

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 225 of 2018

STATE

V

RUPENI LILO

Counsel : Ms. Bhavna Kantharia for the State
Ms. Aarti Prakash with Ms. Manisha Singh for the Accused

Dates of Trial : 27-30 April 2020

Summing Up : 6 May 2020

Judgment : 8 May 2020

JUDGMENT

[1] As per the Information filed by the Director of Public Prosecutions (DPP), the accused Rupeni Lilo was charged with the following offences:

COUNT 1

Statement of Offence

AGGRAVATED BURGLARY: Contrary to Section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

RUPENI LILO with another, on the 29th day of April 2018, at Nabua, in the Central Division, entered into the dwelling house of **JONE KELO** as trespassers, with intention to commit theft therein.

COUNT 2

Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Act 2009.

Particulars of Offence

RUPENI LILO with another, on the 29th day of April 2018, at Nabua, in the Central Division, dishonestly appropriated 1 x Ingeo Circular Saw valued at \$165.00 and 2 x sheets of interior ply boards valued at \$45.14; all to the total value of \$210.14, the property of **JONE KELO** with the intention of permanently depriving **JONE KELO** of his properties.

- [2] The accused pleaded not guilty to the two charges and the ensuing trial was held over 4 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found the accused guilty of the said two charges.
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.
- [5] During my summing up I explained to the Assessors the salient provisions of the offence of Aggravated Burglary, as defined in Section 313 (1) of the Crimes Act No. 44 of 2009 (Crimes Act) and also the offence of Burglary, as defined in Section 312 (1) of the Crimes Act, in relation to Count 1. In relation to Count 2, I explained to the Assessors the salient provisions of the offence of Theft, as defined in Section 291 (1) of the Crimes Act.
- [6] Accordingly, I directed the Assessors that in order for the prosecution to prove the first count of Aggravated Burglary, they must establish beyond any reasonable doubt that;
- (i) The accused;
 - (ii) On the specified day (in this case the 29 April 2018);
 - (iii) At Nabua, in the Central Division;
 - (iv) With another person;
 - (v) Entered into the dwelling house of Jone Kelo as trespassers;
 - (vi) With the intention to commit Theft therein.

- [7] Similarly, I directed the Assessors that in order for the prosecution to prove the second count of Theft, they must establish beyond any reasonable doubt that;
- (i) The accused;
 - (ii) On the specified day (in this case the 29 April 2018);
 - (iii) At Nabua, in the Central Division;
 - (iv) With another person;
 - (v) Dishonestly;
 - (v) Appropriated the property of Jone Kelo;
 - (vi) With the intention of permanently depriving the said Jone Kelo of his properties.
- [8] All the above individual elements were further elaborated upon in my summing up in relation to both counts.
- [9] The prosecution, in support of their case, called the complainant, Jone Kelo, witness John Naibuka Junior and Acting Sergeant Lorini Chan. The Caution Interview Statement made by the accused has been tendered to Court as Prosecution Exhibit **PE1**.
- [10] The accused exercised his right to remain silent. During the cross examination of prosecution witness Acting Sergeant Lorini Chan, the defence tendered to Court the Search List (pertaining to the search conducted at the accused's house), as Defence Exhibit **DE1**.
- [11] In this case, the main witness the prosecution was relying on was John Naibuka Junior, who was an eye witness to the incident. He testified that he resides at Munda Lane, Makila, Nabua. He has been staying in Nabua for approximately 5 years. He is staying with his grandmother, his aunty and cousins. On 29 April 2018 (which was a Sunday), there was a break in at his neighbour Jone Kelo's house. His neighbour's house was not that far from his house. The witness showed the distance between the two houses to be 4 meters.
- [12] Around 1.00 o'clock in the afternoon, he had heard a noise from the next door neighbour's house. On hearing the noise, he had told one of his cousins to go and check. After that he had peeped out of the window of his house. He saw a man standing at Jone Kelo's house veranda. He had been eating raw noodles. The witness said that he knows this man and his name is Lilo, the accused. Lilo used to stay in their community. He said that he is staying close to their house – in the neighbourhood.
- [13] The accused had greeted his small cousin and then he went back. He testified that he personally saw the accused greeting his cousin. His cousin was standing on the footpath next to Jone Kelo's house. The footpath leading to houses. The accused had

gone up the hill where the witness's uncle's place is. There is said to be a slope opposite Jone Kelo's house. That's where he went.

[14] Thereafter, the accused went and he was standing under the coconut tree. The coconut tree is on the slope near the footpath. Then the accused was seen making a phone call. Then the witness testified that he saw another guy (an I-Taukei man) jump off Jone Kelo's veranda. He did not know who the other person was. At the time, the witness was still inside his house and peeping out the window.

[15] Thereafter, the witness had seen the other person, who was covered with a hood, run up the slope with two ply boards and a machine. The machine is one which is used to cut timbers.

[16] At this point in time, the witness was asked the following questions in evidence in chief:

Q. What happened then?

A. When he ran up the slope, then Lilo came after and they took the machine and the ply board and went together.

Q. What do you mean Lilo came after?

A. The man was running up the slope, then Lilo came and then they went running up together.

Q. The witness was asked to clarify further?

A. Because Lilo was standing under the coconut tree when the other guy came up the slope. Lilo came from under the coconut tree and they took the machine and ply boards together.

[17] The witness testified that thereafter his grandmother, Ruci Qaqanilawa, came from church. He had told his grandmother what happened to his neighbour. Then his grandmother had contacted Jone Kelo and told him about what had happened.

[18] The complainant, Jone Kelo, testified that around 2.00-2.10 in the afternoon, on 29 April 2018 (which was a Sunday), he had received a call from Ruci that someone had burgled into his property. He had requested her to inform the Police and that he will come and check the property on Monday.

