

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CASE NO.: HAC 17 OF 2019

STATE

V

RATU KANITO MATAGASAU

Counsel: Ms. U. Tamanikaiyaroi for State
Ms. T. Kean with L. Naikawakawavesi for Defence

Dates of Hearing: 25-26 June 2019

Date of Summing Up: 26 June 2019

SUMMING UP

Ladies and Gentleman Assessor,

- 1 . We have now reached the final phase of this case. The law requires me, as the judge who presided over this trial to sum up the case to you. Each one of you will then be called upon to deliver your separate opinion, which will in turn be

recorded. As you listened to the evidence in this case, you must also listen to my summing up of the case very carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused person.

2. I will direct you on matters of law which you must accept and act upon.
3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, these are matters entirely for you to decide for yourselves. So, if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.
4. In other words you are the judges of fact. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.
5. The counsel for Prosecution and the Defence made submissions to you about the facts of this case. That is their duty as the counsel. They were their arguments, which you may properly take into account when evaluating the evidence. It is a matter for you to decide which version of the facts to accept, or reject.
6. You will not be asked to give reasons for your opinions. Your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions. But I will give them the greatest weight when I deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law that accused person is innocent until he is proven guilty. The burden of proving his guilt rests on the Prosecution and never shifts.
8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find an accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty. However, the doubt must be reasonable and not be based on mere speculation.

9. Your opinions must be solely and exclusively upon the evidence which you have heard and seen in this court and upon nothing else. You must disregard anything you might have heard or read about this case, outside of this court room. Your duty is to apply the law as I explain it to you to the evidence you have heard in the course of this trial.
10. This Summing-Up is not evidence. Statements, arguments, questions and comments by the counsel are not evidence either. A thing suggested by a counsel during a witness' cross-examination is also not evidence of the fact suggested, unless the witness accepted the particular suggestion as being true. You may take into account arguments and submissions made by counsel when you evaluate the evidence.
11. Your duty is to find the facts based on the evidence and apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
12. Real evidence is evidence presented in the form of an exhibit. In this case, the mobile phone and the silver blade would be examples.
13. In evaluating evidence, you should see whether the story relayed in evidence is probable or improbable; whether the witness is consistent in his or her own evidence or with his or her previous statements or with other witnesses who gave evidence. It does not matter whether that evidence was called for the Prosecution or for the Defence. You must apply the same tests and standards in applying them.
14. In the course of cross-examination, the Defence Counsel referred to previous statements of witnesses recorded by police. A previous statement made by a witness is not evidence in itself unless it is adopted and accepted by the witness under oath as being true. You can of course use those statements to test the consistency and credibility of the witness if you are satisfied that such a statement was made.

15. In testing the consistency, if you find that there are inconsistencies, omissions or contradictions with his/her earlier version, you must be satisfied whether such contradiction/omission is material and significant so as to affect the credibility or whether it is only in relation to some insignificant or peripheral matter. If it is shown to you that a witness has made a different statement or given a different version on some point, you must then consider whether such variation was due to loss of memory, shock, faulty observation or due to some incapacitation of noticing such points given the mental status of the witness at a particular point of time or whether such variation has been created by the involvement of some another, for example by a police officer, in recording the statement where the witness is alleged to have given that version.
16. You must remember that merely because there is a difference, a variation or a contradiction or an omission in the evidence on a particular point or points that would not make witness a liar. You must consider overall evidence of the witness, the demeanor, the way he/she faced the questions etc. in deciding on a witness's credibility.
17. Another relevant aspect in assessing truthfulness of a witness is his or her manner of giving evidence in court. You have seen how the witness' demeanour in the witness box when answering questions. But, please bear in mind that many witnesses are not used to giving evidence and may find court environment distracting.
18. Proof can be established only through evidence. Evidence can be direct evidence that is the evidence of a person who saw it or by a victim who saw, heard and felt the offence being committed. You are also free to draw reasonable inferences in the circumstances of this case if such inferences are based on facts proved by evidence.
19. In this case the Prosecution and the Defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth. Agreed facts in this case are that:
 - I. The complainant in the matter is Sanjana Lata ("Sanjana").
 - II. The person charged is in the matter is Ratu Kanito Matagasau ("Kanito").

