

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 429 OF 2018

STATE

-v-

ESALA RABALOLO

Counsel: Ms. L. Bogitini with Ms. S. Tivao for Prosecution
Mr. K. Chang for Accused

Date of Summing Up: 14th March, 2019

Date of Judgment : 18th March 2019

JUDGMENT

1. The accused was charged with one count of Aggravated Robbery and tried before three assessors. The information reads as follows:

Statement of Offence

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

Particulars of Offence

ESALA RABALOLO in the company of others, on the 9th of November, 2018 at Nasinu in the Central Division, stole \$150 cash, a BLU brand mobile phone and a wallet with assorted cards, the property of Benjamin Robert and immediately before committing the theft used force on Benjamin Robert.

2. The Prosecution called four witnesses and at the end of the Prosecution's case, the accused was put to his defence. The Defence called only the accused.
3. After a short deliberation of twenty minutes, the assessors unanimously found the accused guilty of Aggravated Robbery as charged.
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 that the complainant Mr. Robert was robbed by three people on the 9th of November, 2018 at Nasinu. The only dispute is with regard to the identity of the accused. The accused completely denies that he took part in this robbery. Defence takes up the position that the complainant was mistaken when he identified the accused in difficult conditions as one of the robbers.
6. The Prosecution called the complainant as an eye witness. He said that the lighting condition was good and bright so that he could see clearly and nicely the face of the offender who punched him thrice; the assailant was recognised

by the complainant soon after the incident when he was brought to the Valelevu Police Station. The complainant also identified the accused at a photo identification process held two days after the alleged incident.

7. Evidence of the complainant is acceptable and believable. His evidence that there was enough light at the crime scene was supported by the eye witness, Sukuru. There is no material contradiction between complainant's evidence and his previous statement to police. The complainant had refused to drive further down his taxi to the house which the robbers had pointed to because that place was dark and dangerous. The place he had stopped the taxi had enough light. Although he said that after the robbery he ran to a place where there was clear visibility, I am satisfied that the place where the incident happened had enough light for the complainant to observe the face of the accused.

8. According to eye witness accounts, the circumstances under which the identification was done are that; there was a street light on top and also the light coming from the nearby house where the taxi was parked, and also the light of the taxi was on. The assailant who punched the complainant was not wearing a cap and nothing was obstructing complainant's view. The observation of the offender was done in close proximity for one minute while the complainant was being punched thrice. The complainant said that he particularly remembered assailant's face because it was the first time he was punched by somebody in his face. Although he closed his eyes each time he received punches, he observed offender's face in close proximity when the offender was counting money in the wallet. The complainant had chauffeur driven the offender from Carnavon Street to Vesida, paying close attention to the back seaters through the rear mirror. It was not a fleeting glimpse although the whole episode was over fairly quickly.

9. The Prosecution relies on photograph identification to bolster the identification evidence of the complainant. The photograph identification was done at the police station two days after the alleged incident where the complainant positively identified the photograph of the accused. The prosecution had laid a proper foundation for dock identification. After a consideration of all the evidence, I am satisfied that the quality of the identification remains good and the danger of mistaken identification is eliminated.
10. The accused denies that he took part in the robbery. The Defence case is that the identification done in difficult conditions is incorrect and cannot be relied upon. The Defence argues that the apprehension of the accused by Marica and her neighbours was based on suspicious behaviour of the accused which coincides with accused's fear of being arrested by police and their personal prejudices and stereotypes *vis-a-vis* robbers. Defence further says that nothing was found in accused's possession soon after the alleged incident.
11. The circumstances under which the accused was arrested and his conduct soon after the alleged robbery is consistent with the guilt of the accused. There is no other inference that the assessors could have drawn in the circumstances.
12. The complainant started yelling butako.. butako,...soon after the robbery thereby alerting the neighbourhood. The eye witness Sukuru had seen the person in white t-shirt running from the crime scene towards her back yard and then to her neighbour's fence. The same person was apprehended by Marica when he was trying to climb up her fence. The accused does not deny that he was apprehended by Marica and her neighbours and later handed over to police.

The only inference that the court could draw in the circumstances is that the person apprehended by Marida is the person who robbed the complainant.

13. The Defence's argument that the accused was apprehended because of his suspicious behaviour (not associated with the robbery) is not tenable. Accused seems to have made up his story to defend himself. If the accused was in fear of being arrested for this robbery as he was known to police, he would not have allowed Vilisi (according to his evidence with whom he had had sexual intercourse just prior to his arrest) to leave him because she would have been his best *alibi* witness who could have supported his defence in the event of him being arrested.
14. The conduct of the accused that he ran away from the vicinity of the crime scene soon after the alleged robbery fearing arrest is completely consistent with his guilt. Furthermore, accused's refusal to take part in the identification parade is also consistent with his guilt.
15. The fact that nothing is found in accused's possession does not support Defence's argument because the robbery was done in the company of two other persons. The robber had every opportunity to give the stolen wallet to one of the accomplices or throw it away during the pursuit.
16. The version the Defence must be rejected. I am satisfied that the complainant is an honest and reliable witness and he had positively identified the accused.

17. I endorse the unanimous opinion of the assessors. Prosecution proved that the accused robbed the complainant in the company of others. I find the accused guilty of Aggravated Robbery and convict him accordingly.
18. That is the judgment of this court.



A handwritten signature in black ink, appearing to read "Aruna Aluthge", is written over the printed name.

Aruna Aluthge

Judge

AT SUVA

18th March, 2019

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