

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 362 OF 2017S**

**STATE**

**Vs**

- 1. ARVIND CHAND**
- 2. JONETANI ROKOTUINASAU**
- 3. LIVAI DRIGITA**

**Counsels : Ms. S. Serukai for State**  
**Mr. A.K. Singh for Accused No. 1.**  
**Accused No. 2 in Person, but tried in absentia.**  
**Ms. N. Mishra for Accused No. 3**

**Hearings : 17, 18, 19, 20, 24, 25 and 26 June, 2019.**

**Summing Up : 28 June, 2019.**

---

**SUMMING UP**

---

**A. ROLE OF JUDGE AND ASSESSORS**

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my opinion on the facts of the case, or if I appear to

do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of fact.

2. You will note from the information that there are three accused persons in this proceeding. Accused No. 2 had been tried in absentia and thus had made no closing submission to you. State counsel, and counsels for Accused No. 1 and 3 had made closing submissions to you, about how you should find the facts of this case. The right to make a closing submission to you, is the prerogative of the parties, as they are designed to assist you as the judges of fact. However, you are not bound by what they said. It is you who are the representatives of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.
3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

**B. THE BURDEN AND STANDARD OF PROOF**

4. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation on the accused to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he is proved guilty.
5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is not guilty.
6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about

this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accuseds or the victims. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

**C. TRIAL IN ABSENTIA FOR ACCUSED NO. 2 AND ACCUSED NO. 3 ON 19 JUNE 2019**

7. You will notice that when the trial began on 19 June 2019, Accused no. 2 and No. 3 were not present in the dock in court. They last appeared in court on 4 December 2018. On 6 March 2019, the prosecution applied for both accuseds to be tried in absentia, on the ground that they well knew the pending proceeding and chose, by conduct, not to attend court. The prosecution relied on the authority of Section 14 (2)(h)(i) of Fiji's 2013 Constitution, which reads as follows:

***“...Every person charged with an offence has the right – (h) to be present when being tried, unless – (i) the court is satisfied that the person has been served with a summon or similar process requiring his attendance at the trial, and has chosen not to attend...”***

8. The court granted the prosecution's application, and proceeded to hear the case against Accuseds No. 2 and 3 in absentia. The court found they were aware of the proceeding, and chose, by conduct, not to attend their trial. Accused No. 3 turned up in court on 20 June 2019, and his trial proceeded in his presence. A bench warrant is still pending against Accused No. 2, as of today.
9. However, as assessors and judges of fact, you cannot hold their non-attendance at the trial to their disadvantage. You cannot use their non-attendance to decide against them, or you cannot view their non-attendance negatively. Despite their non-attendance, they still have the right to a fair trial. The burden is still on the prosecution to prove their guilt beyond a reasonable doubt, and that stays with them from the start to the end of the trial. The accuseds do not have to prove anything, at all. In fact, they are entitled to remain silent, as

they has chosen in this case by not attending trial, and require the prosecution to prove their guilt beyond a reasonable doubt. The burden of proof is not on the accuseds.

**D. THE INFORMATION**

10. You have a copy of the information with you, and I will now read the same to you:

*“... [read from the information]....”*

**E. THE MAIN ISSUES**

11. In this case, as assessors and judges of fact, each of you will have to answer the following questions:

- (i) On count no. 1, did Accused No. 1, 2 and 3, on 15 November 2017, at Bau Road, Nausori in the Central Division, rob complainant no. 1 (PW1) of his properties as itemized in count no. 1, and at the time had a pinch bar with them?
- (ii) On count no. 2, did Accused No. 1, 2 and 3, on 15 November 2017, at Bau Road, Nausori in the Central Division, violently rob complainant no. 2 (PW2) of her properties as itemized in count no. 2?
- (iii) On count no. 3, did Accused No. 1, 2 and 3, on 15 November 2017, at Bau Road, Nausori in the Central Division, enter complainant no. 3's (PW3) house as trespassers with intent to steal?
- (iv) On count no. 4, did Accused No. 1, 2 and 3, on 15 November 2017, at Bau Road, Nausori in the Central Division, steal her properties, as itemized in count no. 4?

