

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. HAC 84 OF 2009

STATE

- V -

- 1. JOJI ROKETE**
- 2. JOSUA WAKA**
- 3. SANJEEV MOHAN**
- 4. JONETANI ROKOUA**

Counsels Appearing: Mr. J. Niudamu with Mr A. Paka for the State
Mr J. Savou. for the First Accused
Mr A. Singh for the Second Accused
Third Accused in person
Ms. L. Tabuakuro for the Fourth Accused

Date of Hearing: 10 – 20 February 2014

Date of Judgment: 21 February 2014

JUDGMENT

[1] Joji Rokete, Josua Waka, Sanjeev Mohan and Jonetani Rokoua you have been charged with the following offences:

First Count

Statement of Offence

ROBBERY WITH VIOLENCE: Contrary to section 293 (1) (b) of the Penal Code Cap 17.

Particulars of Offence

JOJI ROKETE, JOSUA WAKA, SANJEEV MOHAN and JONETANI ROKOUA between the 7th and 8th of September 2009 at Yalalevu, Ba in the Western Division robbed Vinod Dutt Sharma of Nokia mobile phone valued at \$200.00, wrist watch valued at \$150.00, a gold ring valued at \$300.00 and a Uniden cordless phone valued at \$50.00 all to the total value of \$700.00 and at the time of such robbery did use personal violence to the said Vinod Dutt Sharma.

Second Count

Statement of Offence

MURDER: Contrary to Section 199 and 200 of the Penal Code Cap 17.

Particulars of Offence

JOJI ROKETE, JOSUA WAKA, SANJEEV MOHAN and JONETANI ROKOUA between the 7th and 8th of September 2009 at Yalalevu, Ba in the Western Division murdered Vinod Dutt Sharma.

Third Count

Statement of Offence

UNLAWFUL USE OF MOTOR VEHICLE: Contrary to section 292 of the Penal Code Cap 17.

Particulars of Offence

JOJI ROKETE, JOSUA WAKA, SANJEEV MOHAN and **JONETANI ROKOUA** between the 7th and 8th of September 2009 at Yalalevu, Ba in the Western Division unlawfully and without a colour of right but not as to guilty of stealing took to their own the private registration number EX 110 the property of Vinod Dutt Sharma.

- [2] The three assessors have returned with mixed opinions. All four accused are found unanimously guilty of the robbery and of the unlawful use of the motor vehicle (Charge 1 and 3). Two of the assessors have found all four accused guilty of the murder while one assessor has found all four not guilty of murder but guilty of manslaughter.
- [3] I now direct myself on my own summing up and in consideration of all of the evidence in this trial I come to the following judgment.

First Accused:

- [4] The first accused made admissions in an interview under caution which were a confession ultimately of taking part in the robbery and in aggressively subduing the householder, Vinod Sharma. In his interview which the assessors have obviously accepted he speaks of blocking the victim's mouth while he started to struggle and he blocked his mouth while he was tied by others and blocked until he was not moving and

was “slacked down”. Such action is obviously an unlawful act and the only intention would be to kill or do very serious harm. He admitted in the interview that when he spoke earlier of using chloroform he had lied. I find, as the assessors have obviously found, that his evidence in Court that he acted alone is not believable.

- [5] In the premises I agree with the three assessors in respect of the first and third counts and I agree with the majority on the second count. I find him guilty of robbery with violence, murder and unlawful use of a motor vehicle.

Second accused:

- [6] In the caution interview the second accused not only admits to being part of the robbery enterprise he admits that he was told there was only a single man there alone (Q. 74) and there was plenty of money. When they entered he saw others “tying someone on top of a bed” and another was pressing his mouth (Q.90). He then carried on searching for booty. Later in his interview (Q.172) he adds as an afterthought that he had assisted in subduing the householder by “holding his backside down”.
- [7] By admitting his part in the robbery, and knowing that there would be one man alone in the house, the second accused brings himself on his own admission into complicity in the murder – given that it was quite probable that the man alone would need to be “dealt with”. However more seriously he admits to being an accessory to the murder by the first accused and is therefore pursuant to section 21(1) (c) of the Penal Code, having taken part is equally guilty of the murder. I find the second accused guilty of all three counts.

