

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

High Court Criminal Case No. 52 of 2016
Magistrates' Court Criminal Case No. 169 of 2016

STATE

v.

- 1. LIVAI MATEA**
- 2. MOAPE MATEA**

For the State: Sergeant Luke Qerewaqa

For the 1st Accused: Ms. L. David, *of counsel*, of the Legal Aid Commission

For the 2nd Accused: Ms. C. Choy, *of counsel*, of the Legal Aid Commission

JUDGMENT

1. You each stood trial for:

Statement of Offence

Aggravated Robbery: contrary to section 311 (1)(a) of the **Crimes Act 2009**

Particulars of Offence

Livai Matea and **Moape Matea**, on the 22nd day of January 2016, at Samabula in the Central Division, (stole) 1 x UNSNY brand mobile phone valued at \$200.00, the property of **Pranil Singh** and immediately before the robbery used force on the said **Pranil Singh**.

2. The trial was held before another Magistrate, one whose service to Fiji has ended, and who has since returned to his own jurisdiction. The judgment of that Magistrate, though prepared, is not sealed. It was never pronounced.

3. Time passed and the matter was eventually allocated to me. I caused audio recordings of the proceedings to be typed up. Both the State's representative at the time, *Inspector Jiten Singh* and the Defendants' counsel, *Mr. J. Nasa of the Legal Aid Commission* indicated that they were content to have me proceed to judgment on the basis of that record. Both the State and the Legal Aid Commission understood that if I proceeded to judgment, I would be doing so without having had the benefit of having seen each witness testify.
4. The initial judgment not having been sealed, and the learned Resident Magistrate, no longer in the country to confirm its contents, I deem it prudent to simply proceed to judgment on the basis agreed to by parties on 13 January 2020.

The Evidence

The Prosecution Case

5. The State called two witnesses. **Prosecution Witness No 1: Mr. Pranil Singh** testified that on 22 January 2016, at 11.00pm, he walked past the bus stop near the Gospel School. He saw two males, one wearing a white vest who was seated at the bus stop and another who was bigger, walking toward the bus stop at the time. He crossed the road and they both crossed the road with him. They approached him from different directions and while one grabbed him, the other one grabbed his phone.
6. **Prosecution Witness 1** testified that he could see them clearly by aid of a street light. He had also seen a lady and a girl on the street that night. After the person in the white vest had grabbed his phone, **Prosecution Witness 1** said that they then crossed the street and ran away from him. He followed, whereupon they chased him away. He then got into a taxi and went to the Samabula Police Station. Two Police Officers caught the men and they also recovered his mobile phone.
7. **Prosecution Witness 1** testified that he had been with the Police Officers when they arrested the men. He testified that both men had been arrested together as they were attempting to board a taxi. Indeed the following exchange in chief is recorded:

"Q: Now, when the Police arrested, did the Police arrest both of them at the same time or different places, at the same place or different places?"

A: *Two of the cops, they caught the guys together, sir.*"

8. **Prosecution Witness 1** then said that he could clearly remember their faces. He identified each of the Accused in Court.
9. The State then called **Prosecution Witness No. 2: Corporal 2177 Sebastiano Baleisuva of Samabula Police Station** to the stand. He testified that on 22 January 2016 he had been just gotten off duty at 11.00am and was waiting for his transport when they received a report that two youths had robbed a man along Rewa Street. He then proceeded toward Rewa Street on foot. He was accompanied by the person who had lodged the report. However, before arriving at Rewa Street, the complainant identified the people who had robbed him. These men were walking toward the Police Station at the time, **Corporal Baleisuva** testified.
10. **Prosecution Witness No. 2: Corporal 2177 Baleisuva** testified that when he approached the two, they each ran off in different directions. He caught one of them and asked that person where the complainant's phone was. The person he caught pointed to the other person who had run away. That other person had gotten into a taxi. That taxi stopped at the red light and the second man was arrested by a Police Constable Abdul. **Prosecution Witness No. 2** later went back to the area and he found the mobile phone on the ground. It was shown to the complainant who identified it as his.
11. He identified the first Defendant as the person he had arrested on that day and he identified the second Defendant as the person Police Constable Abdul had arrested on that day.

