

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 099/2010**

**BETWEEN: THE STATE**

**AND: EPARAMA MANI**

**COUNSEL: Mr L Fotofili for the State  
Accused in Person**

**Date of Hearing: 18-22/03/2013**

**Date of Summing Up: 25/03/2013**

## **SUMMING UP**

Madam and Gentlemen of Assessors,

01. It is now my duty to sum up this case to you. I will direct on matters of Law which you must accept and act upon. On matters of facts however, which witnesses to accept as reliable, which version of the evidence to accept, these are matters for you to decide for yourselves. So if I express my opinion to you about facts of the case or if I appear to do so it is a matter for you whether you accept what I say, or form your own opinions. In other words you are the judges of facts. All matters of facts are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.
02. You have to decide what facts are proved and what inferences drawn from those facts. You then apply law as I explain it to you and form your opinion as to whether the accused is guilty or not guilty.

03. Prosecution and accused, appearing in person, made submissions to you about the facts of this case. That is their duty. But it is a matter for you to decide which version of the facts to accept or reject.
04. You will not be asked to give reasons for your opinions but merely your opinions of yourself and your opinion need not be unanimous but it would be desirable if you agree on them. Your opinions are not binding on me but I can tell you that they carry great weight with me when I deliver my judgement.
05. On the question of proof, I must direct you as a matter of law that the onus of burden of proof lies on the prosecution throughout the trial and never shifts. There is no obligation on the accused person to prove his innocence. Under our criminal justice system accused person is presumed to be innocent until he is proved guilty. This is the golden rule.
06. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of the accused's guilt before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt then you must express an opinion that he is not guilty.
07. Proof can be established only through evidence. Evidence can be from Direct Evidence that is the evidence that who saw the incident or felt the offence being committed. The other kind of evidence is Circumstantial Evidence that you put one or more circumstances together and draw certain irresistible inferences. Probative matter furnished by items that are actually on view, as opposed to a verbal description of them by a witness is called Real Evidence.
08. Your decisions must be solely and exclusively upon the evidence, which you have heard in this court and upon nothing else. You must disregard anything you have heard about this case outside of this court room.
09. Your duty is to find the facts based on the evidence apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotions.
10. Now let's look at the charge.

## **FIRST COUNT**

### **Statement of Offence**

**AGGRAVATED ROBBERY: Contrary to Section 311(b) of the Crimes Decree No: 44 of 2009.**

### **Particulars of Offence**

**EPARAMA MANI** on the 01<sup>st</sup> day of May 2010 at Samabula in the Central Division, armed with an offensive weapon stole \$350.00 cash, a black berry mobile phone valued at \$800.00 and a Gold diamond ring valued at \$1000.00, all to the total of \$2,150.00 from **ANTHONY PRICE**.

## **SECOND COUNT**

### **Statement of Offence**

**GRIEVOUS HARM: Contrary to Section 258 of the Crimes Decree No: 44 of 2009**

### **Particulars of Offence**

**EPARAMA MANI**, on the 1<sup>st</sup> of May 2010 at Samabula in the Central Division, unlawfully and maliciously did grievous harm to **FILIMONI BOGILEKA**.

11. In order to prove the offence of aggravated robbery, the prosecution must lead evidence which satisfies you beyond reasonable doubt of several elements. Firstly, that the accused stole property of the complainant. Stealing is the taking of something without the consent of the owner with the intention of permanently depriving the owner of the property.
12. The offence of aggravated robbery also has an element of force or violence. It is the stealing of something by an act of force. The force can be either implied from the carrying of weapons, or from the number of people involved in the incident. So when a group of people enter a house for an instance, to take money without the owner's consent with no intention of returning it, then the offence of robbery is committed.
13. Grievous Harm means any bodily hurt which seriously or permanently injures health, or which is likely to seriously or permanently injure health.

