

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC117 of 2018

STATE

vs.

- 1. EMOSI BALEDROKADROKA**
- 2. LOTE WAISALE**

Counsel: Mr. E. Samisoni for the State
Ms. N Mishra for the 1st Accused
Ms. L David with Ms. Prasad for the 2nd Accused

Date of Hearing: 11th, 12th and 13th March 2019

Date of Summing Up: 15th March 2019

SUMMING UP

1. The hearing of this case has now reached to its conclusion. It is my duty to sum up the case to you. As I explained you before the commencement of the hearing, we have different functions. It is my task to ensure that the trial is conducted according to law. As part of that, I will direct you on the law that applies in this action. You must accept the law from me and apply all directions I give you on matters of law.
2. Your function is to determine the facts of the case, based on the evidence that has been placed before you in this courtroom. That involves deciding what evidence you accept or

refuse. You will then apply the law, as I shall explain it to you, to the facts as you find them to be, and in that way arrive at your opinion.

3. I may comment on the facts if I think it will assist you when considering the facts. While you are bound by directions I give as to the law, you are not obliged to accept any comment I make about the facts. Hence, it is entirely upon you to accept or disregard any comment I make about the facts of this case, unless it coincides with your own independent opinion.
4. You must reach your opinion on evidence, and nothing but on the evidence itself. Evidence is what the witnesses said from the witness box and the documents tendered as exhibits. This summing up, statements, arguments, questions and comments made by the counsel of the parties are not evidence. The purposes of the opening address by the learned counsel for the prosecution is to outline the nature of evidence intended to be put before you. Therefore, the opening address of the prosecution is not evidence. The closing addresses of the counsel of the prosecution and the defence are not evidence either. They are their arguments, which you may properly take into account when you evaluate the evidence, but the extent to which you do so is entirely a matter for you.
5. If you heard, or read, or otherwise learned anything about this case outside of this courtroom, you must exclude that information or opinions from your consideration. You must have regard only to the testimony put before you in this courtroom during the course of this trial. Ensure that no external influence plays a part in your deliberation. You are allowed to talk, discuss and deliberate facts of this case only among yourselves. However, each one of you must reach your own opinion. You are required to give merely your opinion but not the reasons for your opinion. Your opinion need not be unanimous. I must advise you that I am not bound by your opinion, but I assure you that I will give the greatest possible weight on your opinions when I make my judgment.
6. Moreover, I must caution you that you should dismiss all emotions of sympathy or prejudice, whether it is sympathy for or prejudice against the accused or anyone else. No

such emotion has any part to play in your decision, nor should you allow public opinion to influence you. You must approach your duty dispassionately; deciding the facts solely upon the whole of the evidence. It is your duty as judges of facts to decide the legal culpability as set down by law and not the emotional or moral culpability of the action.

Burden and Standard of Proof

7. I now draw your attention to the issue of burden and standard of proof. The accused are presumed to be innocent until they are proven guilty. The presumption of innocence is in force until you form your own opinion that the accused are guilty for the offence.
8. The burden of proof of the charge against the accused is on the prosecution. It is because the accused are presumed to be innocent until they are proven guilty. In other words there is no burden on the accused persons to prove their innocence, as their innocence is presumed by law.
9. The standard of proof in criminal trial is “proof beyond reasonable doubt”. It means that you must be satisfied in your mind that you are sure of the accused’s guilt. If there is a riddle in your mind as to the guilt of the accused after deliberating facts based on the evidence presented, that means the prosecution has failed to satisfy you the guilt of the accused beyond reasonable doubt. If you find any reasonable doubt as to the commission of the offence as charged or any other offence by the accused, such doubt should always be given in favour of the accused person.

Information and elements of the offences

10. The two accused person are charged with one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act. The particulars of the offence are before you hence, I do not wish to reproduce them in my summing up.

11. The main elements of the offence of the Aggravated Robbery are that:

The two accused persons,
In the company of each other,
Committed the robbery on Nilesh Chand of \$40 cash and a mobile phone.

12. The first element involves the identity of the offenders. The prosecution should prove beyond reasonable doubt that the two accused persons committed this offence and no one else.

13. Then the prosecution has to prove that the two accused committed this offence in the company of each other. Hence, the prosecution's case is that the two accused committed this offence together. Where a criminal offence is committed by two or more persons, each of them may play a different part, but if they are acting together as part of a joint plan or agreement to commit the offence, they are each guilty.

