

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC243 of 2018

STATE

vs.

1. EPELI TAWAKE
2. MELI LESUMAIROMA CAMA

Counsel: Mr. E. Samisoni for the State
Ms. N Mishra with Ms. M. Singh for the 1st Accused
Mr. M. Young for the 2nd Accused

Date of Hearing: 08th July 2019

Date of Closing Submissions: 09th July 2019

Date of Summing Up: 09th July 2019

Date of Judgment: 10th July 2019

JUDGMENT

1. The two accused have been charged with one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act. The particulars of the offence are that:

Statement of Offence

AGGRAVATED ROBBERY: *Contrary to Section 311 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

EPELI TAWAKE and MELI LESUMAIROMA CAMA on the 15th day of April, 2018 at Nasinu in the Central Division, in the company of each other robbed ***SAMISONI RAIWALUI*** of 1 x silver “Meizu” brand mobile phone valued at \$862.50; 1 x black wrist watch valued at \$20.00; 2 x USB’s valued at \$70.00; 1 x beanie valued at \$25.00; 2 x power banks valued at \$100.00; 1 x black wallet valued at \$100.00 and 1 x small carry bag valued at \$25.00 all to the total value of \$1, 202.50 the property of ***SAMISONI RAIWALUI***.

2. The hearing commenced on the 8th of July 2019 and concluded on the same day. The prosecution presented the evidence of one witness and tendered the caution interview of the first accused as an exhibit of the prosecution. The two accused decided to exercise their right to remain silence, hence, no evidence adduced for the defence. The learned Counsel for the prosecution and the defence then made their respective closing addresses. Subsequently, I delivered my summing up.
3. The three assessors in their opinions unanimously found the two accused not guilty of the offence of Aggravated Robbery as charged.
4. Having carefully taken into consideration the evidence presented in the hearing, the respective closing addresses of the parties, the summing up and the opinion of the assessors, I now proceed to pronounce my judgment as follows.
5. The prosecution alleges that the two accused came and assaulted the complainant on his head and face when he was vomiting at Kubukawa road, after getting down from the taxi, on the early hours of the 15th of April 2018. They have then snatched the bag of the complainant from it strap, containing the items as described in the information therein and ran away. The strap of the bag remained on the shoulder of the complainant.

6. The complainant, during the cross examination, said that he cannot remember whether he had approached the two accused and made certain sexual advancement to them when they were sitting at the canteen near the carwash. The defence suggested to the complainant that the first accused had told the complainant to stop his sexual advancement. The complainant had continued to make his sexual advancement irrespective of the warning of the first accused. The first accused then punched him. The complainant had fallen down on the ground. He then got up and left the place, leaving his bag on the ground. The complainant did not deny the above version of events suggested by the defence. He said that he cannot remember those events as he was drunk. He had been drinking beer for nearly five hours before this alleged incident. The complainant further said during the cross examination, that he cannot remember whether he got up and left the place, leaving his belongings, after he was punched by the first accused as he was drunk. The complainant said that he cannot remember everything as his memory about this incident has gaps as he was drunk on that morning.
7. According to the evidence of the complainant, there is a reasonable doubt whether the complainant was assaulted by two men on his face and head while he was vomiting at the Kubukawa road and then snatched his bag from the strap or he had left the canteen, leaving the bag on the ground, as suggested by the Defence.
8. The above inconsistent nature creates a reasonable doubt about the reliability of the evidence given by the complainant.
9. The prosecution tendered the caution interview of the first accused as an exhibit of the prosecution. According to the caution interview, the complainant had approached the two accused while they were smoking cigarette at the carwash. The complainant had started to touch the front side of the trousers of the 1st accused. The first accused had then told the complainant to stop it. The complainant continued his advancement. The first accused then punched the complainant and the complainant fell down on the ground. The complainant then stood up and walked away, leaving his bag on the ground. The first accused had then picked the bag.

10. It is clear that the first accused had admitted in the caution interview that he punched the complainant once and also picked the bag when it was on the ground. However, the first accused has not specified in his statement to where the punch was landed on the complainant. He has merely stated that he threw a punch at the complainant. He had given his explanation and excuses for punching the complainant in that manner and also the reasons why he picked the bag of the complainant in his caution interview.
11. Any statement made by the accused outside the court is not allowed to adduce in evidence against the accused as it amounts to hearsay evidence. The exception to this rule is an admission made by the accused in such a statement.
12. The allegation against the accused in this case is that they have assaulted the complainant on his head and face when he was vomiting at the Kubukawa road. The complainant said that he was hit on his head and then face. He did not explain whether it was a punch or some other form of assault. He only said that the hit on his face would have been a fist. He was not certain about it. The two accused have then snatched the bag from the strap and ran away.
13. Apart from the admission of punching on an unspecified location of the complainant and taking of the possession of the bag, the answers given by the first accused in his caution interview are not admissions to this allegation. Only the admissions or the confession made in the caution interview are evidence of the truth of the facts stated. Having taken the whole of the statements in the caution interview, I do not find any admission of committing this offence, or certain elements of this offence in the caution interview.
14. In view of the reasons discussed above, I find the prosecution has failed to prove beyond reasonable doubt that the two accused committed the offence as charged. Hence, I do not find any cogent reasons to disagree with the unanimous opinion of not guilty given by the three assessors.

15. In conclusion, I find the first and second accused not guilty of the offence of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act and acquit them from the same accordingly.
16. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva

10th July 2019

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for 1st Accused.
Office of the Legal Aid Commission for 2nd Accused.