**F. THE OFFENCES AND THEIR ELEMENTS**

12. The accuseds were charged with “aggravated robbery”, contrary to sections 311 (1)(a) and (1)(b) of the Crimes Act 2009 [counts no. 1 and 2]; “aggravated burglary”, contrary to section 313 (1)(a) of the Crimes Act 2009 [count no. 3], and “theft”, contrary to section 291 (1) of the Crimes Act 2009 [count no. 4].

13. For the accused to be found guilty of “aggravated robbery”, the prosecution must prove beyond reasonable doubt, the following elements:

- (i) the accused;
- (ii) in company with one or more persons [count no. 2]; or
- (iii) has an offensive weapon with him [count no. 1];
- (iv) steals
- (v) the complainant's property or properties; and
- (vi) before, during or after the theft;
- (vii) uses force or threatens to use force;
- (viii) on another person;
- (ix) with intent to commit theft.

14. "Stealing" is the act of taking away someone's property or properties without his permission, and with an intention to permanently deprive him of the ownership of that property or properties. "Force" means "any type of force, whether or not done physically or verbally, for example, beating someone with a stick or threatening to do the same".

15. Before, during or after stealing the complainant's properties, the accused, in company with one or more persons, or he had an offensive weapon with him, must use force or threaten to use force to subdue the complainant or others' resistance, and at the time, had the intention to steal. For example, I and my friend saw you withdrawing \$1,000 cash from an ANZ Bank ATM machine. I and my friend immediately came to you, told you to hand over the \$1,000 cash to me or I will punch you in the face. You refused, I punched you in the face and stole your \$1,000 cash. That was "aggravated robbery".

16. For the accused to be found guilty of "aggravated burglary" [count no. 3], the prosecution must prove beyond reasonable doubt, the following elements:

- (i) the accused;
- (ii) in company with one or more persons;
- (v) enters or remains
- (vi) in a building;

- (vii) as a trespasser;
  - (viii) with intent;
  - (ix) to commit theft
17. The key word in the above offence is the word “trespasser”. A trespasser is someone who does not have permission, express or implied, to be in a building. In other words, if you don’t have permission to enter or remain in a building, but nevertheless entered or remained in the building, you are a trespasser. You don’t have authority to enter or remain in the building. For example, a thief who enters or remains in a building, to steal, is a trespasser. A building includes a residential house, where people reside. When the accused enters or remains in the building, he must do so with the assistance of others.
18. “Theft” in count no. 4 is the same thing as stealing. It has the meaning described in paragraph 14 hereof.
19. You will notice in the information in count no. 1, 2, 3 and 4 that the prosecution, in their particulars of the offences, began with the phrase, “...ARVIND CHAND, JONETANI ROKOTUINASAU AND LIVAI DRIGITA...” The prosecution appears to be alleging that the accuseds committed the above offences as a group. In other words, to make them jointly liable for the above offences, the prosecution appears to be relying on the concept of “joint enterprise”.
20. “Joint enterprise” is “when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed, of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence” (Section 46, Crimes Act 2009). In considering each accused, you will have to ask yourselves the following questions. Did each of them form a common intention with each other, to violently rob Mr. Suruj Prasad (PW1) of the properties mentioned in count no. 1?

If so, did each of them acted together in violently robbing PW1 and later burgled and stole from Ms. Rohini Lata Nandan's (PW3) house, and later violently robbed Uma Kumari Mishra (PW2)? When PW2 and PW3 were offended against, were these episodes a probable consequence of them violently robbing PW1? If your answer to a particular accused was yes, and you are sure that the elements of the offences described in paragraphs 13 to 18 hereof are satisfied, the particular accused was guilty as charged. If it was otherwise, he was not guilty as charged.

