

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 150 OF 2013

STATE

-v-

1. SUNIA RORAQIO
2. DAVID LOCKINGTON

Counsels : 1st Accused in Person
Ms C. Choy for 2nd Accused

Date of Trial : 10 June 2014 – 16 June 2014

Date of Summing Up : 16 June 2014

SUMMING UP

Madam Assessor and Gentlemen Assessors:

1. We have now reached the final phase of this case. The law requires me – as the Judge who presided over this trial – to sum up the case to you on law and evidence. Each one of you will then be called upon to deliver your separate opinion, which will in turn be recorded. As you listened to the evidence in this case, you must also listen to my summing up of the case very carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused persons.
2. I will direct you on matters of law which you must accept and act upon.
3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, these are matters entirely for you to decide for yourselves. So if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.

4. In other words you are the Judges of fact. All matters of fact 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.
5. The counsel for Prosecution and Counsel for the 2nd Accused made submissions to you about the facts of this case. That is their duty as the Prosecution Counsel and the Defence Counsel. But it is a matter for you to decide which version of the facts to accept, or reject.
6. You will not be asked to give reasons for your opinions, and your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions, but I will give them the greatest weight when I come to deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law, that each accused person is innocent until he is proved guilty. The burden of proving his guilt rests on the prosecution and never shifts.
8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find each accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty.
9. 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 might have heard or read about this case, outside of this courtroom. Your duty is to apply the law as I explain to you to the evidence you have heard in the course of this trial.
10. You must judge the case solely on the evidence that you heard in this Court room. There will be no more evidence and you are not to speculate on what evidence there might have been or should have been. You Judge the case solely on what you have heard and seen here.
11. Your duty is to find the facts based on the evidence and apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
12. As assessors you were chosen from the community. You, individually and collectively, represent a pool of common sense and experience of human affairs in our community which qualifies you to be judges of the facts in the trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.
13. In assessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole. In deciding on the credibility of any witness, you should take into account not only what you heard but what you saw. You must take into account the manner in which the witness gave evidence. Was he evasive?

How did he stand up to cross examination? You are to ask yourselves, was the witness honest and reliable.

14. The information against the accused is as follows:

Statement of Offence

AGGRAVATED ROBBERY: Contrary to Section 311 (1) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

SUNIA RORAQIO, DAVID LOCKINGTON and NACANI TIMO with another, in company of each other on the 18th of July, 2013 at Lautoka in the Western Division, robbed **FALVIANO PISONI** of assorted mobile phones valued at \$5,900.00, 8 assorted Gold wrist watches valued at \$131,000.00, assorted jewellerys valued at \$8,500.00, 2 assorted bags valued at \$5,500.00, cash \$2,500.00 FJ dollars, \$700.00 US dollars (converted \$1,260.00 FJ), 1000 EURO dollars (converted \$2,215.00 FJD), \$500.00 NZ dollars (converted \$679.00 FJD), \$1,000.00 AUS dollars (converted \$1,779.99 FJD), \$30.00 HK dollars (converted \$6.72 FJD), \$2.00 SINGAPORE dollars (converted \$2.65 FJD), assorted liquors valued at \$140.00 all to the total value of **\$159,483.36**.

15. Firstly I must explain the legal basis of the charge. When charge is laid jointly against more than one accused-person in this manner, it brings into focus an important legal principle, which is known as the 'doctrine of joint enterprise'

16. Usually, a person is liable in law for only acts committed by him and for his conduct and such acts or conduct attract criminal liability if they are unlawful acts or unlawful purposes. The doctrine of joint enterprise is an exception to that general rule, of course, for valid and sound reasons. The principle is explained under Section 46 of the Crimes Decree, which reads:

Offences committed by joint offenders in prosecution of common purpose

'When two or more persons form a common intention to prosecute an unlawful purpose in connection with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.'

17. Madam assessor and the gentlemen assessors, if I am to site an example, this is how the principle works. Three people plan to rob a shop and one stands guard outside looking out for any police surveillance. One man goes inside and holds the security guard, while the other threatens the cashier with a gun and takes all the cash. All three men then make their get-away. Now you will see that only the third man did the actual act of offence, while the

other two helped to execute the plan of robbery. Under the law, each one of them is held liable for the offence of robbery. Under the law, each one of them is held liable for the offence of robbery with violence irrespective of the individual roles played by each one of them under the doctrine of 'joint enterprise.' For the principle to work under the section, there should be evidence beyond reasonable doubt that:

- (i) There should be two or more persons forming a common intention to prosecute an unlawful purpose;
- (ii) In prosecution of that unlawful purpose, an offence/s should be committed; and
- (iii) The commission of such offence/s-should be the probable consequence of the prosecution of that unlawful purpose.

