

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 228 OF 2019

STATE

-v-

1. ATUNAIISA KOROI JUNIOR
2. ANANAIASA VEISERE KOROI

Counsel: Ms. S. Lodhia for State
Mr. K. Prasad for 1st Accused Mr. K. Cheng for 2nd Accused

Date of Summing Up : 17 July 2020
Date of Judgment : 21 July 2020

JUDGMENT

1. The accused were jointly charged on the following information and tried before a panel of three assessors.

Count 1

Statement of offence

Aggravated Burglary: contrary to Section 313 (1)(A) OF THE Crimes Act 2009.

Particulars of offence

ATUNAIISA KOROI JUNIOR & ANANAIASA VEISERE KOROI on the 12th day of June 2019 at Suva in the Central Division in the company of each other entered into the recording studio of **RATU JOSEFA TABA-KAUCORO** as trespassers, with intent to commit theft therein.

Count 2

Statement of Offence

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

Particulars of Offence

ATUNAISA KOROI JUNIOR AND ANANAIASA VEISERE KOROI on the 12th day of June 2019 at Suva in the Central Division in the company of each other dishonestly appropriated the 1 x squirer Stratocaster electric guitar with case, 1 x case containing connecting cables, 1 x GT100 effects processor with case, 1 x yellow level, 1 x black bag containing GT 100 effects with cables and guitar straps, 1 x drumstick bag with accessories, 1 x blue HP laptop with charger, 4 x packets of grog, 1 x black Tuscan TH02 Headphone, 2 x amour black hand gloves, 1 x orange multimeter, 2 x soldering iron, assorted screw drivers and pliers, 2 x multi tools, 1 x multi bright light, 4 x cables, 2 x cutters, 3 x long nose pliers, 1 x clamp pliers, 1 x 32 inches grundig TV screen and 1 x gretsch acoustic electric guitar, the properties of **RATU JOSEFA TABAKAUCORO** with the intention of permanently depriving **RATU JOSEFA TABAKAUCORO** of his properties.

2. Having been directed by my Summing-Up, the assessors unanimously found both the accused guilty on the second count. In respect of the first count, the assessors expressed a mixed opinion. In their majority opinion, the assessors found each accused guilty on the first count also.
3. I review evidence led in trial on my own Summing-Up and pronounce my judgment as follows.
4. In this case, there is no direct evidence or eye witness account to link the accused to the alleged burglaries and thefts. The Prosecution relies on circumstantial evidence to prove the charges. It invited the assessors to draw the inference in respect of recent possession of stolen property and come to the conclusion that the accused, acting together, burgled the studio at No. 131 Domain Road and stole the property that were in the possession of the complainant Mr. Ratu Josefa Tabakaucoro.
5. The Defence case is one of complete denial. The position of the Defence is that none of the alleged stolen goods were in the possession of the accused or seized from their possession.
6. In order to draw the presumption of recent possession of stolen property, the Prosecution must establish beyond reasonable doubt that:

- a. the accused was found in possession of the goods;
 - b. the goods were recently stolen
 - c. the goods found in the possession are the subject matter of the complaint.
 - d. there is no reasonable explanation by the person found in possession of the goods in regards to his possession of the said goods.
7. The police had recovered the alleged stolen goods within 24 hours of the alleged offences. The Prosecution was called upon to prove two important elements in this case; that the accused were found in possession of the goods and that those goods were the property stolen from complainant's studio which was the subject matter of the complaint.
 8. The Prosecution called the complainant Ratu Josefa and 5 police witnesses. Ratu Josefa was called to prove that the goods recovered by the police officers are the stolen property which is the subject matter of the complaint. The arresting officers PC Esava, PC Rusiate and Atekini were called to prove that the goods were in the possession of the accused.
 9. None of the so called recovered items were presented to Court either for identification by the witnesses or for the observation of court. The investigating officer WPC Arieta said that the recovered goods were listed in three search lists, photographed and released to the complainant as they were the source of income of the band of which he is the leader. The Prosecution tendered three search lists (PE1-PE3) and a booklet of photographs (PE4). WPC Arieta said that the photo booklet presented in evidence truly reflects the items recovered and the search lists properly account for the stolen items seized by the police officers.
 10. The Defence contended that the Prosecution had failed to prove that the alleged recovered goods are the stolen property or the subject matter of the complaint.
 11. The Defence had not objected to the photograph evidence being tendered at the trial. The assessors accepted the evidence presented by the Prosecution and were satisfied that the goods recovered by police are the ones stolen from the complainant's studio. That finding in my opinion is available on evidence led in trial.
 12. The Complainant said that, except for the TV and the equisetec guitar, he had identified all the other goods stolen from his studio in the same evening at the Totogo Police Station. He said that the tools, the GT 100 guitar effects and one of the equisetec guitars belonged to him. He described how he managed to identify those items; some of the items had distinguishable marks on them; they were in use in his studio for 5-6 years and were very familiar to him. The black strap on the neck is unique to his guitar; the blue HP laptop had Ashla's name written on it.
 13. The complainant had seen the photographs of those items at a witness conference held at the DPP's office a week before the trial. He confirmed that the photos reflected the goods he had identified at the police station. When the photo booklet was shown to him, he described the

