

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 411 of 2018

STATE

vs.

- 1. ALIKI KAIKOSO**
- 2. TIMOCI SORO**

Counsel: Mr. S. Shah for the State
Mr. K. Cheng for the 1st Accused
Ms. N. Mishra for the 2nd Accused

Date of Hearing: 03th, 04th, 05th and 06th February 2020

Date of Closing Submission: 07th February 2020

Date of Summing Up: 10th February 2020

SUMMING UP

1. The hearing of this case has now reached its conclusion. I have to sum up the case for you. As I explained to you before the commencement of the hearing, we have different functions. It is my task to ensure that the trial is conducted according to law. As part of that, I will direct you on the law that applies to this action. You must accept the law from me and apply all the directions I give you on matters of law.
2. Your function is to determine the facts of the case based on the evidence. That involves deciding what evidence you accept or refuse. You will then apply the law, as I shall explain it to you, to the facts as you find them to be, and in that way, arrive at your opinion.

3. I may comment on the facts if I think it will assist you when considering the facts. While you are bound by directions I give as to the law, you are not obliged to accept any comment I make about the facts. Hence, it is entirely upon you to accept or disregard any comment I make about the facts of this case unless it coincides with your own independent opinion.
4. You must reach your opinion on evidence and nothing but on the evidence itself. Evidence is what the witnesses said from the witness box and the documents tendered as exhibits. This summing up, statements, arguments, questions, and comments made by the counsel of the parties are not evidence. The purpose of the opening address is to outline the nature of evidence. Therefore, the opening address of the prosecution is not evidence. The closing addresses of the counsel of the prosecution and the defence do not evidence either. They are their arguments, which you may properly take into account when you evaluate the evidence, but the extent to which you do so is entirely a matter for you.
5. If you heard, or read, or otherwise learned anything about this case outside of this courtroom, you must exclude that information or opinions from your consideration. You must have regard only to the testimony put before you in this courtroom during this trial. Ensure that no external influence plays a part in your deliberation. You are allowed to talk, discuss, and deliberate facts of this case only among yourselves. However, each one of you must reach your own opinion. You are required to give merely your opinion but not the reasons for your opinion. Your opinion need not be unanimous. I must advise you that your opinion does not bound me, but I assure you that I will give the highest possible weight on your opinions when I make my judgment.
6. Moreover, I must caution you that you should dismiss all emotions of sympathy or prejudice, whether it is sympathy for or prejudice against the accused, witnesses, or anyone else. No such emotion has any part to play in your decision, nor should you allow public opinion to influence you. You must approach your duty dispassionately, deciding the facts solely upon the whole of the evidence. You have to determine the legal culpability as set down by law and not the emotional or moral culpability of the action.

Burden and Standard of Proof

7. I now draw your attention to the issue of burden and standard of proof. The accused are presumed to be innocent until they are proven guilty. The presumption of innocence is in force until you form your own opinion that the accused guilty of the offence.
8. The burden of proof of the charge against the accused is on the prosecution. It is because the accused are presumed to be innocent until they are proven guilty. In other words, there is no burden on the accused persons to prove their innocence, as their innocence is presumed by law.
9. The standard of proof in a criminal trial is “proof beyond a reasonable doubt.” It means that you must be satisfied in your mind that you are sure of the accused’s guilt. If there is a riddle in your mind as to the guilt of the accused after deliberating facts based on the evidence presented, that means the prosecution has failed to satisfy you the guilt of the accused beyond a reasonable doubt. If you find any reasonable doubt as to the commission of the offence as charged or any other offence by the accused, such doubt should always be given in favor of the accused person.

Information and elements of the offences

10. The two accused are being charged with two counts of Aggravated Robbery and one count of Attempted Aggravated Robbery. The particulars are in the information which is before you; hence, I do not wish to reproduce them in the summing up.