14. The word plan and agreement do not mean that there has to be any formality about it. An agreement to commit an offence may arise on the spur of the moment. Nothing need be said at all. It can be made with a nod and a wink, or a knowing look, or it can be inferred from the behaviour of the parties. The essence of joint responsibility for a criminal offence is that each accused shared a common intention to commit the offence and played his part in it, however great or small, so as to achieve that aim.

15. Robbery is an aggravating form of theft. A theft becomes robbery, if the two accused immediately before committing theft; or at the time of committing theft; or immediately after committing theft, use force or threaten to use force on another person with intent to commit theft or to escape from the scene.

16. A person commits theft if that person:

Dishonestly,

Appropriates the property belonging to another,
With the intention of permanently depriving the other of that property.

17. The elements of ‘dishonestly’ and “the intention of permanently depriving the other of the property” are the state of mind of the two accused at the time of committing the offence. Inferences of the state of mind of the accused could be drawn from the conduct of the accused.
18. ‘Appropriation of property’ means taking possession or control of the property without the consent of the person to whom it belongs. At law, property belongs to a person if that person has possession or control of the property.
19. Accordingly, the prosecution has to prove beyond reasonable doubt that:

The two accused, Emosi Baledrokadraoka and Lote Waisale
In the company of each other,
Dishonestly appropriates \$40 cash and a mobile phone belong to Nilesh Chand,
With the intention of permanently deprive it,
And used force on Nilesh Chand immediately before or after stealing the said
items.

Evidence of the Prosecution

20. Let me now remind you briefly the summary of the evidence presented by the prosecution and the defence during the course of the hearing. This is a very short hearing and lasted only for three days. Therefore, I trust that you can properly and correctly recall all of the evidence adduced during the hearing.
21. Nilesh, who is the complainant of this matter, had parked his taxi near the Tamavua Police Station after he called it a day for his work. He had then started to walk down towards his home. While he was walking down to his home, two men came across the road and

grabbed him and dragged him across the road to the nearby carwash. It was a dark day and time was around 8.00 p.m. to 8.30 p.m. One man was wearing a red colour vest and a short. He is tall and dark in complexion. He was the one who punched Nilesh twice on his face when he fell down on the ground. The same person then tried to strangle Nilesh. The other person is not tall like the first one. He was wearing a grey colour t-shirt. The person in the grey t-shirt was the one who stole from Nilesh, his cash, mobile phone and the key of his taxi. After that, they left, leaving Nilesh at the place. Nilesh was bleeding from his head. He then went home and related the incident to his wife. He had then called the police.

22. While this incident was taking place, Vasemaca Lewatubekoro was witnessing the incident from the other side of the road, this was 10 meters away from the incident. Vasemaca said that she recognized the two assailants as Emosi and Lote. Emosi is one of her cousins and Lote is known to her as they both grew up together since their childhood. Vasemaca was walking to the nearby canteen to purchase a reload card. When she was coming down from home, she met Emosi and Lote was sitting under the mango tree. Emosi passed a joke at her when she walked past them. She then came across the bus stop, where she saw Nilesh was walking towards the same direction on the other side. Vasemaca knows Nilesh as he used to drive a taxi owned by her cousin. He was walking really fast as his house is located bit far. She had called Nilesh by his name and waved at him. At the same time, she looked back and noticed that Emosi and Lote were following her.
23. When she reached to the hilly foot path, she could see whether the canteen was opened or closed. She then came close to the car-wash and then she heard the footsteps went down at the carwash. Vasemaca then looked back and saw Emosi and Lote had got hold of Nilesh and dragging him to the side of the car-wash. She saw Emosi was holding Nilesh on his waist and Lote was squeezing the mouth of Nilesh. At the same time, a car came along the road and the light of the car straightly directed to the car-wash. The car was not moving really fast. With the light of the car, Vasemaca saw the faces of Emosi and Lote while they were dragging Nilesh to the car-wash. The light of the car lasted a minute or two. There was nothing blocking her vision of Emosi and Lote at that time. Emosi was wearing a red

vest and short. He is tall. Lote was wearing a round neck t-shirt like a grey colour. Lote was not taller than Emosi.

