

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

Criminal Case No. HAC 55 of 2024

BETWEEN : STATE

AND : SILIVIO VUETI KAVU

**Counsel : Ms T Sharma for the State
Ms B Gani for the Accused**

Hearing : 16, 17, & 18 June 2025

Closing Address : 27 June 2025

Judgment : 22 July 2025

JUDGMENT

[1] The accused, Silivio Vueti Kavuu, is charged with the following two offenses:

Count 1

Statement of Offence

AGGRAVATED BURGLARY: *Contrary to section 313(1)(a) of the Crimes Act 2009.*

Particulars of Offence

SILIVIO VUETI KAVU with others between the 26th day of January, 2024 and the 29th day of January, 2024 at Nasinu in the Central Division, in the company of each other, entered into the house of VINDU SHANDIL as trespassers with the intention to commit theft therein.

Count 2

Statement of Offence

THEFT: *Contrary to section 291(1) of the Crimes Act 2009.*

Particulars of Offence

SILIVIO VUETI KAVU with others between the 26th day of January, 2024 and the 29th day of January, 2024 at Nasinu in the Central Division, in the company of each other, dishonestly appropriated 1x Hisense chest freezer, 1x Hisense 32 inch television, 1 x electric kettle, 2 x speakers, 1 x LG Home theatre system, 1 x rice cooker, 1 x blue cooler box, 1 x Hisense microwave, 1 x Hisense micro oven , 1 x Tabua, 1 X Regal gin, 1 x Brandy, 1 x Toshiba waffle maker, 1 x bucket biscuit, 4 x 4 litre cooking oil, 1 x gas stove with gas tank, 1 x pocket Wi-fi, 1 x Lenovo laptop, 1 x Toshiba Vacuum Cleaner, 1 x Toshiba laptop, 1 x men's coat, assorted washing items, assorted hand towels and assorted jewellery, the property of **VINDU SHANDIL**, with intention to permanently deprive **VINDU SHANDIL** of the said property.

- [2] The accused is alleged to have broken into the home of the complainant, Vindu Shandil, between 26 January and 29 January 2024 and stolen a number of household items. The items are listed in the amended information and include a large freezer, a blue cooler box, a home theatre system, a Lenovo laptop and so on.
- [3] The accused denies having committed the offences.

Elements of aggravated burglary and theft

- [4] The Prosecution must prove each of the following elements of aggravated burglary beyond reasonable doubt:
- i. The accused in the company of one or more other persons;
 - ii. Entered into the house of Vindu Shandil;
 - iii. As a trespasser; and

iv. With intent to commit theft.

[5] With respect to the offence of theft the Prosecution must establish the following elements beyond reasonable doubt:

i. The accused dishonestly appropriated (stole);

ii. Property (itemised in count 2) belonging to Vindu Shandil; and

iii. With intent to permanently deprive Vindu Shandil of the said property.

Burden of proof and assessment of the evidence

[6] The accused is presumed to be innocent until he is proven to be guilty. As a matter of law, the onus or burden of proof rests on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation or burden on the accused to prove his innocence.

[7] The accused chose to give evidence, but he does not carry any burden to prove or disprove anything.

[8] The burden is on the prosecution to prove the charges beyond a reasonable doubt. Each element of the charge must be proved. 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.

Evidence

[9] There are few admitted facts. The accused admits his name and age – he is 24 years old. He admits that the complainant is Vindu Shandil, and that she is 54 years old. He also admits that a blue cooler box was stolen from the complainant's house in Farm Road, Nasinu.

[10] The Prosecution called five witnesses. The accused gave evidence in his own defence.

Prosecution case

[11] Vindu Shandil (PW1) lives at Farm Road, Nasinu.

[12] On 26 January 2024, PW1 locked up her house and left to stay at her partner's house. She returned home on 29 January 2024 to find that her house had been broken into. PW1 immediately called the police and awaited their arrival before entering the house.

[13] DC 5686 Nirmeet Singh (PW3) was one of the first police officers to respond to the report, arriving at the scene within an hour of the report. Upon arrival of the police, and in their company, PW1 entered the house. She saw that intruders had broken into the house, ransacked it and stolen a number of items. PW1 was asked to record the items that were missing and did so. PW1 described the missing items in her evidence in court as being a freezer, food items, a microwave and oven, jewellery, a vacuum cleaner, two laptops, a kettle, a rice cooker, two bottles of alcohol, a toaster, a tabua, a DVD player, a home theatre system, a blue cooler box, towels and clothing.