The Defence Case

12. Each Defendant testified in open Court. Their accounts are markedly different.
13. **Defendant 1: Livai Matea** testified on 22 January 2016 he had been at Howell Road with his nephew, the second Defendant. They had had a few drinks at his brother's place and after about an hour they left on foot along Rewa Street. They were headed toward the Samabula Bus stop. He was in the lead and the second Defendant had been trailing him. As they neared the Gospel School bus stop, he

saw a man running. The man was chased by three prostitutes. The man crossed over to his side of the road and then continued running in the opposite direction.

14. After the man had gone past him, the second Defendant called out to him and said, "Hey, that one gave me his phone." The second Defendant then apparently said, "The fellow just ran towards me and gave me the phone. The fellow ran, he never said anything."
15. The first Defendant took the phone off the ^{second P} first Defendant and they continued walking toward the bus-stop opposite the Fiji National University and near the Samabula Police Station. At the Samabula Cake Shop, the first Defendant stopped to relieve himself. The second Defendant continued on and crossed the road toward the Samabula Police Station. After relieving himself, the first Defendant proceeded to cross the road himself when he saw a Police Officer arresting the second Defendant.
16. The first Defendant threw the phone to the ground and then went toward the second Defendant and the Police Officer. When he reached them, a second Police Officer came by and arrested him. They were taken to the Police Station. The following questions and answers in chief are recorded:

"Q. Now Livai, why did you throw the phone on the ground?"

A. I was shocked because they were arresting Moape.

Q. And you heard the evidence of the complainant, his name is Pranil Singh. Now he has said that you are the one who pulled his shirt, now what do you have to say about that allegation?"

A. No, that's a lie. He was way behind me, Moape. That's when he gave the phone. He said I was behind him and holds his shirt, I never hold his shirt. I never even assaulted him. He gave the phone by himself to Moape.

Q. And you also heard him say that while you were holding his shirt, Moape had taken the phone. Now what do you have to say about that?"

A. It's a lie.

Q. You heard from the complainant Pranil, say that you and Moape had chased him?"

A. No, we never chase him.

Q. Also later, you have heard the evidence from the police officer. You heard him say that you two had run in different directions?"

A. We never even intended to run away. When I saw him I went toward them and then he said I ran away. I never ran away from them.

Q. I'll repeat the question again, you heard the police officer had said that you and Moape had run in different directions?

A. No, that's not true.

17. **Defendant 2: Moape Matea** testified that on 22 January 2016, he had been drinking at his uncle's place at around 10.30pm. Three of them had drunk 6 bottles of beer amongst them and then he and the first Defendant left on foot toward Suva. They walked along Rewa Street. The first Defendant was in front and he was a distance behind. At the bus stop in front of the Gospel School, he saw a man running toward them. The man was chased by three prostitutes. The man came running up to him and then gave him his phone. He did not know the guy and he did not know why the man had given him his phone. He then gave the phone over to Livai. By this time, the man who had given him his phone had disappeared.

18. They continued on their way toward the Samabula bus-stop opposite the Fiji National University. Along the way, he saw the man who had given him the phone walking toward him in the company of a Police Officer. When they got to him, they arrested him and took him to the Police Station. He testified that the first Defendant who had gone to relieve himself had come back and seen the Police arresting him. The following questions and answers in chief are recorded:

"Q. Now Moape, you have seen the same ... boy give evidence earlier this morning and he stated that you have grabbed the mobile phone from him. Now what can you say in regards to that?"

A. His lying sir.

Q. What can you say about the 3 prostitutes that he said were not there at that particular time?"

A. Sir, there were 3 prostitutes were running after him when we are walking on our way down to Samabula, sir.

Q. And you also saw the police officer come and give evidence and state that you and the 1st accused try to run away as they were coming to arrest you. What can you say about that?"

