

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 22 of 2024**

**BETWEEN : STATE**

**AND : ATUNAIISA MUDUNAVONU**

**Counsel : Mr I Tuivuya for the State  
Mr M Fesaitu & Mr W Navuni for the Accused**

**Hearing : 2 & 3 June 2025 (Voir Dire)  
9, 10,11 & 12 June 2025 (Trial)**

**Voir Dire Ruling : 6 June 2025**

**Closing Submissions: 17 June 2025**

**Judgment : 31 July 2025**

**JUDGMENT**

[1] The accused is charged with two counts of aggravated robbery. The information reads:

**Count One**

***Statement of Offence***

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

***Particulars of Offence***

***ATUNAIISA MUDUNAVONU with another, on the 29<sup>th</sup> day of December, 2023 at Veikoba Settlement, Nasinu in the Central Division, in the company of each other,***

*stole 1 x Alcatel Smart Mobile Phone the property of **VINOD LAL** and immediately before stealing from **VINOD LAL** used force on him.*

### **Count Two**

#### ***Statement of Offence***

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

#### ***Particulars of Offence***

**ATUNAIISA MUDUNAVONU with another,** *on the 29<sup>th</sup> day of December, 2023 at Veikoba Settlement, Nasinu in the Central Division, in the company of each other, stole 1 x Bombay Sapphire, 1 x 40 ounce Gin, Electric Clipper and cash \$1,056.00 the property of **SAROJINI LAL** and immediately before stealing from **SAROJINI LAL** used force on her.*

[2] The accused denies having committed the two offences.

#### **Elements of aggravated robbery**

[3] Aggravated robbery is an offence contrary to s 311(1)(a) of the Crimes Act. The elements of robbery are:

- i. the accused (identity);
- ii. on 29 December 2023, stole property from Vinod Lal and Sarojini Lal (with respect to Vinod Lal, the allegation is that the accused stole his Alcatel Smart mobile phone while the allegation in respect to Sarojini Lal is that the accused stole one bottle of Bombay Sapphire, one bottle of 40 ounce Gin, an electric clipper and cash in the amount of \$1056);

- iii. in the act of stealing the property, the accused and/or his co-offender used force on each of the two complainants.

- [4] In order to constitute **aggravated** robbery, it is alleged that the accused committed the robbery with another person.
- [5] The prosecution must prove beyond a reasonable doubt that each of the elements are established, including that the accused committed the robbery with another person.
- [6] Where two or more persons form a common intention to '*prosecute an unlawful purpose*' and in the process of doing so an offence is committed of such a nature that it was a probable consequence of the said purpose, then each of them is deemed to have committed the offence.<sup>1</sup>

### **Burden of proof and assessment of the evidence**

- [7] The accused is presumed to be innocent until he is proven to be guilty. The burden of proof rests on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation on the accused to prove his innocence. The accused chose to give evidence, but he does not carry any burden to prove or disprove anything.
- [8] Each element of the charge must be proved by the prosecution. If there is a reasonable doubt, so that the Court is not sure of the accused's guilt, or if there is any hesitation in my mind on any of the elements, the accused must be found not guilty of the charges and, accordingly, acquitted.

### **Trial**

- [9] A voir dire was conducted on 2 and 3 June 2025 to determine whether admissions made by the accused during his interview with the police are admissible in evidence. I issued a ruling on 6 June 2025 determining that the admissions were admissible.

---

<sup>1</sup> Section 46 of the Crimes Act 2009.

[10] The trial proper commenced on 9 June and concluded on 12 June 2025. The prosecution called seven witnesses, including the two complainants. The prosecution witnesses being:

- Sarojini Lal (PW1).
- Vinod Lal (PW2).
- DC 5404 Rusiate (PW3).
- WPC Anarieta (PW4).
- Peceli Waqairatu (PW5).
- Selly Singh (PW6).
- DC 5578 Arthur Nawaqa (PW7).

[11] At the conclusion of the prosecution case, the defence advanced an argument of no case to answer. I found that the accused did have a case to answer. After putting the options to the accused, he chose to provide evidence in his defence. The accused did not call any witnesses.

