

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 111 OF 2014

BETWEEN : STATE

AND : SENIJELE BOILA

Counsel : Mr. Niudamu J with Mr. Nath S. for State,
Ms. Jiuta S. for the Accused Person,

Date of Hearing : 8th -10th of April 2015

Date of Summing Up: 13th of April 2015,

Date of Judgment : 13th of April 2015.

JUDGMENT

1. The accused person is charged with one count of Aggravated Robbery contrary to section 311 (1) (b) of the Crimes Decree 44 of 2009. The particulars of the offence are that;

“Senijeli Boila with three others on the 15th of August 2014, at Nadi in the Western Division being armed with offensive weapons, namely iron rod and cane knife robbed Sunil Prasad and Ranjeet Prasad of \$ 50,000 cash, the property of City Forex Fiji Limited.”

2. The accused person pleaded not guilty for this offence; hence this action was set down for hearing from 8th to 10th of April 2015. The Prosecution called

eight witnesses during the course of the hearing. At the conclusion of the prosecution case, the accused gave evidence on oaths but did not call any other witnesses for the defence. Subsequently, the learned counsel for the Prosecution made his closing submissions, which was followed by the closing submissions of the learned counsel for the accused person. I then delivered my summing up to the assessors.

3. The three assessors have returned with unanimous guilty verdict against the accused person. The assessors' verdict was not perverse. It was open for them to reach such conclusion on the evidence presented during the hearing.
4. Having considered the evidence presented during the hearing, respective closing submissions of the prosecution and the defence, and the opinions of the assessors, I now proceed to pronounce my judgment as follows.
5. Section 311 (1) (b) of the Crimes Decree states that;

"A person commit an indictable offence if he or she –

b. commits a robbery and, at the time of the robbery, has an offensive weapon with him or her".

6. The offence of robbery has defined under section 310 of the Crimes Decree, where it states that;

"A person commits an indictable offence (which is triable summarily) if he or she commits theft and –

(a) Immediately before committing theft, he or she –

(i) uses force on another person; or

(ii) threatens to use force then and there on another person –

with intent to commit theft or to escape from the scene; or

(b) at the time of committing theft, or immediately after committing theft, he or she —

(i) uses force on another person; or

(ii) threatens to use force then and there on another person —

with intent to commit theft or to escape from the scene.

7. It appears that the offence of robbery is an aggravating form of theft. Accordingly the main elements of the offence of aggravated robbery that the prosecution is required to prove beyond reasonable doubt are that;
 - i. The accused,
 - ii. Dishonestly appropriates \$ 50,000 cash belong to City Forex Fiji Limited,
 - iii. With the intention of permanently deprive it,
 - iv. And used force or threatened to use force on Mr. Sunil Prasad and Ranjeet Kumar immediately before or after stealing \$ 50,000 cash,
 - v. Use an offensive weapon when committing this crime,

8. According to the evidence presented by the prosecution, it appears that the prosecution case is founded on the principle of “recent possession”. The principle of “recent possession” means that if someone is found in possession of property soon after it has been stolen, and he fails to give a credible or reasonable explanation of the manner in which he came by it, it is justified in inferring that he was either the thief or else a guilty receiver of that stolen property.

9. Lord Goddarad in **R v Aves (1950) 2 All ER 330** held that

“ Where the only evidence is that an accused person is in possession of property recently stolen, a jury may infer guilty knowledge (a) if he offers no explanation to account for his possession, or (b) if the jury are satisfied that the explanation he does offer is untrue. If however, the explanation offered is one which leaves the jury in doubt whether he knew the property was stolen, they should be told that the case has not been proved”.

10. In **Regina v Morin (1957) O.R. 337 (CA)** has discussed the principle of recent possession, where Laidlaw J.A. held that;

“if the prosecution establishes the fact of theft and the fact of recent possession by the accused of the stolen goods, then, in the absence of any evidence to explain how the accused obtained possession of them, the jury may convict the accused”.

11. In view of the principle of recent possession as discussed in the above judicial precedents, it appears that the onus is on the prosecution to prove beyond reasonable doubt that;

- a. The aggravated robbery as charged in the information has actually taken place, where cash of \$ 50,000 was stolen with a green bag,
- b. The accused was found in possession of the said stolen green bag with cash of \$ 50,000 in it within few hours after the commission of the said aggravated robbery.