[14] The police immediately commenced its investigation, undertaking a door-to-door inquiry in the immediate area. One of the houses visited was occupied by Ms Arishma Lata (PW2). PW2 informed the police that the previous day, on 28 January 2024, she saw a freezer being loaded from 'Isoa's' house into a carrier. The carrier was blocking the road and PW2 had to wait in her car while the freezer was loaded. She saw Isoa standing outside and saw that there were six iTaukei males in the back of the carrier with the freezer. She recorded the registration number of the carrier and provided the details to the police when they arrived at her door.

[15] On receipt of the information from PW2, the police were able identify the driver of the carrier. PW3 spoke to the driver about the freezer. The carrier driver led the police to an address in Nausori where he delivered the freezer. The occupant of the house informed PW3 that it was his brother, Nitesh Singh, who had purchased the

freezer. Nitesh Singh was contacted and asked to return to the house where he met with PW3. Mr Singh informed PW3 that he had purchased the freezer for \$400 but was not aware that it was stolen. The freezer was seized by the police. A Search List was completed by PW3 on 29 January 2024 recording the seizure of the freezer – the document was signed by Mr Singh; **Prosecution Exhibit 2.**

[16] The door-to-door inquiries proved to be fruitful. At another house, police seized more items allegedly stolen from PW1's house. On this occasion, they seized a blue cooler bag from a house occupied by 'Salacieli'. PW3's evidence was that there were additional stolen items inside the blue cooler bag, being a Lenovo laptop, a green plastic bag containing assorted hand towels, a black coat, 4 rolls of toilet paper, 1kg of salt, 900 gram boom, 4 litre bottle of cooking oil, two packets of colgate toothpaste, a packet of mosquito coil and 2 tooth brushes. The eleven items were recorded by PW3 in a Search List which was signed by Salacieli on 29 January 2024; **Prosecution Exhibit 1.** Salacieli is the accused's wife. The accused lives at that house. The blue cooler bag was found in his room.

[17] More of PW1's alleged stolen property was found and seized from another house in the immediate area, this time the occupant was Viniana Ranai. Two items were seized, being a Hisense micro oven and an LG Home Theatre System. The items were recorded by PW3 in a Search List which was signed by Viniana on 29 January 2024; **Prosecution Exhibit 3.**

[18] The seized items were taken to the police station and later shown to PW1 who confirmed that they were her property. The items were also photographed by Adi Vodo Iosefo (PW5) – the booklet of photographs was produced by PW5 as **Prosecution Exhibit 6.** By an oversight the items in the blue cooler box were not photographed and not shown to PW1.¹ The only recovered items that PW1 confirmed were hers were the freezer, microwave oven, home theatre system and DVD player. In cross-examination, PW1 stated that she was able to confirm the items were hers because the freezer had paint missing near the bottom and the cooler box had a

¹ Neither PW1 nor PW5 were informed that there were items inside the blue cooler bag.

missing wheel – in re-examination, PW1 stated that she was able to tell from viewing the microwave oven and home theatre that they were hers.

[19] PW3 stated that the police learned from their enquiries on 29 January 2024 that the accused was a suspect in the offending. This was based on the following information received:

- i. The blue cooler bag allegedly stolen from PW1's house was found in the accused's room at the house of Salacieli.
- ii. Viniana Ranai informed PW3 that the alleged stolen items seized from her house had been placed there by the accused.

[20] PW3 arrested the accused at the accused's home the same day. PW3 stated that the accused smelled heavily of liquor. PW3 stated that he informed the accused of the reason for his arrest and his rights under the Constitution. The accused was handcuffed and transported to the police station. PW3 stated that the accused was given his first hour interview with a lawyer from the Legal Aid Commission. However, because the accused smelt of alcohol the police interview was deferred to the next day.

[21] PW3 interviewed the accused on 30 January 2024. There was no witnessing officer. The interview was conducted in the English language and recorded on PW3's personal laptop.

