

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 348 of 2019**

STATE

vs.

ISOA VONU

**Counsel:** Mr. Z. Zunaid for the State  
Accused In Person

**Date of Hearing:** 05th, 06<sup>th</sup> and 7<sup>th</sup> October 2020

**Date of Closing Submission:** 07<sup>th</sup> October 2020

**Date of Summing Up:** 08<sup>th</sup> October 2020

**Date of Judgment:** 09<sup>th</sup> October 2020

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**JUDGMENT**

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1. The accused is charged with one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act. The particulars of the offence are that:

***FIRST COUNT***

*Statement of Offence*

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

*Particulars of Offence*

*ISOA VONU, SERUVATU NIUMATAIWALU and TEVITA RAVAI on the 4<sup>th</sup> day of September, 2019 at Nakasi, in the Central Division, in the company of each other stole \$1800.00 cash and 1x Samsung J2 mobile-phone from **SANJAY NARAYAN SHARMA** and immediately before stealing from **SANJAY NARAYAN SHARMA**, used force on him.*

2. The hearing commenced on the 5th of October 2020 and concluded on the 7th of October 2020. The Prosecution adduced the evidence of seven witnesses, and the accused gave evidence for the defence. Subsequently, the learned counsel for the Prosecution and the accused made their respective closing addresses. I then delivered the summing up.
3. In their unanimous opinion, the three assessors found the accused guilty of the offence of Aggravated Robbery as charged.
4. Having carefully considered the evidence presented during the hearing, the respective closing addresses of the parties, the summing up, and the assessors' opinion, I now proceed to pronounce my judgment as follows.
5. The Prosecution alleges that the accused with two others had entered the house of the Complainant and then robbed FJ \$1800 cash and one Samsung mobile phone on the early hours of the 4th of September 2019. The accused denies the allegation, saying that he was in Lautoka with one Ravoni Yalayala on the 4th of September 2019. Accordingly, the main dispute in this matter is whether it was the accused who entered the Complainant's house with another, while the third accomplice was guarding outside the home.
6. The accused said he went to the West in August 2019 and stayed with his relatives at Tomuka, Lautoka. In September, he had moved to Natokowaqa and stayed with Titus Nair until the Police arrested him. The accused initially said that one Ravoni Yalayala had asked him if he could accompany them for shopping on the 14th of September 2019. He then suddenly added, saying, "also on the 4th of September 2019". In his evidence, the accused

further said that he was shopping in Lautoka with Ravoni Yalayala on the 4th of September 2019. He did not specifically state what time or how long he did shopping in Lautoka.

7. This alleged incident had taken place at 2.00 a.m on the early morning of the 4th of September 2019. The accused did not state where he was on the 3rd of September 2019 and in the early morning of the 4th of September 2019. He merely said that he moved to the West in August 2019. In contrast, he said he was employed at Core Construction based in Vatuwaqa, Suva in September 2019.
8. During the cross-examination, the accused said Ravoni Yalayala is presently in remand custody at the Suva Remand Centre. He has not met Ravoni Yalayala in prison. Ravoni Yalayala is in a different dormitory. One Prison Officer had informed the accused that Ravoni Yalayala had been brought to the Suva prison from Lautoka. The prison officer had found the accused is also from Tomuka village as Ravoni. On the accused's request, the court had issued a production order to produce Ravoni Yalayala to give evidence for the defence. However, the accused decided not to call Ravoni Yalayala to give evidence.
9. I do not find the accused's evidence is and/or maybe credible, reliable, and truthful evidence because of these discrepancies. Moreover, the evidence of the accused has failed to create any doubt about the prosecution case. Hence, I find the defence of the alibi of the accused is false and not true.
10. The Complainant, in his evidence, said that he saw the boy who was dressed in a blue t-shirt very clearly. He was not wearing a mask, though his accomplice wore a mask. The light of the room was on when they came and placed the chopper on his neck. It took about 13 to 14 minutes for this entire ordeal. The boy in the blue t-shirt was standing near him during the said period. The Complainant had given the boy the money box and the cash. The Complainant explained the features of that boy during his evidence. After that, the Complainant made a dock identification stating the accused was the same boy dressed in a blue t-shirt and robbed his home on the 4th of September 2019.

