

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 421 of 2018

[CRIMINAL JURISDICTION]

STATE

V

WAISALE DAVUIQALITA

Counsel : Ms. S. Lodhia for State
Ms. S. Hazelman for the Accused

Hearing on : 15 – 17 June 2020

Summing up on : 18 June 2020

Judgment on : 19 June 2020

JUDGMENT

1. The accused is charged with the following offence;

Statement of Offence

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

Particulars of Offence


WAISALE DAVUIQALITA & OTHERS on the 3rd day of November, 2018 at Suva in the Central Division, in the company of each other stole 1x wallet containing \$120 cash and 2x e-transport bus cards from **SAHA DEO SINGH** and at the time of stealing from **SAHA DEO SINGH**, used force on him.

2. The assessors have returned with a divided opinion. While the majority opined that the accused is not guilty of the offence, one assessor found him guilty as charged.
3. I direct myself in accordance with the summing up delivered to the assessors on 18/06/20 and the evidence adduced during the trial.
4. The accused did not dispute the fact that PW1 may have been robbed by more than one person. He disputed the evidence on identity.
5. The only incriminating evidence against the accused was the cautioned interview. The accused claimed that the admissions recorded therein were fabricated by the interviewing officer.
6. The prosecution case was riddled with inconsistencies which called into question the reliability of the evidence presented especially the cautioned interview tendered as PE3.
7. The evidence of the witnessing officer (PW5) that the record of the cautioned interview he read on the computer was different from the print out which was tendered as PE3 was consistent with the accused's claim that PE3 has been fabricated.
8. Given the evidence led by the prosecution, I am not satisfied beyond reasonable doubt that the admissions recorded in PE3 were in fact made by the accused. Therefore PE3 should be disregarded. Without PE3 there is no evidence to establish that the accused took part in committing the alleged offence. As the prosecution has failed to prove the case, it is futile to comment on the defence of *alibi*.

9. In the circumstances, I would agree with the majority opinion of the assessors that the accused is not guilty of the above offence.

10. I find the accused not guilty of the above offence and hereby acquit him accordingly.




Vincent S. Perera
JUDGE

Solicitors;

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