21. Furthermore, in this case, there are three accuseds on trial. Each of them is entitled to be tried solely on the evidence that is admissible against them. This means that you must consider the position of each accused separately, and come to a separate considered decision on each of them. Just because they are jointly charged, does not mean that they must all be guilty or not guilty. Most evidence in this case are admissible against all accuseds. However, regarding their police caution interview statements, which may contain their alleged confessions, the statements therein are only admissible against the maker of the statements, and on no other. In other words, in each of the accuseds' police caution interview statements, you must totally disregard what the accused said about his co-accuseds on the commission of the offence, because these are inadmissible evidence. You can only take into account what he said about himself, regarding his role in the commission of the crime, because this is admissible evidence against him.
22. There are four counts in the information. You must consider each count separately in the light of the total evidence presented, and come to a considered decision on each of them separately.

**G. THE PROSECUTION'S CASE**

23. The prosecution's case were as follows. On the early morning of 15 November 2017 (Wednesday), between 1.30 am to 2.15 am, Mr. Suruj Prasad (PW1) was asleep at his home at Bau Road Nausori, with his wife and daughter. He was suddenly awoken by two

men who had broken into his house. The men allegedly attacked him with a pinch bar and a coffee table thrown at him. They later allegedly stole his Nokia mobile phone valued at \$60 and \$110 cash, before they fled the crime scene.

24. Also along Bau Road at Nausori on 15 November 2017 between 3 am and 3.30 am, Ms. Rohini Nandan (PW3) was sleeping in her house with her husband and son. She was suddenly awoken by a car alarm. She woke up to see 3 boys standing with plastic bags at their back terrace. They fled when she yelled at them. She later found out that they had allegedly broken into their storeroom and stole 5 pairs of canvass worth \$700.
25. Between 3.45 am and 4 am on 15 November 2017, Ms. Uma Kumari Mishra (PW2) was sleeping in her Bau Road home at Nausori. She was suddenly awoken by a person standing in her room. She yelled out and the person blocked her mouth with his hand. She later kicked him and the person fled the crime scene. Later she saw 3 men standing on her porch. One was holding a cane knife. The men later fled. PW2 later checked her house and found out the men had allegedly stole her properties as itemized in count no.2.
26. PW1 reported the attack on him to police between 2 to 2.15 am. PW3 reported her case to police at 3.30 am, while PW2 reported her case to police at 4 am. The police responded and later arrested Accused No. 1, driving his car registration number JB 405 along Bau Road. He was allegedly carrying PW1, PW2 and PW3's stolen items. In Accused No. 1's car were Accused No. 2 and 3. They fled when police arrested Accused No. 1. According to prosecution, Accused No. 1, 2 and 3 jointly robbed PW 1 (count no. 1), PW2 (count no. 2) and burgled PW3's house (count no. 3) and stole her properties (count no. 4), on 15 November 2017. They allegedly used violence when committing the above crimes.
27. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find all accuseds guilty as charged on all counts. That was the case for the prosecution.



## H. THE ACCUSED'S CASE

28. On 20 June 2019, the information was put to Accused No. 1 and 3, in the presence of their counsels. Accused No. 2 was tried in absentia. Both Accused No. 1 and 3 pleaded not guilty to the charges, and Accused No. 2 was deemed to have pleaded not guilty also to all the charges. In other words, all accuseds were taken to have denied the allegations against them. When a prima facie case was found against each of them, at the end of the prosecution's case, wherein they were called upon to make their defence, only Accused No. 1 chose to give sworn evidence and called no witness. Accused No. 2 was deemed to have chosen to remain silent and called no witness. Accused No. 3, through his counsel, also chose the above option. The above were their rights.
29. As for Accused No. 1, his case was very simple. On oath, he admitted he drove Accused No. 2 and 3 to Bau Road Nausori, at the material time. In the Agreed Facts submitted to court, he admitted that the stolen items from PW1, PW2 and PW3 were found in his private car, registration number JB 405, after PW1, PW2 and PW3 were attacked early morning on 15 November 2017. However, he said, he knew nothing about the alleged crimes against him. He said, he was only driving his private car for hire to Accused No. 2. He said, he was not a party to the alleged offendings by Accused No. 2 and 3, and was therefore not guilty as charged on all counts.
30. As for Accused No. 2, he was deemed to have chosen to remain silent and called no witness. Accused No. 3, through his counsel, chose to remain silent and called no witness. Nothing negative whatsoever should be imputed to the accuseds for choosing to remain silent and calling no witness. This is because of what I told you in paragraph 4 hereof. The burden to prove the two accuseds' guilt beyond reasonable doubt stays with the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. There is no burden on the two accuseds to prove their innocence. If fact, they do not need to prove anything at all. They are entitled to sit there, fold their arms and demand that the prosecution prove their guilt beyond a reasonable doubt. In other words, you will have to