Elements of first and second counts

11. The main elements of the Aggravated Robbery are that:
 1. The two accused persons with others,
 2. in the company of each other,

3. committed the robbery on Nitya Nand Singh of FJ \$295 cash, Taxi Registration LT 6468, and a mobile phone.
 4. (in respect of the second count) committed the robbery on Noor Farida Fleming of one handbag, one mobile phone and FJ\$520.
12. The first element involves the identity of the offenders. The prosecution should prove beyond a reasonable doubt that the two accused persons committed this offence.
 13. The prosecution has to prove the two accused with others have committed this offence. Hence, the prosecution's case is that the two accused and others committed this offence together. Where two or more persons commit a criminal offence, each of them may play a different part, but if they are acting together as part of a joint plan or agreement to commit the offence, they all are guilty.
 14. The word plan or agreement does not mean that there has to be any formality about it. An agreement to commit an offence may arise on the spur of the moment. Nothing needs to be said at all. It can happen with a nod and a wink or a knowing look, or it can infer from the behavior of the parties. In joint responsibility, each accused shares a common intention to commit the offence and plays his part in it, however great or small, to achieve that aim.
 15. A person commits theft if that person:
 1. Dishonestly,
 2. Appropriates the property belonging to another,
 3. with the intention of permanently depriving the other of that property.
 16. The 'dishonestly' and "the intention of permanently depriving the other of the property" is the fault elements of the theft. These two elements denote the mind of the accused at the time of committing the offence. Inferences of the state of mind of the accused could be drawn from the conduct of the accused.

17. 'Appropriation of property' means taking possession or control of the property without the consent of the person to whom it belongs. At law, the property belongs to a person if that person has possession or control of the property.
18. Accordingly, in respect of the first count, the prosecution has to prove beyond a reasonable doubt that:
 1. The two accused, with others,
 2. In the company of each other,
 3. Dishonestly appropriated one Nokia Mobile phone, FJ \$ 295, and one taxi bearing the registration number LI 6468 belonged to Nitya Nand Singh,
 4. With the intention of permanently deprive it,
 5. And used force on Nitya Nand Singh immediately before or after stealing the said items.
19. The main elements of the second count are that:
 1. The two accused, with others,
 2. In the company of each other,
 3. Dishonestly appropriated one handbag containing one iPhone and FJ \$ 520 belonged to Noor Farida Fleming,
 4. With the intention of permanently deprive it,
 5. And used force on Noor Farida Fleming immediately before or after stealing the said items.
20. I now take your attention to the third count of Attempted Aggravated Robbery. The main elements of the attempted Aggravated Robbery as charged are that:
 1. The two accused, with others
 2. In the company with each other,
 3. With an intention to rob the complainant,

4. Attempted to rob the complainant.

The Identity of the Accused

21. The first element of the offence is involved with the identity of the two accused. It is the onus of the prosecution to prove beyond a reasonable doubt that two accused were the two perpetrators who attempted to rob the complainant.

Intention to Rob

22. The prosecution has to prove beyond a reasonable doubt that the two accused had the intention to rob the complainant. Robbery is stealing by using force. Therefore, the prosecution is required to prove beyond a reasonable doubt that the two accused had the intention to steal the complainant by using force.
23. It is not possible to have direct evidence regarding a person's state of mind as no witness can look into the accused's mind and describe what it was at the time of the alleged incident. However, you can deduce the state of mind of an accused from the facts and circumstances you would consider as proved.
24. To conclude that the two accused had the intention to steal the complainant by using force, you must be sure that they had that intention when they attack the complainant. You should consider all the evidence and draw appropriate inferences to ascertain whether the two accused had the said intention.

Attempt

25. I now draw your attention to the fourth element. The prosecution has to prove beyond a reasonable doubt that the two accused have done something to execute their intention of stealing complainant by using force. It must not be something that amounts to mere preparation to execute their said intention.

