

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 121 of 2018

BETWEEN : STATE

AND : 1. APETE TURAGATANI
2. NAVITALAI LOATUICAMA
3. PAULA VURA

Counsel : Mr Samisoni for the State
Mr Varinava T. for the first Accused
Mr Korotini J. for the second Accused
Mr Sharma N. for the third Accused (*in absentia*)

Dates of Hearing : 09, 10 & 11 November 2020

Closing speeches : 11 November 2020

Date of Summing up: 13 November 2020

SUMMING UP

Ladies and gentleman assessors,

1. I must now sum up the case to you. You must then retire to consider your opinions. I will direct you on the law that applies. You must accept those directions I give you on matters of law. You are to decide the facts of the case, based on the evidence that has been led before this court. You will then apply those directions to the facts and give me your opinions as to whether each Accused person is guilty or not guilty in respect of each count.
2. You are bound by the directions I give you as to the law. But you are not obliged to accept any opinion I may express or appear to have expressed while going through evidence. If you do not agree with that opinion you will ignore it and form your own opinions with that evidence.
3. You must base your opinions only on evidence given by the witnesses before this court. But a few things that you heard in this court are not evidence. Opening submission, closing submissions, statements, arguments and comments made by the counsel and this summing up are not evidence. But you may consider those as a guidance when you evaluate evidence and the extent to which you do so is entirely a matter for you. If you have acquired any knowledge about the facts of this case outside this court room, you must exclude that information from your consideration. Make sure that external influences play no part in forming your opinions. You will also not let any sympathy or prejudice sway your opinions.
4. I will give you only a summary of evidence. I will not go through every word uttered by the witnesses in this case, and if I leave out something that seems to be important, nothing stops you from taking that into account. Because you decide the facts.
5. After this summing up, you may give your individual opinion as the representatives of the community. You may reject or accept any evidence in

forming your opinions. Your opinions need not be unanimous. And you need not give reasons for your opinions.

6. Your opinions will assist me in giving my judgement. I will give the greatest weight to your opinions in my judgement. However, I am not bound to conform to your opinions.

Ladies and gentleman assessors,

7. I will now mention some considerations that may assist you in evaluating evidence. As I said before you may reject the whole evidence of a witness, accept the entirety or even accept only a part of a witness's evidence and may reject the rest. You have to decide whether a witness has spoken the truth or correctly recalled the facts and narrated it.
8. You have seen the demeanour of the witnesses and how they gave evidence in court. You have seen whether they were forthright or evasive in giving evidence. You have to use your common sense in assessing the reliability and credibility of witnesses.
9. When you evaluate evidence, you should see whether the version of a witness is probable or improbable. You must see whether the witness has relayed a consistent story and whether it tallies with the evidence of other witnesses.
10. If you find any inconsistency or omission in the evidence given by a witness with the evidence given by another witnesses, it is necessary to decide firstly, whether it is significant and whether it affects adversely on the reliability and credibility of the issue that you are considering. If it is significant, you will next need to consider whether there is an acceptable

explanation for it. If there is an acceptable explanation, for the change, you may then conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then it is for you to decide as to what extent that influences your judgment of the reliability of such witness.

11. According to the law the prosecution must prove its case beyond reasonable doubt. For the prosecution to discharge its burden of proving the guilt of each Accused, it is required to prove beyond reasonable doubt that each Accused is guilty in respect of each count. The burden of proof remains on the prosecution throughout the trial. For this purpose, the prosecution must prove every element of the offences, beyond reasonable doubt.
12. The Accused persons need not prove their innocence. The fact that the Accused Persons gave evidence in this case does not imply any burden upon them to prove their innocence. It is not their task to prove their innocence. The burden is on the prosecution to prove the guilt of the Accused persons. That means you must be satisfied that the State has proved every element of the offences beyond reasonable doubt. When you say a reasonable doubt, a mere imaginary doubt is not a reasonable doubt. The doubt should be a reasonable one and if you are left with a reasonable doubt you must find the Accused persons not guilty. If you are not left with any such doubt and if you are sure that the prosecution proved every element of the offences in respect of each Accused, you must find them guilty to those offences.
13. In this case the Prosecution and the second Accused agreed to certain facts. Similarly, the Prosecution and the third Accused also agreed to another set of facts. Those are before you in two documents named as admitted facts for Navitalai Loatuicama and admitted facts for Paula Vura. These facts are part

of evidence and you must consider those facts as proven beyond reasonable doubt.

