. You should first decide whether that inconsistency is significant. That is, whether that inconsistency is fundamental to the issue you are considering. If it is, then you should consider whether there is any acceptable explanation for it. If there is an acceptable explanation for the inconsistency, you may conclude that the underlying reliability of the account is unaffected. In this regard, you may perhaps think it obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you might not expect every detail to be the same from one account to the next.
  
9. However, if there is no acceptable explanation for the inconsistency which you consider significant, it may lead you to question the reliability of the evidence given by the witness in question. To what extent such inconsistencies in the evidence given by a witness influence your judgment on the reliability of the account given by that witness is for you to decide.

10. Therefore, if there is an inconsistency that is significant, it might lead you to conclude that the witness is generally not to be relied upon; or, that only a part of the witness' evidence is inaccurate; or you may accept the reason the witness provided for the inconsistency and consider him to be reliable as a witness.
11. You may also consider the ability and the opportunity a witness had, to see, hear or perceive in any other way what the witness said in evidence. You may ask yourself whether the evidence of a witness seem reliable when compared with other evidence you accept. These are only examples. It is up to you how you assess the evidence and what weight you give to a witness' testimony.
12. Based on the evidence you decide to accept, you may decide that certain facts are proved. You may also draw inferences based on those facts you consider as directly proved. You should decide what happened in this case, taking into account those proven facts and reasonable inferences. However, you should bear in mind that the inference you draw should be the only reasonable inference to draw from the proved facts. If there is a reasonable inference to draw against the accused as well as one in his favour based on the same set of proved facts, then you should not draw the adverse inference.
13. In this case, there are certain facts which are agreed by the prosecution and the defence. You have been given copies of those admitted facts. You should consider those facts as proven beyond reasonable doubt.
14. As a matter of law you should remember that the burden of proof always lies on the prosecution. An accused is presumed to be innocent until proven guilty. This means that it is the prosecution who should prove that the accused is guilty and the accused is not required to prove that he is innocent. The prosecution should prove the guilt of an accused beyond reasonable doubt in order for you to find him guilty. You must be sure of the accused person's guilt.

15. You are not required to decide every point the lawyers in this case have raised. You should only deal with the offence the accused are charged with and matters that will enable you to decide whether or not the charge has been proved against each accused.
16. Please remember that you will not be asked to give reasons for your opinion. In forming your opinion, it is always desirable that you reach a unanimous opinion. But it is not necessary.
17. Let us now look at the Information. The Director of Public Prosecutions has charged the accused for the following offence;

*Statement of Offence*

**Aggravated Robbery:** contrary to section 311(1) (a) and 3 of Crimes Act of 2009.

*Particulars of Offence*

**ILIMOTAMA TIKO AND TAITUSI YALAYALA** with others on the 3<sup>rd</sup> day of June, 2018, at Suva in the Central Division, in the company of each other, robbed **PONIPATE NAMARALEVU** OF \$15.00 cash and 1 x White Vido Mobile Phone valued at \$100.00 all to the total value of \$115.00 the property of **PONIPATE NAMARALEVU**.

18. In order to prove that a particular accused is guilty of the above offence, the prosecution should prove all the elements of the offence beyond reasonable doubt against that accused. If you find that you have a reasonable doubt in respect of any element, that is, if you find that the prosecution has failed to prove even one element of the offence against a particular accused beyond reasonable doubt, you should find that accused not guilty. However, a reasonable doubt is not a mere imaginary doubt but a doubt based on reason.

19. You should remember to consider the evidence against each accused separately. In the event you find one accused guilty of a particular count, you must not simply assume that the other accused must be guilty as well.
20. To prove the offence of aggravated robbery the prosecution must prove the following elements beyond reasonable doubt;
  - a) the accused;
  - 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.
21. The first element involves the identity of the offender. The prosecution should prove beyond reasonable doubt that the accused committed the offence and no one else.
22. 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.
23. 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.
24. 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.
25. '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.

