

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]
CASE NO: HAC. 149 OF 2017

BETWEEN : **STATE**

AND : **1. SAULA LALAGAVESI**
2. APAKUKI SOWANE
3. JOSEPH NONU

Counsel : *Mr. Tuenuku T. for State*
: *Accused appeared in Person*

Hearing on : *7th, 19th & 20th August 2020*
Summing up on : *21st August 2020*
Judgment : *28th August 2020*

JUDGMENT

- [1] The accused, Mr. Saula Lalagavesi, Mr. Apakuki Sowane, and Mr. Joseph Nonu were charged as follows;

COUNT 1

Statement of Offence

AGGRAVATED ROBBERY: contrary to section 311(1) (a) of the Crimes Act 2009.

Particulars of Offence

Saula Lalagavesi, Apakuki Sowane, Joseph Nonu and others on the 14th day of April 2017 at Lautoka in the Western Division, robbed Anchorage Beach Resort of \$35,776.40 cash, the property of Anchorage Beach Resort.

COUNT 2

Statement of Offence

AGGRAVATED ROBBERY: *contrary to section 311(1) (a) of the Crimes Act 2009.*

Particulars of Offence

Saula Lalagavesi, Apakuki Sowane, Joseph Nonu and others on the 14th day of April 2017 at Lautoka in the Western Division, robbed Nacanieli Cakacaka of 1 x Alcatel mobile phone valued at \$49.00, 1 x brown Knapsak bag valued at \$45.00, cash of \$30.00 and a USB valued at \$12.00, all to the value of \$136.00, the property of Nacanieli Cakacaka.

COUNT 3

Statement of Offence

AGGRAVATED ROBBERY: *contrary to section 311(1) (a) of the Crimes Act 2009.*

Particulars of Offence

Saula Lalagavesi, Apakuki Sowane, Joseph Nonu and others on the 14th day of April 2017 at Lautoka in the Western Division, robbed Ratu Masivesi Seru of 1 x Samsung J5 mobile phone valued at \$650.00, the property of Ratu Masivesi Seru.


- [2] The accused were offered their right to counsel and each of the accused elected to appear in person for the trial. They pleaded not guilty to the Charges and it was taken up for trial and the ensuing trial lasted for 3 days. The PW1 Mr. Atish Ratnesh Div the Manager of the Anchorage Beach Resort, PW2 Mr. Nacanieli Cakacaka, PW3 Mr. Ratu Masivesi Seru and PW4, Mr. Josefa Vulaiqece gave evidence for the prosecution while all three accused gave evidence for themselves and the 1st accused in addition, called witnesses on his behalf.
- [3] At the conclusion of the evidence and after the directions given in the summing up, the assessors unanimously found all three accused guilty to the 3 counts of Aggravated Robbery.
- [4] I direct myself in accordance with the law and the evidence inclusive of which I discussed in my summing up to the assessors.

Analysis

- [5] The prosecution case relied on the evidence of the PW4. His evidence was the only evidence connecting the accused to the alleged robberies. He was a driver and drives a private car to transport passengers. He was not a registered taxi driver. It should be analyzed first, whether he is an innocent driver or an accomplice.
- [6] As for his evidence, on the face of it he looks like an innocent driver who took the passengers on hire. When his evidence is carefully considered, he is not a novice to criminal/illegal activities. Furthermore, he has driven on the tram line for more than a kilometer when returning from the robbery. The purpose of it is to avoid encountering the police. As for his evidence he is given just \$50.00 as his fare, for taking them at 1.00am, waiting for them for ½ an hour and bringing them back safely. He has been arrested on suspicion a few days after the incident. He has given his first statement to the police after the accused been arrested for some other offence. More than that, he states that firstly his contact Sachin and secondly the leader of the robbers, Kelepi, introduced each of the robbers to him, by their proper names. That is unusual and improbable unless, the PW4 is an accomplice. Therefore, I am convinced that PW4 was an accomplice.
- [7] Since PW4 was an accomplice, his evidence is not to be trusted and relied upon in absence of some independent corroboration on the material points. In regards to the identity of the robbers, there is no other evidence whatsoever. Further, PW4 admits that he named the robbers as for the names given by the police. His evidence is somewhat inconsistent *inter-se*. He has given the name of the leader, Kelepi Ratu to the police and by the time PW4 was arrested, the police having obtained information from Kelepi Ratu had already released him. I am hesitant to accept that it was the conduct of our police, in absence of any further proof.
- [8] All in all, there is nothing to substantiate the evidence of the PW4. Therefore, it would be too dangerous to rely on the evidence of the PW4. Though it may be possible that the accused have committed the alleged robbery, it is insufficient to convict them as I am not convinced beyond reasonable doubt that they did so.
- [9] Therefore I am of the view that the prosecution has failed proved the necessary elements of the alleged offence beyond reasonable doubt and the accused are entitled to the benefit of such doubt.

- [10] From my point of view, the assessor's opinion was incorrect. It was wrong for them to reach such a conclusion on the available evidence. Therefore, I disagree and overturn the unanimous opinion of the assessors.
- [11] I, having seen and heard the testimonies of the witnesses, am satisfied that evidence of the prosecution presented through the PW1 to PW4 are insufficient to establish the elements of the offence of aggravated robbery, beyond reasonable doubt. Particularly, the prosecution failed to establish the identity of the accused beyond reasonable doubt.
- [12] Therefore, I acquit the accused, Mr. Saula Lalagavesi, Mr. Apakuki Sowane, and Mr. Joseph Nonu of the three alleged counts of Aggravated Robbery.
- [13] This is the Judgment of the Court.




Chamath S. Morais
JUDGE

At Lautoka

This 28th Day of August 2020

cc: Solicitors for the State - Director of Public Prosecutions, Lautoka
Solicitor for the Accused - Accused appeared in Person