24. Vasemaca then saw Emosi threw a punch on Nilesh and started to search his pockets. She saw them touching the pockets of Nilesh, but does not know what they have taken from Nilesh. When she saw Emosi was punching Nilesh, she got scared and ran back home. On her way home, she had gone to her friend Sera's place and told her about the incident.
25. You may recall that Vasemaca then explained that she knows both Emosi and Lote as they usually hang around her neighbourhood. She has seen them almost every day in the neighbourhood. Vasemaca explained about the locations of their houses. Vasemaca has stated in her statement made to the police that Lote was wearing a blue colour t-shirt. However, in her evidence she said that it was like grey colour. Vasemaca said that she clearly saw Emosi and Lote when she was walking down to the canteen, though she was engaged in a conversation on her mobile phone. When she was walking, she heard the sound of laughing of Emosi and Lote, when they were following her.
26. Vasemaca further said that the sister of Emosi had approached her on the 9th of March 2019, requesting her not to attend to court to give evidence in the matter. On the 11th of March 2019, one Vani, who is also related to Emosi had approached Vasemaca, requesting her not to attend court and give evidence against Emosi.
27. You have heard evidence of Unaisi Nakalevu. She has seen the first and second accused were together around 8.30 p.m. on the 11th of March 2018, near her house. When she was talking with her sister near the window of her house, she has seen Emosi and Lote were running towards her house along the foot path. Once they get closed to her house, they have stopped running and walked past her house. Once they walked away from her house, they have started to run again and went into the nearby cross cut that leads to the Princess road. According to Unaisi, Emosi was dressed in a red vest and a short and Lote was dressed in a round neck blue colour t-shirt and a short. Emosi is related to her through her ex-husband side and Lote is a known person as he has been living in the same vicinity.

28. Unaisi explained the lighting condition of the area, when she saw Emosi and Lote were passing her house. Vasemaca is the daughter of Unaisi. Both of them have made their statements to the police on the 13th of March 2018 that was two days after the alleged incident took place. Eremasi Koroï is the son of Unaisi and the brother of Vasemaca. Eremasi had been arrested by the police in connection of this matter. Unaisi and Vasemaca have given their respective statements to the police after Eremasi had been arrested by the police. Once they made their respective statements, Eremasi has been released by the police.

Evidence of the Defence

29. At the conclusion of the prosecution case, the two accused were explained about their rights in defence. Both the accused opted to give evidence on oath. Apart from that, the second accused called a witness for his defence.
30. The first accused in his evidence said that he had been drinking beer and Woodstock on the 11th of March 2018 from 12 midday till 1 a.m. of the 12th of March 2018 at Co-Op. He started to drink with three people and later four others joined with them for drinking. He had to leave the drinking place at around 8 p.m. to go and drop off his brother at home as he was really drunk. He had gone to his home in a car owned by his cousin. He denies being at the scene of this alleged crime and involving in it.
31. The second accused said that he was at home with his sister and mother during the evening of 11th of March 2018. He watched movies and had dinner and went to sleep. His three brothers had gone to church on that day. Lote's mother gave evidence stating that Lote was at home with her twin daughter and the son. You may recall that the mother of Lote said during the evidence in chief that she lives with her three sons and daughter. However, during the cross examinations, she said that she lives with four sons and the daughter. According to Lote, only his mother and sister were present at home. But his mother said apart from the sister, her twin brother was also at home during the evening of 11/03/18.

32. I have summarized the evidence presented during the course of this hearing. However, I might have missed some. It is not because they are not important. You have heard every items of evidence and recall yourselves on all of them. What I did only was to draw your attention to the main items of evidence and help you in recalling yourselves of the evidence.

Analysis and Directions

33. You have heard the evidence presented by the prosecution and the defence. The prosecution alleges that the two accused acting in the company of each other, robbed Mr. Nilesh Chand in the evening of 11th of March 2018. The first accused claims that he was not present at the scene of the alleged crime as he was drinking with some others from 12 midday till 1 a.m on the 12th of March 2018 at Co-Op. The second accused claims that he was at home with his mother and sister during the time that is material to this alleged crime.

Evaluation of Evidence

34. It is your duty now, to determine whether the prosecution has established beyond reasonable doubt that these two accused had in company with each other have committed this offence of aggravated robbery as alleged. In order to do that you have to evaluate the evidence presented by the prosecution and the defence and determine the reliability and credibility of evidence given by the witnesses.

Reliability of Evidence

35. You must be satisfied that you can rely on the evidence as the true, reliable, and credible evidence. In order to do that, you have to be satisfied that evidence is free from mistakes, errors and inaccuracies. If you find the evidence is free from such mistakes, errors and inaccuracies, you can take the evidence into consideration as reliable evidence.