14. In this case the Accused persons are indicted for two counts. You must consider each count separately for each Accused. If you find one Accused guilty to one count it does not automatically make him guilty to the other count or another Accused guilty to those counts. You must consider whether the Prosecution has proved the elements of each count beyond reasonable doubt in respect of each count and in respect of each Accused.

15. Also, I must remind you that the third Accused was not present during the proceedings. However, his counsel defended him throughout the trial. I must warn you that although the third Accused decided not to be present in Court for his trial you must not draw any adverse inferences from his absence.

16. Now let us look at the counts contained in the information filed by the Director of Public Prosecutions.

First Count

Aggravated burglary: contrary to Section 313(1)(a) of the Crimes Act 2009.

Particulars of offence

Apete Turagatani, Navitalai Loatuicama and Paula Vura in the company of each other between 13th day of January 2018 and the 15th day of January 2018 at Koro Island in the Eastern Division entered as trespassers into Koro Island Community Police Post with intent to commit theft from that property.

Second Count

Theft : Contrary to section 291(1) of the Crimes Act 2009.

Particulars of offence

Apete Turagatani, Navitalai Loatuicama and Paula Vura in the company of each other between the 13th day of January 2018 and the 15th January 2018 at Koro Island in the Eastern Division dishonestly appropriated five plants believed to be cannabis sativa, the property of the Fiji Police Force.

17. To prove the first count of burglary the Prosecution must prove the following elements beyond reasonable doubt;

- (i) the Accused persons
- (ii) entered or remained in the building
- (iii) as trespassers
- (iv) with intent to commit theft

18. A trespasser is a person who enters and remains in a building without the owner's permission. In other words, that person enters and remains in the building without any lawful authority, thus she or he becomes a "trespasser".

19. Therefore, the Prosecution must prove beyond reasonable doubt that;

- a) The Accused persons in the company of each other entered into Koro Island Community Police Post between 13 January 2018 and 15 January 2018 as trespassers.
- b) When they entered that building their intention was to commit theft of a particular property kept in that building and that was their common intention.

20. The intention of each Accused is a central issue here. No one can look inside their minds. So, you are supposed to examine the evidence in relation to their conduct and ask yourselves whether you are sure beyond reasonable

doubt that the Accused persons entered into the Community Police Post to commit theft of a particular property kept in that building.

21. The offence of burglary becomes aggravated burglary only when a person commits burglary in the company of one or more other persons. Therefore, the Prosecution must prove that the offence was committed by more than one person.

22. I will now discuss about the second offence against the Accused persons. To prove the offence of theft the Prosecution must prove beyond reasonable doubt that;

- a) the Accused persons
- b) dishonestly
- c) appropriated property belonging to another
- d) with the intention of permanently depriving the other of that property.

23. The element 'dishonestly' is about the state of mind of the Accused. Also the element, 'intention to permanently deprive' is about the state of mind. Inferences may be drawn from the conduct of the Accused with regard to an Accused's state of mind.

24. 'Appropriation of property' means taking possession or control of the property without the consent of the person to whom it belongs. According to the law, property belongs to a person if that person has possession or control of the property.

25. An offence may be committed by one person acting alone or by more than one person acting together with the same criminal purpose. As a matter of law, I must now direct you on the law of joint enterprise. The law says that where two or more persons form a common intention, to do something

unlawful together, and while doing something to further that purpose, an offence is committed of such a nature that its commission was a probable consequence of that purpose, each of those who had formed the common intention and had taken part in furtherance of that intention, is deemed to have committed the offence.