26. 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 which you are required to consider.
27. Please remember that an offence may be committed by one person acting alone or by more than one person acting together with the same criminal purpose. 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.
28. Those who commit crime together may play different parts to achieve their purpose. The prosecution must prove that the accused took some part in committing the crime.
29. On each count, if you are sure that the offence of aggravated 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.
30. You should also remember that no witness can look into an accused's mind and describe what it was at the time of the alleged incident. Therefore, it is not possible to have direct evidence regarding an accused's state of mind. Knowledge or intention of an accused can only be inferred based on relevant proven facts and circumstances.
31. The prosecution led the evidence of three witnesses. At the end of the prosecution case you heard me explain several options to the accused. They had those options because they do not have to prove anything. The burden of proving an accused's

guilt beyond reasonable doubt remains on the prosecution at all times. The first accused chose to give evidence on oath and the second accused opted to exercise his right to remain silent. You should not draw any adverse inference against the second accused in view of his decision to exercise that right.

32. Now let us look at the evidence. Please remember that I will only refer to evidence which I consider important to explain the case and the applicable legal principles to you. If I do not refer to evidence which you consider important, you should still consider that evidence and give it such weight you may think fit.
33. Firstly, let us look at the admitted facts. The following facts are admitted in this case and you should consider that these facts have been proven beyond reasonable doubt;

The first accused admits that;

1. It is admitted that Ilimotama Tiko on 3/6/18 was at the Suva Bus Stand.
2. It is admitted that Ilimotama Tiko was arrested by a PC 5163 Atekini Duaibe and PC 5205 Joeli at the Suva Bus Station on the day of alleged incident on 3/6/18.
3. It is admitted that Ilimotama Tiko and another were then escorted by PC 5163 Atekini Duaibe and PC 5205 Joeli to the Market Police.
4. It is admitted that the Ilimotama Tiko was with the second named accused Taitusi Yalayala at the time of the alleged incident on 3 June, 2018.

The second accused admits that;

1. It is admitted that Taitusi Yalayala at about 5.10am on 3/6/18 was at the Suva Bus Stand.
2. It is admitted that Taitusi Yalayala was arrested by PC 5163 Atekini Duaibe and PC 5205 Joeli at the Suva Bus Station on the day of alleged incident on 3/6/18.
3. It is admitted that Taitusi Yalayala and another were then escorted by PC 5163 Atekini Duaibe and PC 5205 Joeli to the Market Police.
4. It is admitted that Taitusi Yalayala was with the first named accused Ilimotama Tiko on the day of the alleged incident on 3 June, 2018.

34. The complainant (PW1) said in his evidence that;



- a) *He is a market vendor at the Suva Market. On 03/06/18 he walked to the Suva bus stand after drinking at the Ritz Nightclub from around 12.00am to 4.30am. He was sitting at the bus stop and then fell off to sleep for 3 to 4 minutes. He was the first to come to that bus stand. He felt that someone is trying to choke him and another person was trying to put the hand in his pocket. He said by the word 'choke' he meant that the person held him tightly from his neck and the other hand was around his waist so that he could not move. He tried to free himself and also tried to shout.*
- b) *Later he said, after he sat down, he closed his eyes for a little bit and then the two persons arrived. He said that the person who put his hands in his pockets took \$15 cash and his mobile phone from his pockets.*
- c) *When this happened he was sitting the way he was sitting down while he gave evidence and was facing the Lami bus stand. He said the person who choked him was beside the gate where you usually wait for the bus which was about 3 meters away and then came closer to the post and choked him leaning onto the post. The person who was trying to put the hand inside his pocket was in front of him.*
- d) *When he was trying to free himself and was shouting, he saw two police officers walking by. The two officers then jumped over the gate and the person who was choking him was arrested at the same time. He said the other person escaped and was arrested later. He said there were four of them but he could only feel two people touching him. Apart from those four people he didn't see anyone else in the bus station as it was early morning. He said that right after the first person was arrested the second person tried to walk in a normal manner and then ran away. The police officer chased him and managed to arrest him.*
- e) *He said that this incident took place between 5.00am and 5.30am. At that time all the lights in the bus stand were switched on. He said that the two persons who tried to attack him were I-Taukei.*
- f) *After the two were arrested, the police officers told him to come with them. He went to the 'van stand' to see his brother. Thereafter the two police officers came looking for him and took him to the Market Police Post. He lodged his report there and he saw the two persons the police officers arrested. Then he was taken to Totogo and medically examined at the CWM. When he was examined he was only feeling pain on his neck. He said when the doctor examined him no one else was present. No injuries were found on him.*
- g) *He said that the money and the phone were not recovered. He said that the police officers who came there were not in their uniforms and it took only few seconds for those police officers to reach him. He could not recall what happened to the other two persons he initially saw.*
- h) *During cross examination on behalf of the first accused he agreed that he was waiting at the New Town bus stand which was in the second terminal. There are three terminals. He agreed that because he was sleeping he could not see the person who had choked him.*

