

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

High Court Criminal Case No. HAC 281 of 2019

BETWEEN : STATE

AND : MANASA ROKOTUIVEIKAU

Counsel : Ms Sharma S. for the State  
Ms Kean T. for the Accused

Date of Hearing : 23 November 2020

Closing speeches : 24 November 2020

Date of Summing up: 25 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 the Accused is guilty or not guilty to the offence of aggravated robbery.

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 during the trial. If you do not agree with that opinion you will ignore it and form your own opinion with the evidence of this case.
3. You must base your opinion 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, comments made by the counsel and this summing up are not evidence. But you may consider those as 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 opinion. 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 opinion. 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. But you may also bear in mind that some witnesses have good memory, some may not remember every detail and it is also likely that some may perceive the same incident differently and narrate differently, specially if the the incident occurred withing a few seconds. You have to use your common sense in assessing the reliability and credibility of witnesses. Remember, that many witnesses are not comfortable in giving evidence in a court room, they may act in anxiety and get distracted in this environment.
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 his or her previous statements or the evidence of other witnesses.
10. In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies, omissions and contradictions in his or her evidence. That is, whether the witness has not maintained the same position and has given different versions with regard to the same issue. This

could be in relation to the testimony of the witness given in Court or in comparison to any previous statement made by that witness.

11. A statement made to the Police by a witness can only be used during cross-examination to highlight inconsistencies or omissions. That is, to show that the particular witness on a previous occasion had said something different to what he or she said in Court (which would be an inconsistency) or to show that what the witness said in Court was not stated previously in the statement made to the Police (which would be an omission). You have to bear in mind that a statement made by a witness out of Court is not evidence. However, if a witness admits that a certain portion in the statement made to the Police is true, then that portion of the statement becomes part of the evidence.

12. This is how you should deal with inconsistencies and omissions. You should first decide whether that inconsistency or omission is significant. That is, whether that inconsistency or omission is fundamental to the issue you are considering. If it is, then you should consider whether there is any acceptable explanation for it. You may perhaps think it obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you might not expect every detail to be the same from one account to the next. If there is an acceptable explanation for the inconsistency or omission, you may conclude that the underlying reliability of the account is unaffected.

13. However, if there is no acceptable explanation for the inconsistency or omission which you consider significant, it may lead you to question the reliability of the evidence given by the witness in question. To what extent such inconsistencies and omission in the evidence given by a witness influence your judgment on the reliability of the account given by that witness is for you to decide. Therefore, if there is an inconsistency or omission that is significant, it might lead you to conclude that the witness is generally not to be relied upon; or, that only a part of his or her evidence is

inaccurate. In the alternative, you may accept the reason he or she provided for the inconsistency or omission and consider him or her to be reliable as a witness.

14. 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 the Accused, it is required to prove beyond reasonable doubt that he is guilty. The burden of proof remains on the Prosecution throughout the trial. For this purpose, the Prosecution must prove every element of the offence, beyond reasonable doubt.

15. The Accused need not prove his innocence. The fact that the Accused gave evidence in this case does not imply any burden upon him to prove his innocence. It is not his task to prove his innocence. The burden is on the Prosecution to prove the guilt of the Accused. That means you must be satisfied that the State has proved every element of the offence beyond reasonable doubt.

16. 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 not guilty. If you are not left with any such doubt and if you are sure that the Prosecution proved every element of the offence, you must find him guilty.

17. Now let us look at the charge contained in the Information filed by the Director of Public Prosecutions.

Statement of offence

Aggravated robbery: contrary to Section 311(1)(a) of the Crimes Act 2009.

### Particulars of offence

Manasa Rokotuiveikau on the 14<sup>th</sup> day of July 2019 at Nasinu, in the Central Division robbed Samuela Vanuarebu of 1 x Samsung J2 mobile phone the property of Samuela Vanuarebu.

18. For the offence of aggravated robbery, the Prosecution must prove the following elements beyond reasonable doubt;

- a) The Accused
- b) In the company of another
- c) Dishonestly appropriated one Samsung J2 mobile phone belonging to Samuela Vanuarebu
- d) With intention to permanently deprive Samuela Vanuarebu of that property
- e) Used force on Samuela Vanuarebu immediately before or after stealing the said property

19. The first element is the identity of the Accused. The Prosecution must prove beyond reasonable doubt that the Accused committed the offence.

20. 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.

21. Theft is dishonest appropriation of the property belonging to another with the intention of permanently depriving the other of that property. 'Dishonesty' and 'intention to deprive permanently' are about the state of mind of the Accused. Inferences may be drawn from the conduct of the Accused, with regard to the Accused's state of the mind. 'Appropriation of property' means taking possession or control of the property without the consent of the person

to whom it belongs. In law, property belongs to a person if that person has possession or control of the property.