look at the prosecution's case only, and decide whether or not they had proven the two accuseds' guilt beyond a reasonable doubt.

31. Because they pleaded not guilty to the charges, they are asking you as assessors and judges of fact, to find them not guilty as charged. That was the case for the defence.

## **I. ANALYSIS OF THE EVIDENCE**

### **(a) Introduction:**

32. In analyzing the evidence, please bear in mind the directions I gave you in paragraphs 4, 5 and 6 hereof on the burden and standard of proof. In the acceptance and/or rejection of the evidence presented at the trial and your role as assessors and judges of fact, please bear in mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analyzing the evidence, we will first discuss the State's case against all accuseds, then the accuseds' cases, and lastly, the need to consider all the evidence.

### **(b) The State's Case Against Accused No. 1:**

33. In this case, no eye witness saw Accused No. 1 violently robbing Mr. Suruj Prasad (PW1) of his properties as itemized in count no. 1. No eye witness saw him violently robbing Ms. Uma Kumari Mishra (PW2) of her properties as itemized in count no. 2. No eye witness saw him burgle Ms. Rohini Nandan's (PW3) house as alleged in count no. 3, nor steal her properties as alleged in count no. 4. This was obviously a difficulty for the prosecution.
34. To connect Accused No. 1 to the crimes alleged in count no. 1, 2, 3 and 4, the State is relying on what is commonly called circumstantial evidence. Reference has been made to the type of evidence which you have received in this case. Sometimes assessors are asked to find some fact proved by direct evidence. For example, if there is reliable evidence from a witness who actually saw a defendant commit a crime; if there is a video recording of the incident which plainly demonstrates his guilt; or if there is reliable evidence of the defendant himself having admitted it, these would all be good examples of direct

evidence against him. On the other hand it is often the case that direct evidence of a crime is not available, and the prosecution relies upon circumstantial evidence to prove guilt. That simply means that the prosecution is relying upon evidence of various circumstances relating to the crime and the defendant which they say when taken together will lead to the sure conclusion that it was the defendant who committed the crime. It is not necessary for the evidence to provide an answer to all the questions raised in a case. You may think it would be an unusual case indeed in which assessors can say "We now know everything there is to know about this case". But the evidence must lead you to the sure conclusion that the charge which the defendant faces is proved against him. Circumstantial evidence can be powerful evidence, but it is important that you examine it with care, and consider whether the evidence upon which the prosecution relies in proof of its case is reliable and whether it does prove guilt. Furthermore, before convicting on circumstantial evidence you should consider whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the prosecution case. Finally, you should be careful to distinguish between arriving at conclusions based on reliable circumstantial evidence, and mere speculation. Speculating in a case amounts to no more than guessing, or making up theories without good evidence to support them, and neither the prosecution, the defence nor you should do that.

35. We will now look at and consider the evidence of various circumstances relating to the crimes and the defendant which the prosecution says when taken together will lead to the sure conclusion that it was the defendant who committed the crimes. We will first consider the time in which the three complainants were attacked in their own house, and their properties stolen.
36. Mr. Suruj Prasad (PW1), the complainant in count no. 1 said, he was attacked by two men in his own house at Kuku, Bau Road, Nausori on 15 November 2017, between 1.30 am to 2.15 am. The modus operandi of the two attackers were as follows. They silently broke into PW1's house at night when they were fast asleep, stole PW1's properties when they

least expected it, attacked PW1 with a pinch bar and coffee table when confronted, and then fled the crime scene (count no. 1). PW1 could not identify the thieves. PW1 rang the police between 2 am and 2.15 am.

