

**IN THE MAGISTRATES' COURT OF FIJI  
AT SUVA  
EXTENDED CRIMINAL JURISDICTION**

*High Court Criminal Case No. 426 of 2016  
Criminal Case No. 1966 (A) of 2016*

**STATE**

**v.**

**MACIU CAMA**

**For State:** Inspector of Police Jiten Singh

**For Defendant:** Ms. Marama, *of counsel*, of the Legal Aid Commission

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**JUDGMENT**

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1. You were initially charged alongside **WAISALE SASALU** but on 7 November 2019, in fairness to you I directed that the State sever proceedings in order to safeguard your constitutional right to have your trial begin and conclude without unreasonable delay. Your co-accused's case was nowhere near ready for trial at that time and I needed to give him time to get his legal representation sorted out.
2. You being on bail, I then adjourned your trial to 9 November 2019, a Saturday. I wish to put on record my gratitude to all parties for their diligence and willingness to sit on a Saturday to ensure that your criminal trial proceedings were not further unduly delayed.
3. The State filed their severed Charges and your trial on the Charge of **ATTEMPTED AGGRAVATED ROBBERY** contrary to section 44 and 311 (1) (a) of the **CRIMES ACT 2009** began. For the sake of completeness, it was alleged that you "with another, on the 18<sup>th</sup> day of November, 2016 at Suva in the Central Division, assaulted one

**MUDHUR SINGH** before attempting to steal from him 1x Samsung mobile phone valued at \$65.00, the property of the said **MUDHUR SINGH**.”

4. Your plea was taken on the severed charge. You indicated that you understood the charge against you after it was read out to you and you entered a “not guilty” plea. The State then called two witnesses to the stand. After hearing their evidence, I found a case to answer against you and after I explained to you the substance of the State’s case against you, I then put to you in full your three rights pursuant to section 179 of the **CRIMINAL PROCEDURE ACT 2009**. You indicated that you understood the allegation and you indicated that you wished to testify but declined to call witnesses on your behalf thereafter.

#### **THE EVIDENCE**

5. **PROSECUTION WITNESS 1: MUDHUR SINGH** testified that on 18 November 2016 at around 11.30pm he had been walking alone along Victoria Parade in Suva going in the direction of the Court house. He had been on his phone. As he came past the New Peking Restaurant he saw four *i-Taukei* boys walking in his direction. They were about 5 meters from him when he first saw them. As soon as they came near to him, one of the boys punched him and snatched at his mobile phone. He simultaneously felt someone putting their hands into his back pocket. He held onto his phone tightly and so the person who had punched him was unable to take it away from him.
6. The group of boys then went away and as soon as they had, **Mr. SINGH** saw a Police vehicle drive by. He stopped the vehicle and he reported the incident. The Police Officers asked him to get into the van and they went in search of the boys. They found them very near where the incident happened. **Mr. SINGH** could clearly recall the face of the person who had punched him and who had tried to snatch his phone. That person was not in Court he said. He made clear that he had not seen the person who had put their hand inside his back pocket because that person had been behind him the entire time.
7. He testified that there had been street lights and shop lights that were on and illuminating the area where the attempted robbery had taken place. Moreover, there were lights from oncoming vehicles that aided him to see that night.

8. **PROSECUTION WITNESS 2: DETECTIVE CONSTABLE 6585 TIMOCI SEVIUA** testified that on 18 November 2016, he had come off shift at the Totogo Police Station. The Fiji Police Force provides a Police Service Trip for those who come off duty. He boarded the vehicle and they drove along Victoria Parade. As they passed the New Peking Restaurant he saw a group of around 4 *i-Taukei* boys assaulting a Fijian<sup>1</sup> man. He testified that he also saw you reaching into the back pocket of the man being assaulted. He said that you were clearly digging into both back pockets.
9. **DETECTIVE SEVIUA** testified that he would have been about 5 meters from you and your counterparts but in a moving vehicle at the time. He had you under observation for approximately 2 minutes he said before the vehicle had moved completely past. Visibility that night was clear he testified. There had been light from the street lights, one right there were the incident took place, and lights from the shops in the area. He testified that he had seen you before. He said that he would see you at least once every weekend over a period of 5 months. He would see you often along Cumming Street and he would come across you often over those weekends until the night clubs closed.
10. **DETECTIVE SEVIUA** testified that nothing had obstructed his view of you or the incident in question. After the vehicle had gone past, he told the driver to turn around. He did and when they came back, he saw you standing near the place of the incident. They arrested you and placed you in the vehicle. The Fijian man who had been assaulted came toward them and sought their assistance. He told them that he had been assaulted and described his assailant by the clothes he had been wearing. They then made a round in front of Victoria Parade and they then saw his assailant walking in front of Victoria Parade. The person was arrested and brought into the vehicle.
11. It took them about 10 minutes from the time he had initially witnessed the attempted robbery to the time they had arrested you to the time the complainant approached them. They then took you both to the Totogo Police Station. **DETECTIVE SEVIUA** testified that the man he had seen with his hands in the complainant's back pocket was in Court. He identified you in the Accused Box. In cross-examination, he testified that no one but the four youths and the complainant had been in the area at the time of the attempted robbery and that the vehicle had been driving past at a speed of around 10 – 15 *kmph* that night. He pointed out a distance in Court that all parties agree was close to 2 meters.