18. In dealing with the principle, you must also consider the following factors as matters of law. They are:

- (i) The case of each accused must be considered separately. That is, you must find evidence as to what each accused did to demonstrate that he too had shared the intention in common to prosecute unlawful purpose;
- (ii) Each accused must have been actuated by that common intention with the doer of the unlawful purpose at the time the offence was committed and should have contributed in some meaningful way towards the prosecution of the unlawful purpose;
- (iii) Each one of them should have known that the commission of the offence is a probable consequence of the prosecution of that unlawful purpose;
- (iv) Common intention must not be confused with same or similar intention entertained independently of each other. Instead, it should clearly be distinguished from similar intention. That is, if you find no evidence to show a particular accused did not share the intention in common with others and that he was actuated by his own intention which was, however, similar to the intention of other, you can find the accused guilty only for what he has committed and not for anything else;
- (v) There must be evidence, either direct or circumstantial, or pre-arrangement or some other evidence of common intention. Sometimes, such common intention could occur on the spur of the moment;
- (vi) The mere fact of the presence of the accused at the time of the offence is not necessary evidence of common intention.

19. I will now deal with the elements of the offence. The offence of Aggravated Robbery is defined under Section 311 of the Crimes Decree.

20. Accordingly the elements of the offence are:

- (i) A person,
- (ii) Committed Theft,

- (iii) Immediately before committing theft uses force on another person,
- (iv) He was in company of one or more persons.

21. Apart from the elements of the offence, the identity of the person who alleged to have committed the offence is very important. There must be positive evidence beyond reasonable doubt on identification of the accused persons and connect them to the offence that they alleged to have been committed.
22. Evidence that the accused has been identified by a witness as doing something must, when disputed by the accused, be approached with special caution because experience has demonstrated, even honest witnesses have given identification which have been proved to be unreliable. I give you this warning not because I have formed any view of the evidence, but the law requires that in every case where identification evidence is involved, that the warning be given.
23. In assessing the identification evidence, you must take following matters into account:
- (i) Whether the witness has known the accused earlier?
 - (ii) For how long did the witness have the accused under observation and from what distance?
 - (iii) Did the witness have any special reason to remember?
 - (iv) In what light was the observation made?
 - (v) Whether there was any obstacle to obstruct the view?
24. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw it or by a victim who saw, heard and felt the offence being committed.
25. Documentary evidence is also important in a case. Documentary evidence is the evidence presented in the form of a document. In this case, search lists are examples if you believe that such a record was made. Then you can act on such evidence.
26. As a matter of law, I must direct you on circumstantial evidence. In this case, the prosecution relies on certain circumstantial evidence. In circumstantial evidence, you are asked to piece the story together from witnesses who did not actually see the crime being committed, but give evidence of other circumstances and the events that may bring you to a sufficiently certain conclusion regarding the commission of the alleged crime.
27. I cite the following situation as an example for circumstantial evidence. In a silent night, you hear cries of a man from a neighboring house. You come out to see that a man named 'A' is running away from that house with an object in his hand. Out of curiosity you go inside the house to see what really had happened. You see your neighbor 'B' lying fallen on pool of blood with injuries. Here you don't see 'A' committing any act on 'B'. The two independent things you saw were the circumstances of a given situation. You can connect

the two things that you saw, and draw certain inferences. An inference you may draw would be that 'A' caused the injury on 'B'. In drawing that inference you must make sure that it is the only inference that could be drawn, and no other inferences could have been possibly drawn from the said circumstances. That should be the inescapable inference that could be drawn against 'A' in the circumstances. Further in evidence one witness may prove one thing, and another witness may prove another thing. None of those things separately alone may be sufficient to establish guilt, but taken together may lead to the conclusion that the accused committed the crime.

