

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 430 OF 2018S**

**STATE**

**Vs**

**SETAREKI RAVIA**

**Counsels : Mr. M. Vosawale and Mr. U. Lal for State**  
**Ms. M. Chand for Accused**

**Hearings : 12, 13, 14, 15 and 16 October, 2020.**

**Summing Up : 19 October, 2020.**

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**SUMMING UP**

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**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 their 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 victims. 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. There are three counts. You must consider count no. 1 and 2 only, and ignore count no. 3. For count no. 1 and 2, you must disregard

JEKEMAIA RABONU'S case, as he had already been convicted and dealt with on 5 December 2019. For Mr. Setareki Ravia, I will now read count no. 1 and 2 to you:

*“... [read from the information]....”*

**D. THE MAIN ISSUES**

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

- (i) On count no. 1, did the accused, in the company of another, on 10 November 2018, at Nasinu in the Central Division, violently rob the first complainant (PW1) of his properties, as itemized in the information?
- (ii) On count no. 2, did the accused, in the company of another, on 10 November 2018 at Nasinu in the Central Division, violently rob the second complainant (PW2) of her properties, as itemized in the information?

**E. THE OFFENCE AND IT'S ELEMENTS**

9. The accused was charged with two counts of “aggravated robbery”, contrary to section 311(1) (a) of the Crimes Act 2009. On count no. 1, it was alleged that, he and another, on 10 November 2018 at Nasinu in the Central Division, violently robbed the first complainant (PW1), of his properties as itemized in the charge. On count no. 2, it was also alleged that, he and another, at the same time and place, violently robbed the second complainant of her properties as itemized in the charge. For the accused to be found guilty of the offence, 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 the offence for count no. 1 and 2, began with the phrase, "...SETAREKI RAVIA AND JEKEMAIA RABONU, on the 10<sup>th</sup> day of November 2018, at Nasinu in the Central Division, in the company of each other robbed [the first and second complainants of their properties as itemized in the charge]..." The prosecution is alleging that the accused and JEKEMAIA RABONU committed the above offences as a group. It is immaterial that JEKEMAIA RABONU had previously been convicted for the offences and dealt with. To make them jointly liable, the prosecution is relying on the concept of "joint enterprise".
13. "Joint enterprise" is "when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed, of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence" (Section 46, Crimes Act 2009). In considering each accused, you will have to ask

yourselves the following questions. Did each of them form a common intention with each other, to violently rob the complainants (PW1 and PW2) of the properties mentioned in the charge? If so, did each of them acted together in violently robbing PW1 and PW2? When the complainants were violently robbed, were these episodes a probable consequence of them assaulting the complainants? If your answer to a particular accused was yes, and you are sure that the elements of the offences described in paragraphs 9 to 11 hereof are satisfied, the particular accused was guilty as charged. If it was otherwise, he was not guilty as charged.

14. If you find the elements of aggravated robbery proven by the prosecution beyond reasonable doubt against the accused, you must find him guilty as charged. If otherwise, you must find him not guilty as charged. It is a matter entirely for you.

**F. THE PROSECUTION'S CASE**

15. The prosecution's case were as follows. The first complainant, Mr. Sat Deo Maharaj (PW1) was 71 years old, on 10 November 2018, the date of the alleged incident. The second complainant, Ms. Parbha Wati (PW2) was 65 years old at the time. PW1 and PW2 were husband and wife, and had been married for approximately 49 years. PW1 earned his living cutting grass and makes between \$200 to \$300 per week. His wife stayed home attending to domestic chores.
16. According to the prosecution, on Saturday, the 10<sup>th</sup> November 2018, between 10 am to 11 am, the first and second complainant were walking through Qarase Road towards Bal Govind Road on their way to Nadawa to visit some relatives. The first complainant had on him his properties, as itemized in the charge. Likewise, the second complainant had on her her properties, as itemized in the charge. According to the prosecution it was a sunny day.
17. According to the prosecution, two i-taukei youths, approximately aged 18 and 20 years old, suddenly jumped out of the bushes and confronted the elderly couple. They repeatedly

punched PW1 on the face, and he fell on the ground. He was injured and later required 7 stitches to close the injury. They then went for the second complainant and dragged her along the road. The two youths then violently stole the two complainant's properties, as itemized in the charge. They later fled the crime scene.

18. The matter was reported to police. An investigation was carried out. The accused was arrested at Veiraisi Settlement on the same day, after 2 pm. He was taken to Valelevu Police Station. On 11 November 2018, he was caution interviewed by police. He allegedly admitted the offences to them. On 12 November 2018, he was taken to the Nasinu Magistrate Court charged with violently robbing the two complainants. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged on count no. 1 and 2. That was the case for the prosecution.