## **Evidence**

[12] Sarojini Lal (**Sarojini**)<sup>2</sup> lives at Veikoba Settlement, Valelevu, with her parents, including her father, Vinod Lal (**Vinod**)<sup>3</sup>. Sarojini has been living there for many years and has run a canteen from her house for the past 7 years. The canteen is known as Bijen's Store.

[13] On 29 December 2023, between 8am to 9am, Sarojini was at home, washing dishes in the kitchen. Vinod was cooking in his room – his room is located in another part of the house at the back. Vinod's evidence is that he saw a person wearing black clothes

---

<sup>2</sup> PW1.

<sup>3</sup> PW2.

enter the house.<sup>4</sup> The intruder's face was masked so that only the eyes were visible. As the intruder entered the house he punched Vinod to the side of the face twice causing Vinod to black out. Sarojini's evidence is that she heard her father yell that there was a thief in the house. She then saw someone enter from the kitchen door wearing black clothes and a black mask. The masked intruder ran into the canteen, took the money tin (which contained \$7 or \$8 in cash) and then ran into one of the rooms. The intruder took items from the cupboard in the room which Sarojini later learned were two bottles of alcohol, a Westpac bag full of coins, and her wallet from her handbag which had a lot of cash inside which she was about to send to Australia for her daughter's school fees. The intruder then ran toward the back door to make his escape. As he was doing so, Sarojini pushed the intruder and tried to pull off his mask. The intruder responded by pushing Sarojini, grabbing a sharp object nearby and putting it to the side of her neck before pushing her to the ground. At this point, Sarojini fainted.

[14] Vinod regained consciousness only to hear his daughter shouting for help. Neighbours then came and alerted the police. The police arrived a short time later. Sarojini was taken to hospital.

[15] Vinod discovered that his wife's mobile phone was missing. He shared use of the phone with his wife but it belonged to his wife. Sarojini also described the phone in question as being her mother's but stated that both parents used the phone. Sarojini identified the items that had been stolen from her as being a bottle of Bombay Sapphire, a bottle of Gin, a Westpac bag full of coins, about \$1,000 in cash inside her wallet, and electric hair clippers. She stated that three of the stolen items were recovered by police two days later - being the electric hair clippers, her mother's mobile phone and the coin bag.

---

<sup>4</sup> Vinod's evidence was that this happened about 8.30am.

[16] Neither Sarojini nor Vinod were able to identify the intruder(s). Each only saw one intruder although neither was in the same room when they saw the intruder. Both described the intruder as wearing black and being masked.

[17] Peceli Waqairatu (**Peceli**)<sup>5</sup> also lives at Veikoba Settlement. He is 20 years old and in a de facto relationship. He lives at home with his partner as well as his mother, stepfather, two stepbrothers<sup>6</sup> (Rusiate and Jone), and an aunt. His account of events on 29 December 2023 start at any earlier time. At about 7am, Peceli was at home preparing his lunch for his partner. Jone and the accused then arrived at the house. They invited Peceli to smoke a cigarette with them. Rusiate also joined them. Peceli described Jone as his eldest stepbrother and the accused as someone who stays in the same settlement whom Peceli had known at that time for about a year. Peceli stated that Jone and the accused were talking about committing a robbery at Bijen's Store and asked Peceli whether he would like to join them. Peceli told them that he does not do those things.

[18] Peceli stated that Jone and the accused then left the house carrying a bucket full of black clothes. Peceli resumed making lunch for his partner. He dropped his partner at the bus stop and returned home. At about 9am, Jone and the accused arrived back at the house with 3 cans of alcohol, which they drank together on the porch. Jone, the accused and Rusiate subsequently left the house to buy more alcohol. Peceli changed his clothes and then followed them. When he met up with Jone and the accused, Rusiate was not with them. He was told that Rusiate had gone home. Peceli stated that they bought marijuana and 3 packs of bourbon blues. They consumed some of the alcohol before returning to Veikoba. Peceli was given 2 cans and walked back to the house. As he was about to reach the house, he saw police officers. The police arrested Peceli and took him to the Valelevu Police Station along with Rusiate. They were arrested on suspicion of being involved in the robbery at Bijen's store. Peceli informed the police officers that it was Jone and the accused who had robbed the store.

---

<sup>5</sup> PW5.

