

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 280 of 2019

STATE

V

SAVENACA VALU

Counsel : Ms. Swastika Sharma for the State
Ms. Lice Manulevu with Ms. Kalesi Marama for the Accused

Dates of Trial : 19-20 October 2020

Summing Up : 22 October 2020

Judgment : 23 October 2020

JUDGMENT

- [1] As per the Information filed by the Director of Public Prosecution (DPP), the accused, Savenaca Valu, was charged with the following offence:

[COUNT]

Statement of Offence

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

Particulars of Offence

SAVENACA VALU and others, on the 29th day of July 2019, at Suva, in the Central Division, in the company of each other, robbed **VILIAME SIVO RAKURO** of 1 x Huawei brand mobile phone, the property of **VILIAME SIVO RAKURO**.

- [2] The accused pleaded not guilty to the charge and the ensuing trial was held over 2 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the Assessors found the accused not guilty of the charge. By a

unanimous decision, the Assessors also found the accused not guilty of the alternative charge of Receiving.

- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the unanimous opinions of the Assessors.
- [5] During my summing up I explained to the Assessors the salient provisions of Sections 310 (1) and 311 (1) (a) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [6] The Assessors were directed that in order for the prosecution to prove the count of Aggravated Robbery, they must establish beyond any reasonable doubt that:
 - (i) The accused;
 - (ii) On the specified day (in this case the 29 July 2019);
 - (iii) At Suva, in the Central Division;
 - (iv) With others;
 - (v) Robbed Viliame Sivo Rakuro of his property (The Huawei brand mobile phone).
- [7] Each of the above individual elements were further elaborated upon in my summing up in respect of the charge.
- [8] Furthermore, for a better understanding of the offences of Robbery and Aggravated Robbery, I had to explain to the Assessors the salient features of the offence of Theft in terms of the provisions of Section 291 (1) of the Crimes Act.
- [9] I further explained to the Assessors that since the complainant Viliame Sivo Rakuro does not himself identify as to who had robbed him on the 29 July 2019, to impute liability on the accused the prosecution was relying on what is known as the Doctrine of Recent Possession. In other words, that in this case that the prosecution was relying on the Doctrine of Recent Possession to establish the link between the accused and the Huawei brand mobile phone stolen from the complainant.
- [10] In *State v. Cakau* [2011] FJHC 249; HAC143.2007 (6 May 2011) it was held as follows:

"6. The doctrine of 'recent possession' furnishes a legal and factual basis to found a criminal prosecution. The underlying principle in the doctrine is that a person, who is in possession of stolen goods soon after a theft or an associated offence, implicates him in the act of receiving [stolen goods] or in the act of theft itself or in associated offences (R v. Garth [1949] 1 AER 773; R v Raviraj (1986) 85 Cr App R 93).

7. The prosecution, for it to be benefitted from the application of the doctrine, must prove that:

(i) The accused possessed the goods;

(ii) The goods possessed by the accused were the subject matter of the offence, as complained to by the complainant; and,

(iii) There is no explanation from the accused in regard to his possession of the suspected goods.”

- [11] I explained to the Assessors that according to the Doctrine of Recent Possession, when a person is found in possession of recently stolen property, which is the subject matter of the offence, and cannot provide a reasonable explanation for that fact, the Court may infer that he or she either stole the property or received the property knowing that it was stolen. This principle can be extended to apply to cases of robbery and armed robbery as well.
- [12] I directed the Assessors that if they find that the prosecution although failing to prove the elements of the offence of Aggravated Robbery beyond any reasonable doubt, has proved that the accused dishonestly received stolen property knowing or believing the said property to be stolen; as an alternative, they are then allowed to look at the lesser offence of Receiving, in terms of Section 306 of the Crimes Act, though the accused is not formally charged in the Information for that offence.
- [13] In terms of Section 306 of the Crimes Act *“A person commits a summary offence if he or she dishonestly receives stolen property, knowing or believing the property to be stolen.”*
- [14] I further directed the Assessors that in order for the prosecution to prove the offence of Receiving, they must establish beyond any reasonable doubt that;
- (i) The accused;
 - (ii) On the specified day (in this case the 29 July 2019);
 - (iii) At Suva, in the Central Division;
 - (iv) Dishonestly;
 - (v) Received stolen property;
 - (vi) Knowing or believing the property to be stolen.
- [15] Each of the above individual elements were further elaborated upon in my summing up.
- [16] In support of their case, the prosecution called the complainant Viliame Sivo Rakuro, former Police Officer, Special Constable Pita Waqabaca and Woman Detective Constable (WDC 3045) Salote Talaca. The prosecution also tendered the following exhibits:

Prosecution Exhibit **PE1**- The Huawei brand mobile phone of the complainant.

Prosecution Exhibit **PE2**- The caution interview statement made by the accused.

[17] In terms of the provisions of Section 135 of the Criminal Procedure Act No. 43 of 2009 ("Criminal Procedure Act"), the prosecution and the defence have consented to treat the following facts as "*Admitted Facts*" without placing necessary evidence to prove them:

1. The complainant (PW1) in this matter is Viliame Sivo Rakuro, 22 years old at the time of the offence, resides at Lot 28 Nawanawa, Nadera.
2. At the time of the offence, Savenaca Valu was 19 years old, student at FNU, resided at 31 Kameli Place, Nabua.
3. Police Officer Mario Navia and Special Constable (SC) Pita went into Birdland night club on 29th July 2019. Whilst at the club, they met Savenaca Valu who approached them and asked "If they could buy him a carton of beer in exchange of a Huawei mobile phone".
4. The officers then arrested Savenaca Valu and escorted him to Totogo Police Station because the mobile phone did not belong to him.
5. On 30th July 2019, the accused was interviewed under caution by WDC 3045 Salote.

[18] I directed the Assessors that since the prosecution and the defence have consented to treat the above facts as "*Admitted Facts*" without placing necessary evidence to prove them that they must, therefore, treat the above facts as proved beyond reasonable doubt.

[19] The accused exercised his right to remain silent.

[20] In my summing up I have summarized the evidence of all witnesses led during the course the trial.

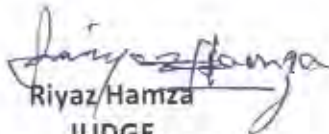
[21] The prosecution version of the events is that the complainant's phone was robbed from his possession between 1.00 and 2.00 a.m. on 29 July 2019, at the Temptation 1 Nightclub. Prosecution witness Pita Waqabaca testified that around 2.00 in the morning on 29 July 2019, while he and PC Mario Navia were at the Birdland Nightclub the accused had approached them and asked "*if they could buy him a carton of beer in exchange of a Huawei mobile phone*".

[22] The accused takes the position that he had found the Huawei mobile phone of the complainant in front of the Onyx Nightclub. This is the explanation offered by the accused for being in possession of the phone at the time he had approached PC Mario

and SC Pita at the Birdland Nightclub, on 29 July 2019, and asked them *"If they could buy him a carton of beer in exchange of a Huawei mobile phone"*.

- [23] In this case the prosecution is relying on the admissions made by the accused in his Caution Interview Statement. The Caution Interview Statement made by the accused has been tendered to Court as Prosecution Exhibit PE2. Any admission made by an accused in his Caution Interview Statement is admissible and sufficient evidence to prove his guilt to a charge. The defence is not challenging the voluntariness or fairness of the statement made.
- [24] However, in the said Caution Interview Statement too the accused explains that he had found the phone.
- [25] At the conclusion of the evidence and after the directions given in my summing up, the three Assessors by their unanimous opinions have found the accused not guilty of the charge of Aggravated Robbery and also not guilty of the alternative charge of Receiving.
- [26] In my view, the Assessors' opinion is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the unanimous opinions of the Assessors.
- [27] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has failed to prove the charge of Aggravated Robbery against the accused beyond reasonable doubt.
- [28] In the circumstances, I find the accused not guilty of the charge of Aggravated Robbery and he is accordingly acquitted of the charge.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 23rd Day of October 2020

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused : Office of the Legal Aid Commission, Suva.