*He said that at that time it was dark but the lights were on and the sun was just about to come out. He said the police officers came from the Raiwaqa bus stand which is the first bus stand and they jumped over the gate. He also agreed that when he was sitting down the Raiwaqa bus stand was behind him. When he was asked how he came to know that the police officers came from Raiwaqa bus stand when he was facing the opposite side, he said that the person who tried to choke him pulled him up and twisted him and he could see from there. When it was suggested why he did not mention about him shouting in his police statement he said the police officers never asked him.*

- i) According to him his statement to police was not read back to him. It was just given to him by the police to sign. He agreed that the Naulu-Nakasi bus stand is also at the second terminal.*
- j) When it was suggested that the two accused persons were just talking in the second terminal while they were standing, he said he does not know. He also said "I don't know" when it was suggested that the 1<sup>st</sup> accused and the 2<sup>nd</sup> accused were arrested together at the Naulu - Nakasi bus stop. He denied the suggestion that he gave the name Epeli as the person who stole his phone to the police. He denied the suggestion that three I-Taukei boys were brought to the Market Police Post and he pointed to one of them identifying that person as Epeli.*
- k) When it was suggested that a medical report was prepared by the doctor who examined him on 03/06/18 he said he can't recall. The medical report was tendered as DE1. He agreed that at D10 it is written "...Epeli and another who robbed him at the bus stand". He agreed that the name Epeli is also mentioned at D16.*
- l) He agreed that what he said in evidence about how the person was holding him is different from what he stated at the D10 of the medical report.*
- m) During cross examination on behalf of the 2<sup>nd</sup> accused he agreed that there is no mention of him seeing four people going up and down in his police statement. He agreed that it is written in his statement that "then immediately two police officers approached us and arrested two of them". He agreed that there is no mention about the person that ran away. He agreed that he realized his phone and the money were not there when he checked his pockets after the police officers told him to do so. He said he checked his pockets when he went to the 'van stand' and only then he knew that they were missing. His statement to police dated 03/06/18 was tendered as DE2.*
- n) During re-examination he said he closed his eyes for about 2 minutes. He said he did not see the first accused and the second accused talking at the bus stand. He said when the doctor was writing the medical report he was at the opposite side of the table.*
- o) He said that there is no mention of another person trying to touch his pockets in his statement because that did not come to his mind at that time. He said that he does not know who told the doctor that one Epeli robbed him. He also said that there is no mention*

*about four boys because it did not come to his mind to mention that to the police. He again said that the police came and asked him to check his pockets.*

35. The second prosecution witness was PC 5163 Alekini Duaibe (PW2). He said that;
- a) *On 03/06/18 he was stationed at the Market Police Post and was on the night shift. After 5.00 am that morning he heard a sound from the second terminal while he was on patrol with PC Joeli. They were at terminal one when they heard the shout. The distance between terminal one and terminal two was around 20 meters. He saw an I-Taukei boy being strangled and three others were touching that boy's pockets. Then again he said that it happened so fast and he was not able to see what exactly the other three were doing. He said that he could not see the person who was strangling because that person was turning his back towards him. He said that there were tube-lights in the bus stand and they were bright as the light in the courthouse and he could see what was going on. Nothing was obstructing his view.*
  - b) *Upon hearing the sound they immediately ran towards the I-Taukei boy who was being strangled. They had to jump over a small gate at terminal two. It took them only few seconds to reach him. The person who was strangling the boy was still there when he approached and he arrested that person.*
  - c) *With regard to the other three persons, he said, one was searching the boy's pockets and other two were lookouts. He said the three of them were not far from where the incident happened. He said they were one meter away from the I-Taukei boy who was strangled. By the time he approached the boy, two persons had already fled the scene as they saw the police running towards them. When he got hold of the first person who was strangling the complainant the other person just walked away normally as if nothing happened.*
  - d) *He said he got to know that the name of the person who was strangling the complainant is Ilimotama at the market police post after he arrested him.*
  - e) *The other person who just walked away was arrested by PC Joeli. He said that person walked 5 to 10 meters away from the scene.*
  - f) *He said he had seen the 1<sup>st</sup> accused before the incident around the city area. He said he can't recall how many times they had met around the city.*
  - g) *He said the complainant was told to come to the police post but they had to bring him from the Mini Bus Stand. They asked the complainant regarding his belongings and the complainant told them that his mobile phone and \$15 are missing. Thereafter a report was lodged.*
  - h) *He said the stolen items were not recovered. He said since there were 4 persons they must have passed the stolen items.*