28. Circumstances are not made by mere speculation or guesswork. They must be established beyond reasonable doubt and the proved circumstances must only be consistent with the accused having committed the crime. To find him guilty, you must be satisfied so as to feel sure that an inference of guilt is the only rational conclusion to be drawn from the combined effect of all the circumstances proved. It must be inference that satisfies you beyond reasonable doubt that the accused committed the crime and that inference should be irresistible and inescapable on the evidence. Before you can draw any reasonable inference, you must first be satisfied beyond reasonable doubt, that the evidence given by each witness relating to the circumstances giving rise to the issues of fact to be proved is credible and truthful.

29. In assessing evidence of witnesses you need to consider a series of tests. They are for examples:

Test of means of opportunity: That is whether the witness had opportunity to see, hear or feel what he is talking of in his evidence. Or whether the witness is talking of something out of pace mechanically created just out of a case against the other party.

Probability and Improbability: That is whether what the witness was talking about in his evidence is probable in the circumstances of the case. Or, whether what the witness talked about in his evidence is improbable given the circumstances of the case.

Belatedness: That is whether there is delay in making a prompt complaint to someone or to an authority or to police on the first available opportunity about the incident that was alleged to have occurred. If there is a delay that may give room to make-up a story, which in turn could affect reliability of the story. If the complaint is prompt, that usually leaves no room for fabrication. If there is a delay, you should look whether there is a reasonable explanation to such delay.

Spontaneity: This is another important factor that you should consider. That is whether a witness has behaved in a natural or rational way in the circumstances that he is talking of, whether he has shown spontaneous response as a sensible human being and acted accordingly as demanded by the occasion.

Consistency: That is whether a witness telling a story on the same lines without variations

and contradictions. You must see whether a witness is shown to have given a different version elsewhere. If so, what the witness has told court contradicts with his earlier version.

30. You need to consider all those matters in evaluating the evidence of witnesses. You shall, of course, not limit to those alone and you are free to consider any other factors that you may think fit and proper to assess the evidence of a witness. I have given only a few illustrations to help what to look for to evaluate evidence.
31. I will now deal with the summary of evidence in this case.
32. Prosecution called Sher Mohamed as the first witness. He is a taxi driver based in Lautoka. On 18.7.2013 around 9.00 a.m. the first accused and his wife had hired his taxi to go to Suva from Lautoka. He had charged them \$200. They were dropped at Lami. The 1st accused was carrying a small plastic bag.
33. Under cross examination he said that 1st accused was not known to him and he came to know his name from the police. At the time he made the statement to police he did not know the name of the 1st accused. He was not called to police to identify the 1st accused.
34. The next witness was Mr. Flaviano Pisoni. On 18.7.2013 he was alone at his house at Savala place, Lautoka. He had heard alarm around 00.30 a.m. When he came out he had seen four figures outside through the window. These figures moved from front to back of the house. Then they threw a stone on louver blades in the kitchen. They broke few blades and entered the house. They grabbed him and asked for money. He had said there is no money and later he said that it is in the room. He was made to lie on the bed with one person putting his hand on his neck. He thought that if he reacts they will kill him. He felt for his life. They searched and took his purse, beauty case, watches and money. When they took his bag he asked them to give back his documents. His passport and his wallet with credit cards were given back. They were inside the house for about 10 minutes. They left the house same way they came in.
35. He is collector of watches. Some are originals and others are replicas. They have taken 8-9 watches, few phones, a bracelet, two Gold rings, one Gold lighter and jewels. In the beauty case there were three original watches and 5-6 replicas. One JT Master Rolex valued at US\$ 50,000-70,000 (a gift from his wife), one Vacheron contestant Gold Coronagraph watch valued US\$ 35,000-50,000 and one Photo Philip Swiss watch valued US\$ 15,000 were stolen. Each replica had a value of about US\$ 250-300. iPhone 5 valued FJ\$ 1,000, I Phone 4 valued FJ\$ 400-500, one Blackberry phone valued FJ\$ 450-500, one Prada phone valued FJ\$1,500, one Nokia phone valued FJ\$100 and one Samsung tablet valued FJ\$ 1,300 were also stolen.
36. The value of the bracelet was about US\$ 2,000-3,000. The Gold rings were gifts from his wife valued US\$ 5,000 each. The Gold lighter was valued US\$ 11,000-12,000. There was also cash. Few US\$, 500-600 NZ\$, 500-600 AU\$, about 1,000 Euros, over FJ\$5,000 and few

Singapore and Hong Kong dollars were stolen. After they left he contacted his house girl and she informed the police. They have come immediately. Police have checked for finger prints. His statement was recorded around 1.30-2.00 a.m. He had roughly stated what was stolen.