- III. On the 31st day of December 2018 (“said date”) on or about 1.20am Kanito grabbed 1 × Samsung S6 mobile phone from Sanjan’s hand.
- IV. On the said date Kanito was found by PC 5474 Pita sitting against the wall of a dwelling house trying to cover himself with a blanket.
- V. On the said date Kanito was arrested by PC 5474 Pita and escorted to Valelevu Police Station.
- VI. On the said date at the time of his arrest, Kanito had in his possession 1 × Samsung S6 mobile phone.
- VII. It is agreed that the admissibility of the following documents are not in dispute and the same will be tendered by consent:-

Search List of Ratu Kanito Matagasau; and
1 × Samsung S6 mobile phone.

- 20. Let us now look at the information, a copy of which has been given to you.

Statement of Offence

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

Particulars of Offence

RATU KANITO MATAGASAU on the 31st day of December, 2018, at Suva in the Central Division, armed with a weapon namely a silver blade robbed SANJANA LATA of 1x Samsung S6 mobile phone, the property of said SANJANA LATA.

- 21. To prove the offence of Aggravated Robbery the prosecution must satisfy the following elements beyond reasonable doubt;
 - a the accused, Ratu Kanito
 - b committed robbery ; and
 - c at the time of robbery, has an offensive weapon with him.

- 22. The offence of Robbery is defined in the Crimes Act. A person commits robbery if he immediately before committing theft; or at the time of committing theft; or immediately after committing theft, uses force or threatens to use force on another person with intent to commit theft or to escape from the scene.

23. I will now deal with the summary of evidence in this case. In doing this, I do not propose going through all the evidence. It should still be fresh in your minds. If I refer to only some parts of a witness's evidence it does not mean that the rest is unimportant. You must weigh up and assess all the evidence in coming to your decision in this case.

Case for Prosecution

PW.1- Sanjana Lata (Complainant)

24. The complainant, Sanjana Lata, testified that on the 31st December, 2018, at around 1.30 am., she was walking towards the main road. She was on her Samsung S6 mobile phone, talking to her husband. A robber came from behind and snatched her phone which was in her left hand. After snatching the phone, the robber pushed her to the ground. Then he put a silver blade on her neck as she was trying to get up, asking for help. When she was trying to get up, she saw robber's face and the tattoo on his right hand which was used to grab the phone. The robber wanted to do something but by that time her husband arrived in the van. When her husband came, the robber ran away with her phone. She called the Valelevu Police Station using her husband's phone.
25. In her evidence, Lata described the silver blade that was put on her neck. She said that it was without a handle, about 3 -4 inches in length. When a silver blade was shown to the witness, she recognised it as the one that was put on her neck. The silver blade was exhibited and marked as PE.1. She also recognised her Samsung X 6 mobile phone which was snatched by the robber. The phone was tendered, marked as PE.2
26. Under cross examination, Lata denied the proposition that the accused had run away from her soon after snatching the phone. Lata admitted that when she rang up the police to inform about the robbery she did not mention that the robber had used a silver blade on her. She said that she only informed of the robbery. She admitted that there are some inconsistencies between her evidence and her statement to police and also with one given to the doctor soon after the robbery. She said that the accused had already been taken to Valelevu Police Station when she arrived there and he was searched in front of her. The silver blade, a lighter and a sum of \$ 5.50 was taken out of his pocket by a police officer. When it was

suggested to her that there was no reason for the accused to put a blade on her neck when he had already snatched the phone, Lata said that she was wearing her wedding chain. She admitted that she did not mention about the wedding necklace to police. Lata denied that she had mentioned about the silver blade to police only after she had seen it being taken out from accused's pocket.