- i) During Cross Examination on behalf of the 1<sup>st</sup> accused he said the shout came from the second bus terminal but he cannot recall from which bus stand. He agreed that he had stated in his police statement that he heard the shout and then looked towards the Kinoya bus stand. He then said that the shout came from terminal 2, towards the Kinoya bus stand.
- j) He agreed that he arrested the 1<sup>st</sup> accused at the Suva bus stand. He said when the 1<sup>st</sup> accused was arrested before taking to the police post he warned the 1<sup>st</sup> accused that the 1<sup>st</sup> accused is arrested for robbery.
- k) When it was suggested that while they were at the Market Police Post three I-Taukei boys were brought in, he said he cannot recall. Then when it was suggested that the complainant identified one of them as Epeli he said 'no'.
- l) He agreed that the 1<sup>st</sup> accused sell cigarettes at the market bean cart and that he used to tell the 1<sup>st</sup> accused to stop selling that and to chase him from the market. He said that it is against the Law to sell loose cigarette rolls. He denied the suggestion that sometimes he used to ask lunch money from the 1<sup>st</sup> accused.
- m) During Cross Examination on behalf of the 2<sup>nd</sup> accused he agreed that he had mentioned in his statement that "we then approached the said youths and managed to get a hold of two youths while the other two youths fled". He agreed that he has not mentioned in the statement that the 2<sup>nd</sup> accused started walking away. When it was suggested that the 2<sup>nd</sup> accused did not walk away he said he cannot recall. He agreed that he had seen the 2<sup>nd</sup> accused with the 1<sup>st</sup> accused at the bean cart area.
- n) During Re-Examination he said that PC Joeli arrested this 2<sup>nd</sup> accused a few meters away from the place of the incident and he did not write that down in his statement. He said he did not write his statement in detail.

36. The third prosecution witness was PC 5212 Joeli Simi Wakasaka (PW3). He said that;

- a) On 03/06/18 he was on operation duty at market Police Post. That morning around 5.20am, he with Constable Atekni arrested 2 I-Taukei males for the allegation of aggravated robbery.
- b) He said Constable Atekini and him heard a scream coming from terminal 2 when they were on foot patrol along terminal 1 of the Suva bus stand.
- c) They noticed a total of 5 people and that 4 of them were in the act of robbing one male. One was strangling the victim around the neck, 2 were going through the victims pocket whilst the 4<sup>th</sup> was standing as a look out. The victim was standing and was being strangled. Nothing was obstructing his view.
- d) Then Constable Atekini and him ran towards the scene. As they were running towards the scene, 2 of the suspects fled the scene whereby the I-Taukei man that was strangling

*the boy was still strangling him. The other I-Taukei male with the red and black t-shirt started to walk away slowly.*

- e) It took them about 5 seconds to reach terminal 2 from the place where they were at (terminal 1). He said that Constable Atekini arrested the person who was strangling the victim. He ran towards the other suspect who was walking away calmly and shouted at him to stand still. The suspect stood still and he managed to make the arrest. He identified the second accused as the person he arrested.*
- f) He said the second accused was arrested about 5 meters away from the place of the incident. After arresting the second accused he was escorted to the Market Community post.*
- g) They told the victim to follow them to the Market Community post. The victim did not come and they managed to find the victim at the Minibus stand. They asked the victim if anything was stolen from him during the incident. The victim told them that his phone and some money were stolen from him.*
- h) They searched the accused but were unable to recover this phone and money. He said that there is a possibility that the 2 suspects that fled the scene could have taken the stolen items.*
- i) During the Cross Examination when he was asked whether the scream came from the Kinoya side he said he is not sure. He also said that the complainant was questioned after they found the complainant at the Mini Bus Stand and this was after the two accused have been detained at the Market Community Post. He agreed that he has not mentioned in his police statement that the 2<sup>nd</sup> accused was walking away and that he shouted at the 2<sup>nd</sup> accused to stand still. He agreed that he did not see the two suspects that ran away had the stolen items.*
- j) During re-examination he said he overlooked to mention the details regarding the arrest in his police statement. He said he mentioned that it was possible for other two to have taken the stolen items because the suspects were surrounding the victim and he could not clearly see as everything was happening so fast.*

