

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 363 of 2018

[CRIMINAL JURISDICTION]

STATE

V

- 1. VERETI KOROI**
- 2. PENIASI BERABI**
- 3. MALAKAI CIRIKIDAVETA**

Counsel : Ms. S. Lodhia for the State
Ms. L. Manulevu and Mr. E. Sau for the 1st Accused
Mr. K. Verebalau for the 2nd Accused
Ms. T. Kean for the 3rd Accused

Hearing on : 16 - 20 March 2020

Summing up on : 20 March 2020

Judgment on : 23 March 2020

JUDGMENT

1. The accused are charged with the following offence;

Statement of Offence

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

Particulars of Offence

VERETI KOROI, PENIASI BERABI & MALAKAI CIRIKIDAVETA on the 27th day of September, 2018 at Nasinu in the Central Division, in the company of each other robbed **TUERE MAITVUKI** of 1x Samsung brand J1 mobile phone and \$7 cash, the properties of **TUERE MAITAVUKI**.

2. The assessors have returned with the unanimous opinion that each accused is guilty of the above charge.
3. I direct myself in accordance with the summing up delivered to the assessors on 20/03/20 and the evidence adduced during the trial.
4. The three accused did not dispute the fact that PW1 may have been robbed. They disputed the evidence on identity.
5. According to PW1, he was robbed between 4.10am and 4.15 am. He said he is sure of the time because he checked the time from his phone. The evidence of the police witnesses (PW3, PW4, PW5 and PW6) was that the incident took place around 5.30am and all three offenders ran together towards the back of McDonalds where two were arrested there and the third one ran further towards the BBQ stand where he was arrested. PW2 gave a third version. First, his evidence was inconsistent with PW1 with regard to the time of offence. Secondly, though the said evidence in relation to the time of offence could be reconciled with the evidence of police witnesses, his evidence cannot be reconciled with the evidence of police witnesses regarding the manner and the place the accused persons were arrested.
6. If PW1 was robbed of his phone and the money around 4.10am by three individuals, and if as the police said they saw the three accused searching PW1's pockets around 5.30am, that would lead to two possibilities.

7. First, the three accused are the offenders who robbed PW1 around 4.10am and they were still searching PW1's pockets for more than one hour until the police arrived. The second possibility is that, the three accused are not the offenders who robbed PW1 around 4.10am, but they were searching the pockets of PW1 who was unconscious and lying on the ground attempting to steal from PW1, around 5.30am.
8. In my view, the first scenario is highly improbable. That is, for three individuals to be searching the pockets of PW1 from 4.10am to around 5.30am to steal from PW1. On the other hand, the fact that none of the stolen items were recovered from the three accused persons who were said to have been arrested soon after they were seen searching PW1's pockets, suggests that the second situation is more probable.
9. The other evidence on identification in this case was the description of the clothes the assailants were wearing. PW1 in his evidence in chief gave a description of the clothes his assailants were wearing when they approached him. However, it was clearly noted during cross-examination that he was not confident with regard to that evidence he gave during evidence in chief. On the other hand, PW1 admitted that the three accused were shown to him by the police at the police station and informed him that they were his assailants.
10. These circumstances call into question the reliability of the evidence of PW1 regarding the description of the clothes. It should also be noted that none of the police witnesses gave evidence on the clothes the accused were wearing at the time of arrest and those clothes were not produced as exhibits.
11. Moreover, according to PW2, the person who ran past him towards the BBQ stall had a beard. This being an important detail with regard to the identity of the offender who ran towards the BBQ stall who is the second accused according to the police witnesses,

none of the other witnesses including PW1, mention that the second accused had a beard at the time of arrest. The second accused did not have a beard during the trial.

12. According to the evidence of the police witnesses, PW1 was unconscious and he had not spoken to any one of them from the time he was loaded into the police vehicle and while he was being transported to the police station. However, according to PW1, he had witnessed everything that took place including the arresting of the three accused persons where he even said that the name of the police officer who took him to the police vehicle was 'Vereti' and he told this police officer what happened to him. It is pertinent to note that, according to police witnesses, there was no police officer by the name of 'Vereti' among those who were involved in this case and the name of PW5 who said that he brought PW1 to the vehicle, is Rusiate Ralasi.
13. With regard to the place of arrest and the manner the accused were arrested, I have already pointed out that the evidence of PW2 and the police witnesses cannot be reconciled. Even PW1's evidence was not consistent with the evidence of the police witnesses as PW1 said that two accused were caught near the BBQ stall in the passage leading to Post Fiji. Moreover, both PW5 and PW6 agreed that they have mentioned in their police statements that PW3 and PW4 had arrested the two accused (first and the third) at the Western Mini Bus Stand. Even though PW5 said during re-examination that he may have 'overlooked' when he mentioned that in his statement, it is difficult to accept that a police officer could simply 'overlook' such fact and more importantly two police officers could make the same mistake when recording their police statements.
14. All in all, this case was riddled with inconsistencies that were not adequately explained. Most of those inconsistencies were fundamental to the main issue in this

case which is the identity of the offenders who committed the offence of robbery as per the charge. I find that the prosecution has failed to prove the charge against each accused, beyond reasonable doubt.

15. Therefore, I am unable to agree with the unanimous opinion of the assessors. I find each accused not guilty of the above charge.

16. Each accused is hereby acquitted of the charge accordingly.




Vinsent S. Perera
JUDGE

Solicitors;

**Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused**