

Particulars of Offence

TERRENCE EDWIN ANTHONY in the company of others, on the 19th October, 2018 at Suva in the Central Division, in the company of each other robbed **AMON PREETIVI CHAND** of 1x Samsung brand J2 mobile phone, wallet containing cards and \$200 cash, 25x disposable e-ticketing cards and 1x flash drive, the properties of **AMON PREETIVI CHAND**.

2. The Prosecution called three witnesses and at the end of the Prosecution's case, the accused was put to his defence. The only witness for Defence was the accused himself.
3. After a short deliberation, the assessors unanimously found the accused not guilty of Aggravated Robbery as charged and found him guilty of Assault Occasioning Actual Bodily Harm.
4. I reviewed evidence led in trial with my own Summing- Up to see if the opinion of the assessors is supported by evidence led in trial.
5. There is no dispute in this case as to the identity of the accused. The accused admits that the complainant was known to him prior to the incident.
6. The accused in his evidence and caution interview admits that he had assaulted the complainant. The medical report prepared by the doctor upon the examination of the complainant was tendered in evidence by consent as an admitted fact. In the medical report, the doctor had noted some injuries on complainant's body. The injuries are not that serious. It is open for the assessors to find the accused guilty of Assault Occasioning Actual Bodily Harm.

7. The accused does not deny that he had used force on the complainant. However he vehemently denies that he has assaulted the complainant with the intention of committing a theft or that he participated in the alleged robbery with others. His evidence is that while he was engaged in the altercation with the complainant somebody else took away complainants telephone. He also denied that he had assaulted the complaint in the company of two I Taukei boys and that he had instructed the I Taukei boys to rob the complainant of his belongings.
8. The prosecution substantially relies on the evidence of Amon, the complainant in this case. To support the evidence of the complainant, the Prosecution relies on the evidence of PC Naickar who effected the arrest of the accused, the admissions made by the accused in this caution interview and the medical report prepared by the doctor.
9. The accused was in love with the present girlfriend of the complainant. The complainant admits that he started dating accused's ex-girlfriend Maureen and that the dispute over Maureen had triggered threatening telephone calls, text messages and even assault attempts on the part of the accused even before the alleged incident. The accused concedes that he was a heart broken lover when Maureen started dating the complainant. He had even inflicted self harm to prove his love to his ex-girlfriend. There is an apparent motive on the part of the accused to assault the complainant. However there is no credible evidence that the accused had committed the alleged robbery in the company of two other I Taukei boys.
10. On the other hand, having receive punches in his own bus, there is a strong motive on the part of the complainant to make up a robbery allegation against the accused. In the circumstances of the allegation of robbery was made, it is open for the assessors to find the complainant to be an untrustworthy witness so far as his evidence relating to the alleged robbery is concerned. The accused had gone to the complainant's house to have a discussion about his ex-girlfriend. He had asked the complainant to come to have a further discussion near the Shop & Save supermarket in Nabua town. The complainant having agreed to this request had

first gone to the Nabua Police Station to lodge a complaint against the accused. He had not gone near the Supermarket which was a crowded place. He had stopped his bus at an isolated bus stop behind the Police Station and whilst awaiting Police Officers arrival at the bus stop, the complainant had informed the accused to come to the bus stop behind the Police station where the alleged robbery took place.