[22] PW3 stated that the accused admitted his role in the burglary and theft. The interview was suspended for a reconstruction of the scene. PW3 and the accused were transported to PW1's house for the reconstruction. Three other police officers accompanied them including PW5, who took photographs of the reconstruction, and DC 5969 Shivnal (PW4), who can be seen in two of the photographs – the photographs were produced by PW5 as **Prosecution Exhibit 5**. The three police officers gave evidence that the accused indicated where he and his co-offenders had entered PW1's house, where they stolen PW1's property from and the door they exited.

[23] PW3 reconvened the interview with the accused on 31 January 2024. The accused made further admissions in respect to the offending. The record of the interview was produced as **Prosecution Exhibit 4**.

Defence case

[24] At the conclusion of the Prosecution case I found that the accused had a case to answer. I informed him of his three options including his right to remain silent. The accused chose to provide evidence.

[25] The accused denied being involved in the burglary or theft of items from PW1's house. He stated that his cousin, Jonetani had given him the alleged stolen items and asked the accused to sell them. The accused enlisted the assistance of a neighbour, Isoa who organized a customer for the freezer. The accused went with the carrier to deliver the freezer at the house in Nausori. He accepted that the blue cooler box was found at his house and that his wife is Salacieli but denied that any of the items listed in the Search List (Prosecution Exhibit 1) were inside the blue cooler box – despite his wife signing the Search List.

[26] The accused stated that Jonetani had given the blue cooler box to the accused. He stated that he had kept the blue cooler box in his room as he was selling drinks. He emphasized that the items were left with him in order to conduct a garage sale and he did so because of his familial relationship with Jonetani.

[27] The accused denied being informed of his right to silence when arrested. He stated that he did not receive the first hour interview with a Legal Aid Commission (LAC) lawyer on 29 January 2024. Before the accused provided evidence, the Defence made an application for the Station Diary to ascertain whether there was any evidence of an LAC lawyer being made available to the accused. I made the order and the station diary was supplied to the Defence. The Defence did not rely on this evidence.

[28] The accused confirmed that the police interview was conducted with the interviewing officer only and recorded on PW3's personal laptop. The accused stated that at the end

of the interview, the record of the interview was printed and he signed each of the pages. He stated that did not read the interview record and did not see it again until about June 2024 when shown by his then LAC lawyer. The accused stated that he immediately realized that there were a number of questions and answers that were not asked during the interview. In particular, admissions attributed to him of his role in the burglary and theft. The accused stated that these questions and answers were fabricated by PW3.² He referred here to questions 23 to 32, 34, 35, 45, 46 and 52. With respect to question 33, he stated that the question recorded was not asked and, in fact, he was asked whose freezer he sold and he said he did not know. With respect to question 36, he only answered that the freezer was sold for \$400 and did not provide any answer with respect to the other two items. With respect to 53, he was asked, ‘do you know who is the owner of the house?’ and the accused responded, ‘I don't know’.

[29] With respect to the scene reconstruction, the accused stated that he was told by the officers where to point and did so. He accepted that he was not forced to point, but did so in compliance with the police instructions. He was asked in re-examination why he did not read the questions and answers in the record of the police interview and stated that he did not so because he was told just to sign so that he could be charged. When asked in cross-examination why the police would fabricate the evidence, he answered that he had had a previous matter with the police where they had planted, or tried to plant, evidence on him.

Analysis and findings

[30] Between 26 January and 29 January 2024, the complainant’s house was burgled and a number of her household items stolen. The evidence of PW2 is that she saw a freezer being transported on 28 January 2024, later identified as the complainants, suggesting that the burglary and theft occurred by that date.

[31] The primary issue in this proceeding is whether the accused was involved in the burglary and theft. The accused denies this. The Prosecution rely on the fact that he

² In light of the allegation of fabrication, the accused did not pursue a voir dire. Both counsel advised that such allegations are determined at the trial proper – relying on authorities of *Radininausori v State* [2012] FJSC 19 (16 August 2012) and *State v Bokadi* [2015] FJHC 745 (1 October 2015)

was found in possession of some of the stolen items which the accused accepted were in his possession but he claimed were given to him by a relative to sell and he was not aware they were stolen. The Prosecution also rely on admissions made by the accused in his police interview and reconstruction. The accused claims that the admissions were fabricated in the record of interview and staged in the reconstruction.