PW.2- PC Pita

27. PC Pita said that on 31st December, 2018, when he was based at Valelevu Police Station, he arrested the accused soon after the robbery. At the time of arrest, he found a Samsung X6 phone in accused's possession. The accused was taken to the police station. The police had recovered a silver blade from accused's possession. He tendered the search list (PE3) wherein the accused had acknowledged the items being taken from his possession.
28. Under cross examination, PC Pita said that the accused cooperated with police at the time of arrest. He said that the accused had been searched by another officer before the complainant came to the police station.
29. That is the case for the Prosecution.
30. At the close of the Prosecution's case, you heard me explain to the accused what his rights were in defence and how he could remain silent and say that the Prosecution had not proved the case against him to the requisite standard or he could give evidence in which case he would be cross-examined.
31. The accused elected to give evidence. That is his right. Now I must tell you that the fact that an accused gives evidence in his own defence does not relieve the Prosecution of the burden to prove their case to you beyond reasonable doubt. Burden of proof remains with the prosecution throughout. Accused's evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

Case for Defence

Ratu Kanito (Accused)

32. The accused in his evidence admitted that on the 31st December, 2018, he snatched a Samsung S6 phone from complainant's hand while she was talking on the phone. He denied having done anything against her other than snatching her phone. After snatching the phone he ran to the back of a house and covered himself with a blanket. PC Peta came and arrested him. He handed the phone over to PC Peta. The complainant was present at the Valelevu Police Station when he was brought there. He was searched by a police officer. A silver blade was found in the pocket of his pants. He said that he was wearing his uncle's pants and that he had never used the silver blade on the complainant. He said that he was drunk at that time and wanted to say sorry for what had happened.
33. That is the case for Defence.


Analysis

34. The accused is charged with one count of Aggravated Robbery. There is no dispute in this case as to the identity of the accused. The accused admits that he had snatched complainant's phone from her hand at around 2.30 am on the 31st December, 2018.
35. The only dispute is whether the accused had used a silver blade to rob the complainant. If you find that the accused had used a silver blade on the complainant, the robbery becomes aggravated and you may find him guilty of aggravated robbery.
36. The accused denies using a silver blade on the complainant. The Prosecution says that the evidence given by the complainant is trustworthy and believable and the complainant had no motive to lie to this court about a silver blade if it was not used on her. The State Counsel also argues that the complainant had no opportunity to notice the tattoo on accused's right hand if he had only snatched the phone from her hand. Having conceded that there are minor inconsistencies between her evidence and that of her previous statements to police and to doctor,

the State Counsel argues that those inconsistencies did not affect the credibility of the complainant's evidence.

37. The Defence Counsel on the other hand argues that the inconsistencies she highlighted are material enough to discredit the version of the complainant. It is for you to decide what version to believe.
38. The silver blade is an offensive weapon within the meaning of the Crimes Act. The accused does not deny that the silver blade exhibited at the trial was found in his possession when a police officer searched his pocket. He admits that he knew the silver blade was in his pocket at the time of the offence. His position is that he was wearing his uncle's pants and that the silver blade was never used on the complainant.
39. Based upon these admissions, and the evidence led in trial, if you are sure that the accused had used a silver blade on the complainant either before or after snatching the phone, you should find the accused guilty of Aggravated Robbery. If you are not sure or you have a reasonable doubt if the accused had used it or not you must find him not guilty of Aggravated Robbery.
40. However, if you find that accused, without using a weapon, only used force in stealing, you should find him guilty only of Robbery.
41. That concludes my summing up of the law and the evidence in this particular trial. We have now reached the stage where you must deliberate together and form your individual opinions.
42. On your return you will be asked to separately state in Court whether the accused is guilty or not guilty of Aggravated Robbery or if he is guilty only of Robbery.
43. Would you please now retire to consider your opinions? When you have made your decisions would you please advise the court clerk and the Court will reconvene to receive your opinions?

44. Any redirections?



Aruna Aluthge
Judge

**AT Suva
26th June 2019**

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