

**IN THE HIGH COURT OF FIJI AT SUVA**

CASE NO: HAC. 203 of 2018

[CRIMINAL JURISDICTION]

STATE

V

1. RIZWAN ALI
2. VICHTAL VIKASH PRASAD

Counsel : Mr. E. Samisoni & Mr. Z. Zunaid for State  
Mr. M. Young for the 1<sup>st</sup> Accused

Hearing on : 25 - 28 February 2019

Summing up on : 01 March 2019

Judgment on : 11 March 2019

**JUDGMENT**

1. The accused persons are charged with the following offences;

**COUNT 1**

*Statement of Offence*

**Aggravated Burglary:** contrary to section 313 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

**RIZWAN ALI and VICHTAL VIKASH PRASAD** on the 26<sup>th</sup> day of December, 2017 at Nasinu in the Central Division, in the company of each other, entered as trespassers into the house of Abdur Raafe, with the

intent to commit theft.

## COUNT 2

### *Statement of Offence*

**Theft:** contrary to section 291(1) of the Crimes Act 2009.

### *Particulars of Offence*

**RIZWAN ALI and VICTHAL VIKASH PRASAD** on the 26<sup>th</sup> day of December, 2017 at Nasinu in the Central Division, in the company of each other, dishonestly appropriated (stole) 1 x HP laptop, assorted jewellery and \$600.00 cash the property of Abdur Raafe with the intention of permanently depriving Abdur Raafe of the said property.

2. The second accused pleaded guilty to both charges before the trial commenced. The trial proceeded only against the first accused.
3. The assessors have returned with the unanimous opinion that the first accused is not guilty of the first count but guilty of the second count.
4. I direct myself in accordance with the summing up delivered to the assessors on 01<sup>st</sup> March 2019 and the evidence adduced during the trial.
5. The prosecution led the evidence of five witnesses. The accused gave evidence and called the second accused as a defence witness.
6. The first prosecution witness was the complainant. He was not at home when the incident took place. However, he said that the first accused came to his house and apologized to him about what happened in his house. The first accused had also told the complainant that he can show where the laptop is.

7. The third and fourth prosecution witnesses (PW3 and PW4) were police officers who arrested the first accused. They said that the first accused confessed to them and they managed to recover the laptop stolen from the complainant's house and also arrest the second prosecution witness (who was initially considered as an accomplice but was not charged) based on the information provided by the first accused.
8. The fifth prosecution witness was the police officer who interviewed the first accused under caution. He said he was not informed by the arresting officers regarding any confession made by the first accused during arrest.
9. The main evidence relied upon by the prosecution to bring home the charges against the first accused was the evidence of the second prosecution witness. The prosecution also relied on an alleged confession made by the first accused to PW3 and PW4 during arrest.
10. According to the second prosecution witness' testimony, he did not take part in committing the two offences. However, he said he received \$40 as his share from the \$200 received from selling the laptop. The question is, why did PW2 receive \$40 as his 'share' if he did not take part in committing the offences. Taking into account the evidence given by PW2 and his demeanour and deportment when he gave evidence, I was not convinced that PW2 gave a truthful account of what took place on the day in question. The evidence given by PW2 was unreliable.
11. PW3 and PW4 who testified that the first accused confessed to them, had not made a note of the relevant statement said to have been made by the first accused. Therefore, the exact statement said to have been made by the first accused to PW3 and PW4 was not disclosed before this court. PW3 and PW4 simply said that the first accused admitted certain facts, during the arrest. It is pertinent to note that the

evidence of PW3 and PW4 on the facts allegedly admitted by the first accused was not consistent. (Vide paragraphs 28 and 29 of the summing up)

12. In the circumstances, I would disregard the evidence of PW3 and PW4 on the confession alleged to have been made by the first accused to them during arrest.
13. Fact remains that the laptop stolen from the complainant's house was recovered based on the information provided by the first accused. This suggests that the first accused knew that the said laptop was stolen, the fact that it was sold and to whom it was sold. However, the guilt of the first accused on each count is not the only reasonable and irresistible inference to be drawn from this particular fact. There is a possibility that the first accused realised that the second accused committed the two offences after they were committed and then simply was with the second accused when the laptop was sold.
14. Therefore, given the circumstances of this case, the first accused's knowledge of the whereabouts of the stolen laptop is not sufficient to find him guilty of either the first count or the second count.
15. The first accused said in his evidence that he did not take any part in committing the two offences. The second accused who pleaded guilty for the two charges said in his evidence that he is solely responsible for the break-in and no one else including the first accused was involved.
16. All in all, I find that the prosecution has failed to prove that the first accused had committed either of the two offences beyond reasonable doubt.

17. Therefore, I agree with the opinion of the assessors that the first accused is not guilty of the first count but I cannot agree with them that he is guilty of the second count.
18. I find the first accused not guilty of both counts and I acquit him accordingly.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera". The signature is stylized and written in a cursive script.

Vinsent S. Perera  
JUDGE

Solicitors;

Office of the Director of Public Prosecutions for the State.  
Chand & Young Lawyers, Suva for the first accused.