37. The 1<sup>st</sup> Accused said in his evidence that;

- a) He was at the Suva bus stand around 4.30am to 5.00am on 03/06/18. He was going home after returning from the nightclub. He said while he was at the Naulu Nakasi bus stand with the 2<sup>nd</sup> accused, some youth were standing beside the Valelelou bus stand and one was sleeping at the New Town bus stand. While he was having a conversation with the 2<sup>nd</sup> accused they saw two I-Taukei men who were in their sports attire waking up the person who was sleeping in the New Town bus stand. Thereafter they came to where he was standing with the 2<sup>nd</sup> accused and the two of them were searched. When he asked, the two persons who searched them said that they are police officers.*

- b) *After the search the police officers spoke to the boy who was sleeping and they told that his phone and money are missing. Thereafter they were taken to the Market Police Post.*
- c) *At the police post when the police officers asked the boy, the boy said one Epeli touched his pockets. Thereafter three other persons were arrested and brought to the police post and the boy that was sleeping pointed to one saying that he is Epeli. The police officers then released those men and told the boy that it was him and the 2<sup>nd</sup> accused who stole the items.*
- d) *He kept on talking back to the police officers and because of that he was punched inside the cell. He said he knows the police officer who arrested him because that officer used to come to the place he sell cigarettes and ask for lunch money. He said he used to chase that police officer away.*
- e) *During Cross Examination he said that he did not see anything happen while he was at the bus stand that morning. He denied the allegation.*

38. I have explained you how to deal with inconsistencies. You should follow the said directions when you deal with any inconsistency you may come across.
39. You may recall that the complainant said that he saw the person who strangled him from a distance of three meters until he was strangled from behind. He said that the person who searched his pockets were in front of him. However, the complainant did not identify any accused in court. You would also have noted that the complainant did not go to the police station when he was initially told to do so and the police had to look for him and then found him at the Mini Bus Stand. Further, until the complainant was found there, there was no complaint made against the two accused that they stole the items in question from the complainant.
40. It is pertinent to note that the items alleged to have been stolen were not recovered from the two accused though they were arrested immediately after the alleged incident. According to PW2 and PW3 it is possible for the 2 persons who fled the scene to have taken those items with them. But either PW2 or PW3 did not see this and they only assume this. Given all the evidence you have ask yourselves what inference you would draw from the fact that the stolen items were not found in the possession of the two accused who are present before this court, given the time and the place they were arrested.


41. The medical report of the complainant was tendered by the defence as DE1 with consent. That means the prosecution does not challenge the contents of the said report. According to that report, the complainant had told the doctor that one 'Epeli' robbed him. However, the complainant denied telling this to the doctor. Moreover, no injuries were found on the complainant. It is up to you to decide what weight you would give to the medical report.
42. You must remember to assess the evidence for the prosecution and the defence using the same yardstick but bearing in mind that always the prosecution should prove the case against each accused beyond reasonable doubt.
43. I must again remind you that even though an accused person gives evidence, he does not assume any burden of proving his case. The burden of proving the case against an accused beyond reasonable doubt remains on the prosecution throughout. An accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.
44. Generally, an accused would give an innocent explanation and one of the three situations given below would then arise;
  - (i) You may believe his explanation and, if you believe him, then your opinion must be that the accused is 'not guilty'.
  - (ii) Without necessarily believing him you may think, 'well what he says might be true'. If that is so, it means that there is reasonable doubt in your mind and therefore, again your opinion must be 'not guilty'.
  - (iii) The third possibility is that you reject his evidence. But if you disbelieve him, that itself does not make him guilty. The situation would then be the

same as if he has not given any evidence at all. You should still consider whether the prosecution has proved all the elements beyond reasonable doubt.

If you are sure that the prosecution has proved all the elements, then your proper opinion would be that the accused is 'guilty' of the offence.

45. Any re-directions?
46. Madam and Gentlemen Assessors, that is my summing up. Now you may retire and deliberate together and may form your individual opinion on the charge against each accused. When you have reached your separate opinion you will come back to court and you will be asked to state your separate opinion.
47. Your opinion should be whether each accused is guilty or not guilty.



  
Vinsent S. Perera  
**JUDGE**

**Solicitors;**

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