

IN THE MAGISTRATES' COURT OF FIJI

AT SUVA

Criminal Case No: 1420/2022

EJ No : 21/2025

STATE

V

SAMUELA MEYA

JONE WAQAVI BABAKOBAU

KENI MAKABUNA

For the Prosecution : Ms. Alisha Lal(ODPP)

For the 1st accused: Mr. Asheesh Prasad(LAC)

For the 2nd accused : Ms. Ali(LAC)

For the 3rd accused: Ms. Dean (LAC)

Date of Judgment : 29th of May 2025

JUDGMENT

1. The accused persons are charged with one count of Aggravated Robbery, contrary to Section 311(1)(a) of the Crimes Act.¹ The particulars of the offence in the information state:

“Samueal Meya, Jone Waqavi Babakobau & Keni Makubuna on the 09th of September 2022, at Suva in the Central Division , in the company of each other ,stole a black wallet, a white T-Shirt , \$30.00 cash and assorted personal identification cards from Rupert Tony Bainicakau and immediately before stealing from Rupert Tony Bainicakau , used force on him”.

2. The accused persons pleaded not guilty hence this proceeded for hearing.

3. Before the hearing parties filed following agreed facts:

AGREED FACTS FOR SAMUELA MEYA ACCUSED 1

1. A1 was arrested on 9th September 2022 by PC 6450 Saiasi Katonivere.
2. A1 was interviewed under caution on 9th and 10th September 2022 at Totogo Police Station by Sgt. Nitesh.
3. A1 was formally charged by Josefa Kila at Totogo Police Station.

¹ No 44 of 2009.

AGREED FACTS FOR JONE WAQAVI ACCUSED 2

1. A2 was present near Elim Mini Market at Victoria Parade Suva at 2.30am on 9th September 2022.
2. Robbery occurred on 9th September 2022 near Elim Mart at Victoria Parade Suva.
3. A2 was wearing a black round neck t-shirt at the morning of the robbery.
4. A2 was arrested on 9th September 2022 by PC 6450 Saiasi Katonivere whilst running at Butt Street Suva.
5. A2 was caution interviewed on 9th and 10th of September 2022 by PC Lovate.
6. A2 was formally charged with Aggravated Robbery by Sgt. Nitesh at Tototgo Police Station.
7. Record of interview of A2 is not in dispute and can be tendered in by consent.

AGREED FACTS FOR KENI MAKUBUNA ACCUSED 3

1. A3 was interviewed under caution on 9th and 10th of September 2022 by DC Esava.
 2. A3 was charged by WPC Milekutu on 10th September 2022.
4. During the hearing, the prosecution called the following witnesses:
- PW1- PC 6540 Saiasi katonivere
- PW2- Rupert Bainicakau
- PW3-PC 6969 Osea Rabonu
- PW4- DC 5115 Manasa
5. They also produced the following exhibits .
- PE1- Medical Report of PW2
- PE2- Caution interview of the 2nd accused
- PE3- Black bag
- PE4- White Tribe T-shirt
- PE5- Black T-shirt
- PE6-Yellow nike vest
- PE7-Search list of PW2

6. At the conclusion of the prosecution's case, this Court found that there was a case to answer against all the accused persons and informed them of their rights.²
7. The accused elected to remain silent.
8. The parties were allowed to file closing submissions. Only the State, the 1st accused, and the 2nd accused filed their submissions within the stipulated time, and I have considered these submissions in this judgment.

The Law

9. In **Woolmington v DPP**³ it was held that :

“Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt, subject [to the qualification involving the defence of insanity and to any statutory exception]. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained” (per Viscount Sankey L.C. at pp. 481-482).

10. The accused persons are charged with one count of Aggravated Robbery, contrary to Section 311(1)(a) of the Crimes Act which states :

(1) A person commits an indictable offence if he or she —

(a) commits a robbery in company with one or more other persons;

11. According to the particulars in the information , the prosecution needs to prove beyond reasonable doubt the following elements:

- a. The three accused ;**
- b. On 09/09/2022 at Suva in the Central Division ;**
- c. In the company of each other ;**
- d. Stole items mentioned in the charge sheet from the complainant ;**
- e. And immediately before stealing used force on the complainant .**

² S179, Criminal Procedure Act, No43 of 2009.

³ [1935] AC 462.