22. The offence of robbery becomes aggravated robbery, if it is committed in the company with one or more other persons. The Prosecution must prove that the Accused committed the offence in the company of another person.
23. An offence may be committed by one person acting alone or by more than one person acting together with the same criminal purpose. In this case, the Prosecution says that the Accused committed the offence in the company of another person.
24. I must explain to you the liability of a number of people committing a crime together. 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 offenders' 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.
25. Those who commit a crime together may play different parts to achieve their purpose. The Prosecution must prove that the Accused took some part in committing the crime. If you are sure that the offence of Aggravated Robbery was committed by more than one person and that the Accused acted together with the other to commit that offence and took some part in that offence you should find the Accused guilty of the offence of Aggravated Robbery.

Ladies and gentleman assessors

26. I will now briefly outline the evidence presented in this case. However, you should consider the entirety of the evidence adduced in this case when forming your opinions.

27. The first Prosecution witness, Samuela Vanuarebu gave evidence that he went on fishing on 13 July 2019 and was returning home at around 2 am on 14 July 2019. He stated that when he reached Duvula junction he noticed two boys sitting near the bread shop. The witness said that he did not know that the two boys were following him. When he reached a streetlamp near the bus stop one of the boys had tried to snatch his phone. The witness said one boy was wearing a hoodie and he came from the front. When the two boys tried to get hold of him, he had swung the bucket which he was carrying in his hand. The witness said then one boy who was at the back hit him on his head and he fell down. The witness said when he fell down one of them took his phone from his pocket and they ran away. He further stated that the boy who punched him was holding him while the other boy took his phone.

28. The witness stated that a person then came and help him to stand up. He said he was taken to the hospital and there were bruises on his face and mouth. The witness also said that he cannot remember how forcefully he was held by the two boys. He said he felt weak when he fell, and he just let them take his phone. The witness said that it was a Samsung J2 phone and the value was \$280.

29. Samuela further gave evidence that the person who came to help him was one Epeli. He said that Epeli saw what happened and it was Epeli who took him to Valalevu Police Station and then to the hospital. The witness said that it was at the Police Station he got to know the name of Epeli when he shook hands to thank him.



30. During cross examination the witness said that although it is recorded in the statement that there were some iTaukei boys sitting at the shop there were only two boys sitting there. Under cross examination the witness said that he did not explain to the Police how he was punched, and he only said that he was punched from the back. When it was suggested to the witness that the incident was fresh in his mind when he went to the Police soon after the incident, the witness said that when he went to the Station, he could remember some things but he forgot certain things as well. The witness was asked whether he stated in his statement that he was punched on his face. The witness explained it by saying that he was first hit on the back of his head and when he fell down, they punched him on his face. However, the witness said that he cannot exactly recall and all he can remember is that he fell down when he was punched.

31. The second Prosecution witness, Epeli Founa Makrava Vueti gave evidence that on 14 July 2019 he was returning from Nausori. He said he had a few more bowls of grog at Qarase and left that place around 1.30 am. The witness said there was an iTaukei man walking about 5 meters in front of him. The witness said that when that man went pass Duvula there were two boys sitting at a shop.

32. Epeli further stated that then the two boys crossed the road and started following the iTaukei man. He said the two boys got hold of the iTaukei man and the iTaukei man was swinging a bucket to protect himself. Then one of the boys had punched on the back of the iTaukei man's head and he had fallen down. The witness said then they took the iTaukei man's phone and ran away. The witness said that he approached the iTaukei man and helped him to collect his things. He further said that he held that man's hand and walked him across the road and took him to Valalevu Police Station in a taxi. He had also accompanied him to the health Centre. Epeli stated that although it was dark at that time there was a streetlight where the incident occurred.

The witness said that he told the two boys not to do that, but they took the iTaukei man's phone and ran away.

33. The witness said that he recognized the two boys as Manasa and Kini. The witness said that he has been living in Nadera for 15 years and he has known Manasa very well. He said he even used to work with him in 2017. The witness stated that he saw Manasa during the daytime on 13 July 2019 as well. He identified the Accused in this case as Manasa.

34. During cross examination the witness admitted that he was doped with grog. He said that he could not catch the two boys as he was doped with grog. The witness admitted that there are differences in the times he mentioned in Court and the times he stated in the Police statement. When he was asked as to why there are differences in the times he mentioned, the witness explained during re-examination that he is a bit scared as it was the first time for him to come Court. The witness admitted that it is recorded in his statement that the two boys were slim and fair. He agreed that the Accused is not fair. However, during the re-examination, the witness gave an explanation as why it is recorded that the two boys are fair in his statement. He said that he saw the incident in his own eyes, and he showed a picture of Manasa to the Police. He said it was the Police Officer who recorded the statement, had written down that Manasa was fair.