Credibility of Evidence

36. The assessment of credibility of evidence does not concern with unintended inaccuracy, mistakes or errors. It is focused on the lies or inaccurate facts that are intentional and motivated attempts to deceive. The credibility depends on the individual who gives evidence, his motivations, his relationship to and the reaction to the particular situation.
37. Evaluation of the reliability and credibility of evidence will assist you to determine what evidence you may accept and what part of the evidence you may refuse. In doing that, you may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified.
38. In assessing evidence of the witnesses, you must consider whether the witness had the opportunity to see, hear and or feel what the witness is talking in the evidence. You should then consider whether the evidence presented by the witness is probable or improbable considering the circumstances of the case. Apart from that you are required to consider the consistency of the witness not only with his or her own evidence but also with other evidence presented in the case.
39. It is your duty to consider the demeanour of the witnesses, how they react to being cross examined and re-examined and were they evasive, in order to decide the credibility of the witness and the evidence. In doing that you have to keep in your mind that some witnesses are not used to giving evidence in court and may find the different environment in the court house distracting.
40. Moreover, you must bear in your mind that a witness may tell the truth about one matter and lie about another; he or she may be accurate in saying one thing and not accurate in another thing.

Inconsistency and Contradictions

41. You have heard that the learned counsel for the second accused cross examined Vasemaca about the inconsistent nature of the evidence she gave in the court with the statement she made to the police during the investigation. Moreover, the learned counsel for the defence in their respective closing addresses, invited you to take into consideration number of contradictions and inconsistencies between the evidence given by Vasemaca and Nilesh Chand.
42. Let me explain you the laws relating to such inconsistencies and contradictions between the evidence given by two or more witnesses and also between the evidence given by a witness with the previously made statement.
43. You are allowed to take into consideration about such inconsistencies and contradictions when you consider the credibility and reliability of the evidence given by the witnesses. However, you have to be mindful that the previously made statements are not evidence of the truth of its contents. The evidence is what a witness testified in the court.
44. It is obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you might not expect every detail to be the same from one account to the next. Furthermore, the capacity of the memory of people is different. Different people have different capacities in understanding and remembering the events and the people in a situation where a series of events are unfolding in an unexpected and expedient manner. Some people might focus to one or few events, or a person or certain number of persons, more than other events or the people involved in the entire series of such events. Therefore, you have to be mindful of these practical limitations and conditions when you consider those inconsistencies and contradictions between the evidence of two or more witnesses in respect of the issues which you are determining.
45. In respect of the inconsistency between the evidence presented in the court and the previously made statement, it is necessary to decide firstly, whether it is significant and

whether it affects adversely to the reliability and credibility of the issue that you are considering. If it is significant, you will next need to consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, you may then conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then it is for you to decide as to what extent that influences your judgment of the reliability of such witness.

Defence of Alibi

46. Let me now take your attention to the defence of the two accused, where they claim that they were not present at the scene of the crime, as the first accused was drinking alcohol with few others at a different location and the second accused was at home with his mother and sister when this alleged crime took place.
47. The accused are not obliged to prove their innocence and also not required to give evidence. However, in this hearing, the two accused elected to give evidence on oath. Moreover, the second accused called a witness to give evidence for the defence of second accused. Therefore, you have to take into consideration the evidence adduced by the defence when you determine the issues of fact of this case.
48. The accused's defences are alibi. The two accused say that they were not present at the scene of the alleged crime as they were at somewhere else at the time the alleged offence took place.
49. Even though the accused have put forward the defence of alibi, the burden of proving the case against the two accused still remains on the prosecution. The prosecution must prove so that you are sure that the two accused were present at the scene of the crime and robbed the complainant as charged in the information. In doing that the presentation has to disprove the alibi defence put forward by the defence. That does not mean, the prosecution is required to provide specific evidence to disprove that the accused was not at the drinking party as claimed by the first accused or the second accused was not at home as claimed by

the second accused. If you believe and accept the evidence of the witnesses of the prosecution as credible, reliable and truthful beyond reasonable doubt, then the prosecution has discharged its duty of disproving the alibi defence of the accused person.