**G. THE ACCUSED'S CASE**

19. On 13 October 2020, 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 two aggravated robbery allegations 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 chose to give sworn evidence and called two witnesses, first, Doctor Tracey Shackley (DW2), and second, Mr. Seru Surusuru, as his witnesses. That was his constitutional rights.
20. The accused's case was very simple. On oath, he denied the allegations against him. He said, on 10 November 2018, he woke up from his home in Veiraisi Settlement. He said, he later went to Suva City at the Yatulau Shopping Complex to have a haircut. He said, he went and saw Mr. Seru Surusuru (DW3), a hair dresser. DW3 said, the accused was with him from 10 am until 12 midday, when they came to Veiraisi Settlement to drink liquor at his home. He said, during that time, he cut his hair.

21. Although the prosecution said he made an alleged confession to them when caution interviewed on 11 November 2018, he asks you to disregard his alleged confession because the police forced the same out of him. He said, he was repeatedly assaulted by police, while he was in their custody, and he received injuries as a result. He called Doctor Tracey Shackley (DW2) to give evidence on his alleged injuries. He submitted his medical report via DW2, as Defence Exhibit No. 1. He appeared to say that he did not give his police caution interview voluntarily and the same was not given out of his own free will. He appeared to say that the alleged confession was not true.
22. Because of the above, the accused is asking you, as assessors and judges of fact, to find him not guilty as charged on count no. 1 and 2. That was the case for the defence.

## **H. ANALYSIS OF THE EVIDENCE**

### **(a) Introduction:**

23. In analyzing the evidence, please bear in mind the directions I gave you in paragraphs 4, 5 and 6 hereof on the burden and standard of proof. In the acceptance and/or rejection of the evidence presented at the trial and your role as assessors and judges of fact, please bear in mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analyzing the evidence, we will first discuss the State's case against the accused; then the accused's case and lastly the need to look at all the evidence.

### **(b) The State's Case Against the Accused:**

24. In this case, the allegations that the first and second complainants (PW1 and PW2) were violently robbed of their properties, as itemized in count no. 1 and 2, were not contested by the defence. Both complainants could not identify the robbers' faces, at the material time. It was also not contested by the defence that the alleged aggravated robberies occurred at Bal Govind Road near Qarase Road on 10 November 2018 between 10 am to 11.30 am on that day. It was also not contested that it was a sunny Saturday morning at the time. To connect the alleged crime to the accused, the State was relying on two types of evidence.

First, the State said the accused voluntarily confessed to the police when he was caution interviewed on 11 November 2018 at Valelevu Police Station. Second, the State is relying on Ms. Nanise Tuicakau's (PW3) identification evidence of the accused, at the material time. We will now discuss these evidence in turn.

25. **The Accused's alleged confession to police.** Sergeant 1853 Luke Lewabeci (PW4) said, he recalled the 10<sup>th</sup> November 2018. PW4 said, he was on police duty at Valelevu Police Station (VPS) at the time. PW4 said, they received an aggravated robbery case from Veiraisi Settlement at Bal Govind Road at 11 am. PW4 said, after 2 pm, he received information that the suspect was seen at Veiraisi Settlement. He later led a team of 5 police officers to arrest the suspect. PW4 said, they arrived at Veiraisi Settlement and searched for the suspect. PW4 said, the suspect tried to avoid them, but they later arrested him. PW4 said, he smelt heavily of liquor. PW4 said, they later escorted the suspect to Valelevu Police Station. Because the cell at Valelevu Police Station was full, PW4 said they later took the suspect to Raiwaqa Police Station (RPS). PW4 identified the accused in court as the suspect they arrested that day. PW4 said, they did not assault or threatened the accused while he was in their custody.
  
26. Police Officer DC 5090 Inoke Tuiloaloa (PW5) said they escorted the accused from Valelevu Police Station to Raiwaqa Police Station on 10 November 2018 after 2 pm. PW5 said, they went in a police vehicle. PW5 said, at Raiwaqa Police Station, they handed the accused over to Raiwaqa Police Station when they arrived there. He was later locked in the cell. PW5 said, they did not assault or threaten him when he was in their custody. Police Officer DC 3835 Wili Naqura (PW6) escorted the accused from Raiwaqa Police Station to Valelevu Police Station on 11 November 2018 between 10 am to 10.40 am. At Valelevu Police Station, PW6 was instructed to caution interview the accused. He did so in question and answer form in the English Language. He recorded the same by typing it into a computer. He started the interview at 10.44 am and concluded the same at 5.52 pm on



the same day. He asked a total of 91 questions and the accused gave 91 answers. He submitted the accused's caution interview statements in court as Prosecution Exhibit No. 1.

27. PW6 said, the accused was given his right to counsel and other rights. He said, the allegations were put to the accused. He was formally cautioned. He was given the standard rest and meal breaks. PW6 said, the accused's mother was present during the interview. PW6 said the accused, his mother, D/Sgt 2614 Ofati as the witnessing officer and himself were present during the interview. PW6 said, from questions and answers 43 to 80, the accused admitted the offences. PW6 said, he and D/Sgt 2614 Ofati did not assault or threaten the accused during the interview or while he was in their custody. PW6 said, the accused gave the caution interview statements voluntarily and out of his own free will. D/Inspector 2614 Ofati (PW7) next gave evidence. He confirmed what PW6 said above.
  
