

Particulars of Offence

AKARIVA ASORO BATIKAVAKAVA and another on the 15th of October, 2018 at Nasinu in the Central Division, in the company each other, robbed **SALESH LAL** of a Samsung mobile phone, the property of the said **SALESH LAL**.

2. The Prosecution called three witnesses. At the end of the Prosecution's case, the accused was put to his defence. The Defence called only the accused.
3. After my Summing Up, the assessors in their majority opinion, found the accused guilty of Aggravated Robbery as charged.
4. I review evidence led in trial with my own Summing-Up. Having concurred with the majority opinion of assessors, I pronounce my judgment as follows:
5. There is no dispute in this case that the complainant Mr. Salesh Lal was robbed on the 15th October, 2018 at Nasinu. The only dispute in this case is with regard to the identity of the accused. Defence takes up the position that the complainant was mistaken when he identified the accused as one of the robbers.
6. The accused admits that he saw his friend Biggy running from the crime scene with a mobile phone in his hand when he heard the complainant screaming for help. The accused completely denies that he took part in this robbery although he was arrested near the crime scene.

7. I considered the evidence adduced from both sides. I am satisfied that the evidence of the complainant is credible and believable. The court can safely act upon his evidence although there are some minor inconsistencies as regards the time taken for the robbery. The complainant said that, because of the incident that happened, he was confused as to the time. He confirmed under cross examination and also under re-examination, that the incident took place for 5-10 seconds.

8. In his evidence-in-chief, the complainant clearly said that the road was empty at that time and that only two persons participated in the robbery. He confirmed under re-examination that there were only two persons participated and the one who grabbed him from behind ran away with his phone and the person who punched him was caught by the police officer. He confirmed that the person who punched him was wearing a blue *bula* shirt. He further said that he saw the police officer and the accused when he opened the eyes after regaining consciousness.

9. The Prosecution also called PC Lepani who arrested the accused soon after the alleged robbery near the crime scene. He supported the version of the complainant. His evidence is consistent and believable. The fact that, in the statement he recorded soon after the incident, he had not stated anything about the alleged admission made by the accused upon his arrest did not affect the credibility of his version, because he has given an acceptable explanation for his failure to record everything. PC Lepani had seen the accused searching through the complainant while the complainant was still lying on the ground and calling for help.

10. The central question is that, even if the complainant could be believed, was he mistaken? I am convinced, he was not. In the circumstances under which the robbery took place and the arrest was effected, it is open for the assessors to come to an unambiguous conclusion that it was the accused that had robbed the complainant in the company of another person.

11. This is not a fleeting glimpse case although the whole episode was over fairly quickly. The observation of the offender was done in day light. The accused had come from the opposite direction and the complainant observed the offender in close proximity before he was punched. He had seen that the robber who punched him was wearing a blue *bula* shirt. Nothing was obstructing his view until he blacked out. The road was empty and no one, other than the robbers, was present at the crime scene at the time of the offence. Soon after the robbery, the accused was arrested at a close proximity to the crime scene. The complainant identified the accused as one of the robbers soon after the robbery. The accused himself admits that he was implicated by the complainant at his arrest.


12. There is no dispute that the accused was wearing a blue *bula* shirt at the time of arrest. PC Lepani confirmed seeing the two boys searching through the complainant's pocket whilst the complainant was lying down on the ground calling for help. Although the accused, upon his arrest, denied robbing the complainant, he made an admission that it was the other iTaukei boy who took away the phone.

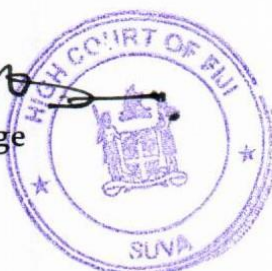
13. Considering the evidence in its totality, the argument of the Defence that the accused was implicated by the complainant not because he had identified the accused but only because the accused was arrested by a police officer at a close proximity to the crime scene cannot be accepted.

14. The fact that no phone was recovered from accused's possession soon after the incident does not absolve accused from guilt. There is credible evidence that the accused punched the complainant in his face for him (the complainant) to be fallen down to the ground so that the complainant could be robbed by his accomplice.

The accused admits that his friend Biggy fled the crime scene with a phone in his hand while the complainant was yelling.

15. I accept the version of events of Prosecution's case and reject that of the Defence.
16. I am satisfied that the accused assisted his accomplice with the requisite criminal intention to rob the complainant. Prosecution proved the charge beyond reasonable doubt.
17. I find the accused guilty of Aggravated Robbery and convict the accused accordingly.
18. That is the Judgment of this Court.


Aruna Aluthge
Judge



AT Suva

On 20th May, 2019

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