[32] Having carefully considered all the evidence produced at trial I am satisfied that the Prosecution have established beyond reasonable doubt that the accused, along with others, burgled the house of the complainant between 26 January and 28 January 2024 stealing a number of items from the house, including a freezer, home theatre system, microwave oven, blue cooler bag and DVD player as photographed in Prosecution Exhibit 6.

[33] The most compelling evidence against the accused is his own admissions at interview and during the reconstruction. At interview, the accused stated that he and three others broke into PW1's house in the nighttime through the toilet window. He stated that they removed the louver blade. He entered first. They then entered the house and stole items which he identified as a TV, rice cooker, radio, deep freezer and cooler bag. He stated that they planned the burglary while drinking alcohol. They sold some of the items, the freezer for \$400, TV for \$200 and rice cooker for \$70. They spent the money on alcohol. The photographs of the reconstruction show the accused pointing at the toilet window from the outside of the house and inside – where they broke into the house. He is also shown pointing to areas in the house where certain items were stolen (the freezer and home theatre system) and the door from which they exited the house with the stolen items.

[34] The accused states that the answers recorded in the interview were fabricated. I have difficulty accepting this. Firstly, the accused signed each page of the interview including the pages where he made admissions. The accused states that he did not read the pages when he signed. I am unable to accept this particularly given his evidence that he has had a previous bad experience with the police where he states the police planted evidence on him. If that were the case, I have no doubt the accused would have been particularly careful to check the record of interview to ensure it was correct. Also, if the police had fabricated the questions and answers (where the

accused made admissions) why would the police not have provided incriminating answers to the following questions – instead of the answers as recorded:

Q41. According to the victim her gold jewelry was also stolen from her house, what can you say on that?

A. I have no idea.

...

Q.53 Can I know why do stole items from Vindu's house?

A. Remain silent.

[35] The accused also denies identifying the locations in the reconstruction where he broke in, stole certain items and left the house. He states that the photographs were staged in that he was pointing to certain places at the request of the police officers not knowing why he was pointing. Again, I find that answer difficult to accept if the accused believes that the police previously planted evidence on him. The accused would not have simply pointed at certain places at the direction of the police. It should have been obvious why the accused was being asked to point at/identify certain locations. I have no doubt he did so based on his own first-hand knowledge gained from being involved in the offending. The evidence of PW3, PW4 and PW5 confirm that the accused pointed of his own volition to the locations during the reconstruction. I accept their evidence as true.

[36] In addition to the admissions, the accused was found in possession of PW1's stolen blue cooler bag and the items inside the cooler bag. There is a factual presumption arising out of possession of recently stolen property as described in the following terms by the Supreme Court in *Rokodreu v State* [2022] FJSC 36 (25 August 2022):

[30] In common law jurisdictions there is a presumption that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. In order to apply this presumption, the prosecution is required to establish several requirements.

- i. Stolen property*
- ii. Recent possession*
- iii. Exclusive and conscious possession*

When the above factors are established, the possessor has to give an account as to how he came to possess. In other words, he should give a reasonable or a plausible explanation.

i. Stolen Property:

[31] The property must be stolen property. It is therefore necessary to establish the identity of the property. In this case witnesses Arvind Chand Prakash and his wife Alini Prakash had identified the property which belonged to them such as jewellery, mobile phones which are personal to them. They identified this property at the police station and in courts.

ii. Recent Possession:

[32] The property should be recently stolen property. In other words, recent possession has to be established. According to the evidence, the robbery has taken place on 18 March 2009 after 10.00 p.m. The accused joined witness Aisea Bani and others who were having drinks at about 3.00 a.m. in Kaleli, Lautoka and they were in their company having drinks when the police came and arrested the accused and others and recovered the blue bag which was in the possession of the accused containing stolen items. These items were recovered within twelve hours after the commission of the offence. The items such as jewellery which will not change hands many a times such as cash. Therefore, the prosecution has established the property was recently stolen property.

iii. Exclusive Possession

[33] The next element the prosecution is required to prove is that the stolen items were in the exclusive possession or control of the accused. Inspector Iakobo Vaisewa recovered the blue bag which was in the possession of the accused. That bag contained stolen items. The accused denied that he was

in possession of the stolen property and alleged that police fabricated evidence. However, the assessors and the trial judge accepted the evidence of Inspector Iakobo Vaisewa as truthful. The accused did not give a reasonable account as to how he came to possess these items.