28. When considering the accused alleged confession, I must direct you as follows. 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 caution interview 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.

29. **Ms. Nanise Tuicakau's (PW3) identification evidence.** The next type of evidence the State relied on to connect the accused to the crime was Ms. Nanise Tuicakau's identification evidence. PW3 said she had lived at Veiraisi Settlement since 2014. At the date of the alleged incident, she had been living in the settlement for 4 years. PW3 said she was familiar with the people who lived at the settlement. PW3 said she recalled the 10<sup>th</sup> November 2018 at about 11 am. PW3 said it was a sunny day and she was going with her mother to visit an aunty at the settlement. She said, as they were walking towards Bal Govind Road, she saw PW1 and PW2 being attacked by the accused and his brother Jeke. PW3 said she saw the accused and Jeke punching PW1. PW3 said, she saw them steal the couple's properties. PW3 said she saw PW1 fell on the road. PW3 said, she saw the accused pushed PW2 to the ground and steal her bag. PW3 said, they were 20 footsteps away from her. PW3 said, she observed them for about 4 minutes. PW3 said, it was bright sunny day. PW3 said, her view of the accused and Jeke were not impeded. PW3 said, she had seen the accused before. They stayed together at the same settlement and she often sees him every Friday. PW3 identified the accused in the courtroom as the person she saw that day.

30. PW3 said, when the accused and Jeke fled from the crime scene, she followed them. PW3 said, she saw them kneeling in the bushes. PW3 said, she saw them taking out the contents of the purse and throwing the empty purse away. She said, they were 9 footsteps away from her. She said, she observed them for 2 minutes. It was about 11.09 am and the sun was shining. She said her views were not impeded. She said, she had seen the accused before, as they stay in the same settlement. PW3 said, she was not mistaken on what she saw that day. When considering PW3's identification of the accused at the material time, I must direct you as follows, as a matter of law. Firstly, whenever the case against an accused depends wholly or substantially on the correctness of one or more identification of the accused which the defence alleged to be mistaken, I am warning you of the special need for caution before convicting in reliance on the correctness of the identification, because an honest and convincing witness or witnesses may be mistaken.

Secondly, you must examine carefully the circumstances in which the witness made the identification. How long did the witness had the accused under observation? At what distance? In what light? Was the observation impeded in any way? Had the witness ever seen the accused before? How often? Had she any special reasons for remembering the accused? Was there any police identification parade held? Thirdly, are there any specific weaknesses in the witness's identification evidence? The answers to the above questions will determine the quality of the witness's identification evidence? If the quality of the identification is good, you may rely on it. If otherwise, you must reject it. It is a matter entirely for you.

31. You must consider the accused's alleged confession and Ms. Nanise Tuicakau's identification evidence together. If you find the same credible, and you accept the prosecution's version of events, you must find the accused guilty as charged on count no. 1 and 2. If otherwise, you must find the accused not guilty as charged on both counts. It is a matter entirely for you.

**(c) The Accused's Case:**

32. I had summarized the accused's case to you from paragraphs 19 to 22 hereof. I repeat the same here. If you accept the accused's version of events, you must find him not guilty as charged on count no. 1 and 2. If you reject the accused's version of events, you must then analyze the strength of the prosecution's case on its own. If you accept their version of events, you must find the accused guilty as charged on both counts. If otherwise, you must find the accused not guilty as charged on both counts. It is a matter entirely for you.

**(d) The Need To Consider All the Evidence:**

33. Seven witnesses gave evidence for the State:
- (i) Mr. Sat Deo Maharaj (PW1);
  - (ii) Ms. Prabha Wati (PW2);
  - (iii) Ms. Nanise Tuicakau (PW3);

- (iv) Sgt. 1853 Luke Lewabeci (PW4);
- (v) DC 5090 Inoke Tuiloaloa (PW5);
- (vi) DC 3835 Wili Naqura (PW6); and
- (vii) D/Inspector Edward Ofati (PW7).

The State submitted the following exhibit:

- (i) Accused's Caution Interview Statement- Prosecution Exhibit No. 1.

The defence called the following witnesses:

- (i) Accused (DW1);
- (ii) Doctor Tracy Shackley (DW2); and
- (iii) Mr. Seru Surusuru (DW3).

The Defence submitted the following exhibit:

- (i) Accused's Medical Report –Defence Exhibit No. 1.

34. You must compare and analyse all the evidence. You must compare and analyse all the witnesses' evidence together. If I didn't mention a piece of evidence you consider important, please take it on board in your deliberation. If you find a witness credible, you are entitled to accept the whole or some of his/her evidence in your deliberation. If you find a witness not credible, you are entitled to reject the whole or some of his/her evidence, in your deliberation. You are the judges of facts.

## **I. SUMMARY**

35. 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.

36. Your possible opinions are as follows:

- (i) Count No. 1: Aggravated Robbery: Accused: Guilty or Not Guilty
- (ii) Count No. 2: Aggravated Robbery: Accused: Guilty or Not Guilty

37. 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.**