

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 151 of 2024**

**BETWEEN : STATE**

**AND : MARIKA BINATAGI**

**Counsel : Mr A Takalaivuna for State  
Ms N Pratap for Accused**

**Hearing Dates : 6 & 7 October 2025**

**Closing Submissions : 4 November 2025**

**Judgment : 30 December 2025**

**JUDGMENT**

[1] The accused is charged with one count of aggravated robbery and one count of assault causing actual bodily harm. The information reads:

**Count One**

***Statement of Offence***

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

***Particulars of Offence***

***MARIKA BINATAGI with another on the 12<sup>th</sup> day of May, 2024 at Raiwaqa in Suva in the Central Division, in the company of each other stole 1x black side bag, 1 x passport, 1 x iphone 7, 1 x rose gold ring, 1 x sunglasses, 2 x goldplated***

*chain, and \$50 cash, properties of LAISIASA RAIBEVU DAVETAWALU and during the course of committing theft, threatened to use force on LAISIASA RAIBEVU DAVETAWALU.*

**Count Two**

***Statement of Offence***

**ASSAULT CAUSING ACTUAL BODILY HARM:** *Contrary to Section 275 of the Crimes Act 2009.*

***Particulars of Offence***

*MARIKA BINATAGI on the 12<sup>th</sup> day of May, 2024 at Raiwaqa in Suva in the Central Division, assaulted RATU PENAI A NAGATA VOTADROKA thereby causing him actual bodily harm.*

- [2] The accused denies the offences.
- [3] The prosecution must establish each of the following elements of the offence of aggravated robbery (count 1), beyond reasonable doubt:
1. on 12 May 2024, the accused (identification).
  2. in the company of another;
  3. robbed Laisiasa Davetawalu of several items of personal property, plus \$50 cash, as itemised in the Information; and
  4. immediately before the robbery, the accused threatened to use force on Laisiasa Davetawalu.
- [4] With respect to count 2, the prosecution must establish the following elements beyond reasonable doubt:
1. on 12 May 2024, the accused (identification);

2. assaulted Ratu Penaia Votadroka;

3. thereby causing actual bodily harm to Ratu Penaia Votadroka

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

[5] 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.

[6] The accused chose to give evidence, but he does not carry any burden to prove or disprove anything. The burden is on the prosecution to prove the charges beyond a reasonable doubt.

[7] Each element of the two charges 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**

[8] The prosecution called two witnesses, being:

- PW1 – Laisiasa Davetawalu (complainant for count 1)
- PW2 – Ratu Penaia Votadroka (complainant for count 2)

[9] The accused provided evidence in his own defence.

[10] The parties also filed an Admitted Facts, signed by both counsel and the accused on 15 October 2024.

- [11] The facts below are taken from the evidence produced at trial and as contained in the Admitted Facts. I will point out from the outset that it was difficult to make out many facts from the evidence provided by the prosecution witnesses. They were both truthful witnesses but poor at recounting the events.
- [12] Laisiasa is the uncle of Penaia. Penaia lives in Derrick Street, Raiwaqa. The accused lives nearby in Bryce Street, Raiwaqa, about 100 meters from Penaia's house. It appears that Penaia and the accused know each other from having lived in the same neighbourhood for many years. Before 12 May 2024, the accused and Laisiasa had not met.
- [13] On the evening on 11 May 2024, the three had been drinking alcohol in Suva city. They were not drinking together but as fortune would have it, they crossed paths outside O'Reileys night club at about 3.30am on 12 May. Laisiasa was arranging a taxi to travel home to Toorak. Penaia saw his uncle and arranged to be dropped home at Raiwaqa in the same taxi. As they got into the taxi it was at this point that the accused came into the picture. The accused saw Penaia and sought a ride home in the same taxi. Laisiasa was not happy with the accused sharing the taxi. To put it in Laisiasa's words, *'I was a bit worried because I didn't know [the accused] but because my nephew knew him, they're from the same area...I was like okay, sure, might as well drop him while I'm dropping [Penaia] off'*.
- [14] The accused sat in the front passenger seat. Laisiasa and Penaia sat in the back seat, Penaia immediately behind the accused. It was agreed that that they would drop Penaia first in Derrick Street, then the accused in Bryce Street before Laisiasa was dropped at Toorak. The route taken by the taxi was as expected; up towards Flagstaff, down Rewa Street, then into Milverton Road – Bryce Street is off Milverton Road and Derrick Street is off Bryce Street.
- [15] Along the way, the accused asked Penaia for \$50 cash. It is the accused's evidence that he had given this amount to Penaia before getting into the taxi on the understanding that they would purchase alcohol on the way home. They did not purchase any alcohol and the accused was angry and wanted his money back. Laisiasa's evidence was that he knew nothing of any such arrangement. Penaia denies

