

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

High Court Criminal Case No. HAC 105 of 2017
Magistrates' Court Criminal Case No. CF 2043 of 2017

STATE

v.

MYLES BAKAU

For the State : *Sergeant R. Ram, of counsel, for the Police Prosecution Department*
For the Accused: *Not Present*

JUDGMENT

1. I remind myself that you are presumed innocent until proven guilty. I remind myself that it is for the State to prove each element of the offence against you beyond reasonable doubt.
2. You are charged with "***Aggravated Robbery***". The elements the State must prove are that:
 - (i) You
 - (ii) In company with another
 - (iii) Dishonestly
 - (iv) Appropriated
 - (v) Property belonging to another
 - (vi) With intent to deprive that person of that property
 - (vii) And immediately before or during the theft

- (viii) Used violence against that other person
 - (ix) In order to effect the theft.
3. The victim and an eye-witness made clear that you had approached the victim on your own and had snatched her mangal-sutra from her. There is evidence that you had been walking with two other boys but that you had gone ahead in front of them and had committed that act by yourself.
 4. The evidence is that **Taniela Lomani** had walked up to the lady and had asked her what had happened. He and another then went after you. You and **Taniela** were then arrested as you walked back down Mark Street into Epworth Arcade. None of this evidence pointed inexorably to **Taniela Lomani's** guilt and do not point inexorably to the irresistible conclusion that you had been working together with him to effect this crime. Indeed, on the contrary, there is a possibility that **Taniela Lomani** was in fact attempting to bring you back to answer for what you had done and that that detour had been to recover the mangal sutra you had taken.
 5. In all the circumstances, I am not satisfied beyond reasonable doubt that you had committed this robbery in company with another. I find you not guilty of "**Aggravated Robbery**" as charged and I now pause to consider if the evidence is sufficient to satisfy me of the lesser offence of "**Robbery**" beyond reasonable doubt.
 6. I am satisfied beyond reasonable doubt that a person acting on his own had walked up to and had snatched a mangal sutra from **Renuka Salesni Lata's** neck. She was clear in her evidence that no force had been used against her at all. Use of force or threats not made out on the evidence, I find you not guilty of "**Robbery**" but I do pause to consider if the minor offence of "**Theft**" is made out.
 7. That there was a dishonest appropriation of the victim's mangal sutra with intent to permanently deprive her of the property is proved beyond reasonable doubt. The question is, was it you who committed the crime. The evidence of identification comes from three strands. First, **Ms. Lata** was clear that the person who robbed her had had a cut on his nose. Your arresting officer and the eye witness who saw what happened, both of whom knew

you prior to that day, testified that you had had a cut on your nose at the time of the incident and during your arrest.

8. **Vito Bogileka** was a security officer at Westpac at the time. He knew you. He saw you every day during his time there. He said nothing obstructed his view of what had happened and it is clear he had had you under observation for about 2 minutes before the theft took place. I am satisfied beyond reasonable doubt that it was you who had dishonestly appropriated the mangal sutra from **Ms. Lata's** neck with intent to permanently deprive her of the same that day.
9. I find you guilty and I convict you of "**Theft**" accordingly.



Seini K Puamau
RESIDENT MAGISTRATE



Dated at Suva this 6th day of January 2021.