Summary of Evidence

12. PW1 was conducting a mobile patrol on 09/09/2022 at around 2:00 a.m. with PW3. They were proceeding from Victoria Parade toward Main Street when they observed three I-Taukei boys robbing another I-Taukei boy. PW1 was approximately 5 to 7 meters from the incident and could clearly see what was happening, as the area was well-lit by streetlights and shop lights. There was no obstruction to PW1's view. Two of the suspects were tall and slim, while the third was slightly overweight but of similar height. One of the suspects, who was holding the victim, was wearing a yellow Nike vest, and among the other two, one was wearing a black t-shirt. They grabbed a bag from the victim, empty it, threw it away and fled the scene when they saw the police approaching.

13. The suspect in the yellow vest who grabbed the victim was unable to flee and was arrested at the scene. The other two suspects ran toward Station Parade and Gordon Street. PW1 instructed nearby bystanders and a taxi driver, to detain the suspect in the yellow vest, while he pursued the suspect who fled toward Gordon Street. PW1 apprehended the suspect wearing the black t-shirt in Butt Street and returned him to the scene. During the chase, PW1 maintained visual contact with the suspect, who was at a distance of approximately 2 meters. Upon returning, the suspect in the yellow vest attempted to flee again but was re-arrested. PW1 identified the yellow vest (MFI-1) the suspect was wearing and the black bag (MFI-2) in the court.

14. The suspects were taken to Totogo Police Station. PW1 described the suspect in the black t-shirt as tall and slim, with no visible body markings, and stated he had approximately five minutes to observe the suspect's face before arresting him. PW1 identified the 2nd accused in the court as the person he arrested on that date after giving chase. He also stated that the individual in the yellow vest, whom he had also observed, is not present in court.

15. *Cross-examination by counsel for the 1st accused:* PW1 stated there were four individuals at the scene (three suspects and the victim). He also said the suspect in the yellow vest did not flee initially and was held by two individuals.

Cross-examination by counsel for the 2nd accused: PW1 stated they arrived while the robbery was in progress and saw the 2nd accused taking something from the victim. PW1 confirmed he was in uniform at that time and had never seen the 2nd accused prior to the incident. The robbery occurred near the Western Union Bank, approximately 5–7 meters from his position. The 2nd accused fled toward Gordon Street and was arrested in Butt Street without resistance. At the time of arrest, he had no stolen items in his possession. PW1 handed over both suspects to the duty officer at the police station.

16. *Re-examination:* PW1 stated that the 2nd accused threw the bag away and then fled.

17. PW2 was the victim in this case and was walking toward McDonald's when he encountered three boys who robbed him, stealing his bag, BSP card, and other items. The suspect not present in court restrained him while the others took his belongings. That suspect was wearing a yellow vest and three-quarter pants. PW2's bag was also damaged during the incident. The area was illuminated by street and shop lights. While the robbery was occurring, two police officers arrived, and the suspects fled. The police arrested the individual in the yellow vest (not present in court). They also arrested the other two who ran away. PW2 identified the 2nd accused in the dock (this was objected to by the counsel for the 2nd accused).

18. PW2 stated that his white t-shirt, BSP card, and e-ticket card were also stolen. He identified his bag (MFI-2) in the court, which was marked as PE3. He also identified his white t-shirt (PE4) brought from Nagindas and the yellow vest of the suspect. PW2 mentioned that the police arrested two suspects wearing black t-shirts. At the police station, the witness found the suspect in the yellow vest wearing his white t-shirt.

19. *Cross-examination by counsel for the 1st accused:* PW2 admitted to giving two statements to the police.

Counsel for the 2nd accused: PW2 stated that while walking toward the bus stop, he saw a group of boys at the scene but could not clearly identify them. He first saw the 2nd accused at the police station.

Counsel for the 3rd accused: PW2 said he did not see the face of the person in the black t-shirt during the incident and only saw the suspects' faces at the police station. He also stated the police officers told him they were the ones who robbed him.

20. *Re-examination:* PW2 confirmed that he saw the individual in the yellow vest wearing his white t-shirt at the police station.

21. PW3, who was conducting foot patrol with PW1, stated they saw three boys holding another boy and searching his pockets. The distance was approximately 5–7 meters, and the area was well-lit with no obstructions. As they approached, the suspects fled. One ran toward Sukuna Park, and PW3 gave chase, eventually arresting him in the JJ Car Park with the assistance of a taxi driver. PW3 maintained visual contact throughout the pursuit whilst in the taxi. He observed the suspect for 3–5 seconds and described him as an I-Taukei male, tall and slim, with dark hair, and wearing a black t-shirt. PW3 identified the 3rd accused in court as the person he arrested and confirmed he was one of the individuals attacking the victim. He did not lose sight of the suspect during the chase and identified the black t-shirt as MFI-3.