Separate Consideration

26. The two accused are charged with three separate counts. You have to consider them separately. If you find them guilty of one count, that does not automatically make them guilty of the other remaining counts. Likewise, if you find them not guilty of one count, that does not make them not guilty of other counts. You have to give separate consideration to each of these three counts.

Agreed Facts

27. I now request you to draw your attention to the agreed facts, which are before you. They are the facts that the prosecution and defence have agreed without dispute. Hence, you are allowed to consider them as proven facts by the prosecution beyond a reasonable doubt.

Evidence of the Prosecution

28. Let me remind you of the evidence presented by the prosecution during the hearing. The prosecution called eight witnesses to give evidence during the hearing. I will now summarize the evidence of the prosecution.
29. The first witness of the prosecution is Mr. Nand Singh. He was driving his taxi on the morning of the 27th of October 2018. When he was driving around Tacirua East along Khalsa Road, four youths got into his taxi, asking him to take them to Nadawa. Once he reached Nadawa, one of them told him to go to Bal Govind Road. He turned into Bal Govind Road and was driving along it passing the housing area. Then they told him to drive straight. Mr. Singh suddenly realized that if he drives straight, there are no houses. Therefore, he quickly drove his taxi towards the housing site. The passengers told him to stop the taxi.
30. Once he stopped the taxi, one of the passengers who was sitting in the back seat, gave him \$5 for the taxi fare. Another youth who was also sitting in the back seat got off from the taxi. He came and stood beside the door of the driver's side. The youth who was sitting in the

front passenger seat opened the door. At the same time, the youth who was standing beside the door of the driver's side said "driver change" and turned off the engine of the car. One of the youths who was sitting in the back seat grabbed Mr. Singh from his back. The youth who was sitting in the front passenger seat, and the one who was standing outside started to punch Mr. Singh. They took his wallet, phone, and damaged the dashboard of the car. They then opened the door and dragged him outside and kicked him. The villagers saw it and started to come towards them. Meantime, the four youth got into the car and drove away.

31. Mr. Singh said that the journey from Tacirua East to the location of this incident took about 7 to 10 minutes. He had seen the face of the person who was seated in the front passenger seat during the journey. He was sitting half a meter away from him. His view of the person sitting in the front passenger seat was not obstructed or impeded by anything. That person was similar to Mr. Singh's size and fit. He was wearing a blue coloured t-shirt and 3/4 shorts.
32. Moreover, Mr. Singh said that he saw the face of the person who got off the taxi and stood beside the door for about 20 to 30 seconds. He was standing just 30 cm away from Mr. Singh. His view of that person was not obstructed or impeded by anything. That person was a tall man. Once the four youth left the scene in his taxi, Mr. Singh went to Valelevu Police Station with one of the villagers and reported the matter. The registration number of his taxi is LT6468.
33. On the 29th of October 2018, Mr. Singh was asked to attend an identification parade at the Totogo Police Station. He was taken into a room at the backside of the Police Station. When he entered the said room, he found there were about 15 to 16 men lined up for the identification parade. Apart from the men who were lined up for the identification parade, he found few police officers were also in the room. They explained to him the procedure and steps of the identification parade. They were from Totogo Police Station. He was asked to go in front of the line of the men and see if he can find the suspects who robbed him on the 27th of October 2018. He identified the first accused and second accused as the two of the four suspects who robbed him on that day.