<sup>6</sup> It was unclear from Peceli's evidence whether they were step-brothers or half-brothers.

- [19] It was put to Peceli in cross-examination, that the accused did not come to his house that day on 29 December 2023 and did not drink alcohol with him. Peceli maintained his story.
- [20] It was revealed during this evidence that Jone was charged for the same robbery but prosecuted separately from the accused. In 2024, the prosecution filed a nolle prosequi in respect to the charges against Jone.
- [21] Selly Singh (**Selley**)<sup>7</sup> also lives at Veikoba Settlement, close to Sarojini's house. On the morning of 29 December 2023, Selley saw two iTaukei males, one wearing a black shirt and the other a white shirt. They had a black cloth around their heads. They were crossing her compound coming from the direction of Sarojini's house. This was about the time of the robbery, around 8-9am.
- [22] Two days after the robbery, the police recovered a bag said to have been stolen with the alleged stolen items, being the Westpac plastic bag containing coins, the mobile phone and the electric hair clippers.<sup>8</sup> DC 5404 Rusiate (**DC Rusiate**)<sup>9</sup> stated in cross examination that the police took photographs of the recovered items but did not fingerprint the items.
- [23] The accused was arrested on 10 January 2024. DC 5578 Arthur Nawaqa (**DC Nawaqa**)<sup>10</sup> was one of three police officers who travelled to Nabitu village on 10 January 2024 to arrest the accused. The officers found the accused sleeping in a farmhouse, arrested him, informed him of the reason for his arrest and his rights, and transported him in a police vehicle to Valelevu Police Station. The other two officers present at the time of arrest were DC 5420 Apenisa and the driver. DC Nawaqa stated

---

<sup>7</sup> PW4.

<sup>8</sup> Evidence of DC Rusiate in cross-examination.

<sup>9</sup> PW3.

<sup>10</sup> PW7.

that he sat in the front passenger seat, whilst the accused and DC 5420 Apenisa, sat in the back seat.

[24] The accused was interviewed by the police later the same day, on 10 January 2024. DC Rusiate was the interviewing officer. He stated that the accused was provided with the ‘first hour’ interview with a Legal Aid Commission lawyer before being interviewed by the police. The police interview was conducted in the English language – DC Rusiate stated that this was at the accused's request. The interview was typed by DC Rusiate in real time onto a computer. A hard copy was printed and signed at the interview by the accused, DC Rusiate and the witnessing officer<sup>11</sup>.

[25] The interview record was produced in evidence; **Prosecution Exhibit 1**. According to the record, the accused stated that he was originally from Nabitu village but then residing at Veikoba settlement. The accused admitted being involved in the robbery at Bijen's store. The accused stated that it was Jone's idea to rob the store and that he met Jone along the road. They then went to Jone's family house. From there they took ‘2 long black pants and 2 long sleeve jacket black in colour’ and changed into these clothes before entering the back of Sarojini's house. The accused stated that it was Jone who assaulted both complainants while the accused stole the items from inside the room; such items being a bag of coins, a lady's bag and an electric clipper (Sarojini's evidence, however, was that the person who assaulted her was the same person that ran into the room and stole the items). The accused stated that when they left the house they followed back where they came from and changed out of their clothes. They found money in the bag, left the bag behind and went back to Jone's house. After this they left Jone's house. Jone gave a bag to Rusiate to hide and then he, Jone, and Peceli went and purchased alcohol to drink. They parted ways later that day.<sup>12</sup>

---

<sup>11</sup> The interviewing officer was WPC Anarieta (PW4).

<sup>12</sup> With the exception of some minor differences, the accused's account during the police interview is consistent with Peceli's evidence.

[26] The police interview was suspended the same day for a scene reconstruction to be conducted. DC Rusiate stated that during the reconstruction the accused pointed out where the various events occurred - a map was drawn by DC Rusiate of the reconstruction.