37. Forty-five minutes later at 3 am on 15 November 2017, Ms. Rohini Lata Nandan (PW3) was awoken from her house at Kuku, Bau Road, Nausori by a car alarm. She was fast asleep in her house. She woke up to find 3 boys holding plastic bags in front of her back terrace. She yelled at them and they fled. On checking their storeroom, PW3 found it broken into and the properties itemized in count no. 4 had been stolen (count nos. 3 and 4). The thieves' modus operandi was similar to count no. 1. They attacked when complainants were fast asleep, silently broke into their house, stole their properties and fled when confronted. PW3 reported the matter to Nausori Police Station at 3.30 am. She could not identify the thieves.
38. Between 3.45 am and 4 am on 15 November 2017, Ms. Uma Kumari Mishra (PW2) was attacked in her house at Bau Road, Nausori. This was 15 minutes after PW3 reported her case to Nausori Police Station. PW2 said she awoke to find a man standing in her room. She yelled and he pressed her mouth with his hand. She kicked him and he fled. PW2 said she later saw 3 boys standing on her porch, and one was armed with a cane knife. They later fled from the scene. On checking her house, she found her properties as itemized in count no. 2 stolen. PW2 could not identify the thieves. She reported the matter to police at 4 am. The thieves' modus operandi were similar to those who attacked PW1 and PW3. They attack people when they were fast asleep, breaking into their houses, steal their properties and fled when confronted.
39. PW2's report was received by Sgt 2870 Adrian Choy (PW4) at 4.15 am. He went with SC Binesh and WDC 3585 Sisilia (PW10) to Bau Road Nausori. At 4.25 am, they reached Bau Road in their police vehicle. They saw a Silver Grey Hybrid vehicle registration number JB 405 speeding past their vehicle with a flat tyre. This was about 10 meters from PW2's Bau

Road house. PW4 said, they followed the vehicle. PW4 said, he stopped the vehicle later, and saw Accused No. 1 was driving the same. PW4 said, he saw 3 i-taukei men sitting in the car. PW4 said, he later arrested Accused No. 1. The 3 i-taukei men fled the vehicle. In paragraph 11 of Accused No. 1's 7 June 2019 Agreed Facts, Accused No. 1 identified two of the i-taukei men who fled, as Accused No. 2 and 3.

40. PW4 later checked the car. In paragraph 10 of Accused No. 1's 7 June 2019 Agreed Facts, Accused No. 1 agreed the car JB 405 was his. He admitted he was driving the same on 15 November 2017 in the early hours and picked Accused No. 2 and 3 from Bau Road, Nausori. When PW4 checked the car, PW1, PW2 and PW3's stolen properties were in the same. In paragraphs 14, 15 and 17 of Accused No. 1's 7 June 2019 Agreed Facts, Accused No. 1 admitted the properties were stolen and PW1, PW2 and PW3 identified the properties as theirs. It must be noted that stolen properties do not have legs. If the same had to travel from the house of their owners to Accused No. 1's car, they had to be taken there by human beings. All three accuseds were present in the car when PW4 stopped them and arrested Accused No. 1, while Accused No. 2 and 3 fled from the scene. What do these hard facts tell you? Stolen properties do not speak, but they implicate the persons who possess them, at the time the police (PW4) stopped them.
41. Accused No. 1 had submitted an Agreed Facts with the State, dated 7 June 2019. Read it carefully. In the Agreed Facts, Accused no. 1 had basically admitted that he was in physical possession of stolen goods, in his car, at the time police (PW4) arrested him. Accused No. 1 said, he had no knowledge that the stolen properties were in his car, at the material time. He said, he was only hiring out his vehicle to Accused No. 2 for money. Note his car was neither a taxi nor a rental vehicle. The State asks you to disregard his excuse, because according to them, he was part of the group and his role was to provide the transport for the thieves and the stolen goods, and also as the getaway vehicle.