22. *Cross-examination by counsel for the 3rd accused:* PW3 confirmed the robbery was observed from a distance of approximately 5 meters and maintained that the person he arrested was part of the group who robbed the victim. He reiterated that he did not lose sight of the suspect, even while pursuing him in a vehicle.

23. PW4 was the initial investigating officer and seized the stolen items and clothing from the suspects. He received the yellow vest and white t-shirt from Sgt. Nitesh, who had prepared the search list. The yellow vest was marked as PE6. He saw the suspect in the yellow vest holding the white t-shirt. The 3rd accused was brought to the station wearing a black t-shirt, which was marked as PE5. The bag and the search list were marked as PE3 and PE7, respectively. PW4 confirmed that PW1 brought in Jone and Samuela, while PW3 brought in the 3rd accused, all of whom were handed over at the charge room.

24. *Cross-examination by counsel for the 1st accused:* PW4 admitted he was not present at the time of the robbery and only received information from the victim regarding the suspect in the yellow vest.

Counsel for the 2nd accused: PW4 admitted there was no identification parade and that no stolen items were recovered from the 2nd accused.

Counsel for the 3rd accused: PW4 confirmed he was present when the three suspects were brought to the police station.

Court: PW4 stated the 1st accused was wearing the yellow vest and the white t-shirt.

Analysis

25. The learned counsel for all the accused, during the hearing and in their closing submissions, admitted that the complainant was robbed by a group of men on 09/09/2022.

26. According to PW2, while he was walking to the bus stand that night, he was grabbed from behind by one person while two others searched him. They stole his bag, white t-shirt, BSP card, \$30 cash and e-ticket card. The medical report (PE1) confirms that the victim sustained injuries as a result of this incident. Accordingly, from the admissions of the counsel of the accused as well as testimony of PW2, I find that the prosecution has proved beyond reasonable doubt that the victim was robbed by a group of men on 09/09/2022.

27. As correctly identified by all parties, the only issue in dispute is the **identity** of the offenders.

28. The defence counsel submitted that their respective clients (the three accused) were not involved in the robbery, although they admitted their clients were present at the scene with a group of other youths.

29. The first accused is absconding, and the trial is proceeding in absentia in respect of him. The other two accused were present throughout the hearing.

30. Although the first accused is absconding, and the second and third accused have elected to remain silent, I do not draw any adverse inference from their silence⁴ or the absence of the first accused. The burden remains on the prosecution to prove that it was the three accused who committed the robbery on that night.

31. From the evidence, as well as the agreed facts, I find that the first and second accused were arrested by PW1, while PW3 apprehended the third accused. PW1 and PW3 also identified the second and third accused in court.

32. The complainant likewise identified the second and third accused in court. However, since the first accused is absconding, he was not identified in court.

33. It is undisputed that no formal identification parade was conducted to allow the victim to identify the accused persons at the police station.

34. The defence has objected to this dock identification, and the State, in its closing submissions, has referred this Court to the authority in *Naureure v State*⁵ where it was stated :

Dock identifications are not, of themselves and automatically, inadmissible: *Maxo Tido v The Queen* (2010) 2 Cr. App.R23, PC, [2011] UKPC 16. In *Aurelio v The Queen* [2003] UKPC 40, the Board of the Privy Council held that, even in the absence of a prior identification parade, a dock identification was admissible evidence, although, when admitted, it gave rise to significant requirements as to the directions that should be given to the jury to deal with the possible frailties of such evidence-

⁴ s14(2)(J), Fiji Constitution 2013.

⁵ [2023] FJCA 256; AAU0037.2019 (29 November 2023).

“that it is important to make clear that a dock identification is not inadmissible evidence per se and that the admission of such evidence is not to be regarded as permissible in only the most exceptional circumstances. A trial judge will always need to consider, however, whether the admission of such testimony, particularly when it is the first occasion on which the accused is purportedly identified, should be permitted on the basis that its admission might imperil the fair trial of the accused.”

35. As PW2 himself stated in his evidence that he could not clearly observe the faces of the second and third accused during the robbery and as there was no proper ID parade, I would not rely on his dock identification of these two accused.