[27] The interview was reconvened on 11 January 2024. Further details were sought from the accused. He accepted that Jone's and the accused's faces were covered when they robbed the complainants. The following questions and answers are worth setting out in full:<sup>13</sup>

*Q.90 According to Sarojini Lal that you and another ran towards her and pushed her from the back. What can you say?*

*Ans: Not me.*

*Q 91 According to Sarojini Lal that you and another swing a knife at her and hit her by the cheek. What can you say?*

*Ans: Not me it was Jone*

*Q 92 According to Sarojini Lal that you and another ran into the canteen first then went into the room, opened the drawer and stole the Westpac money bag containing \$500 notes and \$100 coins, 1 x bottle of Bombay Sapphire, and 1 x bottle of Gin. What can you say?*

*Ans: Only the money bag and not the duty free.*

*Q 93 According to Sarojini Lal that you and another also stole 1 x lady's handbag valued \$35 which contains 1 x wallet valued \$15, \$450 FJD and \$25 AUD. What can you say?*

*Ans: Yes but without the \$25 AUD.*

---

<sup>13</sup> The reason being to show that the accused was not simply accepting each and every allegation put to him by the police. The accused was also downplaying his part in the violence toward the complainants.

*Q 94 According to one Rajeshwar Lal that he gave chase to you and another where he managed to grab one of you but he was being pushed away after that. What can you say?*

*Ans: Not me it was Jone.*

*Q 95 According to one Selley Singh that he saw you and another crossed beside her house carrying a bucket. What can you say?*

*Ans: Yes it was us.*

*Q 96 According to one Rusiate that you and Jone came to them with and Peceli in the morning of 29/12/23 and asked them to go with you to break into Bijen's house. What can you say?*

*Ans: No*

*Q 97 According to one Rusiate that you and Jone asked him and Peceli after the break in to accompany them to go and drink. What can you say?*

*Ans: No, they just followed us.*

[28] At the conclusion of the police interview, the accused did not wish to read the interview, or add or make any changes.

[29] The witnessing officer, WPC Anarieta,<sup>14</sup> corroborated DC Rusiate's evidence in respect to the interview. It was put to WPC Anarieta in cross-examination that she was not present during the interview - there is a reference at page 2 of the interview record that the witnessing officer was, in fact, DC 7395 Mesake. WPC Anarieta stated that that was an error and that she was the witnessing officer – WPC Anarieta signed each page of the interview record as the witnessing officer. She is also identified as the '*other person present*' at page 1 of the interview record.

---

<sup>14</sup> PW4.

- [30] Following the interview, and still on 11 January 2024, DC Nawaqa charged the accused. DC Nawaqa stated that the accused requested to be charged in the English language. The accused was charged in the presence of his father. No admissions were made by the accused.
- [31] It is the accused's evidence, that there were, in fact, four police officers that arrested him at Nabitu village on 10 January 2024; the three officers identified by DC Nawaqa plus another unknown iTaukei officer. DC Nawaqa earlier denied this in cross-examination. The accused also stated that whilst being transported in the police car he was threatened by DC 5420 Apenisa and the unknown police officer to admit to the allegations or he would be assaulted and smacked. This again was denied by DC Nawaqa. The accused stated that when they arrived at the police station he was taken to the room where he was interviewed and confronted by DC Rusiate, DC Nawaqa, DC 5420 Apenisa, the unknown officer in the police car and the investigating officer, Leone. Thereat, DC Rusiate threatened the accused, punched him to his left rib and slapped his left cheek twice – DC Rusiate denied this.
- [32] The accused denied having had a first hour interview with an LAC lawyer. He stated that the threats and assaults by the officers caused him to fear for his safety. Because of this, the accused claimed that he lied about being involved in the robbery. He stated that his admissions were not voluntary or true. He also stated that the interview was conducted in the iTaukei language but recorded in English. He stated that he was also charged in the iTaukei language.
- [33] With respect to the events on 29 December 2023, the accused stated that he was in Nabitu village with his uncle that day and nowhere near Veikoba Settlement or Bijens store. He denied being involved in the robbery and denied being at Peceli's house, or drinking alcohol with Peceli and the others that afternoon. He stated that Peceli was telling lies.

[34] In cross examination, the accused accepted that his uncle (whom he had stated that he was staying with at Nabitu village) was to be his alibi witness at trial but was not called to give evidence. It was put to the accused that the prosecution had obtained a written statement from the uncle who had stated that he could not recall what day the accused was with him at the village. The accused stated that his uncle was mentally impaired and that was the reason why the accused was staying with him. It was put to the accused that despite his allegations of being assaulted and threatened no complaint was made, even when his father was present during the charging. The accused explained that he was scared that if he complained the police would harm him after his father left.