14. The caution interview statement of the accused person is in evidence. What an accused says in his caution interview is evidence against him. These are my direction of law.
15. Now let's look at the evidence led by the prosecution in this case.
  1. Filimoni Bogileka was the personal security officer of Abzan Khan whose house is situated at No: 11 Deoji Street, Tamavua. He was working there for 13 years. On the 1<sup>st</sup> day of May 2010 he was on duty at Deoji Street. He was living in the ground floor of the house. The 1<sup>st</sup> floor was occupied by his land lord while 2<sup>nd</sup> floor had been rented out to a foreigner. His name is Anthony. At about 10.30 pm on 01/05/2010 his landlord's wife had informed him that somebody was inside their compound. When he came to ground floor he had seen a man with covered face. With the help of house lights he could see the man. When he went closer to the intruder he had shouted in Fijian language not to come closer. He was armed with an iron rod and when he went closer to the intruder he warned him again. Though he aimed at the intruder but he missed the target. Then the intruder had stabbed him with a silver coloured knife. The intruder was wearing  $\frac{3}{4}$  pants and a T-shirt. His face was covered with a T-shirt. He could not identify him at that time. He had sustained injuries on the stomach. As he felt difficulty of breathing he let the intruder go from the scene. According to him the intruder was around 20-21 years of age. Although he struggled with the intruder witness could not identify him as his face was covered with a T-shirt. According to the witness the knife was recovered by the police along with a mobile phone belonging to the intruder. Due to the struggle he left the phone and escaped from the scene. Witness had seen the knife at the police station. He had taken the mobile phone and gave it to a police officer. Though the mobile phone was on he could not check inside as its battery was very low. According to him the brand name of the mobile phone is Nokia, and the colour is black. He further said that he gave the T-shirt to police which was wearing by the intruder to cover up his face and went to hospital. He was warded in the hospital for about one week and under gone a surgery. Witness showed scares of his injuries to the court.

In the cross examination witness said that he was informed about the intruder by his landlord's wife. After struggle he had seen a phone on the ground. He could not recall the colour

correctly. Due to dark and fatigue after injury he could not identify the intruder.

He was not re-examined by the prosecution.

2. Dr. Rajeev Patel gave evidence in respect of a medical report but the name of the patient was not entered. After mentioning his medical qualification and experience he submitted a medical certificate without the name of the patient and marked as P1.

He was not subjected to cross examination.

3. Next prosecution called DC/Prashneel who was attached to Samabula Police Station in the year 2010. He was one of the officers who reported to crime scene at No: 11 Deoji Street, Tamavua on 01/05/2010. He with another police officer namely D/C 3761 Jone went to the crime scene and met the complainant who is a Muslim national. The complainant informed that his house had been burgled and his security officer received injuries and was taken to hospital. Cpl/Jone recorded a statement from the complainant. While recording the complaint he was directed to search the area around the compound in order find any evidence. The building has three stories and he went to downstairs for inspection. There is a small driveway close to the building and while walking there had seen a mobile phone-Nokia brand was lying on the ground. As it started to drizzle he took the phone to his custody and put into a plastic bag. He did the search with the help of a street light which was on at that time. After the detection of the phone he handed over the same to D/C Jone. He did not go through the phone as he did not want to temper with the evidence. According to him the phone was connected with a strap. Witness identified the phone and was marked as P2.

In the cross examination witness said that he reported for work at 3.00pm on 01/05/2010. He doesn't know the owner of the phone. He only recovered the phone from the crime scene. Witness said he can't remember as to whether he entered the recovery in his official note book.

4. DC/3657 Leone Vurekeni was the officer who arrested the accused on 03/05/2010. According to him he has completed 06 years in police service. During his service he had done more than 50 arrests. On information accused was arrested at Wainadoi Police Post at about 9.00pm. After his arrest he was

informed the charge and escorted to Samabula police station. D/Sgt Samu and Amani had accompanied him. It took about 40 minutes to reach Samabula Police Station. He was seated in front seat of a white coloured vehicle. No civilian travelled in the vehicle. He was hand cuffed and taken to Samabula Police Station. Accused was calm at the time of the arrest. He was informed the reason for his arrest.