34. Mr. Singh said the police did not inform him that two suspects were taken into custody concerning this incident. Mr. Singh went to the room of the identification parade with a Police Officer. He was not waiting outside the door of the room with other witnesses. However, he waited for a while at the police station until he was called to the identification parade. He did not meet or talk to other witnesses during the waiting period as he was alone. Moreover, Mr. Singh said that he did not meet or see the first accused being escorted into the room by the Police when he was about to enter the room.
35. Mr. Singh said the people who were lined up in the room have different built, heights, skin complexion, and age limits. They were dressed in different clothing as well. The first accused did not look tired or untidy. All the men who were lined up appeared different from each other. They all looked normal as they were dressed in regular clothes. Mr. Singh pointed out to the two accused as they were standing in the middle of the line.
36. The second witness of the prosecution is Mereoni Chung. She had gone to Mad Hatters Cafe to celebrate her birthday with her parents on the morning of the 27th of October 2018. She was sitting at a table which is close to the entrance of the cafe. She was seated, facing inside the cafe. While they were having their breakfast, Ms. Chung found a man was walking into the cafe and try to grab her handbag and the purse which were on the table. She reacted immediately by holding the hand of the man and looked back at him. He gestured to her and pulled the bag with her. Ms. Chung said that she clearly saw the face of the man as he was just in front of her. Ms. Chung tussled with the man to get her bag released, which she managed. She then threw the bag to the back of the cafe and looked for her mother. Ms. Chung found her elderly mother was struggling to stop another man who also entered the cafe and trying to reach Ms. Chung. Both Ms. Chung and her mother managed to push the man back to the door while yelling at him to give up. Eventually, both men gave it up and ran out of the cafe. Ms. Chung and her mother chased after them and found they got into a taxi and went away.
37. Ms. Chung's view of the man who tried to grab her bag was not obstructed or impeded by anything. He was just in front of her. Moreover, she said she clearly saw the second man, as

well as her view of the second man, was also not obstructed or impeded by anything. Both the men were i-taukei males. The first person is slim built and was in his middle age as he was neither young nor old. The second man is a bit shorter than the first man. He was a fair and slim built man.

38. Ms. Chung had gone to Totogo Police Station on the 29th of October 2018, to participate in an identification parade. She had entered the Police Station from the reception and then walked past the car park to enter into a room in the back of the Police Station. When she entered the room, which was quite a big one, she found a line of men standing facing the opposite side of the room. A Police Officer explained to her the procedure and steps of the identification parade. She then went in front of the line and saw if the two men who tried to rob her bag were in the line. Apart from the men in the line, there were few Police Officers. One of them was in the uniform. Ms. Chung had identified the first and second accused as the two suspects who came into the cafe and tried to rob her bag. The first accused was the person who tried to grab her bag. The second accused entered into the cafe after the first accused.
39. During the cross-examination by the learned counsel for the first accused, Ms. Chung said the incident took place around 9.30 a.m. She had gone into the room of the identification parade with a Police Officer in uniform. She was not waiting outside with other witnesses before the identification parade. Ms. Chung further said that she did not see or met the first accused being escorted into the room by the Police before she entered the room. According to her evidence, all the men in the lineup looked similar as they had similar built-in terms of heights and sizes. They all were i-taukei. Apart from one person who looked a bit old, all the other men were in the same age group. They were in casual clothes and looked ordinary. Ms. Chung said she did not see or meet the second accused being taken into the room with another when she was entering the room.
40. The third witness of the prosecution is Noor Farida Fleming. She is living in Melbourne and visits Fiji periodically for her consultancy work. On the morning of the 27th of October 2018, she was walking to the town from the Holiday Inn Hotel. All of a sudden, she felt a

force as someone grabbed her bag. She was holding her bag across her body with a leather strap. She saw a man walked passed her, holding her bag. He used a significant amount of force to grab the bag. The man got into the taxi which came to the side of the road. Ms. Fleming did not try to chase after the man as she was afraid. She sought help from a couple who were on the other side of the road. She remembers the registration of the taxi number as 6468. The bag contained her wallet with FJ\$500, her mobile phone, books, and some cosmetics.