### **Issues for determination**

[35] On the morning of 29 December 2023, the two complainants were abruptly confronted by a masked intruder(s) breaking into the house to steal their property. Vinod was punched twice. Sarojini was pushed to the ground, and threatened with a sharp object to her neck. Both lost consciousness momentarily. The intruder(s) stole a number of items from the house, including the mobile phone, one bottle of Bombay Sapphire, one 40 ounce bottle of Gin, one electric hair clipper, coins from the canteen tin, and some cash (the total cash being about \$1,000). The complainants were unable to identify the intruder(s) or confirm whether there was one or more involved in the robbery.

[36] Peceli gave evidence that his elder stepbrother and the accused had planned to rob Bijen's store that morning and had left the house with a bucket full of black clothes. Selley's evidence was that she saw two iTaukei males with their heads covered with cloth walking from the direction of Bijen's Store at or about the time of the robbery. Peceli also gave evidence that after the time of the robbery he drank alcohol with the accused and Jone and they bought more alcohol. The prosecution relies on this circumstantial evidence along with the accused's admissions during the police interview.

[37] The accused denies the allegations. He claims that he was in Nabitu village the entire day of 29 December 2023. He states that his admissions during the police interview were false and made out of fear due to threats and assaults by the police.

[38] The fact of the robbery is not genuinely in dispute. The evidence from the complainants on this is largely unchallenged. The only question is whether the accused was involved in the robbery and, if so, whether he committed the robbery with another person.

### **Analysis and findings**

[39] The main arguments raised by the defence are as follows:

- i. The prosecution evidence is contradictory in respect to the identity of the accused. The complainants identify only one intruder.
- ii. The circumstantial evidence from Peceli is unsafe and unreliable. He was potentially an accomplice as he had knowledge of the robbery before it happened. As such, his evidence ought to be corroborated or at worst treated with caution, particularly given Peceli was initially a suspect by the police. There were also material inconsistencies between his evidence and the accused's alleged admissions.
- iii. The circumstantial evidence from Selley is also unsafe and unreliable. She stated in evidence that one of the males was wearing a white t-shirt and she did not recall whether they were carrying a bucket.
- iv. The admissions by the accused are not true and were procured by threats and assaults by the police. This was the sworn evidence of the accused at trial. The defence points to inaccuracies in the accused's admissions; such as that

they were carrying the bucket when seen by Selley (which Selley did not recall) and that he conducted the robbery with another person whereas the two complainants only identified one offender.

- v. The mobile phone stolen from Vinod was in fact owned by Vinod's wife. The fact that the phone did not belong to Vinod is fatal to count 1.

[40] Having carefully considered the evidence produced at trial, I am satisfied beyond reasonable doubt that the accused was involved in the robbery at Bijen's store on 29 December 2023 and that there were two persons involved in the robbery. The evidence that satisfies me of this is are the accused's admissions during the police interview and the circumstantial evidence from Peceli and Selley. Both pieces of evidence are sufficient in their own right to demonstrate beyond reasonable doubt that the accused committed the offending. The evidence together overwhelmingly supports the elements of the two counts. The reasons for my findings are as follows (I also address the arguments raised by the defence):

- i. The evidence of Peceli and Selley support the fact that two offenders were involved in the robbery. While Sarojini and Vinod did not see two offenders this can be explained by the two complainants being in two separate parts of the house at the time of the robbery. The two offenders were dressed identically wearing black pants, a black jacket and a black mask. The complainants lost consciousness before the offenders fled the house.
- ii. The defence argue that the circumstantial evidence from Peceli and Selley is unsafe and ought to be disregarded. However, I found both witnesses to be truthful and their accounts to be largely reliable. Naturally there will be inconsistencies due in large measure to the fact that the events occurred quickly and more than 18 months ago. However, on the important aspects I found their evidence to be reliable. Peceli's evidence was that both the accused and Jone informed Peceli shortly before the robbery that they were

intending to rob Bijen's store and they left the house intending to do so with a bucket of black clothes. That is no mere coincidence. The proximity of time to the robbery is compelling. By itself, Selley's evidence that two iTaukei males crossed her compound around the time of the robbery, wearing black cloth around their head is not newsworthy. But taken with the Peceli's evidence it supports the narrative that two offenders were involved in the robbery.