In the cross examination witness said that he was the arresting officer and arrested the accused at about 9.00pm. He was informed about his arrest. Accused was taken to Samabula Police Station within 40 minutes of his arrest. Witness said that he don't have a note book. He denied that he assaulted the accused.

He was not re-examination examined by the State.

5. DC/3761 Jone Veitaqomaki was the investigating and interviewing officer in this case. Upon receiving information of a house break situated at No: 11 Deoji Street, Tamavua he had gone to the crime scene with Cop/Prashneel at about 11.00 pm on 01/05/2010. Before their arrival members of the Ready Action Team had gone to the place. After his arrival he had talked to a European whose house was being robbed. He recorded a statement from him and commenced investigations. At that time members from Ready Action Unit and Dog Unit had already commenced their investigations. The care taker of the house had been taken to hospital due to stab injuries caused by the intruder. Cop/Prashneel had found a mobile phone of Nokia made which was lying on the ground of the compound. He took the phone into his custody and taken to police station and charged. When he switched on the phone found the wall paper of a Fijian boy and a girl. Several photos of the same boy found in the phone. Witness identified the phone which was marked as P2. [This court viewed the all photographs in the phone and shown to the Assessors as well.] Witness said that the phone was kept in the police custody until it produced before this court. The envelope in which the mobile phone was kept marked as P3. Apart from that a red vest and a knife were found from the scene of crime. These two items were handed over to him by Ready Action Unit. The witness could not tell the exact place where red vest and knife were found. According to the witness the knife is about one foot long and silver coloured.

Both had been taken to police and kept there for court purpose. Witness produced both items to the court. The exhibit tag is only found on the knife. State marked the Red Coloured Vest as P4 and the Knife as P5. The witness told court that he inspected the house and the premises. Also inspected the portion where complainant lives. He could not recall whether he checked the windows and doors of the house. He further said that the accused's identity surfaced through the mobile phone which was found at the crime scene and through information received by the police. After the arrest of the accused he had interviewed him under caution on 04/05/2010 at Crime Office, Samabula Police Station. It was commenced on 04/05/2010 and concluded on 05/05/2010. Only he and accused were present at that time. Interview was recorded in English language as per the request of the accused. He had explained all rights of the accused. Before or during the interview neither he nor any police officer assaulted, threatened, intimidated, forced or put pressure on the accused. Accused had never complained that he was injured or feeling not well. Witness read out the entire caution interview statement of the accused before this court. Original Caution Interview Statement was marked as P7 and the typed copy was marked as P8. As PW 01 was taken to hospital no identification Parade was held in this case.

In the cross examination he denied that he assaulted, threatened or forced the accused to sign his caution interview. No injuries seen on the accused. He confirmed that no material evidence detected from the accused. Witness said that he has not called a witnessing officer due to man power problem in his station. No statement recorded from Ready Action Unit who found the Vest and The Knife from the crime scene. Witness said that he can't recall the date of his statement being recorded. Finally witness said that Cop/Prashneel did not tell him how he found the phone at the crime scene. Witness said that the phone was handed over to him on the same night but he can't recall at where he received the phone. Witness said that he can't recall how many times he tried to record a statement from Ready Action Unit.

He was not re-examined by the Prosecution.

6. A/Cpl 3198 Atish Lal who charged accused was called next by the prosecution. According to him he charged the accused on 05/05/2010 at Samabula Police Station. Before the charge he

had explained all the rights of the accused. The charge was taken in English language. Prior or during the charge accused did not complain any assault, threat or force. After the charge accused was produced before the court.

In the cross examination witness told court that he only charged the suspect on that day. He denied that the accused wanted to go to hospital. He denied that he assaulted the accused during the charge. At this stage accused tendered his Medical Certificate and marked as D1. Witness shown Part B 13(ii). But witness said that he did not see any injury on 05/05/2010.

He was not re-examined.

Calling six witnesses Prosecution closed their case.