42. What does the above circumstantial evidence tell you? Was Accused No. 1 part of the group that violently robbed Suruj Prasad (PW1), Uma Kumari Mishra (PW2) and burgled Rohini Nanda's (PW3) house and stole her properties on 15 November 2017? If you accept the above circumstantial evidence, you must find Accused No. 1 guilty as charged on all counts. If otherwise, you must find him not guilty as charged on all counts. It is a matter entirely for you.

**(c) The State's Case Against Accused No. 2:**

43. The circumstantial evidence that was applied to Accused No. 1 could also be applied to Accused No. 2. In Accused No. 1's 7 June 2019 Agreed Facts, Accused No. 1 had identified Accused No. 2 was in his car, at the time Sgt 2870 Adrian Choy (PW4) arrested him at 4.30 am on 15 November 2017. The complainants' stolen properties were in the car. One would ask, why were the complainants' stolen properties in the car, saved that Accused No. 2 may have taken them there. If that was so, he could have stolen it from the complainants. Furthermore, according to Sgt Choy, the 3 i-taukei boys in the car fled, when he arrested Accused No. 1. In paragraph 11 of Accused No. 1's 7 June 2019 Agreed Facts, Accused No. 1 identified Accused No. 2 as one of the 3 i-taukei boys in his car. One may ask the question, why did Accused No. 2 flee from the car? If he was innocent, one may say he would have stayed and clear any doubts the police may have on him regarding the stolen properties. However, he fled. Why did he flee if he was innocent of the crimes alleged against him? These are questions you will have to answer as assessors and judges of fact. The answers are entirely a matter for you.
44. Furthermore, DC 4344 Amani Bosenawai (PW7) caution interviewed Accused No. 2 on 16 November 2017. PW7 asked him 53 questions and he gave 53 answers. PW7 said he gave the accused his legal rights, the standard caution and breaks. PW7 said, he put the allegation in count no. 1 to Accused No. 2. Remember, the complainant in count no. 1, Mr. Suruj Prasad (PW1) was the first to be attacked on 15 November 2017 between 1.30 am and 2.15 am. Accused No. 2's caution interview notes were tendered as Prosecution

Exhibit No. 8 (A), 8 (B) and 8 (C). From questions and answers 19 to 38 in Prosecution Exhibit 8 (C), he admitted breaking into PW1's house at the material time, and attacking PW1 by throwing a coffee table at him. It is up to you as assessors and judges of fact to give what weight and value to his alleged admissions, and decide whether he made the same or not, and whether or not it was true. If you accept that he made the admissions and they were true, they provide further evidence to strengthen the circumstantial evidence against him. In any event, given the above evidence, if you accept the same, you must find Accused No. 2 guilty as charged on all counts. If otherwise, you must find him not guilty as charged, on all counts. It is a matter entirely for you.

**(d) The State's Case Against Accused No. 3:**

45. The circumstantial evidence used against Accused No. 1 and 2, could also be used against Accused No. 3. Like Accused No. 2, Accused No. 1 in his 7 June 2019 Agreed Facts, in paragraph 11, identified Accused No. 3 as being in his car JB 405, at the time Sgt Adrian Choy (PW4) arrested him on 15 November 2017. Sgt Choy said the 3 i-taukei boys sitting in Accused No. 1's car fled the same, when he arrested Accused No. 1. The questions posed to Accused No. 2 could also be posed to Accused No. 3. What were the complainants' stolen properties doing in the car where he was in it? Did he steal those properties? Why did he flee from the car? Was he part of the group that attacked and stole from the complainants early that morning on 15 November 2017? As assessors and judges of fact, you will have to answer the above questions.
  
46. However, I will caution you to consider Accused No. 3's caution interview statements tendered as Prosecution Exhibit No. 9 (B) and 10 (B). In Prosecution Exhibit No. 9 (B), the allegation in count no. 1 was put to him. In Prosecution Exhibit No. 10 (B), the allegations in count no. 3 and 4 were put to him. He admitted riding in Accused No. 1's car at the material time, but denied committing any crime. He denied the allegations against him. This denial may mean he was a joy rider at the material time. However, how you treat the above evidence is entirely a matter for you.