41. The next witness of the prosecution is Mr. Timoci Soqeta. He is a taxi driver by profession. On the morning of the 27th of October 2018, he received news that taxi bearing the registration number I.T 6468 had been stolen. When he was driving back to his taxi base at Nassese from the town, he saw the said stolen taxi parked at Suvavou House. He called the police and his taxi base to inform about the stolen taxi. He turned his taxi back and went and parked the opposite side of the road, near the Mobile Service Station. He observed a man got off from the taxi and started to walk towards the town. The taxi also then moved towards the town. A European lady was also walking towards the town, and that man was walking behind her. When she reached the hotdog stalls, he grabbed her bag and got into the taxi. Mr. Soqeta said he saw the face of that man clearly when he got off and then got into the taxi. That man was about ten meters away when he got off the taxi. His view of the person was not obstructed or impeded by anything. It was a sunny day though it was drizzling. Moreover, Mr. Soqeta had observed a black mark on the face of that man.
42. Mr. Soqeta then parked his taxi parallel to the said taxi and asked the driver why did they do such a thing. He saw the driver of the taxi when he had that conversation with him. He was a short person. Mr. Soqeta wanted to stop them, but they managed to pull off and left the scene. He then chased them after. At Augustus Street, the taxi went over the footpath and bumped on a retaining wall. The two men got off the taxi and ran down towards Nehru Primary School and then went across Suva Methodist Primary School. Mr. Soqeta went after them and saw the two men were at the back of the school. When they saw Mr. Soqeta, they escaped under the fence. He saw the Police Officers at the Nehru Primary School. Mr. Soqeta told the police officers that the two men were going towards Ritova. After that, Mr. Soqeta

went back to check on the European Lady. He could recall the registration number of the taxi as LT 6468.

43. On the 29th of October 2018, Mr. Soqeta had gone to the identification parade held at the Totogo Police Station. He had to wait in a room with a Police Officer until he was taken to the identification parade. He did not meet or talk to any other witnesses while he was waiting for the identification parade. He did not see the first and the second accused before he entered the room of the identification. All the men were in a line, including the two accused when he entered the room. Apart from the men in the line, three other Police Officers were also present in the room. A Police Officer explained to him the procedure and the steps of the identification parade. He then walked in front of the line and identified the two accused as the two men who involved in robbing the European lady in the town. Mr. Soqeta said the first accused was the one who got off the taxi and grabbed the bag of the European lady. The second accused was the driver of the taxi.
44. During the cross-examination by the defence, Mr. Soqeta said he made a statement to the Police on the 27th of October 2018 regarding this incident. It has not recorded in the statement that the first accused had a mark on his face. Moreover, there is no record about the conversation he had with the second accused after the first accused grabbed the bag of the European Lady in the statement. Mr. Soqeta said he told the Police Officer who recorded his statement about everything, but he has not properly recorded it in the statement.
45. Some of the men in the lineup were taller than the others. They all were young boys and had black complexion. They were dressed up in different clothes. Mr. Soqeta said that he found several wheelbarrow boys were also in the lineup. He had seen them in the market. He did not know about them until he went to the identification parade.
46. The fifth witness of the prosecution is Bob Kaitu Korowale. He is a Police Officer attached to Nasese Police Dog Unit. On the morning of the 27th of October 2018, he received direction to attend to a robbery incident. He and Constable Sovalevu went to attend the crime. They received information about the movements of the suspects; hence, they have gone to

several locations around the city and finally went to Flagstaff Reservoir, where he saw a Fijian youth was standing to about 20 yards away from him. He was wearing a white vest and blue shorts, holding a stick in his hand. That Fijian boy was a dark skin, short hair, strong face short man. When the Fijian boy saw the two police officers, he ran away. The two police officers then went to Nailuva road near Rukua junction as it is a short cut from the reservoir. They then saw the same Fijian boy was running towards the Nailuva road. Mr. Korowale then called the boy, but he then ran into the compound of the Korean church. Mr. Korowale ran after him and arrested the Fijian boy. Cpl. Sovalevu assisted him in arresting and escorting the boy to the car. Mr. Korowale said it was a bit rainy day, but he saw the boy clearly. He identified the second accused as the same Fijian boy he arrested on the 27th of October 2018.