7. Defence was called and explained the rights of the accused. Accused elected to give evidence from witness box and called witnesses.
  - 1) According to accused the phone which was found at the scene of crime is belonging to him. He had lost it while it was being charged at her sister's place prior to the incident. When he was in Nadi after three days of the lost of his phone his sister informed him that his phone was found at the crime scene by the police. He came to Suva to attend a birthday party and on his way back to Nadi he was arrested by police officers at a road block and brought to Samabula Police Station. At the time of arrest he was assaulted by the police. When he reached Samabula Police Station police told him about the case.

In the cross examination accused said that that he was in Nadi with his girlfriend. Deoji Street cannot be seen from his sister's place. Accused admitted that he knew some of the shortcuts. According to him he was punched, kicked, threatened and assaulted with a mop stick. According to him no marks were on his body. After assault he was forced to sign the caution interview statement. On 06/05/2010 he had gone to hospital and subjected for a medical examination. He did not tell the magistrate about the police assault but complaint to Prison Department. Accused admitted and confirmed that the phone is belonging to him. P2 shown to the accused. Accused admitted that the lady in



picture No: JPG000 is his girl friend. Accused denied that he was wearing the same vest in one of the pictures in the phone which was found from the crime scene. Further he denied that he brought the knife (P4) from his sister's place. Accused denied that he was at Deoji Street on 01/05/2010. After receiving information about his lost phone he did not go to police to claim the same.

In the re-examination accused said that the police had failed to record a statement from members of Ready Action Unit with regard to recovery of the Vest and the Knife. Further he had been assaulted by the police to admit the charge. Thought he answered certain questions in his caution interview statement but others had been filled by the police.

- 2) Next Salesi Balekivalu was called to give evidence. He was in the custody of Samabula police on 04/03/2010. He had seen the accused there with a black eye. He also heard screaming from the crime office of Samabula Police Station.

In the cross examination witness said that he can't recall the day but he saw the accused with black eye on his left side. Further he had heard accused's screaming. He further said that the accused suffered injury due to police assault. Witness said that he does not know what happened to accused between 01-03/05/2010.

- 3) Next Osea gave evidence on behalf of the accused. According to him he had seen the accused on 07/05/2010 at cell block of Government Building, Suva. His one eye was swollen and he was limping. Accused told him that police officers from Samabula Police Station had assaulted him.

In the cross examination witness said that accused told him that police assaulted him on 07/05/2010.

- 4) Sunia Roragio was called next by the accused. He was in Korovou Prison on 07/05/2010. He had met the accused at Bau Bau dormitory. Accused had a black eye on his left and he told him that police assaulted at Samabula Police Station.
- 5) Next Emeli Adi the elder sister of the accused gave evidence. According to her one day accused had brought his mobile phone for charging. While it was being charged there he went out somewhere. When he returned home to take the phone it

had gone missing. She does not know who took the phone. She identified the phone which had been marked as P2. After three days she came to know that the phone was found at the crime scene by the police. She had informed this to her brother immediately.

In the cross examination she said that the accused is her brother who stayed with her family. Her husband used to have drinking party in their house. She came to know that police found the phone when police came in search of the accused's house. She did not tell the police that the phone had gone missing three days ago as the police only asked about the accused. Answering further witness said that police had informed her about the missing phone of the accused. But she did not tell police that the phone had gone missing from her house. Witness could not identify the vest which had been marked as P4.

### **Analysing of the Evidence**

8. As assessors and judges of facts, in this case, the information was read out in this court before commencement of the trial. The accused had been charged for two counts.
9. As assessors and judges of facts, you can remember that Filimoni Bogileka gave evidence in this court. On the day of the incident he had struggled with the intruder but he could not neither apprehend the intruder nor identified him. But due the struggle the intruder had dropped his mobile phone and the vest which was wearing to cover his face. According to him he had handed over both items to police before he went to the hospital. But according D/C Prashneel he had recovered the phone which was laying at the crime scene. D/C Jone confirm this and further said that the vest and the knife were given to him by members of Ready Action Unit. You must consider there evidence very carefully.
10. In this case a doctor gave evidence with regard to a medical report. But the medical report does not contain the name of the patient. According to the doctor the 1<sup>st</sup> page should be filled by the police. According to the doctor the 2<sup>nd</sup> and 3<sup>rd</sup> pages had been filled by another doctor while he had completed the last page. In the conclusion witness said that the injuries consistent with trauma from a sharp object. Filimoni Bogileka

giving evidence said that he sustained stab injuries on his abdomen. Due to his injuries he was hospitalized and under gone a surgery.