(e) **The Accuseds' Cases:**

47. I had summarized the accuseds' cases to you from paragraphs 28 to 31 hereof. I repeat the same to you. If you accept Accused No. 1's denial, you must find him not guilty as charged on all counts. If you reject his denials, you must still consider the strength of the prosecution's case, and decide accordingly. As for Accused No. 2 and 3, because they chose to remain silent and call no witness, assess the strength of the prosecution's case and decide accordingly. If you think the prosecution's case was weak and you are not sure of their guilt, you must find them not guilty as charged on all counts. If otherwise, you must find them guilty as charged on all counts. It is a matter entirely for you.

(f) **The Need To Consider All the Evidence:**

48. Ten witnesses gave evidence for the prosecution:

- (i) Mr. Suruj Prasad (PW1);
- (ii) Ms. Uma Kumari Mishra (PW2);
- (iii) Ms. Rohini Lata Nandan (PW3);
- (iv) Sgt 2870 Adrian Choy (PW4);
- (v) PC 5110 Arimi Caucau (PW5);
- (vi) DC 4560 Esava Kobiti (PW6);
- (vii) DC 4344 Amani Bosenawai (PW7);
- (viii) PC 5057 Apisai Voravora (PW8);
- (ix) WDC 4495 Senimili (PW9); and
- (x) WDC 3585 Sisilia (PW10).

One witness gave evidence for the defence:

- (i) Mr. Arvind Chand (Accused No. 1).

Eleven Prosecution Exhibits were tendered.



49. You will have to consider and analyze the above evidence together. You will have to compare them. If I had not mentioned a piece of evidence you consider important, please take it on board in your deliberation. If you find a witness credible, you are entitled to accept the whole or some of his/her evidence, in your deliberation. If you find a witness not credible, you are entitled to reject the whole or some of his/her evidence, in your deliberation. You are the judges of fact.

**J. SUMMARY**

50. Remember, the burden to prove the accuseds' guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accuseds, at any stage of the trial. The accuseds are not required to prove their innocence, or prove anything at all. In fact, they are presumed innocent until proven guilty beyond reasonable doubt. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's' guilt, you must find them guilty as charged. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accuseds' guilt, you must find them not guilty as charged.

51. Your possible opinions are as follows:

- |       |                                   |               |                        |
|-------|-----------------------------------|---------------|------------------------|
| (i)   | Count No. 1: Aggravated Robbery:  | Accused No. 1 | - Guilty or Not Guilty |
|       |                                   | Accused No. 2 | - Guilty or Not Guilty |
|       |                                   | Accused No. 3 | - Guilty or Not Guilty |
| (ii)  | Count No. 2: Aggravated Robbery:  | Accused No. 1 | - Guilty or Not Guilty |
|       |                                   | Accused No. 2 | - Guilty or Not Guilty |
|       |                                   | Accused No. 3 | - Guilty or Not Guilty |
| (iii) | Count No. 3: Aggravated Burglary: | Accused No. 1 | - Guilty or Not Guilty |
|       |                                   | Accused No. 2 | - Guilty or Not Guilty |
|       |                                   | Accused No. 3 | - Guilty or Not Guilty |

(iv) Count No. 4: Theft : Accused No. 1 - Guilty or Not Guilty  
Accused No. 2 - Guilty or Not Guilty  
Accused No. 3 - Guilty or Not Guilty

52. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive your decisions.



**Salesi Temo**  
**JUDGE**

**Solicitor for the State : Office of the Director of Public Prosecution, Nausori.**  
**Solicitor for the Accused No. 1: A.K. Singh, Lawyers & Notary Public, Nausori.**  
**Solicitor for the Accused No. 2: In Person, but tried in absentia.**  
**Solicitor for the Accused No. 3: Legal Aid Commission, Nausori.**