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<sup>1</sup> We are all Fijians united by common and equal citizenry: The Preamble to the Constitution.

12. You were **DEFENCE WITNESS 1**. You testified that on 18 November 2016, you had knocked off work at around 7.00pm and had come into town with some workmates to drink. At around 11.00pm, you realised you were intoxicated so you decided to make your way home. You walked from *Signals* to *O'Reilly's*. You arrived at the crossing in front of *Islanders* and crossed to the other side. At that point you saw four *i-taukei* boys doing something to another man. You kept on walking because you were drunk and were afraid that they would attack you if you tried to intervene. You said that there had been groups of boys and girls walking through town. It had been a Friday night and there was flow of foot traffic in that area you said.

13. You testified that you had first seen the Police van when you had arrived at Jacks. You were surprised when they arrested you. You were placed in the van. The complainant then got in and they searched for someone else and found him and placed him in the van too. You testified that you had never seen either of these people before. You were taken to Totogo Police Station and you were locked up on the cell for the night. In cross-examination you denied knowing **DETECTIVE SEVIUA**. You testified that you had a younger brother who sells puddings in town and it may be that he had mistook you for him.

#### **PRESUMPTION OF INNOCENCE**

14. I remind myself that you are presumed innocent until, and unless, proven guilty.

#### **BURDEN AND STANDARD OF PROOF**

15. I remind myself that the burden of proving each element of the offence for which you have been charged rests with the State and it never shifts. The State must prove each element beyond reasonable doubt.

#### **ELEMENTS OF THE OFFENCE**

16. The elements that the State must prove beyond reasonable doubt are as follows:

- (i) You
- (ii) In Company with another or others
- (iii) And Acting In concert with another or others

- (iv) Attempted
- (v) To Commit Theft and
- (vi) Immediately before Attempting to Commit Theft
- (vii) you or the person you were acting in concert with
- (viii) had used force on Mudhur Singh
- (ix) With Intent to Commit Theft.

17. This is case that depends *wholly* on the correctness of your identification. You claim that that identification is mistaken. I warn myself of the special need for caution in these circumstances. I remind myself that:

- (i) there is a need for caution to avoid the risk of injustice;
- (ii) a witness who is honest and convinced in his own mind may be wrong;
- (iii) a witness who is convincing may be wrong;
- (iv) more than one witness may be wrong (*not applicable here*);
- (v) a witness who is able to recognise the defendant, even when the witness knows the defendant very well, may be wrong.

18. More, I must and do carefully examine the circumstances in which the identification came to be made:

- (i) How long did the witness have the accused under observation?
- (ii) At what distance?
- (iii) In what light?
- (iv) Was the observation impeded in any way, as for example by passing traffic or a press of people?
- (v) Had the witness ever seen the accused before?
- (vi) How often?
- (vii) If only occasionally, had he any special reason for remembering the accused?
- (viii) How long elapsed between the original observation and the subsequent identification to the Police?
- (ix) Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance?

- (x) Are there any specific weaknesses that had appeared in the identification evidence?

19. Further, I must be careful to examine whether or not you were acting in concert with another person at the time of the alleged crime. To that end, I consider whether or not the evidence proved beyond reasonable doubt that you had formed a common intention with the person who assaulted the complainant to prosecute an unlawful purpose and in the prosecution of that unlawful purpose an offence is committed that its commission was a probable consequence of the prosecution of such purpose.

20. Finally, I must be satisfied beyond reasonable doubt that either you or the person you were acting in concert with had done something that was more than merely preparatory to commit the offence for which you have been charged. In short, I must be satisfied beyond reasonable doubts on the facts that you and the person you were acting in concert with had embarked on the prosecution of that unlawful purpose.

#### **FINDINGS OF CREDIBILITY**

21. I must make clear that after having had the benefit of examining each witness as they testified, hearing from them first-hand and observing them as they spoke, I believed **PROSECUTION WITNESS 1** and **PROSECUTION WITNESS 2** entirely and I did not believe you.

22. Having said that, I make clear that not believing you means nothing. I remind myself that a person can lie to the Court and *still be innocent of the crime for which he or she has been charged*. You are presumed innocent until, and unless proven guilty and I now look to the evidence adduced before me by the State to see if it is sufficient to satisfy me beyond reasonable doubt in respect of each and every element that they must prove.

#### **ANALYSIS & FINDINGS OF FACT**

##### ***Identification***

23. I answer the questions I must ask of myself as follows:

- (i) How long did the witness have the accused under observation?  
Approximately 2 minutes

(ii) . At what distance?