Fourth accused:

[8] The circumstantial evidence against the fourth accused is strong. The assessors have clearly accepted the evidence of PW7 Tasvindra Singh who took the fourth accused, with others, to the scene of the crime and borrowing a shifter talked about work to do. The next day he came back saying that the man died because “he was a sick person and we tied a cloth around his neck”. By admitting that he knew of the death in connection with the robbery and by admitting that he had participated in tying the cloth the majority opinion of the assessors is available.

[9] Unlike the identification of the third accused, Mr Singh’s dock identification of the fourth accused at trial was not in recollection of a previous first sighting but it was an acknowledgement of recognition, he having seen him and known him over the previous four weeks.

[10] I agree with the assessors and find the fourth accused guilty of all three counts, robbery with violence, murder and unlawful use of a motor vehicle.

Third accused:

[11] In the course of this trial, the third accused (unrepresented) has suffered several injustices. In preparation of the summing up I came across a document on the Court file sent to the Court by the Lautoka Correction Centre on the 19th March 2012 giving notice of the third accused’s alibi. The documents sent included a medical report showing that the third accused is a known asthmatic patient and at the time of the report (11th October 2011) was suffering from an asthmatic attack. This information was never brought to my attention in the voir dire proceedings neither by the prosecutor nor by the accused himself. The effect of this report

rebutts the evidence of Dr Dragon that his finding of asthma in the patient was incidental and that at the time the patient was surprised to learn this. The patient is clearly a long term asthma sufferer as he indeed claimed in the voir dire proceedings. Had I been aware of this earlier my findings on the admissibility of the admissions of the accused might well have been different.

[12] Secondly the third accused was subject to unfair and prejudicial cross examination in the trial by the prosecutor. Having given evidence in chief that he had complained of assault and abuse to the Magistrate on first appearance, it was put to him that that evidence was untrue because the court record did not disclose it. The unrepresented accused not having a copy of the record (it never being returned to him after he had dismissed his legal aid counsel earlier) was adamant that he had made the complaint and that the Magistrate must have forgotten to note it. The prosecutor pressed his point accusing the accused of lying. All along the record does show that the accused complained of abuse and the Magistrate had noted it. The prosecutor must have known this, or had constructive notice of it but he pressed his point regardless. This dishonest line of questioning was totally unacceptable and unnecessarily discredited the accused before the assessors and the court unfairly.

[13] Thirdly the identification evidence of the third accused by the bus driver who claims to have driven him from Lautoka to a point near Nailaga village is unreliable. It was a dock identification made for the first time and without the foundation of an earlier identification by i.d parade at the Police Station. In purporting to identify an Indo-Fijian passenger, he identified the third accused who was the only Indo Fijian in the dock with 3 iTaukei accused. Such an identification based on a previous sighting at nighttime is clearly unacceptable. Although the identification is an ancillary part of the evidence against the third accused whose

confession exists as the main thrust of the prosecution case against him, it is yet another injustice that could have influenced the assessors.

[14] Taken in the round these three injustices persuade me to reject the identification and to revisit my findings on his caution interview and answer to charge. I now found those admissions to be inadmissible because I cannot be sure that he wasn't oppressed by having his asthma medication taken from him as he has always alleged.

[15] There being no confession and no i.d. evidence putting him near the homes of the others I find him not guilty on all three counts.

[16] I convict the first accused of robbery with violence, murder and unlawful taking of a motor vehicle.

[17] I convict the second accused of robbery with violence, murder and unlawful taking of a motor vehicle.

[18] I convict the fourth accused of robbery with violence, murder and unlawful taking of a motor vehicle.

[19] I acquit the third accused of all three charges.

[20] That is the judgment of the Court.

P.K. Madigan
Judge

At Lautoka
21 February 2014