11. The Defence argues that the complainant created a situation to frame the accused in order to please his girlfriend and the allegation of robbery was made up to put the accused in jail after the assault. To support Defenses version, the Defence Counsel advanced certain arguments to show that the accused was trapped in a well orchestrated plan of the complainant. In my opinion, these arguments are logical and tenable to be believed by the assessors in the circumstances of the case.
12. The fact that the checker of the bus who was sitting at the back seat of the bus when the alleged incident took place was not mentioned in complainants statement to Police. The checker who would have been a vital eye witness for the Prosecution to support the version of the complainant that he was robbed was not called as a witness. The Defence's argument that the checker was not mentioned as an eye witness because the allegation of robbery was made up by the complainant is tenable.
13. The accused had asked the complainant to come to a crowded place near the super market. If he had plan to rob the complainant in the company of others, he would not have asked the complainant to come to a crowded place like that and he would not have carried out his plan in the close proximity of a police station.
14. The evidence of the complainant is that the two ITaukei boys who robbed his belongings had fled the scene with the accused soon before the arrival of the police officers. This evidence is not supported. The police officers Naicker had not seen any ITaukei boy fleeing the crime scene. Neither the complainant nor the police officers had pursued the so called robbers. They had apprehended only the accused who was known to the complainant. The alleged stolen items and cash

were never recovered and no investigation was conducted to ascertain if the stolen items ever existed in the possession of the complainant at the time of the alleged robbery.

15. The inconsistencies in complainant's evidence in court and also with his previous statement to police show that the complainant is not a credible witness. His failure to mention the presence of the checker in the bus at the time of the alleged robbery is a vital deficiency vis a vis prosecution's case. The complainant contradicted his own version when he said that he was supposed to drive the bus back to Suva. His own evidence is that the owner of the bus had asked him to park the bus in the garage.
16. PC Naiker is not a reliable witness. He had recorded his statement five months after the incident. It appeared that he was giving evidence in favor of the prosecution to cover up the loopholes in the police investigation. The police had not recorded a statement of the owner of the bus to verify the complainants' allegation that some disposable E- transport cards had been stolen from the bus; that the accused had drawn his salary on that particular day and also to check why the complainant was sacked from his job after this incident. He had not caused a statement to be recorded from the checker who was the only eye witness available at the crime scene.
17. In view of the above, it is open for the assessors to doubt the version of events of Prosecution's case.
18. The accused having admitted the assault denies that he had participated in a robbery with others. He denies that he came to the bus in the company of others. According to complainant's own evidence accused was not present when the ITaukei boys first boarded the bus. He was under the impression that they were passengers. There is no concrete and reliable evidence for the assessors to believe that the accused had taken part in the alleged robbery with the two ITaukei boys.

19. The accused denies that he ran away from police. His explanations that he was trying to escape complainant's attempt to run over him and that he ran to the medical center with his wounded hands when he was being pursued by Amon are not implausible. PC Naiker confirmed that the accused had bleeding injuries when he was arrested. The accused admits that he had a self inflicted injury but what caused him to bleed was the scratching by the complainant during the altercation. The accused has also given reasonable explanations for the inconsistencies in his evidence with that of his answers in the caution interview.
20. The evidence adduced for Defence and the tenable argument advanced by the Defence Counsel are capable of creating a reasonable doubt in the minds of the assessors as to the allegation of robbery. Having been punched in his own bus by the former boyfriend of his girlfriend, there seems to be a strong motive on the part of the complainant to make up a robbery allegation against the accused. The benefit doubt must be given to the accused.
21. At the end of the Summing Up, Mr. Singh required the court to give a redirection inviting the assessors to consider the applicability of the defence of sudden provocation. There was no sufficient evidence to support such a defence. When the counsels were consulted before the Summing Up, no such direction was required by the Defence Counsel in the event the lesser charge being put to the assessors.
22. I endorse the unanimous opinion of the assessors. Prosecution failed to prove that the accused robbed the complainant in the company of others. I find the accused not guilty of Aggravated Robbery as charged and the accused is acquitted thereof. The evidence is sufficient to find the accused guilty of Assault Occasioning Actual Bodily Harm. I find the accused guilty of Assault Occasioning Actual Bodily Harm and convict the accused accordingly.

23. That is the judgment of the court.




Aruna Aluthge
Judge

AT SUVA

26th March, 2019

**Solicitors: Office of the Director of Public Prosecution for State
Legal Aid Commission for Defence**