

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 19 of 2021

STATE

vs.

SIONE MAHE COKANASIGA BILITAKI

Counsel: Mr. E. Samisoni for the State
Ms. M. Chand for Accused

Date of Hearing: 19th October 2021

Date of Closing Submission: 20th October 2021

Date of Judgment: 25th October 2021

JUDGMENT

1. The Accused is charged with one count of Aggravated Robbery, contrary to Section 311(1) (b) of the Crimes Act. The particulars of the offence are that:

COUNT 1

Statement of Offence

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

Particulars of Offence

SIONE MAHE COKANASIGA BILITAKI on the 20th day of December, 2020 at Tacirua, Nasinu in the Central Division, being armed with an offensive weapon, stole 1 x black Toyota motor vehicle with the registration number of LT 4608, 1x Samsung mobile phone and \$250.00 cash from **AJNESH PRASAD**.

2. The hearing of this matter commenced on the 19th of October 2021 and concluded on the same day. The Prosecution presented the evidence of three witnesses. The accused gave evidence for the Defence. The learned Counsel for the Prosecution and the Defence then made their respective written and oral submissions. Having carefully considered the evidence presented in the hearing and the respective written and oral submissions of the parties, I now proceed to pronounce the judgment of this matter.

The Burden of Proof and Standard of Proof

3. The accused is presumed to be innocent until he is proven guilty. The presumption of innocence is in force until the Court finds him guilty of the offence. The burden of proof of the charge against the accused is on the Prosecution. It is because the accused is presumed to be innocent until he is proven guilty. In other words, there is no burden on the accused to prove his innocence, as his innocence is presumed by law.
4. The standard of proof in a criminal trial is "proof beyond a reasonable doubt." It means that the Court must be satisfied that the accused is guilty of the offence.

Evidence

5. The Prosecution case is based on the allegation that the accused had got into the taxi driven by the Complainant on the 20th of December 2020. He had asked the Complainant to take him to Tacirua sub-division. Upon arriving at the destination, the accused had given \$10 for the fare. The Complainant had then returned \$5 as the balance. Instead of getting off the car, the accused grabbed the Complainant's neck from behind and stabbed the Complainant on

his chest with a kitchen knife, using his other hand. The Complainant had managed to take the knife and throw it out of the car. The Complainant had then managed to get out of the vehicle and alerted the public by honking the car's horn. The accused then got off the car, got into the driver's seat, and drove the car away. The accused had stolen the mobile phone and \$250 that was in the car.

6. The accused, in his evidence, admitted that he had grabbed the Complainant on his neck and then punched him on the side of his chest but denied that he stabbed the Complainant with a kitchen knife. According to the accused, an altercation erupted with the Complainant as he brought him to a wrong destination. It has then led to this quarrel. The Complainant had managed to get out of the car, and the people started to gather. The accused also got off the car. A person then hit him on his head from behind. The accused got scared of being assaulted by the people. He then got into the car as the Complainant stood outside and drove it away to escape from the people. Having fled the scene, he had parked the car at a different location and locked it. He then took the mobile phone and the wallet containing \$40 of the Complainant and left.
7. Section 311 (1) (b) of the Crimes Act states that:

"A person commits an indictable offence if he or she—

b. commits a robbery and, at the time of the robbery, has an offensive weapon with him or her".
8. Robbery is an aggravated form of theft. Theft becomes a robbery if the accused, 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 the intent to commit theft or to escape from the scene. A robbery would become an aggravated robbery if the accused had an offensive weapon with him while committing the robbery.
9. Section 311 (3) (a) and (b) of the Crimes Act defines the meaning of the offensive weapon. Section 311 (3) (a) and (b) states that:

“offensive weapon includes—

an article made or adapted for use for causing injury to, or incapacitating, a person; or
an article where the person who has the article intends, or threatens to use, the article to cause injury to, or to incapacitate, another person.

10. A person commits theft if that person:
 - (i) Dishonestly
 - (ii) Appropriates the property belonging to another,
 - (iii) With the intention of permanently depriving the other of that property.

11. Accordingly, the Prosecution has to prove beyond a reasonable doubt that:
 - (i) The accused,
 - (ii) Armed with an offensive weapon, namely a kitchen knife,
 - (iii) Dishonestly appropriated one black Toyota motor vehicle, one Samsung mobile phone and \$250 cash belonging to the Complainant,
 - (iv) With the intention of permanently deprive it,
 - (v) And used force on the Complainant immediately before or after stealing the said items.

12. The Prosecution and the Defence filed Admitted Facts pursuant to Section 135 of the Criminal Procedure Act. According to Section 135 (1) of the Criminal Procedure Act, any admission of the facts or any elements of the offence made by the Accused or his Counsel will be considered as the facts or elements that have been sufficiently proven. Hence, the Court is allowed to consider the facts admitted by the Accused under 135 of the Criminal Procedure Act as the facts that the Prosecution has sufficiently proven.