26. In this case, the Prosecution says that the Accused persons committed the offence in the company of each other. If several people decide to commit an offence together, and all of them participate and assist each other in doing it, each of them is guilty of the crime that is committed. This is so, even though individually, some of them may not actually do the acts that constitute the offence. The Accused persons' agreement to act together need not have been expressed in words. It may be the result of planning or it may be a tacit understanding reached between them on the spur of the moment. Their agreement can be inferred from the circumstances.

27. Those who commit a crime together may play different parts to achieve their purpose. The Prosecution must prove that the Accused persons took some part in committing the crime. If you are sure that the offence of Aggravated Burglary was committed by more than one person and that the Accused persons acted together to commit that offence and took some part in that offence, you should find the Accused persons guilty of the offence of Aggravated Burglary.

28. The Prosecution says that the Accused persons were involved with each other in the commission of the crime. In view of this allegation it is convenient to deal with their cases together in one trial. However, they are still entitled to have their charges considered separately. I direct you that you must consider the case against each Accused separately. In doing this

you must carefully distinguish between the evidence against one Accused and the evidence against the other.

29. I will now discuss about the caution interview statements which were tendered as evidence in this case. The caution interview of a particular Accused can only be used in the case relating to him and not as evidence against the other. As a matter of law, nothing in that caution interview can be regarded as evidence against another Accused person. However, you can compare the caution interviews of each Accused to test the consistency for you to be satisfied as to where the truth lies.

30. In this case you have heard that all the three Accused persons claimed that they were assaulted, threatened and were given false promises to obtain their caution interview statements. However, the Prosecution denied that there were assaults, threats or false promises given.

31. In order to determine whether you can safely rely upon the admissions made by the Accused persons in their respective caution interviews you must decide two issues.

32. Firstly, did the Accused person in fact make the admissions? Having considered the evidence presented during the course of the hearing, if you are not satisfied or not sure of that the Accused has actually made the confessions in his caution interviews, you must ignore the admission made in the caution interview.

33. Secondly, if you are satisfied, that the Accused has made the admission in his caution interview, then it is for you to decide whether the contents of the caution interview are truthful, and what weight you give them as evidence. It is for you to decide whether you consider the whole of

the caution interview or part of it or none of it as truthful, reliable and credible. You must consider all other evidence adduced during the course of the hearing in deciding the truthfulness, credibility and the reliability of the confessions and its acceptability.

34. I will now give you a brief outline of the evidence adduced in this case. However, you should consider the entirety of the evidence adduced in this case when forming your opinions.

35. The first Prosecution witness PC 6813 Timoci Waqabaca gave evidence that he was on duty on 15 January 2018 at Koro Community Post. He said when he went to the exhibit room that morning, he did not find the five plants which he believed to be Marijuana at the place where he left them. He said that he saw the plants on 12 January 2018. He had also noticed that the grills of a window of that room were removed along with three louvre blades. The witness had then reported it to PC 3752 Ilaitia Drauna.

36. Under cross examination the witness said that the five missing Marijuana plants were entered in the exhibit register. Further the witness admitted that the register would have been the proper evidence to prove what items were in the exhibit room. When he was asked that “isn’t it correct that you cannot prove that those 5 Marijuana plants were in the exhibit room on 15th or prior to 15th January 2018”, the witness answered “yes”.

37. The witness was further cross examined on behalf of the 3rd Accused. The witness denied that he assaulted the third Accused. He said that he was in Koro Island when the third Accused surrendered, but he was in Suva when the third Accused was interviewed. However, the witness later said that he cannot recall whether he was present in the island on 25 April 2018. Later when he was shown the station diary the witness admitted that he was in

fact on duty in the island on 25 April 2018 contrary to what he said earlier. He also admitted that since he was there at the island on 25 April 2018, he could have witnessed the interview of the third Accused.

38. The second Prosecution witness, PC Ropate gave evidence that he was based at Nausori Police Station during 2018 and on 10 March 2018 he was instructed to attend to an investigation in Koro Island. He stated that he was the interviewing officer for the first Accused, Apate Turagatani. He tendered the original caution interview, the translated version and the typed copy as Prosecution Exhibit 1,2 and 3.