any such arrangement with the accused but confirms that the accused was demanding the money in the taxi.

- [16] When the taxi arrived at Derrick Street, there is a dispute as to what happened. All agree that Penaia did not get out. They disagree about the reason. Laisiasa says that Penaia was reluctant to get out. Penaia says he was reluctant because he was scared for his uncle and did not want to leave the accused in the taxi with his uncle – which begs the question why Penaia and Laisiasa agreed to drop the nephew off before the accused whom Laisiasa did not know, particularly given Penaia and the accused lived only 100 meters apart (no adequate explanation was given for this). The accused stated that he did not allow Penaia to get out of the taxi because they had not bought alcohol as Penaia had promised and the accused wanted his money back. They then asked the taxi driver to drive the short distance to Bryce Street to drop the accused.
- [17] They arrived at Bryce Street and the taxi driver parked by the side of the road. It was at Bryce Street that the alleged offences occurred.
- [18] Whilst parked, Laisiasa says that the accused kept demanding \$50 from him. This argument went on for a few minutes. The accused was angry. Laisiasa says that the accused then punched Penaia twice to the face - Penaia says that, in fact, the accused used his elbow to strike his face. The accused says that he went to grab Penaia by the shirt to stop him leaving the taxi and his hand *'landed on his [Penaia's] face'*.
- [19] The three passengers then exited the taxi which drove away. The accused asked for \$50. Laisiasa stated that he felt unsafe alone in an unfamiliar neighbourhood in the middle of the night. Therefore, he gave \$50 cash to the accused. Laisiasa then headed up Bryce Street intending to go to his Nephew's house in Derrick Street – it is not particularly clear where Penaia was at this point and/or what he was doing (at some point he fled home taking a shortcut). Laisiasa states that as he was walking up Bryce Street an iTaukei man and the accused followed him. Laisiasa says that the two men then robbed him taking his bag and jewellery and iPhone. Laisiasa stated that they held him, threatened him with physical harm and took his property. He stated that they took his phone *'Zimmerman sunglass, two gold-plated Zimmerman necklaces, a Zimmerman gold ring, my side bag which had my passport and IDs'*.

[20] Laisiasa then made his way to Penaia's house. They reported the matter to the police later that same morning, on 12 May 2024. Penaia was sent for a medical examination. The medical report was produced by consent.<sup>1</sup> It is recorded in the report that Penaia had a small laceration to the right side of his nose, swelling and bruising to his lower lip and a small laceration to his upper lip. The medical practitioner opined that these injuries were caused by a blunt trauma.

[21] The accused was interviewed under caution on 20 May 2024. The prosecution produced the handwritten record of the interview at the end of its case. Although there was no objection from the defence, I note that there was no agreement in the Admitted Facts for this document to be admitted by consent. I am reluctant to place any reliance on the content of this document in the absence of proper agreement to admit the interview without properly calling the interviewing officer. I also note that the document was not referred to in evidence by any of the witnesses, including the accused.

### **Analysis of the evidence**

[22] There is no dispute that Laisiasa, Penaia and the accused boarded a taxi outside O'Reilly's night club. They were headed to Raiwaqa to drop off the accused and Penaia. Laisiasa intended to then take the taxi to Toorak where he lived. Laisiasa had agreed to pay the taxi fare for all the passengers. Ultimately, however, they all got out at Bryce Street, Raiwaqa. Penaia was injured before leaving the taxi, he says as a result of an assault by the accused. Laisiasa was then robbed on the side of the road, he says by the accused and another iTaukei male.