47. The sixth witness of the prosecution is Constable Epele Sovalevu. He was on duty on the morning of the 27th of October 2018. He was doing duty with Officer Korowale, and covering the areas of the suspected stolen taxi was seen. While they were covering certain areas in the city, they received information that the stolen taxi had been abandoned in Toorak. Accordingly, they covered Nailuva Road near Rukua Street. While they were covering this area, they found a Fijian boy was suspiciously running towards Nailuva Road. Cpl. Epele and Mr. Korowale managed to run after this boy and arrested him. They then escorted him to the Police Station. You have seen Cpl. Epele identified the second accused as the Fijian youth whom they have detained near the junction of Nailuva Road and Rukua street.
48. The seventh witness of the prosecution is Tevita Qaranivalu. He explained the manner the Police arrested the first accused. Officer Qaranivalu and PC Apenisa, with other Police Officers, managed to arrest the first accused at the bush near the MH Flagstaff. The first accused was smelt of liquor but was not drunk. Police did not arrest the first accused while he was walking along Rewa Street.
49. The last witness of the prosecution is ASP Vijendra Nand. He conducted the identification parade on the 29th of October 2018 at the Totogo Police Station. He gathered eleven civilians with similar heights, weight, and built. ASP Nasinu briefed him about the incident, and also

about the two suspects that the Police arrested concerning this matter. The two suspects were kept in the interviewing room on the first floor, and the witnesses were in the charging room. He then took the particulars of the civilian and lined them up. The two accused consented to the identification parade. The first accused stood between the 5th and 6th position of the line, while the second accused stood between the 8th and 9th position of the line. After that, the first witness was brought into the room. He identified the first and second accused. Then the second witness Ms. Chung came and identified the first and second accused. The third witness Mr. Soqeta also identified the two suspects.

50. ASP Nand had conducted many identification parades during his 29 years career in the police force and aware of the Force Standing Orders. There was no other officers or person present in the room during the identification parade. The escorting officers of the three witnesses were not present in the room and waited outside the room until the respective witnesses made their identification. According to ASP Nand, the suspects usually object to the composition of the lineup. The oldest person in the lineup was 35 years old, and the youngest two in the lineup were 21 years old.
51. I have summarized the evidence presented during this hearing. However, I might have missed some. It is not because they are not important. You have heard every item of evidence and recall yourselves on all of them. What I did only was to draw your attention to the main issues of evidence and help you in remembering yourselves of the evidence.

Right to Remain Silent

52. After the prosecution case, the two accused were explained about their rights in defence. Both the accused opted not to give evidence on oath and exercised their right to remain silent. The two accused do not have to give evidence. You must not assume they are guilty because they have not given evidence. The fact that they have not given evidence proves nothing. It does nothing to establish their guilt.

Analysis and Directions

Evaluation of Evidence.

53. It is your duty now to determine whether the prosecution has established beyond a reasonable doubt that these two accused have committed these two offences of Aggravated Robbery and one count of Attempted Aggravated Robbery as alleged. To do that, you have to evaluate the evidence presented by the prosecution. In evaluating the evidence, you have to determine the reliability and credibility of evidence given by the witnesses.

Reliability of Evidence

54. It would be best if you were satisfied that you could rely on the evidence as true, reliable, and credible evidence. To do that, you have to convince yourself that evidence is free from mistakes, errors, and inaccuracies. If you find the evidence is free from such mistakes, errors, and inaccuracies, you can consider the evidence as reliable evidence.

Credibility of Evidence

55. The assessment of the credibility of evidence focuses on the lies or inaccurate facts that are intentional and motivated attempts to deceive. The credibility of the evidence depends on the individual who gives evidence, his motivations, his relationship to and the reaction to the particular situation.
56. Evaluation of the reliability and credibility of evidence will assist you in determining what evidence you may accept and what part of the evidence you may refuse. In doing that, you may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified.

