

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 243 OF 2014S

**STATE**

**VS**

**DESHWAR KISHORE DUTT**

Counsels : Mr. S. Shah and Mr. E. Samisoni for State  
Ms. S. Vaniqi for Accused  
Hearings : 19, 20, 21, 24 and 25 April, 2017  
Summing Up : 26 April, 2017  
Judgment : 27 April, 2017

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## **JUDGMENT**

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1. On 21 April 2017, in the presence of his counsel, the accused pleaded not guilty to the following information:

### **FIRST COUNT**

#### ***Statement of Offence***

**AGGRAVATED ROBBERY:** Contrary to section 311(1)(a) of the Crimes Act No. 44 of 2009.

#### ***Particulars of Offence***

**DESHWAR KISHORE DUTT** with others on the 20<sup>th</sup> day of July 2014 at Suva in the Central Division robbed **KISHORE KUMAR** and stole cash totaling \$108,000.00, HP Brand Laptop valued at \$1,800.00, assorted jewelleryes valued at \$5,000.00, Lumix brand camera valued at \$600.00, Fuji Film brand camera valued at \$300.00, Phone in box valued at \$449.00, a Nokia brand mobile phone valued at \$49.00, a Casio brand

wrist watch valued at \$100.00, a Binoculars valued at \$400.00, a rice cooker valued at \$100.00, a sandwich maker valued at \$50.00, a Toaster valued at \$50.00, assorted clothes valued at \$200.00 and vehicle registration number FK 102 valued at \$45,000.00 all to the total value of \$162,098.00 the properties of the said **KISHORE KUMAR**.

## SECOND COUNT

### *Statement of Offence*

**AGGRAVATED ROBBERY:** Contrary to section 311(1)(a) of the Crimes Act No. 44 of 2009.

### *Particulars of Offence*

**DESHWAR KISHORE DUTT** with others on the 20<sup>th</sup> day of July 2014 at Suva in the Central Division robbed **DHARMENDRA RAJ** and stole cash totaling \$3,600.00 and assorted clothes valued at \$165.00 all to the total value of \$3,765.00 the properties of the said **DHARMENDRA RAJ**.

2. The accused then went to trial before myself and three assessors on 21, 24 and 25 April 2017. On 26 April 2017 I delivered my summing up to the assessors. After deliberating on the matter for one hour, they returned with a unanimous opinion that the accused was guilty as charged on the above counts.
3. I had reviewed the evidence called in the trial and I have directed myself in accordance with the summing up I gave the assessors yesterday. The assessors' opinion was not perverse. It was open to them to reach such conclusion on the evidence.
4. Assessors are there to assist the trial judge come to a decision on whether or not the accused was guilty as charged. I agree with the assessors' unanimous opinion for the following reasons.
5. I accept the evidence of Shaleshni Devi (PW1), Dharmendra Raj (PW2) and Kishore Kumar (PW3), that on 20 July 2014 after 2.10 am, four masked men broke into their house, attacked them with a pinch bar and a cane knife, repeatedly punched PW1, ransacked their house and stole the items mentioned in count no. 1 and 2. I find them credible witnesses and I accept

what they said. Even the defence did not dispute the fact that PW1, PW2 and PW3 were attacked and robbed of the items mentioned in the information, at the material time.

6. I agree with the defence that the only evidence to link the accused to the above crimes was his alleged confession to the police, as the getaway driver for the robbers, at the material time. I accept that he gave his caution interview statements to the police voluntarily when he was interviewed at Valelevu Police Station on 19 and 20 August 2014. I accept that he made those statements out of his own free will.
7. I accept that what he told the police in his caution interview were the truth, that is, he was part of the group that attacked and robbed PW1, PW2 and PW3 on 20 July 2014 after 2.10am. He was the one who drove PW1 and PW3's stolen pajero with the robbers and stolen items therein, and they fled from the crime scene.
8. I reject his claim that he was assaulted at Valelevu Police Station on 19 and 20 August 2014. He was medically examined by Doctor Susana Suliana (DW2) 2 hours 15 minutes after his caution interview at Valelevu Police Station on 20 August 2014. DW2 tendered his medical report as Defence Exhibit No. 4. In D(10) of the report, on the history of his complaint, he told DW2 that he "was assaulted by police officers yesterday at Navua Police Station". He made no complaints to DW2 about his alleged assault at Valelevu Police Station. Furthermore, in his sworn evidence, he denied been assaulted by police at Navua Police Station. So, in a sense, he told the doctor one version, and told the court another version. I find him not to be a credible witness, and I reject his claim that he was assaulted by police while in their custody.
9. Because of the above, I agree with the unanimous opinion of the three assessors, and I find the accused guilty as charged on both counts. I convict him accordingly on those counts.



  
**Salesi Temo**  
**JUDGE**

Solicitor for the State : Office of the Director of Public Prosecution, Suva.  
Solicitor for the Accused : Vaniqi Lawyers, Suva.