

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 18 OF 2019

STATE

V

RUSIATE TAUBALE

Counsel: Ms. M. Konrote for State
Ms. L. David for Defence

Date of Summing Up: 31 October 2019

Date of Judgment: 1 November 2019

JUDGMENT

1. The accused was tried on the following information:

Statement of Offence

AGGRAVATED ROBBERY: contrary to section 311(1) (a) of the Crimes Act 2009.

Particulars of Offence

RUSIATE TAUBALE on the 25th of December, 2018 in Raiwaqa in the Central Division, in the company of others, robbed NALIN NAVNEET

SINGH of 1xblack Samsung J5 mobile phone and \$70 in cash, the properties of the said NALIN NAVNEET SINGH.

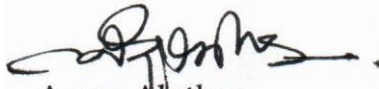
2. The assessors unanimously found the accused guilty of Aggravated Robbery as charged. I direct myself in accordance with my own Summing Up and review evidence led in the trial.
3. Having concurred with the opinion of assessors, I pronounce my judgment as follows.
4. The Prosecution called two witnesses, the complainant and the arresting officer. At the end of Prosecution's case, the accused was put to his defence as the Court found that there was a case for the accused to answer. Having understood his rights in his defence, the accused elected to give evidence under oath.
5. There is no dispute that the complainant Mr. Nalin Singh was robbed by a group of boys on 25 December 2018 at Raiwaqa. The only dispute is with regard to the identity of the accused.
6. The accused does not deny being present at the crime scene at the material time. However he completely denies that he took part in this robbery. Defence takes up the position that the complainant was mistaken when he, in difficult conditions, identified the accused as one of the robbers. Version of the accused is that he in fact tried to save the complainant from the robbers.
7. In my Summing-Up, I directed the assessors in line with Turnbull guidelines as to how they should approach the identification evidence. The circumstances of the identification evidence in this case are that the observation of the offender was done during night time. According to the complainant, there were no street lights but there was light coming to the crime scene from the tube light of his cousin's house. The accused in his evidence does not deny this fact. The tube light was close to the crime scene. The complainant said that he observed the offender in close proximity, face to face, while he was being punched once and also when the offender asked for a roll. The incident had taken more than 5 minutes. The complainant said that nothing was obstructing his view and he could particularly recognise

the assailant as his neighbour who had been living in the neighbourhood for nearly a year. The complainant had pointed out the accused to a police officer within hours after the incident. This fact was not disputed by the accused in his evidence. The Prosecution says that the complainant is an honest witness and that his identification was not mistaken.

8. The Defence does not deny that the complainant is an honest witness. Its position is that the complainant was mistaken. The accused admits that the complainant is his neighbour. The accused agreed before trial that he resided at Gaji Road, Raiwaqa at the time of the offending. That is the neighbourhood where the complainant also resides. The accused however denies having ever met the complainant prior to the incident. It is hardly believable that the accused had never met the complainant prior to the incident when their houses were situated close to each other.
9. The Defence Counsel highlighted some inconsistencies between complainant's evidence and his previous statement to police. She argues that, given those inconsistencies, it is possible that the complainant could have been mistaken in his identification. The inconsistencies highlighted by the Defence are of trivial nature and they in my view do not make the complainant's identification evidence unreliable. The complainant had gone and made a statement to the police station in a stressful condition with blood and a swelling in his face, having experienced a tragic incident. He gave evidence after a lapse of considerable period of time and it is possible that he is unable to recollect perfectly everything that transpired at the incident, particularly which side of his face received injuries.
10. It is clear that the accused was trying to save himself. I observed his demeanour. His evidence was not appealing to the assessors. I agree with them. I reject the version of events of the Defence case.
11. Given the satisfactory recognition evidence adduced by the Prosecution, the dock identification is well founded in the circumstances of this case. I'm satisfied that the identification is not mistaken. I accept the version of events of the Prosecution's case.
12. Evidence is overwhelming to find that the accused shared a common intention to rob the complainant when he punched the complainant thus facilitating the others to take the mobile phone and the money from complainant's pocket.

13. I accept the unanimous opinion of the assessors and find the accused guilty of Aggravated Robbery as charged. The accused is convicted accordingly.
14. That is the judgment of this court.




Aruna Aluthge
Judge

At Suva

1 November 2019

Counsel: Office of the Director of Public Prosecution for Prosecution
Legal Aid Commission for Defence