37. Two-three days later he received a phone call to come to the police station. He had recognized some stolen items which were recovered. This had happened twice. He had identified Dorcy Habana bag, three replicas of Rolex watches, Samsung tablet, I5 phone, I4 phone, Blackberry and the Nokia phone. Inside the bag there was Korian Air tag with his name. He identified and tendered this bag marked PE1. He identified and tendered three Rolex replicas. Blue Submarine replica marked PE2, GT Master replica marked PE3 and Daytoma Coronagraph marked as PE4. He also identified and tendered a Samsung tablet marked PE6, I5 phone marked PE6, I4 phone marked PE7, Nokia phone marked PE8 and Blackberry phone marked PE9. He had also received some US dollars and Hong Kong dollars.
38. There was no cross examination from the accused. The counsel for the second accused only got confirmation that he failed to identify the persons who came.
39. You watched him giving evidence in court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of a witness's evidence is reliable, and therefore to accept and whether witness's evidence, or part of evidence, is unreliable, and therefore to reject, in your deliberation. If you accept the evidence of this witness the elements of the charge is proved except for the identification of each accused.
40. The next witness for the prosecution was Rupeni Vuli Suguturaga. He said that on 18.7.2013 he was woken up by his girlfriend's daughter saying that David was waiting for him outside. When he came out David was outside with Timo and another. He identified the 2nd accused as his cousin David and third accused as Timo. They wanted him to drop them at Banaras. He went with them in his van. David had given him \$50 and Timo had given him \$100 to pump fuel at the service station. Then they have gone to Rakiraki.
41. At Rakiraki town Timo had given two 50 Euros notes for him to change. He had given about FJ\$ 300 to Timo. Then Timo gave money to buy 40 oz Rum and they went to FSC compound to drink. Then tehy have gone to pick one Susana. Thereafter they have gone to Golden point Rakiraki and bought a carton of beer. They had that at the beach. Then they have gone to Suva. They reached Suva after 8.00 p.m. They have gone to Kinoya. Then they have gone to O'Rilley's night club. They have left the night club after 3.00 a.m. Following morning he had gone with David and Susana. They had bought drinks. While they were drinking police had come and arrested them. All three of them were taken to Nabua police station. David was arrested and the other two were released.

42. Under cross examination by the counsel for the 2nd accused he told that they went to Suva to attend 100 nights family function of an uncle. He also said that David gave him only \$50. In re-examination he said that he could not recall whether he told police about this 100 nights family function.
43. You watched him giving evidence in court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of a witness's evidence is reliable, and therefore to accept and whether witness's evidence; or part of evidence, is unreliable, and therefore to reject, in your deliberation.
44. The next witness for the prosecution was D/Cpl. 3685 Vereivalu. He is from the strike back team from Nabua police station. On 19.7.2013 on information received he had gone to a house at Kinoya. There was group of iTaukei people in that house. They were drinking Beer. As he was in civilian clothes he showed his ID to that group and told them that they are looking for some people from Lautoka. Then one person stood up and ran away. He made a chase and managed to arrest him. It was little drizzling that day. While he was calling the others for the handcuffs that person slipped from his hand and ran away. With the help of his colleagues he managed to arrest him hiding under a pile of rubbish next to Banana tree. He was escorted to the house. On the way he was cautioned. He voluntarily surrendered some items to him. Those are Rolex GMT master Gold wrist watch, one black I phone, Lee Navy Blue ¾ pants and 2 pen knives. He had prepared a search list which he identified and tendered marked as PE 10. He also identified the 2nd accused as the person who was arrested.
45. On 20.7.2013 the 1st accused had voluntarily surrendered to police. He had also voluntarily handed over one Rolex watch and one pair of Gold ear ring. A search list was prepared. Both accused and the search lists and the exhibits were handed over to the investigating officer at Lautoka police station.
46. Under cross examination by the 1st accused he stated that on 20.7.2013 at 1400 hours he escorted the 1st accused to Tamavua-i-wai village with D/Cpl. Ilisoni to get some items. He said that he did not obtain a search warrant as these items were handed over voluntarily. He denied not recovering any items and trying to frame the 1st accused.
47. Under cross examination by the counsel for the 2nd accused he stated that he did not have a note book with him on 19.7.2013 when he went to arrest the 1st accused. He denied that the items in the search list were not given by the 1st accused. He admitted that he did not have a search warrant to search the house at Kinoya. The items were handed over at 20.00 hours on 20.7.2013 to the investigating officer DC Baseisei.
48. You watched him giving evidence in court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself

generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of a witness's evidence is reliable, and therefore to accept and whether witness's evidence, or part of evidence, is unreliable, and therefore to reject, in your deliberation. If you accept the evidence of D/Cpl. 3685 Vereivalu beyond reasonable doubt then the prosecution wants you to infer that the 1st and 2nd accused both handed over some items robbed from the complainant's house including Rolex watch each and mobile voluntarily. You have to consider whether the only irresistible inference that could be drawn from that is that each accused is a person who was involved in the robbery as they were in recent possession of robbed items.

49. The next witness was D/Cpl. Ilisoni. He is an officer with 9 years' experience. He also had taken part in the arrest of 2nd accused on 19.7.2013 and had assisted D/Cpl. 3685 Vereivalu. After few questions he had voluntarily surrendered some items. There was a Rolex watch, a mobile, ¾ pant and pen knife. He identified the photographs of the watch and the mobile. The suspect and the items were taken to Nabua police station and handed over to investigation team led by Sgt. Joape. He pointed out and identified the 2nd accused in Court.
50. On the next day he had escorted the 2nd accused with the 1st accused who had surrendered to police from Suva to Lautoka. On the way the 1st accused had surrendered a Rolex wrist watch and pair of ear ring from Tamavua-i-wai. He had given his mobile to the 1st accused to contact his girlfriend. Two mobiles and cash surrendered by his wife were collected at the Lami police station. He had handed over both accused and the exhibits to the investigating officer at the Lautoka police station. He identified a photograph of the Rolex watch and the 1st accused.
51. Under cross examination by the 1st accused he admitted that he had not mentioned about going to Tamavua-i-wai or calling his wife who surrendered some items, in his police statement made on 20.7.2013. His reason was that he was only assisting the other officers. He further said that they reached Lautoka around 20.00 hours and the fact that he mentioned 15.15 hours is a writing error. He denied all police officers are trying to frame 1st accused into this case.
52. Under cross examination by the counsel for the 2nd accused he admitted that he was not carrying his note book that day. He admitted that he did not know the location of the house in Kinoya before going there. The 2nd accused was not known to him. He further said that 1st accused informed a lady, the location of the items recovered and she brought those from the house and handed over to police. He further admitted that he had not mentioned about recovered items in his statement made on 20.7.2013. Under re-examination he said the location of the house in Kinoya was found from GPS from Vodafone Company.
53. The next witness for the prosecution was Pita Sorovakarua. He stated that around 1.30 a.m. the 3rd accused came to his house and asked to buy packet of Cigarette. He said there is no

Cigarette. Then he wanted him to arrange transport. He tried but failed. Then they left. Others were standing under a tree in dark. Same morning the 2nd and 3rd accused had come. He had arranged transport for them to go to Ben's house. Then they have gone to Suva in Ben's van on Kings road. On the way they have drank, liquor bottles taken out of 3rd accused's bag. They have gone to 2nd accused's village in Ra. Laisa had joined them from there. They have gone to Rakiraki. At the town they were looking for a place to change foreign money. The 2nd and 3rd accused were talking with driver about such places. He was left in the van and others have gone out. They have come back with food and 40 Oz Rum bottle. They have gone to FSC compound and drank there till night. Then he had fallen sleep. When he wake up they were in 2nd accused's aunt's house in Kinoya. He had noticed Susana had joined them. Then they have gone to O'Rilley's night club and drank beer there. They have gone to Kinoya early in the morning. He had given a call to his wife and gone home. This was the first time in his life that 2nd and 3rd accused had taken him in a drinking trip like this.