11. The Supreme Court of Fiji in Naicker v State [2018] FJSC 24; CAV0019.2018 (the 1st of November 2018) has outlined the inherent dangers in the dock identification, where Keith J held that:

*"The dangers of a dock identification (by which is meant offering a witness the opportunity to identify the suspect for the first time in court without any previous identification parade or other pre-trial identification procedure) have been pointed out many times. The defendant is sitting in the dock, and there will be a tendency for the witness to point to him, not because the witness recognises him, but because the witness knows from where the defendant is in court who the defendant is, and can guess who the Prosecutor wants him to point out. Unless there is no dispute over identity, and the defence does not object to a dock identification, it should rarely, if ever, take place"*

12. According to Keith J, a dock identification should be used sparingly due to its inherent frailties. However, a dock identification is not inadmissible evidence. It is the trial Judge's discretion to allow a dock identification, offering a witness an opportunity to identify the suspect for the first time in court without any previous pre-trial identification procedures.
13. The purpose of the pre-trial identification procedures is to ensure that a witness's identification takes place in circumstances where the identifying witness's recollection is tested objectively by placing the suspect in a line or a group made up of like-looking suspects. Placing the accused among a number of similar-looking suspects could check on the accuracy of the witness's identification by reducing the risk that the witness is merely picking out someone who resembles the perpetrator.
14. Such safeguards are not available when the witness is asked to identify the accused in the dock at the trial. The accused is sitting in the dock when the witness is asked to point out the alleged suspect if he sees him in the court. There is a tendency for the witness to point to the accused, not because the witness recognizes the accused, but because the witness knows who the accused is and where he is seated and could guess who the Prosecutor wants the witnesses

to point out. (*vide Naicker v State ( supra)*) Even a well-intentioned eye witness could automatically assume the accused sitting in the dock as the person who had committed the crime (*vide Tido v R ((2011) 2 Cr. App. R 23)*).

15. **Holland v HM Advocate [2005] UKPC D1, 2005 SC (PC) 1, 17, para 4** has outlined the benefits of the identification parade and the frailties of the dock identification in an inclusive manner, where it was held that:

*"...identification parades offer safeguards which are not available when the witness is asked to identify the accused in the dock at his trial. An identification parade is usually held much nearer the time of the offence when the witness's recollection is fresher. Moreover, placing the accused among a number of stand-ins of generally similar appearance provides a check on the accuracy of the witness's identification by reducing the risk that the witness is simply picking out someone who resembles the perpetrator. Similarly, the Advocate-depute did not gainsay the positive disadvantages of an identification carried out when the accused is sitting in the dock between security guards: the implication that the Prosecution is asserting that he is the perpetrator is plain for all to see. When a witness is invited to identify the perpetrator in court, there must be a considerable risk that his evidence will be influenced by seeing the accused sitting in the dock in this way. So a dock identification can be criticised in two complementary respects: not only does it lack the safeguards that are offered by an identification parade, but the accused's position in the dock positively increases the risk of a wrong identification."*

16. Lord Kerr in **Tido v R (supra)** found that a dock identification is not inadmissible evidence. It can be admitted in evidence even in the absence of a prior identification parade. Lord Kerr held that:

*"Dock identifications are not, of themselves and automatically, inadmissible. In Pop ( Aurelio) v R ( 2003) UKPC 40, the board held that; even in the*

*absence of a prior identification parade, a dock identification was admissible in evidence, although when admitted, it gave rise to significant requirements as to the directions that should be given to the jury to deal with the possible frailties of such evidence"*

17. Lord Kerr in **Tido v R (supra)** has further held that:

*"It is important to make it clear that a dock identification is not inadmissible evidence per se and that the admission of such evidence is not to be regarded as permissible in only in the most exceptional circumstances. A trial judge will always need to consider, however, whether the admission of such testimony, particularly where it is the first occasion on which the accused purportedly indented, should be permitted on the basis that its admission might imperil the fair trial of the accused"*

18. Therefore, the fundamental consideration that a trial Judge is required to consider in allowing a dock identification is the fairness of the trial.