[19] Accordingly, on Monday the complainant had gone to check on his property. He had seen that someone had forced the nail at the bottom of the ply board – someone had forcefully taken out the ply board that was nailed to the window. He said that the window that he was referring to was the window at the veranda side. He further explained the ply board was still there (on the window), but the nails that were nailed to the bottom of the ply board had been removed.

- [20] Thereafter, the complainant had entered his house and checked on all his things inside. He noticed that one chain saw was missing and when he came to the veranda, he noticed two ply boards were missing. He said the chainsaw was inside the room of the house. The witness explained that the veranda was near the roadside of his house and that the veranda was part of his house. The complainant said that the approximate value of the property taken was about \$200.00. For both items he said it would have been \$214.00.
- [21] In cross-examination, the complainant admitted that, on 30 April 2018, the accused had returned the ply boards. Later, in re-examination the complainant confirmed that the ply boards were returned to him and that they were the same ply board that was taken from the veranda.
- [22] In this case, the accused takes the position that he did not enter the complainant's house on 29 April 2018, nor did he take any ply board from the complainant's house. He also denies that he took the circular saw from the complainant's house. His position is that the ply board he took were the ply board (off-cuts) that were lying outside in the compound. The accused has admitted that on 30 April 2018 he had returned the ply board he had taken to the complainant.
- [23] The prosecution denies this position. The prosecution version is that the said ply boards were taken by the accused from the complainant's house – namely the veranda of the house. The complainant while admitting that the accused had returned the ply boards to him has clarified that the ply boards returned were those that had been taken from the veranda of his house.
- [24] The accused had been arrested on 30 May 2018, and his Caution Interview Statement was recorded the same day by Acting Sergeant Lorini Chan, who was also the Investigating Officer in this case. The State is relying on the admissions in the Caution Interview Statement made by the accused.
- [25] In this case the defence is not challenging the voluntariness or fairness of the Caution Interview Statement made by the accused. However, the defence states that the Answers to Questions 34, 41, 42 and 46 of the statement were fabricated by the police. The prosecution says that no part of the statement was fabricated.
- [26] I wish to refer to the relevant Questions and Answers as found in the Caution Interview Statement, and also refer to the Answers the accused is purported to have given for those Questions.

Q34: What happened from there?

A: We took the short cut to our home and found the ply boards on the verandah of a house.

The Answer the accused is said to have given: We took the short cut to our home and found off-cuts of ply boards outside a house in the compound.

Q41: From there, where else did you go?

A: We took the ply boards home, left them there and left out to Cunningham.

The Answer the accused is said to have given: I took the ply boards home, left them there and left out to Cunningham.

Q42 (on page 3): Where are the ply boards now?

A: We have used them and some pieces are still at home.

The Answer the accused is said to have given: I have used them and some pieces are still at home.

Q46: Do you wish to say anything?

A: Yes, I would like to apologise on what I had done as we were really drunk on that day and would also like to say that I can pay for what we had taken.

The Answer the accused is said to have given: Yes, I would like to apologise on what I had done as I was really drunk on that day and would also like to say that I can pay for what I had taken.

[27] I have carefully considered the purported fabrications that the accused has referred to in respect of the Answers to Questions 34, 41, 42 and 46 of his Caution Interview Statement. I have also considered the contents of the Caution Interview Statement in its totality. Having done so, I am of the view that the Caution Interviewing Officer had not fabricated any of the answers in the Caution Interview Statement.

[28] Accordingly, I am of the opinion that the Caution Interview Statement has been made voluntarily and fairly by the accused and that this Court could attach due weight to the admissions made in the said statement.

[29] During the cross examination of prosecution witness John Naibuka Junior, the defence highlighted several inconsistencies in the testimony given in Court by the witness *vis a vis* his statement made to the Police, which I have detailed in my summing up to the Assessors. I concede that some of these inconsistencies are significant in nature. However, I am satisfied with the explanation offered by the witness in regard to the said inconsistencies and I consider him as a reliable witness.

[30] As I have stated before, prosecution witness John Naibuka Junior, is an eye witness to the incident. He had witnessed himself the accused standing in the veranda of the complainant's house at the time he peeped out of the window of his house, in the

afternoon of 29 April 2018. Later the witness had also seen an unknown man (an I-Taukei man) jump off Jone Kelo's veranda, carrying with him two ply boards and a machine to cut timber (a saw). The witness also testified that he had then seen the accused and the unknown I-Taukei man leaving together.

[31] It has been admitted by the accused that on the next day (30 April 2018) he had returned the ply boards. The complainant has confirmed that the ply boards returned were those that had been taken from the veranda of his house.

[32] In addition, the accused has admitted to the two offences in his Caution Interview Statement.

[33] The Assessors have found the evidence of the prosecution as truthful and reliable as they have by their unanimous decision found the accused guilty of the charges. Therefore, it is clear that they have rejected the position taken up by the defence.

[34] In my view, the Assessor's opinion was justified. It was open for them to reach such a conclusion on the available evidence. I concur with the unanimous opinion of the Assessors in respect of both counts.

[35] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the offences of Aggravated Burglary (Count 1) and Theft (Count 2) with which the accused is charged.

[36] In the circumstances, I find the accused guilty of the offences of Aggravated Burglary and Theft as charged.

[37] Accordingly, I convict the accused of the offences of Aggravated Burglary and Theft as charged.



Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 8th Day of May 2020

Solicitors for the State : **Office of the Director of Public Prosecutions, Suva.**
Solicitors for the Accused : **Office of the Legal Aid Commission, Suva.**