12. It is allowed to form a persuasive presumption that the accused has taken part in committing this crime of aggravated robbery if only the prosecution established the abovementioned two grounds beyond reasonable doubt. Then

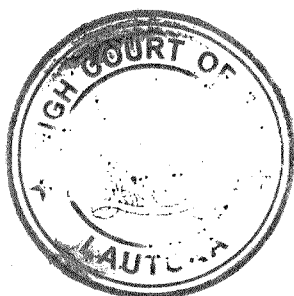
such presumption imposes on the accused person a burden of giving an explanation of his possession.

13. I now turn to discuss the definition of "possession" under the principle of recent possession. The prosecution is required to establish beyond reasonable doubt that the accused has some form of physical possession or control over this stolen property.
14. The burden of the accused to give an explanation of his possession is not higher as of the primary burden of the prosecution in this case. It is only required him to give an explanation which may reasonably true, even though it is not convinced that it is true.
15. In this instant case, the prosecution presented the evidence of Sunil Prasad and Ranjeet Prasad and tendered the cash of \$ 50,000 with a green bag in order to establish that this alleged aggravated robbery took place at the car park of City Forex Fiji limited in Nadi on 15th of August 2014. Both witnesses gave their evidence in collaboration with each other's in respect of this robbery. Mr. Sunil Prasad positively identified the green bag and the cash in it as he packed them into the bag before the robbery. Both of them testified in their evidence that the two men were armed with offensive weapons namely a cane knife and screw driver and threatened them with those weapons.
16. The prosecution then presented evidence of Cpl Usaia, Cpl Semi, Cpl Maciu, A/IP Esira Bari and Senior Pastor Tevita Navuasese to establish that the accused was found in possession of cash of \$ 50,000 with the green bag few hours after the commission of this alleged crime. He was found in possession of the stolen money and the bag while he was traveling in a minivan which was going to Suva from Nadi.

17. Three police constables and the pastor gave evidence in respect of the events that took place at Tagaqu village. Apart from few minor contradictions about the incident, evidence of these witnesses confirmed that the accused travelled in the minivan with a black bag in his possession. They found the green bag inside the black bag. The green bag contained with the cash of 50,000. The Pastor Tevita has observed that the accused kept the bag in front of him while he was seated in the van. Furthermore, he positively identified the accused during his evidence.
18. In view of these evidence presented by the prosecution, it is my opinion that the prosecution has established beyond reasonable doubt that this aggravated robbery as charged in the information has actually taken place, where cash of \$ 50,000 was stolen with a green bag and then the accused was found in possession of the said stolen green bag with cash of \$ 50,000 in it within few hours after the commission of the said aggravate robbery. Accordingly, I could form a persuasive presumption against the guilt of the accused person, if he fails to give a credible or reasonable explanation of the manner in which he came into the possession of this stolen money.
19. It appears from the evidence given by the accused person that he actually did not give an explanation of how this stolen property came into his possession. He actually denied the possession of it. He testified that he did not carry the black bag with the green bag and cash of \$ 50,000 in it. He testified in his evidence that the black bag was in the possession of the other person who also arrested with him at the Tagaqu village.
20. The accused stated in his evidence that he came to Nadi on 14th of August 2014 to meet one of his female friends who promised to arrange him an employment at the Sheraton Hotel. He reached to Nadi in the night and

stayed with one of his friends namely Taito. On the following morning, at around 10 a.m. he went to the Nadi bus stand with Taito in order to get a minivan to go back to Suva. He did not mention anything about the meeting of his female friend on 15th of August 2014, neither of that promised employment. He admitted that he reached to Nadi from Suva in the night of 14th of August 2014. The following morning he went back to Suva without attending the purpose for which he came to Nadi as he claimed. In respect of the possession of the bag, he only denies it.

21. Having considered the evidence presented by the accused person, it is my opinion that the explanation given by him is not reasonably truth.
22. Upon considering the summing up, which I delivered and the reasons I set out above, I do not find any cogent reason to disagree with the unanimous guilty verdict of the assessors against the accused person.
23. I accordingly find the accused Mr. Senijieli Boila is guilty for the offence of Aggravate Robbery contrary to section 311 (1) (b) of the Crimes Decree 44 of 2009, and convict him for this offence accordingly.



At Lautoka
13th of April 2015

A handwritten signature in black ink, appearing to read "R. D. R. ThusharaRajasinghe".

R. D. R. ThusharaRajasinghe
Judge

Solicitors : Office of the Director of Public Prosecutions
The Legal Aid Commission, Lautoka Office,