- distinguishable features of some of the items and pointed out to the assessors how he recognised them.
14. The goods had been recovered by the police officers shortly after the information of the break-in had been received by the police station. The recovery was a coincident. The complainant had given a statement to police when he was called to identify the recovered goods.
 15. The Investigating Officer Arieta confirmed that the goods recovered by the arresting officers were brought to the police station, included in three separate search lists, exhibited and caused them to be photographed by the police photographer Sabina. She recognised the search lists she had prepared and the photographs taken by Sabina in her presence. Sabina confirmed that she took those photographs at the Totogo Police Station at the behest of Arieta.
 16. The Defence challenged the credibility of those search lists on the basis that they had not been prepared by the arresting officers who had done the search and not filled them up simultaneously with the search.
 17. Although the search lists had not been filled up by the officers who had effected the search, they had adopted the contents of those lists and signed them at the bottom. At the time of the arrest, the arresting officers had just opened the bags and they had no reason to believe that the bags contained stolen goods. A thorough search was done only at the police station when it was revealed that the goods were stolen. Most of the items were musical instruments. One officer said that they were not musicians and not smart enough to identify those equipment by their names. The Investigating Officer had helped the arresting officers to fill-up the forms as they were busy. The reason why the search lists were not prepared by the arresting officers themselves and not prepared simultaneously with the search were reasonably explained.
 18. The other important point that the Prosecution was required to establish was that the alleged stolen items were recently in the possession of the accused and were seized from their possession. Both the accused deny that those goods were in their possession at the time of the arrest. However, they did not dispute that they were arrested and searched by the police officers at the Suva carrier stand and that the 5 big bags were taken to the police station with them. Their position was that the big bags were sitting at a distance from where they were sitting and those bags did not belong to them.
 19. According to the arresting officers, the blue HP laptop and some other stolen items were in the possession of the 1st accused, in an orange bag he was wearing. A black Tascam headphone and some tools had been recovered from an adidas bag that the 2nd accused was wearing. The complainant had identified those goods at the police station as the ones that were stolen from his studio.
 20. The Defence Counsel cross-examined the Arresting Officers and the Investigating Officer to challenge the evidence of the Prosecution in this regard. They highlighted certain non-observance of proper procedures, protocols and guidelines on the part of the police officers.

Those procedures, protocols and guidelines are meant to ensure the fairness of the arrests and searches and to avoid fabrication of evidence by the police officers. The police officers gave acceptable reasons as to why they failed to observe some of the procedures, protocols and guidelines. Those failures did not in my opinion discredit the version of the Prosecution.

21. In the absence of the recovered items physically in court, the search lists PE1-PE3 and the photographs tendered by the Prosecution are important evidence in this regard if the assessors believed them to be true statements/ photographs.
22. The 5 big bags had been sitting on the floor and according to the version of the Prosecution, they were placed just in front of the accused where they were sitting. There was no one else closer to them than the accused. No person would ever leave those bags with those valuable items unattended in a place like that. There was no apparent reason why the police officers should fabricated evidence to implicate the accused.
23. The only inference that the assessors could have drawn in the circumstances was that those bags were in the possession of the accused.
24. The Prosecution proved beyond reasonable doubt that the accused were found in possession of the goods recently stolen from the complainant's studio. There was no reasonable explanation by the accused in regards to their possession of the said goods. In the absence of any explanation, the only inference that the assessors could have drawn was that the accused acting together had broken into the complainant's studio and stolen the property that were in the control and possession of the complainant.
25. The Prosecution proved each charge against the accused beyond reasonable doubt. I accept the majority opinion of the assessors.
26. I find the accused guilty on each count and convict them accordingly.
27. That is the Judgment of this Court.

At Suva
21 July 2020




Aruna Aluthge
Judge

Counsel: Director of Public Prosecution for State
Legal Aid Commission for Defence