11. As assessors and judges of facts, you must consider the evidence of D/C Jone Veitaqomaki very carefully. He is the investigating officer and interviewing officer. He had gone to crime scene with D/C Prashneel and recovered productions. D/C Prashneel had given a phone which had been found at the crime scene. He could not record a statement from the members of Ready Action Unit with regard to recovery of a vest and a knife. He examined the phone and found accused's photograph. He recorded accused's caution interview statement at Samabula Police Station. He could not call a witnessing officer due to shortage of police officers. He denied assault while recording the interview. Accused took up the position that he was assaulted during recording of his interview. To support he called witnesses.
12. Defence witnesses Salesi, Osea and Sunia all said that the accused was seen with black eye of left and was limping. Further accused had told them that officers from Samabula Police had assaulted him. But the accused was produced before Suva Magistrate Court on 07/05/2010. The accused did not complaint to Learned Magistrate about police assault. Further he had not taken any action to report this to a higher ranking officer of the police Department.
13. As assessors and judges of facts, accused claimed the ownership of the phone which was recovered from crime scene. According to him phone had gone missing while it was being charged at his sister's place. But he had not taken any endeavour to search for the phone. He had not lodged any complaint in the police with regard to lost of the phone. When police informed about the phone to his sister Emili Adi she did not inform the police about the lost of the phone. When her sister informed about the recovery of the phone from crime scene accused did not take any meaning full action to claim the same from the police. You have to consider this evidence very carefully.
14. As assessors and judges of facts, Original Caution Interview Statement of the accused was marked and produced as P7 and its typed copy marked as P8. What an accused say in his caution interview statement is evidence against him. Accused took up the position that his caution interview statement was not recorded voluntarily. It was obtained through fear and assault. To support his argument he called witnesses and marked his medical report as D1. In his caution interview statement he admitted the charges in this case. You have to consider this evidence with great caution.

15. Prosecution not called the complainant to give evidence before this court. The first count is solely based on the complaint of the complainant.
16. You have heard all the prosecution witnesses. You have observed them giving evidence in the court. You have observed their demeanour in the court. Considering my direction on the law, your life experiences and common sense, you should be able to decide which witness's evidence, or part of his evidence you consider reliable, and therefore to accept, and which witness's evidence, you consider unreliable and therefore to reject. Use the tests mentioned above to assess the evidence of witnesses.
17. You must also carefully consider the accused's position as stated above. Please remember, even if you reject the version of the accused that does not mean that the prosecution had established the case against the accused. You must be satisfied that the prosecution has established the case beyond reasonable doubt against the accused.
18. You can also consider whether the evidence is consistence and corroborative of each other or whether they fall apart. That is, whether the evidence of witnesses supports each other fully or in material parts or whether they go in opposite directions.
19. Remember, it is for the prosecution to prove the accused's guilt beyond reasonable doubt. It is not for the accused to prove his innocence. The burden of proof lies on the prosecution to prove the accused's guilt beyond reasonable doubt, and that burden stays with them throughout the trial.
20. Once again, I remind, that your duty is to find the facts based on the evidence, apply the law to those facts and come to a correct finding. Do not get carried away by emotions.
21. This is all I have to say to you. You may now retire to deliberate. The clerks will advise me when you have reached your decisions, and we will reconvene the court.
22. Any re-direction?

P Kumararatnam  
**JUDGE**

At Suva  
25/03/2013