39. The witness said that he gave rights to the first Accused during the recording of the interview. He said that he did not assault, threaten or make any false promises for the first Accused to confess. The witness also stated that Constable Inasa Nasilasila was the witnessing officer in the first Accused's caution interview. You heard the witnesses reading out the entire caution interview of the first Accused. When you consider the evidence in this case you must assess the contents of the caution interview in accordance with the directions given to you in this summing up.

40. Under cross examination PC Ropate said that he accompanied Cpl Sikeli and Cpl Ilaitia to Naqaidamu village. However, he said that he got off the vehicle upon arrival at the village and instructed Cpl Ilaitia and Cpl Sikeli to go straight to the first Accused's house. The witness denied that he was in the vehicle when the first Accused was brought to the Police Post. He denied that he threatened or punched the first Accused inside the vehicle. He also said that he does not know whether the second Accused was also brought to the Police Post in the same vehicle.

41. The next Prosecution witness, PC Inasa Nasilasila stated that he was on duty at Koro Island Police Post on 10 March 2018. The witness initially said that

he was the charging officer for the first Accused and the witnessing officer for the second Accused, Navitalai. He denied that he was the witnessing officer for the first Accused. However, when the record of interview of the first Accused was shown to the witness, he agreed that he was the witnessing officer for the first Accused.

42. The witness gave evidence that the first Accused did not complain about anything to him. He further stated neither him nor any other officer assaulted, threatened or gave false promises to the first Accused. During cross examination the witness said that the first Accused was given right for medical attention, but he admitted that it is not recorded in the interview.

43. Under cross examination the witness denied that DC Ropate assaulted the first Accused.

44. The fourth Prosecution witness Sgt 3541 Isikeli Rokodreu gave evidence that on 10 March 2018 he was detailed to be the team leader of the investigations into the alleged incident. He said that he was the arresting officer for the first Accused and the second Accused. He gave evidence that he went with PC Ilaitia and Constable Taufu to arrest the first Accused. The witness said that the villagers called the first and second Accused out and assisted them to arrest the first and second Accused persons. Then they had escorted the two Accused persons to the Police Post. He also said that the two Accused persons who were brought to the station were every friendly and cooperative. He denied that the Accused persons were assaulted or threatened.

45. During the cross examination the witness said that he cannot recall whether there was an exhibit register at the Koro Police Post. He confirmed that he did not check whether there were items inside the exhibit room before he proceeded to investigate the matter. The witness also said under cross

examination that it was him, Pc Ilaitia and Constable Taufu who were in the team that went to arrest the Accused persons. Later he admitted that according to the Station diary the team consisted of only him, Pc Ropate and Cpl Isikeli and not Taufu. However, the witness again said that he is sure that PC Ropate was not a part of the arresting team.

46. When the witness was further cross examined by the counsel for the second Accused the witness confirmed that he never checked the exhibit register to confirm that the allegedly stolen items were in fact in the exhibit room.

47. The last Prosecution witness, Cpl 3752 Ilaitia Drauna gave evidence that he was on duty on 15 January 2018 at Koro Island and he was the Investigating Officer of this case. The witness said that Constable Timoci Waqabaca informed him in the morning that the exhibit room was broken into and marijuana plants were stolen. He stated that the grills of the window were open, and the louvre blades were removed of one window. He said five plants of Marijuana valued at \$ 10000 were missing. The witness said that the last time he saw the plants was previous Monday.

48. The witness said that he was the interviewing officer for the second Accused. He said there was no witnessing officer when the interview was recorded as the second Accused was cooperative. The witness tendered the original caution interview, the translation and the typed version as Prosecution Exhibit 4, 5 and 6. The witness said that the second Accused was given his rights. He said that he did not assault, threaten or make false promises to the second Accused. You heard the witness reading out the entire caution interview of the second Accused. When you consider the evidence in this case you must assess the contents of the caution interview in accordance with the directions given to you in this summing up.