- iii. I accept that Peceli's evidence ought to be treated with caution given that Peceli was initially a suspect and may have potentially pointed the finger at the accused to deflect blame. The fact that Peceli knew the offenders and was aware of the robbery before it happened are also reasons to treat his evidence with caution. However, I do not accept that his knowledge made him an accomplice requiring his evidence to be corroborated. While I treat Peceli's evidence with caution, I nevertheless found him to be a truthful and honest witness. He listened carefully to the questions in cross-examination and accepted many of the propositions put to him including inconsistencies between his evidence in court and the contents of his written police statement. On the critical disputed aspects, Peceli remained steadfast that the accused was at his house on the day of the robbery and they did drink alcohol that day (contrary to the accused's version in court).
- iv. If I accept the truth of the accused's admissions during the police interview then this is direct evidence of his offending. Although the accused lays the blame for the violence on the complainants with his co-offender, the accused is equally guilty for these actions under section 46 of the Crimes Act. I have already considered in my voir dire ruling that the accused's admissions were voluntary and not the result of any unfairness by the police. Having carefully considered the evidence at trial I am also satisfied that the accused's admissions are true.
- v. The accused claims that he was assaulted and threatened and that he did not receive the first hour interview. The station diary records that an LAC lawyer arrived at the Police Station about the time the accused was brought

to the Police Station on 10 January 2024. The accused did not call the LAC lawyer to support his claim that he did not receive the first hour interview. The accused stated that the interview and charging statement were conducted in iTaukei but recorded in English. The police officers gave evidence that the accused chose to have the interview and charge statement conducted in English and this is supported by the content of the two documents both of which were signed by the accused. The accused's father was present when the accused was charged. He could have been called by the defence to give evidence to lend some support for the accused's version that the charge statement was conducted in iTaukei. The accused's father could also have provided evidence to support that the accused was living in Nabitu village at the time of the robbery (as alleged by the accused). The father was not called to support the accused.

- vi. There are aspects of the prosecution case and police investigation which are not satisfactory. The accused gave a buccal swab which was tested but no evidence led on the results of the testing. Some of the stolen items were recovered yet there is no evidence that the items were fingerprinted by the police to connect the accused to the offending. However, these deficiencies do not detract from the overwhelming evidence demonstrating the accused's guilt.
  
- vii. The mobile phone identified in count 1 as being the property of Vinod and as having been stolen by the accused was not, in fact, owned by Vinod but his wife. This is the evidence of both Vinod and Sarojini although both state that Vinod used the mobile phone. The defence argue that this is fatal to count 1 although do not identify any authority to support this argument. Section 291(1) of the Crimes Act provides that a person commits theft if that person '*dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property*'. There is no question, on the facts as I accept them to be, that the accused and his co-offender stole a mobile phone that was in Vinod's possession and owned by his wife. The phone did not belong to the offenders. The offenders

intended to permanently deprive Vinod and his wife of the phone when they took it.

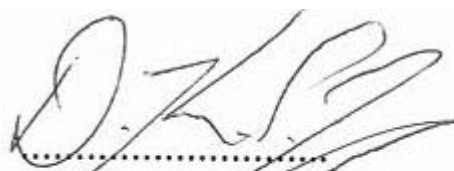
### **Conclusion**

[41] I remind myself that while I do not accept the accused's evidence at trial as true, the onus remains always on the prosecution to establish the elements of the offences.

[42] I am sure that the accused robbed Sarojini and Vinod on 29 December 2023. I am sure he did so with another. I am satisfied beyond reasonable doubt that the circumstantial evidence supports this. The accused's admissions during the police interview serve to remove any doubt.

[43] I find the accused guilty of both counts of aggravated robbery and he is, accordingly, convicted.



  
D.K.L Tuqereqere  
JUDGE

### **Solicitors:**

**Office of Director of Public Prosecutions for the State**

**Office of the Legal Aid Commission for the Accused**