36. As mentioned earlier, there is no dispute that PW1 arrested the first and second accused, and PW3 arrested the third accused on the night in question. The arresting officers testified that while on patrol, they observed the three accused committing the robbery, which led to their apprehension. Therefore, the key issue is whether they **correctly identified** the accused at the scene.

37. To resolve this, I now turn to the **Turnbull guidelines**, as articulated by Lord Widgery CJ, to assess the reliability of the identification evidence in *R v Turnbull*.⁶

The court held :**“Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? 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? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence. Recognition may be more reliable than identification of a stranger; but, even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.”**

38. I now apply the *Turnbull* guidelines to the present case. According to PW1, he observed the robbery from a distance of approximately 5–7 meters, with no obstruction to his view. The area was well-lit by both streetlights and shop lights. He saw the second accused running toward Gordon Street, gave chase without losing sight of him, and arrested him in Butt Street. Although PW1 had not seen the second accused prior to the incident, he had sufficient time to observe him before making the arrest.

39. PW3 similarly described observing the robbery from approximately 6–7 meters away. He confirmed the presence of sufficient lighting in the area. He saw the third accused fleeing, pursued him in a taxi, and arrested him in a car park. PW3 stated that he did not lose sight of the suspect during the pursuit and identified him as one of the individuals involved in the robbery.

40. Defence counsel, during cross-examination of the arresting officers, suggested that the identifications were mistaken and that their clients were not involved in the robbery. However, both PW1 and PW3 firmly maintained that the accused were the individuals who committed the offence.

41. While there are some inconsistencies between the officers' in-court testimony and their prior police statements, I do not find these discrepancies significant enough to affect their overall credibility.

42. Accordingly, from the testimonies of PW1 and PW3, I am satisfied there was no mistaken identity as suggested by the counsel for the accused.

43. In closing submissions, counsel for the first accused argued that the prosecution's exhibits and particulars contained contradictions, and emphasized that PW1 did not identify the first accused in court.

44. However, PW1 was unable to identify the first accused in court because the first accused absconded from trial. Furthermore, I do not find any material contradictions regarding the descriptions of the exhibits, namely the white t-shirt, yellow Nike vest, and black bag.

45. In her closing submission, counsel for the second accused argued that no stolen items were recovered from her client, and that the prosecution presented a black bag as an exhibit, whereas the charge referenced a black wallet.

46. I do not find also these arguments sufficient to cast doubt on the prosecution's version of events. According to the arresting officers, the second accused discarded the bag while fleeing. Even if there is a discrepancy in the description of the stolen property, the Court is entitled to convict the accused on the existing charge without the need to amend it.

47. Additionally, PW2 testified that he saw the first accused wearing his white t-shirt (PE4) at the police station, and this was corroborated by PW4, who was present at the station on that date.

48. I find that the **doctrine of recent possession** is applicable to the first accused in this case.

49. According to the doctrine of recent possession, when a person is found in possession of recently stolen property and cannot provide a reasonable explanation, the Court may infer that the person either stole the property or received it knowing it was stolen (*Bruce v R* (1987) 74 ALR 219; *Trainer v R* (1906) 4 CLR 126; *R v Langmead* (1864) Le & Ca 427).

50. There is no dispute that PE4(White T –Shirt) was stolen from the victim on the night of the incident and that it was found in the possession of the first accused soon after the Robbery, based on the evidence of PW2 and PW4. In the absence of any reasonable explanation from the first accused, the only inference I can draw is that he was involved in the robbery.

51. Apart from the direct evidence of PW1 and PW3, who observed the accused persons committing the robbery, there is also circumstantial evidence pointing to an adverse finding against all the accused.

52. According to PW1 and PW3, when they approached the scene of the robbery, the second and third accused fled and were arrested after a chase. Later, the first accused also attempted to flee and was subsequently arrested. Although counsel for the accused suggested during cross-examination that the flight from the scene was due to other reasons, I do not accept this argument.
53. I also find that all three accused played a part in the robbery. Whilst the first accused restrained the victim, other two accused searched him and stole his bag and other items. On the basis of **joint enterprise**,⁷ I find they are equally responsible for the offence.
54. Considering the totality of the evidence, I find that the prosecution has proved beyond reasonable doubt that it was the three accused who robbed PW2 on the night in question.
55. Accordingly, I find all the accused **guilty** and convict them.
56. 30 days to appeal.



⁷ S46, Crimes Act, No 44 of 2009.