Approximately 2 – 5 meters

(iii) In what light?

A street light shining immediately upon the scene, street lights in the area, and lights that shone from storefronts along that street.

(iv) Was the observation impeded in any way, as for example by passing traffic or a press of people?

No. The witness was clear that there were four *i-Taukei* boys. You were the only person behind the complainant. He rejected the proposition that there was foot traffic, a press of people, in the area that night. He said nothing impeded his view of your face.

(v) Had the witness ever seen the accused before?

Yes

(vi) How often?

Very regularly as he undertook beat patrol along Cumming Street and in Suva City every weekend for five months until the nightclubs closed.

(vii) If only occasionally, had he any special reason for remembering the accused?

It was not an occasional sighting. I received the clear impression that he saw you regularly for prolonged periods of time.

(viii) How long elapsed between the original observation and the subsequent identification to the Police?

Less than 10 minutes.

(ix) Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance?

None at all. Indeed, this question is not applicable. No description was given of you. The person who saw you commit the crime was the same Police Officer who arrested you not far from the crime scene very shortly after the commission of the crime. The witness identified you by name. It was a case of recognition.

- (x) Are there any specific weaknesses that had appeared in the identification evidence?

The witness had been in a moving vehicle at the time but I note that the vehicle had not been moving very fast.

24. In all the circumstances, I am satisfied beyond reasonable doubt that this was not a case of mistaken recognition. I am satisfied beyond reasonable doubt that that I can safely rely on **DETECTIVE SEVIUA's** identification evidence. I am satisfied beyond reasonable doubt that it was you that **DETECTIVE SEVIUA** had seen digging into **Mr. SINGH's** back pockets that night.

*In Company with Another or Others & Joint Enterprise*

25. **PROSECUTION WITNESS 1** saw four *i-Taukei* walk up toward him. He and **PROSECUTION WITNESS 2** saw one of these men hit you. Three of them stood around him and **PROSECUTION WITNESS 2** says that he saw you, the fourth standing immediately behind **PROSECUTION WITNESS 1** digging into his back pocket.
26. **PROSECUTION WITNESS 1** says that as soon as the group reached him one of them hit him and attempted to snatch his phone. He then immediately felt hands digging into his back pocket.
27. I find as a matter of fact that you were part of that group of four men. I accept **PROSECUTION WITNESS 2's** account that there had been no other people in the area except for you four and the complainant.
28. I find that you had formed a common intention with the person who had punched the complainant and was attempting to snatch the complainant's phone to waylay him and steal from him that night. In the prosecution of that common purpose, the first person



punched the complainant and attempted to steal his phone and you had peered around behind the complainant and were digging into his back pockets to see if you could steal anything therein. This is the only logical inference that can be drawn from these acts.

29. I am satisfied beyond reasonable doubt that you were acting in concert with the person who had punched the complainant and had tried to steal his phone. Pursuant to section 46 of the **CRIMES ACT 2009**, you and he were for all intents and purposes one. You are as criminally liable for his actions as if you had committed them yourself.

#### *Attempt*

30. It is clear that the person you were acting in concert with had attempted to rob the complainant. Punching someone and attempting to snatch his phone is something that is more than merely preparatory. He had embarked on the commission of the crime. *But for* the complainant's tenacity in hanging on to his phone, the offence would have been complete. That is my finding of fact.

#### *To Commit Theft*

31. It is clear from the complainant's testimony that he had been on *his* phone. You <sup>contact</sup> approached him and <sup>P.</sup> you tried to steal that phone from him. <sup>He</sup> You tried to snatch it out of his hand. It was not your property, it was <sup>m. singhs</sup> his. This is a clear case of an attempt to dishonestly appropriate something that belonged to another person with the intention of permanently depriving that person of his property.

#### *And Immediately before the Theft Used Force on Another Person*

32. It is equally clear from the facts that immediately before attempting to steal that phone, the person you had been acting in concert with had punched **Mr. SINGH's** face.

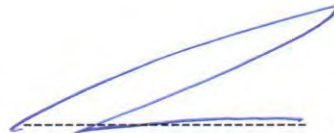
#### *With Intent to Steal*

33. That is force and it is equally clear from the sequence of events that immediately followed that it was force used with the clear intent of stunning **Mr. SINGH**, weakening him so that it might make the theft easier. I have no hesitation in finding that it was the use of force with intent to steal.



**RESULT**

34. In the result and for the reasons set out above, I am satisfied beyond reasonable doubt that you are guilty of **ATTEMPTED AGGRAVATED ROBBERY** contrary to section 44 and section 311 (1)(a) of the **CRIMES ACT 2009**.
35. I find you guilty and I convict you of **ATTEMPTED AGGRAVATED ROBBERY** contrary to section 44 and section 311 (1) (a) of the **CRIMES ACT 2009** as charged.
36. Please present your plea in mitigation.



Seini K Puamau  
Resident Magistrate



Dated at Suva this 6<sup>th</sup> day of January 2020.