19. The Supreme Court of Fiji in **Nalave v State [2019] FJSC 27; CAV0001.2019 (1 November 2019)** has discussed the circumstances where the trial Judge could exercise his discretion to allow a dock identification, where Stock J held that:


*"Whilst it is correct that a trial judge has a discretion to allow a dock identification, I endorse the suggestion by the editors of Archbold 2018 that "in practice the exercise of such a discretion should not even be considered unless the failure to hold an identification procedure was as a result of the defendant's default."*

20. The Prosecution adduced evidence to establish that the accused had refused to stand for an identification parade during the investigation of this matter, thus preventing the Complainant an opportunity to make an identification of the suspect at a properly organized identification parade. Accordingly, I allowed the Complainant to make a dock identification of the suspect.

21. I now draw my attention to consider the admissibility, and the strength, of identification evidence, which I propose to determine in three main steps, that:
  - i) The circumstances in which the witness saw the accused and,
  - ii) The circumstances in which he later identified the accused and,
  - iii) Any other evidence in the case which may support the identification evidence.
  
22. The Complainant, in his evidence, explained the circumstances in which he saw the accused during this alleged robbery. The lights of the room and the kitchen were on at that time. The accused was not wearing a mask; hence, the Complainant was able to see the accused's face clearly. The accused had been standing very close to the Complainant during the incident. It took about 13 to 14 minutes for this ordeal. The Complainant said that he could not forget that day and the accused's face as this incident has caused tremendous trauma. The description of the suspect explained by the Complainant is similar to the actual appearance of the accused. Therefore, I am satisfied the Complainant had correctly and clearly saw the accused as the suspect dressed in a blue t-shirt and robbed him on the 4th of September 2019. Accordingly, it is my view that the circumstances in which the Complainant saw the accused and his subsequent identification of the accused have not affected the strength of the evidence of identification given by the Complainant.
  
23. In his evidence, Mr. Tevita Ravai explained that he had planned to commit this crime with the accused and one Seruvatu, also known as Temo, at around 10 a.m. on the 3rd of September 2019. They had then carried out that plan at about 2 a.m. on the early morning of the 4th of September 2019. The accused was not masked; however, Temo was wearing a mask. The accused and Seruvatu entered the house through the window while Tevita was guarding outside. He said it was the accused who had money in his hand when they came out of the house.
  
24. Mr. Tevita Ravai's evidence has not been shown or suggested by the accused as unreliable or tainted with adverse motive. Moreover, I find Mr. Ravai's evidence has been corroborated by the evidence of the Complainant, Ms. Arieta, and Mr. Momo. Therefore, I accept the evidence of Mr. Ravai as credible, reliable, and truthful evidence.

25. Moreover, Ms. Arieta had seen the accused with another at around 8.00 p.m. when they came to the carwash on the 3rd of September 2019. The accused was dressed in a blue coloured t-shirt. Mr. Viliame Momo had seen the accused and Temo standing in front of the main gate of Holiday Car Rentals at around 5 p.m. on the 3rd of September 2019. He had observed the two till about 9 p.m. as they were hanging around the vicinity. The accused was dressed in a blue coloured t-shirt.
26. The evidence of Mr. Ravai, Ms. Arieta, and Mr. Momo supports the Complainant's evidence of identification. Accordingly, I accept the evidence of the Prosecution as credible, reliable, and truthful evidence.
27. Hence, I find the Prosecution has proven the accused guilty of this offence of Aggravated Robbery beyond a reasonable doubt. Accordingly, I do not find any cogent reasons to disagree with the three assessors' unanimous guilty opinions.
28. In conclusion, I find Mr. Isoa Vonu guilty of Aggravated Robbery, contrary to Section 311(1) (a) of the Crime Act, and convict to the same accordingly.



  
R.D.K.T. Rajasinghe  
Judge

**At Suva**  
09<sup>th</sup> October 2020

**Solicitors**  
Office of the Director of Public Prosecutions for the State.  
Accused In Person.