54. Under cross examination by the 1st accused he said that he did not mention his name to the police. Answering the questions of the counsel of the 2nd accused he stated that only 3rd accused was giving money. He said that the 2nd accused never told him the reason to go to Suva was to attend 100 nights ceremony.
55. You watched him giving evidence in court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of a witness's evidence is reliable, and therefore to accept and whether witness's evidence, or part of evidence, is unreliable, and therefore to reject, in your deliberation.
56. The prosecution called Lisala Navunisinu as the next witness. According to him on 18.7.2013 around 10.00 a.m. his cousin the 2nd accused had come to his house. They came in a van. Ben was the van driver. The witness who gave evidence earlier also came. He was asked to come with them to go to town to have a drink. At the town the 2nd accused had given him AU\$ 50 to buy drinks. He was with them throughout the day. Then he was dropped at home and others went to Suva.
57. Under cross examination by the counsel for the 2nd accused he stated that he did not see from where the 2nd accused took money. He was not told that the 2nd accused was going for 100 night's function in Suva. He had no idea of such a function.
58. You watched him giving evidence in court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of a

witness's evidence is reliable, and therefore to accept and whether witness's evidence, or part of evidence, is unreliable, and therefore to reject, in your deliberation.

59. The last witness for the prosecution was DC Baseisei. He is the investigating officer of this case. He had gone to the scene of the incident on 18.7.2013 at 0100 hours. He had seen the complainant with blood stains on his face. His statement was recorded. The robbers have entered through cutting the fence and breaking kitchen window. The pieces of broken louvers were scatted in the kitchen area and the sitting room. There were stones and iron rods in the kitchen. Later he had received information that 1st accused had surrendered to police in Suva. He was brought to Lautoka with 2nd accused who was arrested. The items recovered were also brought in with them. He identified the search list of the 2nd accused. He also identified and tendered the search list for the 1st accused's wife marked PE11. The search list for the 1st accused is missing. He had failed to make an entry in the station diary about productions. He identified the photographs of some of the items. Both accused were interviewed under caution and charged. They were then produced in Court.
60. Under cross examination by the 1st accused he said that only document to prove items were recovered from him is the statement of the officer. The search list was misplaced. He had failed to record when he received the items.
61. Under cross examination by the counsel for the 2nd accused he admitted that according to the station diary the two accused were brought in at 15.15 hours and there is no mention of the items recovered. He further denied that search list and the entries came into station on 22.7.2013 at 8.53 a.m. according to the station diary. He said that he could not recall the 2nd accused signing the search list while being at Lautoka police station.
62. In re-examination he stated that the entry on 22.7.2013 was made before the accused were produced before Court as the exhibit writer wanted a station diary reference.
63. After the prosecution case was closed you heard me explaining the accused his rights in defence. Both Accused elected to give evidence. The 1st accused said that he went to surrender to police for another matter. He was locked in the cell and transported to Lautoka. He was told that he is involved in a robbery case in Lautoka. He said that he has no idea about that. He had the caution interview with his lawyer's presence. Then he was charged. On the way from Suva they did not stop at any place. They came direct to Lautoka.
64. Under cross examination that he was not shown any search list of his wife. He denied going to Tamavua-i-wai. He said that Liku Bilo is not his wife and he does not know her.
65. The second accused also gave evidence, his position is that on 18.7.2013 he was at his cousin sister's house in Lautoka. Around 6.00 a.m. when he went to shop, he had met Timo (third accused). They have gone to Pita's house. They were looking for a van to go to Suva. He wanted him to give \$50 to pump fuel. They have gone back to his cousin's house to take

his ¾ pants. With him they have gone to Ben's house in a van. Ben had agreed to take them to Suva. They have gone back to his cousin's house to take his ¾ pants. On the way they have stopped at Lovu and Timo had bought snacks, drinks and cigarettes. Timo had taken out Blue Shappeir bottle and gave to Pita to mix. Then they have gone to his cousin's village to ask him to join them for a drink. He had joined them to go to Rakiraki. At Rakiraki Timo gave him AU\$ 50 and he gave that to Lisala to change. Ben was also given money by Timo to change. After they came and handed over the money Timo gave some money to Ben to buy Alcohol and food. Then they have gone to FSC compound and were drinking 40 oz. Rum. Then they have gone to Tavua to pick a girl. They have gone to Golden point Rakiraki and had a carton of beer there. When that was finished they have gone to drop Lisala and gone to Suva. They have gone to his aunt's place at Kinoya. Then they have gone to a Night club and were there till it was closed for drinking Beer. By that time Timo had disappeared.