[34] *The case of Wainiqolo v State [2006] FJCA 49; AAU0061.2005 [28 July 2006] is relevant to this case. It states:*

"The principal ground relates to the so-called doctrine of recent possession which is that where property has been stolen and is found in the possession of the accused shortly after the theft, it is open to the Court to convict the person in whose possession the property is found of theft or receiving. It is no more than a matter of common sense and a Court can expect assessors properly directed to look at all the surrounding circumstances shown on the evidence in reaching their decision. Clearly the type of circumstances which will be relevant are the length of time between the taking and the finding of the property with the accused, the nature of the property and the lack of any reasonable or credible explanation for the accused's possession of the property. What is recent in these terms is also to be measured against the surrounding evidence."

[37] The accused was found in possession of the blue cooler bag and its contents only about a day after the burglary and theft. The accused accepted he was in possession of the blue cooler bag. He did not accept that there were stolen items inside the cooler bag but his wife signed the Search List confirming the items were inside the cooler bag and the accused did not call his wife to give evidence to refute the contents of the Search List. The accused's explanation for being in possession of the blue cooler bag was that 'Jonetani' gave him the items to sell. The accused produced no evidence to support this explanation – such as from Jonatani or from other occupants in the accused's house.

[38] Finally, with respect to the accused's evidence, I found it to be self-serving, far-fetched and short on credibility. The accused denied the truth of admissions made by him recorded in his interview to the police. He denied he was aware why he was pointing to self-incriminating locations at the burgled house despite it being plain why the police would have requested this. He instead pointed the finger at someone else for providing the stolen property to him, namely Jonetani, claiming that because Jonetani was charged with a subsequent burglary of PW1's house that this supports the accused's evidence. It does not.

Conclusion

[39] While I do not accept the accused's evidence, I remind myself that he is not required to prove his innocence. The prosecution carries the burden throughout of proving beyond reasonable doubt that the accused has committed the offending.

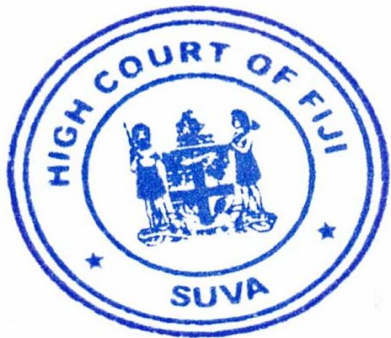
[40] There were certain aspects of the police investigation which were of concern. For example, there were opportunities for fingerprinting to be taken at PW1's house and of the stolen items recovered – to connect the accused to the offending - yet this was not done. The police failed to photograph the items in the blue cooler bag then released the items to PW1. The police interview was conducted without a witnessing officer.

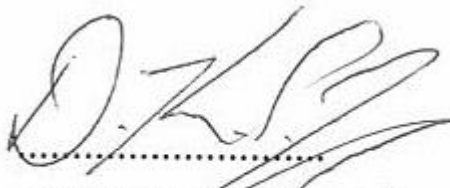
[41] Nevertheless, I am satisfied that the Prosecution has proven beyond reasonable doubt that the accused did commit the two offences as charged. The accused admitted his offending in the interview with the police on 30 and 31 January 2024. I accept that he made the admissions and that they are a reliable and an accurate record of his answers to the police during the interview and the reconstruction. The fact that some of the stolen items were found in his possession further supports his involvement in the offending.

[42] I am sure that the accused and others broke into the complainant's house. They were trespassers, clearly intending to steal the complainant's household property which they did. They stole the items described by PW1 at paragraph [13] above, intending to permanently deprive PW1 of the same. Many items were recovered. I accept that

those items are recorded in the three Search Lists produced by the Prosecution in evidence.³

[43] Accordingly, I find the accused guilty of the counts of aggravated burglary and theft and he is, accordingly, convicted.




D.K.L Tuigereqere
JUDGE

Solicitors:

Office of Director of Public Prosecutions for the Appellant

Office of the Legal Aid Commission for the Respondent

³ Prosecution Exhibits 1, 2 & 3.