57. In assessing evidence of the witnesses, you must consider whether the witness had the opportunity to see, hear, and feel what the witness is talking about in the evidence. You should then find whether the evidence presented by the witness is probable or improbable considering the circumstances of the case. In addition, you have to consider the consistency of the witness, not only with his or her evidence, but also with other evidence presented in the case.
58. You have to consider the demeanor of the witnesses, how they react to being cross-examined, and re-examined and were they evasive. That will help you to decide the credibility of the witness and the evidence. You have to keep in your mind that some witnesses are not used to giving evidence in court and may find the different environment in the courthouse distracting.
59. Moreover, you must bear in mind that a witness may tell the truth about one matter and lie about another; he or she may be accurate in saying one thing and not accurate in another thing.

Inconsistency and Contradictions

60. You have heard that the learned counsel for the first and second accused cross examined Mr. Timoci Soqeta about the inconsistent nature of the evidence he gave in the court with the statement he made to the Police during the investigation.
61. Moreover, the learned counsel for the defence in their respective closing addresses invited you to take into consideration the number of contradictions and inconsistencies between the evidence given by Mr. Korowale and Constable Sovalevu.
62. Let me explain to you the laws relating to such inconsistencies and contradictions between the evidence given by two or more witnesses and also between the evidence given by a witness with the previously made statement.

63. You are allowed to take into consideration such inconsistencies and contradictions when you consider the credibility and reliability of the evidence given by the witnesses. However, you have to be mindful that the previously made statements are not evidence of the truth of its contents. The evidence is what a witness testified in the court.
64. The passage of time will affect the accuracy of memory. Memory is fallible, and you might not expect every detail to be the same from one account to the next. Furthermore, the capacity of the memory of people is different. People have various capacities in understanding and remembering the events and the people involved in a situation where a series of events are unfolding unexpectedly and expediently. Some people might focus on one or a few activities, while others might focus on the entire events and people involved. Some people can remember the whole event while others may remember only part of the event. Therefore, you have to be mindful of these practical limitations and conditions when you consider those inconsistencies and contradictions between the evidence of two or more witnesses in respect of the issues which you are determining.
65. In respect of the inconsistency between the evidence presented in the court and the previously made statement, it is necessary to decide firstly, whether it is significant and whether it affects adversely to the reliability and credibility of the issue that you are considering. If it is substantial, you will next need to consider whether there is an acceptable explanation for it. If there is a satisfactory explanation for the change, you may then conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then you have to decide as to what extent that influences your judgment of the reliability of such witness.

Evidence of the Identification

66. The main issue, in this case, is whether Mr. Singh, Ms. Chung, and Mr. Soqeta had mistaken in their respective identifications of the two accused as the two suspects who involved in the two alleged incidents of Aggravated Robberies and one incident of Attempted Aggravated Robbery.

67. Therefore, you must determine whether Mr. Singh, Ms. Chung, and Mr. Soqeta have clearly and adequately identified the two accused as the two robbers. To do that, you have to determine whether you can accept the evidence of Mr. Singh, Ms. Chung, and Mr. Soqeta as reliable, credible, and truthful evidence. If you are satisfied, you must then proceed to determine whether what they said in their respective evidence are probable or improbable according to the circumstances which they were explaining.
68. When you are considering the evidence of identification given by Mr. Singh, Ms. Chung, and Mr. Soqeta, you need to exercise special caution. The reason for this is that experience tells us that honest and impressive witnesses, genuinely convinced of the correctness of their identification, have in the past made mistakes, even several witnesses making the same identification. You cannot convict the accused unless you are sure the identification of the two accused made by Mr. Singh, Ms. Chung, and Mr. Soqeta were accurate. In making that judgment, you need to look carefully at the circumstances in which they made those identifications and at any other evidence in the case which may support it. Especially you have to take into consideration the followings:
1. For how long could witness see the person witness says was the accused and, in particular, for how long could witness see the person's face?
 2. How clear was the witness's view of the person, considering the distance between them, the light, any objects or people getting in the way, and any distractions.
 3. Had witness ever seen the accused before the incident? If so, how often and in what circumstances? If only once or occasionally, had witness any special reason for remembering the accused?
 4. How long was it between the time of the incident and the time when the witness identified the accused to the Police?