50. If you conclude that the alibi of the accused is true or may be true, then the accused cannot participate in this alleged aggravated robbery and you must find the accused not guilty. If, on the other hand, you are sure, having considered the evidence carefully, that the accused's alibi is false, that is a finding of fact which you are entitled to take into account when judging whether he is guilty. But do not jump to the conclusion that because the alibi put forward is false the accused must be guilty. You should bear in mind that sometimes an alibi is invented because the accused thinks it is easier than telling the truth. The main question for you to answer is: are we sure that this alleged incident involving the two accused actually took place as claimed by the prosecution.
51. In respect of the defence of alibi, the accused is not required to prove beyond reasonable doubt their alibi defences. The burden of the accused to prove their alibi is evidential burden. It means that the accused has to adduce or point to evidence that suggests a reasonable possibility that they were somewhere else when this alleged offence took place. Such evidence that could point or suggest that the accused were somewhere else, and not at the scene of the crime, has to be credible and reliable evidence.
52. In respect of the defence of the first accused, if you believe or may be believe that there is evidence that suggest a reasonable possibility that the first accused was not present at the scene of crime and he was drinking at Co-op during that time, you can find the accused not guilty.
53. Likewise if you believe or may be believe that there is evidence that suggest a reasonable possibility that the 2nd accused was at home at the time this offence took place you can find the 2nd accused not guilty.

54. You have to take into consideration the evidence of the second accused and his mother when you proceed to determine whether the defence of alibi of the second accused is true or may be true or false. In doing that you are allowed to determine whether there are inconsistencies and contradictions between the evidence of the second accused and his mother. If you find such, then you have to consider to what extent such inconsistencies and contradictions affect to the credibility and reliability of their evidence and what weight you would give to those evidence.

Evidence of the Prosecution

55. The two accused claim that they were not present at scene of the crime and therefore, Vasemaca may have mistakenly identified the two robbers as these two accused. Therefore, you must determine whether Vasemaca has clearly and properly recognized the two accused as the two robbers who dragged Nilesh towards the car-wash and then punched him and robbed his cash, mobile phone and the key of the taxi. In order to do that you have to determine, whether you can accept the evidence of Nilesh, Unaisi and Vasemaca as reliable, credible and truthful evidence. If you are satisfied, you must then proceed to determine whether what they said in their respective evidence are probable or improbable according to the circumstances which they were explaining.
56. The main contentions of the defence are that Vasemaca had mistaken in her recognition of the perpetrators as the two accused. Accordingly, the case against the two accused mainly depends on the correctness of the recognitions of the perpetrators by Vasemaca. Vasemaca in her evidence said that she knew both Emosi and Lote before this incident. Emosi is one of her cousins and Lote had been grown up together with Vasemaca in their neighbourhood. Therefore, this is a case of recognitions of known two persons than identification of someone who is not known to the person who made the identification.
57. When you are considering the recognition evidence given by Vasemaca, you need to exercise special caution. The reason for this is that experience tells us that honest and impressive witnesses, genuinely convinced of the correctness of their recognition, have in

the past made mistakes, even a number of witnesses making the same recognition. You cannot convict the accused unless you are sure that Vasemaca's recognition of the two accused was accurate and, in making that judgment, you need to look carefully at the circumstances in which it was made and at any other evidence in the case which may support it. Specially you have to take into consideration the followings:

- i) How long were the suspects under observation?
- ii) At what distance?
- iii) In what light?
- iv) Was the observation impeded in any and, if so, what way?
- v) Had the witness seen the suspect before and, if so, how often and in what circumstances?
- vi) Was there any material difference between the description given by the witness at the time and the suspect's actual appearance?
- vii) Any other circumstances emerging in the evidence which might have affected the reliability of the recognition.

58. Let us consider the circumstances in which the recognition took place. Vasemaca has met Emosi and Lote sitting under the mango tree when she was going to the Canteen. Emosi had passed a joke at her when she walked past them. She knows them as Emosi is one of her cousins and Lote has been grown up with her in the neighbourhood. She then noticed that the two accused were following her and Nilesh was walking to his house on the other side of the road. Vasemaca then heard the footsteps sound from the car-wash and looked back. She then saw Emosi and Lote have got hold of Nilesh and dragging him towards the car-wash. She saw their faces from the light came from the passing car. According to Vasemaca, Emosi was dressed in a red vest and a short, while Lote was dressed in a round neck t-shirt which looks like grey colour.

59. When you are making the decision about the evidence of recognition, you can take into consideration other evidence that tends to support the evidence of recognition. In doing that you can take into consideration the evidence of Nilesh Chand, where he explained the

physical build of the two robbers who assaulted him and robbed him. According to Nilesh, one of the robbers was dressed in red vest and short and other one was dressed in grey colour t-shirt and short. Furthermore, Nilesh said in evidence that the place of the crime was dark. However, he managed to see the clothings of the two robbers as they were very closed to him during this incident.