A. We did not run away from them, sir."

19. The following cross-examination by counsel for the 1st Defendant is relevant:

“Q. Just one question. Moape, you have stated that when your counsel asked why you have given your phone to Livai, your reply was because you didn't know why the Indian guy had given it to you, is that right. Now could you please explain to the Court how you and Livai are related?”

A. He's my uncle sir.

Q. If you could just explain, is it your father's brother or mother's brother?

A. It's my dad's younger brother, sir.”

Presumption of Innocence

20. I remind myself that each of you is presumed innocent until, and unless, proven guilty.

Burden and Standard of Proof

21. I remind myself that it is the State that bears the burden of proving each and every element of the offence against you. You need not prove anything.
22. More, the State must prove each element of the offence against you beyond reasonable doubt.

Elements of the Offence

23. The elements that the State must prove beyond reasonable doubt are as follows:
- (1) You
 - (2) In company with and in concert with
 - (3) Each Other
 - (4) Dishonestly Appropriated
 - (5) Property Belonging to Another
 - (6) And immediately before, during or after,
 - (7) Had used force against another person.

Analysis

24. There are two things that I find dispositive to a finding of guilt or innocence here and now.
25. The first is this, there is a material contradiction between the testimony of the complainant regarding the circumstances of the 1st and 2nd Defendant's arrest and the testimony of **Prosecution Witness 2** in respect of that same arrest. The complainant testified, after a particularly leading question by the State, that both Defendants' had been arrested together. It is clear, in the context of the question asked, that he meant arrested together in the same place.
26. This is consistent with the Defendants' own version of what transpired that night.
27. The second is this, it is clear from everyone's account that the Defendants' were arrested near the Samabula Police Station. Now, this is in line with the Defendants' own version of events. They say that they were en-route from the Samabula Cake Shop toward the Samabula Police Station on the way to the bus-stop opposite the Fiji National University when the first Defendant was approached and arrested by the Police.
28. I cannot think of an instance where a "bad guy", not being a dirty cop himself or herself, would rob a person on our public streets, and then meander their way on foot toward a Police Station. Not in a situation like this, as asserted by the State, where the person robbed had "gotten away" from them.
29. It begs the question, "why did they?" and the accounts offered by each Defendant provides a reasonable answer. They did so because they were innocent of any criminal wrong-doing. They did so because they had witnessed the odd sight of a man being chased by three unknown persons; and after marvelling bemusedly over the fact that the man being chased had handed over his phone without a word to one of them and not being able to sight either the man or those pursuers after that; they then continued on their way, their trajectory unchanged.
30. The account of their conversation and their actions is intrinsically Fijian, and I mean that in the national sense and not an ethnic one. "Hey, that one gave me his phone." Any Fijian, whatever their parents original ethnicity, would have blurted out the

same in similar circumstances. It makes sense that, bemused and slightly intoxicated, the second Defendant would then hand over his phone to his "father." It makes sense that, their consciences clear, they then continued on their way. Had it not been for the complainant's second inexplicable action that night, that of saying that these men had robbed him, it might likely have been nothing more than an amusing anecdote for the grog bowl to be told over and over until they themselves were old and grey.

31. These factors introduce reasonable doubt. When considered against the presumption of innocence, and fortified by the Blackstone ratio, I have no hesitation in stating my position – I am not satisfied beyond reasonable doubt of these Defendants' guilt.

Result

32. In the result and for the reasons set out above, I find you **Livai Matea** and you **Moape Matea** not guilty of the crime of ***Aggravated Robbery***.
33. I enter orders of acquittal in your favour forthwith.
34. Any party not satisfied with my judgment is at liberty to appeal to the Court of Appeal within 30 days.
35. There being no dispute that the phone tendered as **Prosecution Exhibit No. 1** belonged to **Pranil Singh**, I order that it be restored to him forthwith. Please ensure that a copy of this judgment is handed over to him along with his phone.



Seini K Puamau
Resident Magistrate



Dated at Suva this 11th day of March 2020.