49. Cpl Iliatia further gave evidence that he was the interviewing officer for the third Accused, Paula Vura as well. He tendered the original caution interview, the translation and the typed version as Prosecution Exhibit 7, 8 and 9. The witness said that the interview of the third Accused was conducted on 25 April 2018 as Paula Vura was evading Police. The witness stated that finally the third Accused voluntarily surrendered to the Police. He confirmed that the rights were given to the third Accused. He said that the third Accused was not threatened or induced to confess. The witness gave evidence that there was no witnessing officer for the interview as the third Accused was cooperating and it was also due to lack of manpower. The witness said that PC Waqabaca was not on duty that morning. The witness read out the entire caution interview statement of the third Accused and you heard what is recorded in his statement. As I mentioned before when you consider the evidence in this case you must assess the contents of the caution interview in accordance with the directions given to you in this summing up.

50. During cross examination on behalf of the first Accused Cpl Iliatia said that although the exhibits are entered in the exhibit register, he has no copy to submit to court.

51. On behalf of the second Accused it was suggested that the Cpl Iliatia assaulted the second Accused before he was brought to the station and also after bringing him to the station. However, the witness denied those suggestions.

52. Cpl Iliatia stated in response to the cross examination by the counsel for the third Accused that although the exhibit register is not available, he can confirm that the allegedly stolen items were in the exhibit room as it is recorded in the Station diary. The witness said during cross examination that the day Marijuana plants were brought to the station, it was entered in

the Station diary. The witness was given the Station diary to confirm to the Court that it is recorded that the Marijuana plants were in fact brought to the Station. However, upon perusal of the Station diary the witness stated that it is not recorded in the Station diary.

53. The witness further said during cross examination on behalf of the third Accused that he did not collect any evidence from the crime scene. He said that the Crime Officer from the Eastern Division took photos of the scene. But no such pictures were produced.

54. He also said that the Crime Officer came on the following week and the crime scene was preserved by him until the fingerprints are uplifted, by locking the exhibit room. But he later admitted that although he said it was preserved by locking the room, the window was open as it did not have louver blades and grills.

55. Further the witness admitted that it is not recorded in the interview that the third Accused was given a break. The witness admitted that there are discrepancies in the times recorded in the caution interview and the Station diary. However, he denied that during those time gaps which are not accounted for he forced or threatened the third Accused.

56. At this point it must be noted that Cpl Ilaitia mentioned certain facts about what he was told by other persons who did not give evidence in this case. I have informed the witness then and there that portion would be expunged from evidence. Therefore, you are reminded once again that you must not take into consideration what Cpl Ilaitia was told by other persons who did not give evidence in this case.

57. That is the case for the Prosecution. After the closure of the prosecution case the Accused persons were explained their rights. You must bear in mind

that although those options were given, still the burden is on the prosecution to prove the guilt of the Accused persons and they need not prove their innocence. In any event the first and the second Accused persons chose to give evidence.

58. The first Accused, Apete Turaganitani gave evidence that on 10 March 2018 when he was at home the Police came looking for him. He said that 7 Police officers came and Roapate, Isikeli and Ilaitia came in front of his house. The Accused said that the second Accused, Navitalia was also at his place at that time. The first Accused said then he sat in the twin cab and Ropate sat on his right side and another officer sat on the left side. He also stated that the second Accused was at the back tray of the twin cab.

59. The first Accused further said that Ropate started threatening him and pushed his head towards Isikeli. He said that he saw Ilaitia punching the second Accused and suggesting answers at the Police station. He also said that Ropate got hold of the second Accused's legs and Isikeli beat his ankles. The first Accused said that he heard the second Accused crying and then saying yes to what the police officers suggested.

60. He also stated that he was punched by Ropate before his interview. He said that when he had asked Ropate and Isikeli to take him to the hospital they refused to do so.

61. The first Accused said that on the second day of his interview he was taken by the Police Officers to show them the places the first Accused came. He said it took about 10 minutes and then they brought him inside the room and assaulted him again.