60. Moreover, Unaisi has seen Emosi and Lote were running together towards her house and then turned and went to the cross cut that leads to the Princess road around 8.00 p.m. to 8.30 p.m. in that evening. Emosi was dressed in a red vest and short and Lote was in blue colour round neck t-shirt and a short. Unaisi knows Emosi as he is related to her and Lote as a person who has grown up in the neighbourhood. When you take into consideration the evidence of Unaisi recognizing the two accused while they ran towards her house, you must consider the same caution which I explained before regarding the evidence of recognition.
61. The learned Counsel for the defence in their respective closing address invited you to consider the contradictory nature of the evidence given by Vasemaca with the evidence given by Nilesh. Nilesh in his evidence did not say that Vasemaca called his name and waved at him while he was walking towards his home after parking his taxi. Moreover, the learned counsel for the defence suggested you to take into consideration about the contradictory nature of the evidence given by Vasemaca regarding this incident with the evidence of Nilesh, specially the conduct of the robbers during the robbery.
62. Vasemaca said that Lote squeezed the mouth of Nilesh when they were dragging him towards the car-wash and then Emosi punched Nilesh. The medical report which is tendered as exhibits of the prosecution contains the injuries found by the Doctor in the body of Nilesh during the medical examination. You can take the contents of the medical report into consideration when you consider the credibility and reliability of the evidence of recognition given by Vasemaca.

63. If you are sure that the evidence of the prosecution is reliable, it would follow that the accused's alibi is false. You must, of course, consider the alibi evidence with care before you reach such a conclusion. If you are to conclude that the alibi defence is false, that fact is also capable of providing support for the prosecution case. But that would be a conclusion about which you should be cautious, because as I explained before a false alibi may be put forward for reasons other than guilt. One example is that accused who thinks it is simpler to put forward a false alibi than to explain what he was really doing; another is that the accused who has a genuine alibi but thinks he may not be believed unless he can find others to support him. Only if you can exclude such possibilities should you regard a false alibi as any support for the prosecution case.

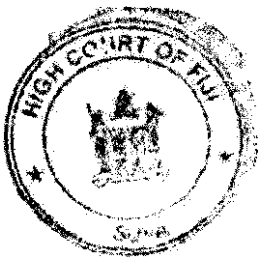
Evidence of subsequent behaviour of the accused

64. You may recall that Vasemaca said in her evidence that two relatives of the first accused approached her on the 9th and 11th of March 2019 and requested her not to give evidence against the first accused. However, during the cross examination, she said that it was only the relatives and not the first accused who approached her.
65. This form of evidence is referred to as evidence of subsequent behaviour of the accused. If you accept and conclude that the first accused was involved in sending the two relatives to Vasemaca, then you can take that into consideration. However, it is not a direct evidence that can establish that the accused had committed the offence as alleged. You are allowed to take this evidence into your consideration when you consider the whole of the evidence presented during the trial. However, you must be mindful that such behaviour of the accused only cannot make him guilty for this offence. He may have some other reasons to act like this. You have to take into consideration all of these circumstances when you consider the evidence of subsequent behaviour of the accused.
66. Madam and Gentleman assessors, I now take your attention to the final directions of the summing up.

67. Having taken into consideration all the evidence adduced during the course of the hearing, if you are satisfied that the prosecution has proven beyond reasonable doubt that the two accused in company with each other have committed the offence of aggravated robbery as charged, you can find them guilty for the offence of aggravated robbery.
68. If you are not satisfied or have doubt whether the prosecution has proven beyond reasonable doubt that the two accused in company with each other have committed the offence of aggravated robbery as charged, you can find them not guilty for the offence of aggravated robbery.

Conclusion

69. Madam and Gentleman assessors, I now conclude my summing up. It is time for you to retire and deliberate in order to form your individual opinions. You will be asked individually for your opinion and will not require to give reasons for your opinion. When you have reached to your opinion, you may please inform the clerks, so that the court could reconvene.
70. Learned counsel of the prosecution and the accused, do you have any redirections to the assessors?



A handwritten signature in black ink, appearing to be "R.D.R.T. Rajasinghe".

R.D.R.T. Rajasinghe
Judge

At Suva
15th March 2019

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for both Accused.