35. The witness said during cross examination that it was the other person, Kini who punched the iTaukei man and it was Manasa who took the phone. It was suggested to the witness that in his statement he had stated that it was Kini who took the phone. The witness explained that when Manasa took the phone from the iTaukei man, Kini took it from Manasa and they ran away.

36. During cross examination the witness said that he had seen Manasa in Nadera when Manasa was in Form 3 at Marist. When it was suggested that Manasa lived in a place called Hart in Nadera only from 2015, the witness

said that he cannot recall that, but he confirmed that had had seen Manasa going to Marist and then to Ratu Sakuna from Nadera. The witness said that Manasa lived in Hart at Tomanu Road in Nadera with his mother. The witness said that he can even show photographs of him and Manasa working in Nadi when it was suggested to him that Manasa does not know the witness.

37. That was the case for the Prosecution.

38. After the closure of the Prosecution case the Accused was explained his 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 and he need not prove his innocence. The Accused opted to give evidence.

39. The Accused said that he was sleeping at home on 14 July 2019 at Newtown with his brother and his wife. He said that he does not know Epeli and this was the first time he saw him. He denied that he worked with Epeli in 2017 and said that he was a Form 5 student at Ratu Sakuna Memorial School in 2017. He said he studied at Marist from Form 3 to 4. He denied the allegation.

40. During cross examination the Accused admitted that he was living at Hart with his mother during the time he was schooling. He said after he left school he was not allowed to live there, and he moved to Newtown. He said during cross examination that he does not know Kini.

41. That was the case for the Defence.

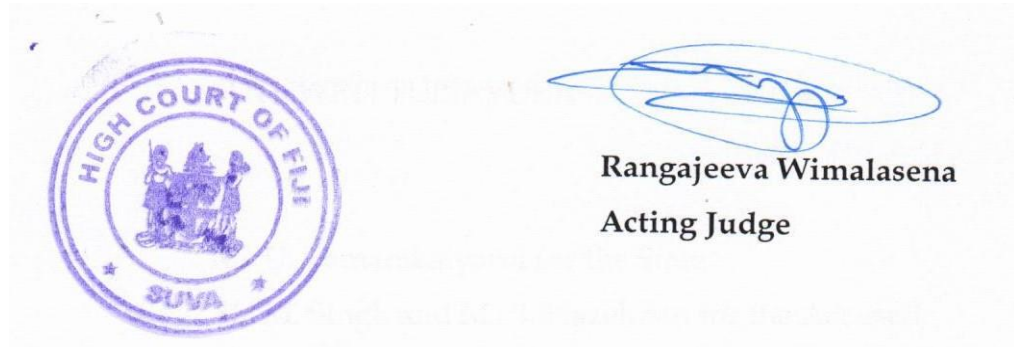
42. You heard the evidence given by both Prosecution witnesses. Samuela gave evidence that he was robbed by two boys on 14 July 2019. However, he has not recognized the two boys. The Prosecution witness, Epeli gave evidence as an eyewitness. He said that he knew the two boys and he identified the Accused as one of those two boys whom he has known for a long time.

Further the Prosecution led evidence that there was sufficient light for the witness to recognize the Accused.

43. The Defence highlighted a number of inconsistencies and omissions in the Prosecution evidence. However, as I said before it is for you to decide whether those inconsistencies and omissions are material to the main issues in this case and whether those are significant so as to affect the credibility of the witnesses or whether they are in relation to some insignificant or peripheral matters. You must remember that merely because there is a difference, a variation or an omission in the evidence in respect of a particular fact that would not make a witness unreliable. You must consider whether the witnesses have given reasonable explanations to those variations or inconsistencies or omissions. You must consider the overall evidence presented by the Prosecution, demeanour of the witnesses, and other circumstances in deciding the credibility of a witness and whether you believe the evidence of a particular witness.
44. The Accused totally denied his involvement with the alleged incident and said that he does not even know Epli. He said that he was sleeping at home at the time of the alleged offence. It is up to you to decide who you believe. If you believe the evidence given by the Accused to be true, then you must find him not guilty.
45. If you reject the version of the Accused and if you accept the evidence given by the Prosecution witnesses, then you must see whether the Prosecution proved the offence with that evidence, beyond reasonable doubt. If you are sure that the Prosecution proved the offence you must find the Accused guilty to the charge.
46. I have now given you the directions of law and summarized the evidence adduced in this case.

47. 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?

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



**At Suva**

25 November 2020

**Solicitors**

Office of the Director of Public Prosecutions for the State

Office of Legal Aid Commission for the Accused