62. The first Accused said that he does not know about the allegations and there was no Marijuana in the Police station. He said the confession was a lie. He said that he said yes to the questions as he was assaulted.
63. Under cross examination by the State it was suggested that the first Accused made up a story about the second Accused as the second Accused is his nephew. The first Accused denied the suggestion and said that he gave evidence of what he saw. The first Accused said that he still has marks on his face as a result of the assault by the Police officers. It was suggested to the first Accused that he was represented by a lawyer on the first day that he was produced to the Magistrate's Court, but he did not complain about the alleged assaults. The first Accused said that he cannot recall whether he had a lawyer and said that he did not know whether he could complain. The first Accused denied what he said to the Police in his statement is true.
64. The second Accused, Navitalai Loatuicama gave evidence that on 10 March 2018 he was sleeping at his uncle, Apete's house when the Police arrived. He said that he got to the back of the vehicle and the first Accused was sitting inside. He said that Roapte and Taufu were sitting next to the first Accused and Isikeli was in the front passenger seat. He gave evidence that he saw Ropate punching his uncle inside the vehicle.
65. The second Accused said that he was assaulted at the Police station and he denied that he broke into the Police Post. He also said that Ropate put his both legs up on a chair and Isikeli beat his legs until he says yes to the allegations. He said he was crying, and he said yes as he was scared. He said it was his first time to go to a Police station.

66. The second Accused further gave evidence that he saw Ropate and Isikeli punching the first Accused. He further stated that he was forced to make the admissions and he does not know about the alleged offence.

67. During cross examination by the State the second Accused denied that he is lying to save his uncle and said he gave evidence about what he saw. The second Accused said that he said yes to the allegations as he was assaulted. When the State suggested to him that he was represented by a lawyer on the first day when he appeared in the Magistrate's Court, the second Accused denied that he had a lawyer. He also said that he did not inform the Court about the assault as he was not asked by the Court about the allegations. However, the State suggested that he was represented by a lawyer on the first day as per the records.

68. That was the case for the Defence.

69. You have seen that there are no eyewitnesses to the alleged offences. The Prosecution is solely relying on the admissions in the caution interviews of the three Accused persons. Therefore, it is for you to decide whether each of the Accused persons made those admissions in their respective caution interview statements and if so, secondly you have to satisfy yourselves about the truthfulness of those admissions. For this you have to look at the entire evidence adduced in this case including the evidence given by the Accused persons.

70. You have seen that the Defence questioned about the existence of five Marijuana plants in the Exhibit room prior to the alleged offences. The Defence also questioned about other evidence, pictures taken at the crime scene and the details of the investigations. The Defence also raised issues

with regard to the discrepancies in the caution interviews, and the Station Diary.

71. It was the position of the Defence that the Accused persons admitted to the allegations as a result of assaults, threats and inducements. It is for you to decide who you believe.


72. You have heard the answers given by each witness. Also, you have heard the evidence given by the Accused persons. If you believe that each Accused person made the admissions in their respective caution interviews and those statements are true, then you have to consider whether the elements of each offence are proved with that evidence beyond reasonable doubt.

73. Finding an Accused person guilty to one count does not automatically make him guilty to the other count. You must consider relevant evidence separately for each count in respect of each Accused when arriving at your opinions. If you have a reasonable doubt in respect of any count, then you must find that particular Accused not guilty to that count or counts.

74. Remember, it is for the Prosecution to prove the charges against the Accused persons beyond reasonable doubt. I have now given you the directions of law and summarized the evidence adduced in this case. It is a matter for you to decide whether the Prosecution proved all the ingredients of the offences beyond reasonable doubt in respect of each Accused.

75. You may now retire and consider your opinions. Before you do so, may I ask the counsel of both parties whether you wish to request any redirections?

76. When you are ready with your opinions, the Court will reconvene for you to inform your opinions to court.



Rangajeeva Wimalasena
Acting Judge

At Suva

13 November 2020

Solicitors

Office of the Director of Public Prosecutions for the State

Office of Legal Aid Commission for the 1st and 2nd Accused

Sharma N for the third Accused (*in absentia*)