13. As per the Admitted Facts, the accused had admitted that he had stolen the taxi with the registration number of LT 4608 and one Samsung Mobile phone that had belonged to the Complainant on the 20th of December 2020. The accused had further admitted the said mobile phone was recovered at his home and brought to the Police Station by his sister.
14. In view of the above admitted facts, the issues that the Prosecution had to prove were, whether the accused armed with a kitchen knife had used force or threatened to use force on the Complainant before, during or after stealing those items. In addition to that, the Prosecution had to prove beyond reasonable doubt that the accused had stolen \$250 cash belonging to the Complainant.
15. During the course of the hearing, the accused stated that he had an altercation with the Complainant as he was taken to the wrong destination. He had then grabbed the Complainant on his neck and punched on his chest. The Complainant then managed to alert the public and got off the car. When the accused saw people were coming to help the Complainant, he took the car and drove it away to escape. The accused then said he stopped the vehicle at another location, locked it, and left the car. Before he left the car, he had taken the wallet of the Complainant containing \$40, and the mobile phone of the Complainant, that were in the car.
16. The accused had admitted in the Admitted Facts that he stole the car. Meanwhile, in his evidence, the accused stated that he took the car as a getaway vehicle to escape from the danger.
17. Section 293 (1) and (2) of the Crimes Act has defined the element of "*appropriation of property*" where it states that:
 - i) *For the purposes of this Division, any assumption of the rights of an owner to ownership, possession or control of property, without the consent of the person to whom it belongs, amounts to an appropriation of the property.*

- ii) *Subsection (1) applies to a case where a person obtains possession of property (innocently or not) without committing theft, and there is a later assumption of rights without consent by keeping or dealing with it as owner.*
18. Accordingly, the physical element of appropriation of property is not limited to taking of the property but also extends to the assumption of the right of ownership, possession or control of any property without the consent of the person to whom it belongs. (*vide: Keshwan v State [2015] FJHC 795; HAA30.2015 (23 October 2015)*). If such an appropriation is considered dishonest according to the standards of ordinary people, and the accused knew that it was dishonest according to that standards, then it becomes a dishonest appropriation of property (*vide Section 290 of the Crimes Act*).
19. Section 300 (1) of the Crimes Act has outlined the boundaries of the fault element of "intention of permanently depriving the other of the property". According to Section 300 (1) of the Crimes Act, a person may appropriate a property that belongs to another. However, he still does not mean to deprive the owner of that property permanently. However, if he intends to dispose of that property as he owns it, disregarding the rights of the owner, then such intention comes within the meaning of "intention of permanently depriving the other of the property." (*vide: Section 300 (1) of the Crimes Act*).
20. Section 300 (3) of the Crimes Act has further defined the meaning of disposing of the property as his own regardless of the owner's rights. If the person parts with the property which he had appropriated, under a circumstance where he may not be able to return it, and he did that parting for his own purpose without the authority of the owner, then such parting of the property amounts to disposing of the property as his own regardless of the rights of the owner.
21. In this case, the accused knew the Complainant was in control and possession of the vehicle, and he was merely a passenger who obtained the Complainant's service when he drove it away. He had taken control and possession of the vehicle without the consent of the Complainant. It is apparent that taking control and possession of the vehicle in that manner

was dishonest according to the standards of ordinary people, which the accused knew. The accused had then disposed of the vehicle as he owned it at a location and parted with it. Under that circumstances, he was not in a position to return it to the owner. At the time he parted the vehicle, he took the wallet and the mobile phone of the Complainant.

22. Accordingly, the accused had taken control and possession of the vehicle without the consent of the Complainant. He had then parted with it without the authority of the Complainant. That act of the accused amounts to the dishonest appropriation of the vehicle that belongs to the Complainant with the intention of permanently depriving the Complainant of the vehicle.
23. Notwithstanding the admission made by the accused in the Admitted Facts that he stole the vehicle that belongs to the Complainant, the evidence of the accused, claiming that he took the vehicle in order to escape from the scene, proves that he dishonestly appropriated the vehicle belonging to the Complainant with the intention of permanently depriving the Complainant of the vehicle.
24. I now turn onto the issue of whether the accused had stabbed the Complainant on his chest with a kitchen knife. The Complainant, in his evidence, explained that the accused grabbed his back from behind and then stabbed him on his chest with a kitchen knife. The Complainant managed to hold the knife on the sharpened part and then threw it out of the car. In his evidence, he said that he held the knife with his left hand.
25. The Doctor, who conducted the medical examination of the Complainant, had found a wound with sharp edges on the chest of the Complainant. According to his expert opinion, such a wound would have been caused by a sharp object. The evidence of the Doctor corroborates the evidence given by the Complainant.
26. The learned Counsel for the Defence, in her closing submissions, urged that the Doctor had not found any injuries on the left hand of the Complainant. Hence, the evidence given by the Complainant, stating that he held the knife with his left hand, should not be considered the