5. Is there any significant difference between the description witnesses gave of the person and accused's appearance?
69. Let us consider the circumstances in which the identification took place. Mr. Singh had travelled to the scene of the crime from Tacirua in his taxi with the four suspects. One of the accused was sitting in the front passenger seat, and the other one came and stood beside the door of the car. Ms. Chung said the first accused was right next to her face when he tried to grab her bag. Then the second accused was facing her when she tried to push him to the door with her mother. Mr. Soqeta had seen the first accused when he got off and got into the taxi and then saw the second accused when he came parallel to their taxi and spoke to him.
70. When you are deciding the evidence of identification, you can take into consideration other evidence that tends to support the evidence of identification. In doing that, you can take into account the testimony of Mr. Korowale, Constable Sovalevu, and Mr. Qaranivalu. They were the three Police Officers who got involved in arresting the two accused on the same morning of 27th of October 2018, within the vicinity of the crashed taxi. Moreover, Ms. Fleming said the registration of the taxi to which the man who grabbed her bag got in is 6468.
71. You have heard the two learned counsel for the defence in their respective closing addresses emphasized that there is no evidence presented by the prosecution about the involvement of others apart from the two accused in respect of the second and third counts as charged. The offences of Aggravated Robbery and Attempted Aggravated Robbery constitute upon the basis of the participation of two or more suspects. Hence, if you are satisfied that the two accused had taken part in committing the two offences as alleged in counts two and three, you can still consider the guilt and not the guilt of the two accused.

Final Directions

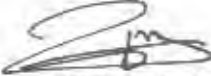
72. Madam and Gentleman assessors, I now take your attention to the final directions of the summing up.

73. If you are satisfied that the prosecution has proven beyond a reasonable doubt that the two accused in company with each other have committed the offence of Aggravated Robbery as charged in count one, you can find them guilty of the offence of Aggravated Robbery.
74. If you are not satisfied or have doubt whether the prosecution has proven beyond a reasonable doubt that the two accused in company with each other have committed the offence of Aggravated Robbery as charged in count one, you can find them not guilty of the offence of Aggravated Robbery.
75. If you are satisfied that the prosecution has proven beyond a reasonable doubt that the two accused in company with each other have committed the offence of Aggravated Robbery as charged in count two, you can find them guilty of the offence of Aggravated Robbery.
76. If you are not satisfied or have doubt whether the prosecution has proven beyond a reasonable doubt that the two accused in company with each other have committed the offence of Aggravated Robbery as charged in count one, you can find them not guilty of the offence of Aggravated Robbery.
77. If you are satisfied that the prosecution has proven beyond a reasonable doubt that the two accused in company with each other have committed the offence of Attempted Aggravated Robbery as charged in count three, you can find them guilty of the offence of Attempted Aggravated Robbery.
78. If you are not satisfied or have doubt whether the prosecution has proven beyond a reasonable doubt that the two accused in company with each other have committed the offence of Attempted Aggravated Robbery as charged in count three, you can find them not guilty of the offence of Attempted Aggravated Robbery.

Conclusion

79. Madam and Gentleman assessors, I now conclude my summing up. It is time for you to retire to your room and deliberate and form your individual opinions. You will be asked individually for your opinion and will not require to give reasons for your opinion. When you have reached your opinion, you may please inform the clerks, so that the court could reconvene.
80. Learned counsel of the prosecution and the accused, do you have any redirections to the assessors?




R.D.R.T. Rajasinghe
Judge

At Suva
10th February 2020

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the 1st Accused.
Officer of the Legal Aid Commission for the 2nd Accused.