[23] There is a dispute between the prosecution witnesses and the accused over the material facts. It is, therefore, necessary to critically assess the evidence produced to determine the truth of the matter.

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<sup>1</sup> As per the Admitted Facts.

## Aggravated robbery

- [24] I will begin with count 1, aggravated robbery. It is alleged that the accused demanded \$50 cash from Laisiasa. After this, the accused and another male are alleged to have accosted Laisiasa forcing him to give up his belongings, which included a mobile phone, Zimmerman sunglasses, two gold-plated Zimmerman necklaces, a Zimmerman gold ring, a side bag and his passport.
- [25] Dealing first with the \$50 cash. Laisiasa accepts that this occurred before the itaukei male was on the scene so cannot constitute aggravated robbery – at most, it is simple robbery.
- [26] The accused stated that Penaia owed him money and because Penaia fled from the taxi, the accused asked Penaia’s uncle for the money. Laisiasa says that the accused demanded the money and that Penaia was present when this occurred. It was put to Laisiasa in cross-examination that the accused and Penaia had arranged to buy alcohol and the accused gave Penaia \$40. Laisiasa stated that he knew nothing of the arrangement. It was put to Laisiasa that when the taxi passed a liquor store, the accused asked Penaia why they did not stop to buy drinks. Laisiasa answered that he could not ‘*recall that conversation*’. In questions from the Court, Laisiasa stated that the accused kept asking for money in the taxi. Ultimately it was when they left the taxi that Laisiasa gave over the \$50 cash.
- [27] Penaia offers very little evidence on this except to state that ‘*We gave him \$50 and he still wanted some more money for drinks*’. This is at odds with Laisiasa’s evidence.
- [28] Am I sure that the accused robbed Laisiasa of the \$50 cash? I am not. It is unclear whether the accused threatened harm to Laisiasa or whether Laisiasa simply provided the money because he felt uncomfortable (or unsafe) being in an unfamiliar neighbourhood in the middle of the night. Laisiasa’s own description of this event is contradictory. In his examination in chief, he stated that he gave the money ‘*under the threat of my life, like he’ll harm me*’. In clarification from the Court, when asked as to the exact words used by the accused, Laisiasa stated that the accused ‘*said, can I*

*have some money for, because he still wants to buy some more drinks*'. These words do not convey menace or threats. I am, therefore, left with a confusing picture.

- [29] I turn to the allegations of the accused's robbery of the other items. Laisiasa was adamant that it was the accused and another iTaukei male that robbed him of the items. I accept his evidence that he was robbed of the items mentioned. The accused appears to accept this as well and says that 'John', his neighbour, was responsible. He saw John *'hustling, roughing him [Laisiasa] up'*. The accused stated that he told John to leave Laisiasa alone. Laisiasa then ran up the road.
- [30] Laisiasa was robbed of his property. The only question, in my view, is whether the accused was involved in the robbery. The accused says he was not. Laisiasa is adamant that he saw him with the other male, and that the two offenders had spoken before the robbery occurred. Who is correct?
- [31] Laisiasa stated in examination in chief that *'It happened so quickly that I cant recall who actually did what because I had...but it was both of them all at once, within 5 seconds of removing my ring, my gold-pated necklace, and my phone'*. In answer to questions from the Court he stated, *'One of them held me and like they started surrounding me, the two gentlemen and one helped me'*. Who helped Laisiasa and what did Laisiasa mean by this?
- [32] Where was Penaia during this time? According to Laisiasa, Penaia *'was standing there, but I feel like he was scared'*. It is evident from Penaia's evidence that he was scared. However, it is not clear where he was. Initially, Penaia stated in examination in chief that when he got out of the taxi he saw Laisiasa's bag being taken by the accused and 'John' – it is not clear how Penaia knew the other male's name. Penaia stated that he then ran home because he was scared. Later in his examination in chief, Penaia stated he was *'far away'* when he saw Laisiasa being robbed. He used these same words twice. In cross-examination, Penaia again confirmed that he was far away when the robbery took place. He also stated that it was dark at the time. In answer to questions from the Court, he described the distance between where he was standing and where the robbery was taking place in terms of two fixtures inside the court. The two fixtures were about 5 metres apart.