66. The following day he woke up at 8.00 a.m. He had few glasses of beer with his cousins who were drinking beside the house. Some officers came and went inside the house. One of them had punched him. Then he ran away. He was arrested, assaulted, hand cuffed and taken away to the twin cab. We could see his ¾ pants inside the twin cab. He was kept at Nabua police station that night and escorted to Lautoka police station. On the way he was forced by officer Vereivalu to sign a search list. He had signed it as officers were assaulting him and told him that they will keep on assaulting if he did not sign. No items were recovered from him.
67. Under cross examination he denied that he was involved in the robbery. He even denied that they were going on a drinking party. He denied handing over any item voluntarily. He said that he ran away when the police came as one officer assaulted him.
68. You watched each accused giving evidence in court. What was his demeanour like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? It is up to you to decide whether you could accept his version and his version is sufficient to establish a reasonable doubt in the prosecution case. If you accept his version that accused should be discharged. Even if you reject his version still the prosecution should prove it's case beyond reasonable doubt.
69. The prosecution concedes that there is no evidence to prove that 1st accused's wife is Liku Bilo. The first accused in his evidence took up the position that this person is neither his wife nor he know her.
70. I must remind you that when an accused person has given evidence he assumes no onus of proof. That remains on the prosecution throughout. His evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

71. You will generally find that an accused gives an innocent explanation and one of the three situations then arises:

- (i) You may believe him and, if you believe him, then your opinion must be Not Guilty. He did not commit the offence.
- (ii) Alternatively without necessarily believing him you may say 'well that might be true'. If that is so, it means there is reasonable doubt in your minds and so again your opinion must be Not Guilty.
- (iii) The third possibility is that you reject his evidence as being untrue. That does not mean that he is automatically guilty of the offence. The situation then would be the same as if he had not given any evidence at all. He would not have discredited the evidence of the prosecution witnesses in any way. If prosecution evidence proves that he committed the offence then the proper opinion would be Guilty.

72. I have summarized all the evidence before you. But, still I might have missed some. That is not because they are unimportant. You heard every item of evidence and you should be reminded yourselves of all that evidence and form your opinions on facts. What I did was only to draw your attention to the salient items of evidence and help you in reminding yourselves of the evidence.

73. The items of circumstantial evidence against the 1st accused are that the search lists of him and Liku Bilo. The 1st accused's search list is missing and never produced as evidence in Court. Prosecution failed to establish any connection between the 1st accused and Liku Bilo. Therefore, only admissible evidence against the 1st accused is that he went to Suva from Lautoka with his wife on 18.7.2013 in a taxi hired by him. You have to consider whether that item of circumstantial evidence is sufficient to establish the guilt of 1st accused and you have to consider whether the only irresistible inference that could be drawn from that item of circumstantial evidence is the guilt of the 1st accused.

74. The items of circumstantial evidence against the 2nd accused are:

- (i) The search list
- (ii) The subsequent conduct on 18.7.2013 till his arrest.

75. You have to consider whether each item of circumstantial evidence is sufficient to establish the guilt of 2nd accused and you have to consider whether the only irresistible inference that could be drawn from those items of circumstantial evidence is the guilt of the 2nd accused.

76. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial, and never shifts to the accused, at any stage of the trial. The accused are not required to prove his innocence, or prove anything at all. In fact, they are presumed innocent until proven guilty beyond reasonable doubt.

77. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of each accused's guilt you must find him guilty for the charge. You have to consider evidence against each accused separately. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of each accused's guilt, you must find him not guilty as charged.

78. Your possible opinions are as follows:

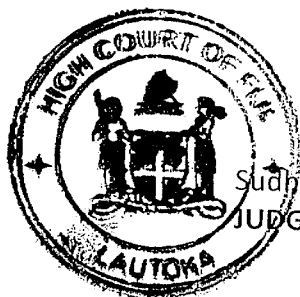
Charge of Aggravated Robbery

1st Accused Guilty or Not Guilty

2nd Accused Guilty or Not Guilty

79. You may now retire to deliberate on the case, and once you have reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.

80. Any re-directions?



Sudharshana De Silva

JUDGE

At Lautoka

16th June 2014

Solicitors : 1st Accused in Person
Office of the Legal Aid Commission for 2nd Accused