[33] While I am sure that Laisiasa was robbed of the items he described in his evidence, I am not sure that the accused was involved in the robbery. The accused denies any involvement. The burden is on the prosecution to prove the accused's involvement beyond reasonable doubt. Laisiasa was feeling unsafe in an unfamiliar neighbourhood in the early hours. It was dark. He had been left stranded by the taxi driver. His nephew had seemingly fled – although at what point remains unclear. The accused had been an unwelcome presence in the taxi and then, as far as Laisiasa could tell, the accused had shaken him down for \$50 cash. Laisiasa was not feeling very well disposed to the accused. Feeling frightened and alone, he was then accosted by another male – whom he had seen speaking with the accused. Laisiasa may well have misconstrued these events which he himself described as happening very quickly. The fact that Laisiasa had been drinking alcohol that night will have only served to make his recollection and understanding of the situation less reliable.

#### **Assault causing actual bodily harm**

[34] Penaia's evidence is that the accused was demanding money in the taxi. The accused then *'turned and he hit my face with his elbow. I broke my nose and my mouth got bruised'*. The injuries recorded in the medical report support the fact of the injuries to Penaia's nose and mouth. Penaia was not cross-examined on the content of the medical report – the medical report was not produced until after the two prosecution witnesses had completed their evidence - but I note that the description of the alleged assault at A(4) and D(10) of the medical report record that Penaia was assaulted by two iTaukei males. To further confuse the matter, Penaia stated in evidence that the accused *'kicked my face'* – it is not clear whether this pertains to the assault which is the subject of count 2 or is a separate assault. Laisiasa stated that the accused, in fact, punched Penaia twice – as opposed to striking him with his elbow.

[35] It is an accepted fact in the Admitted Facts that the accused *'punched Penaia on the face'*. However, the accused's evidence at trial is that he denies punching Penaia. The accused stated that when he reached to pull Penaia's shirt to prevent him leaving the taxi, his hand inadvertently landed on Penaia's face.

- [36] On the evidence produced at trial, it is clear that the accused applied force to Penaia's face with his hand. I am satisfied that this application of force caused the injuries to Penaia's nose and mouth as recorded in the medical report. I am satisfied on this same evidence that Penaia did not consent to the accused placing his hand on Penaia's face. Nor was there was any lawful excuse for the accused to do so.
- [37] Did the accused strike Penaia's face intentionally or recklessly? I am sure that he did. If the application of force was not intentional it was certainly reckless. While Laisiasa and Penaia are at odds over how the accused struck Penaia's face, both agree it was deliberate. The extent of the injuries to Penaia's face is consistent with their evidence. Penaia suffered lacerations and bruising to the nose, upper lip and lower lip. The fact that the accused accepted in the Admitted Facts that he 'punched' Penaia in the face is also consistent with the act being deliberate.<sup>2</sup>


### **Conclusion**

- [38] Overall, I found the evidence of Laisiasa and Penaia difficult to follow. Whether that was due to the impact of drinking alcohol that night or being poor historians is unclear. I was not confident that either witness recalled the events that night with any clarity. That is not to say that I found the accused's evidence to be compelling. I did not. However, he is not required to prove his innocence. The prosecution bears the burden of establishing the accused's guilt. With respect to count 1, I am not sure that the accused robbed Laisiasa of \$50 cash as opposed to simply requesting the same. I am also not sure that the accused acted in concert with the other male person to rob Laisiasa.
- [39] That said, I am satisfied from all the evidence available, including the medical report and the Admitted Facts, that the accused punched Penaia causing him actual bodily harm. I do not accept the accused's evidence that he inadvertently landed his hand on Penaia's face when he tried to pull his shirt. The accused deliberately struck Penaia's face with his fist.

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<sup>2</sup> Pursuant to section 135 of the Criminal Procedure Act 2009, an admission contained in the Admitted Facts signed by the accused constitutes sufficient proof of the fact being admitted.

[40] Accordingly, I find the accused not guilty of count 1 of aggravated robbery and he is acquitted. However, I find him guilty of count 2 of assault occasioning actual bodily harm.



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D. K. L. Talqereqere  
JUDGE

**Solicitors:**

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

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