

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 117 OF 2020

STATE

-v-

- 1. INOKE QILAI DOKANAVOSA**
- 2. TIMOCI RASOVA MATAITINI**

Counsel: Mr U. Lal with A. Singh, Ms S Prakash for Prosecution
Ms N. Mishra and Ms Sharma for 1st Accused,
Ms A. Bilivalu for 2nd Accused.

Dates of Hearing : 27 July 2023 to 10 August 2023

Closing Submissions: 18 August 2023

Date of Judgment : 23 August 2023

JUDGMENT

1. This case involves most heinous crimes committed in Fiji. The accused persons (accused) were arraigned on the following information filed by the Director of Public Prosecution:

COUNT 1

Statement of Offence (a)

MURDER: Contrary to Section 237 of the Crimes Act 2009.

Particulars of Offence (b)

TIMOCI RASOVA on the 22nd day of March 2020, at Sigatoka in the Western Division, murdered **LEKHRAM CHANDRA**.

COUNT 2

Statement of Offence (a)

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

Particulars of Offence (b)

INOKE DOKANAVOSA & TIMOCI RASOVA on the 22nd day of March 2020, at Sigatoka in the Western Division, in the company of each other stole 1 black Nokia brand button mobile phone, 1 Maxton brand DVD Deck, 5 x USD \$1.00 currency, 1 clear eyeglass in brown case, 1 brown eyeglass in black case and 1 black side bag from **LEKHRAM CHANDRA** and immediately before committing theft used force on the said **LEKHRAM CHANDRA**.

COUNT 3

Statement of Offence (a)

RAPE: Contrary to Section 207 (1) & (2) (a) of the Crimes Act 2009.

Particulars of Offence (b)

INOKE DOKANAVOSA on the 22nd day of March 2020, at Sigatoka in the Western Division, had carnal knowledge of **KRISHI LATA** without her consent.

COUNT 4

Statement of Offence (a)

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

Particulars of Offence (b)

INOKE DOKANAVOSA & TIMOCI RASOVA on the 22nd day of March 2020, at Sigatoka in the Western Division, in the company of each other stole FJD 440.00, 1 Alcatel brand button mobile phone, 1 Nokia brand button mobile phone, 1 Ladies Wristwatch, 1 Zebronics brand DVD player and 1 rechargeable lamp, the properties belonging to **KRISHI LATA** and immediately before committing theft used force on the said **KRISHI LATA**.

COUNT 5

Statement of Offence (a)

AGGRAVATED BURGLARY: Contrary to Section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence (b)

INOKE DOKANAVOSA & TIMOCI RASOVA on the 22nd day of March 2020, at Sigatoka in the Western Division, in the company of each other entered the dwelling house of **MUNENDRA GOUNDAR** with intent to commit theft.

COUNT 6

Statement of Offence (a)

THEFT: Contrary to Section 291 of the Crimes Act 2009.

Particulars of Offence (b)

INOKE DOKANAVOSA & TIMOCI RASOVA on the 22nd day of March 2020, at Sigatoka in the Western Division, in the company of each other dishonestly appropriate (stole) a wallet containing assorted bank cards driving license, FJD 80.00 cash, \$150.00 New Zealand currency, \$150.00 Australian currency and a Samsung Brand J2 mobile phone, the property of **MUNENDRA GOUNDAR** with the intention of permanently depriving **MUNENDRA GOUNDAR** of the said properties.

2. The accused persons pleaded not guilty to the charges. At the ensuing trial, the Prosecution presented the evidence of 24 witnesses and tendered 23 exhibits and documents. At the close of the case for the Prosecution, the Court, being satisfied that there was a case for each accused to answer on the counts each is charged

with, put the accused to their defence. Both accused elected to give evidence under oath.

- 3 The written submissions were filed by the Counsel on 18 August 2023 and they relied on the same. Having considered the evidence presented at the hearing and the respective submissions of the parties, I now proceed to pronounce the judgment as follows.

Burden of Proof and Standard of Proof

- 4 The accused are presumed innocent until they are proven guilty. The onus or the burden of proof rests on the Prosecution throughout the trial, and it never shifts to the accused. There is no obligation or burden on the accused to prove their innocence or alibi mounted. The Prosecution must prove each accused's guilt, beyond reasonable doubt. If there is a reasonable doubt, so that the Court is not sure of the accused's guilt, the accused must be found not guilty and acquitted.
- 5 Only the 1st accused is charged with Rape on Count No 3 while only the 2nd accused is charged with Murder on Count 1. Both accused are jointly charged on Counts 2, 4, 5 and 6 apparently based on the principle of joint enterprise. Although the two accused are charged jointly on Counts 2, 4, 5 and 6, I bear in mind that the case and evidence against each accused must be considered separately.

The Elements of the Offence of Murder against the 2nd Accused.

- 6 To prove the offence of Murder, the Prosecution must prove beyond reasonable doubt that the 1st accused Timoci Rasova was engaged in willful conduct with

the intention of causing the death of the deceased Lechram Chandra, or he was reckless as to causing the death of the deceased and that the willful conduct of the 1st accused caused the death of the deceased.

7. The charge of Murder requires the Prosecution to prove 2nd accused's state of mind manifesting the murderous intention or whether he was reckless as to causing the death of the deceased, at the time of the alleged willful conduct. This requires the drawing of inferences, based on all the circumstantial evidence that is relevant to the issue either of intention or recklessness. The drawing of inferences inevitably involves the application of common sense and of the fact finder's knowledge of the world and of how it works on proven facts.

The Elements of the Offence of Rape against the 1st Accused.

8. The Prosecution must prove beyond reasonable doubt that the 1st accused Inoke Dokanavosa, penetrated the vagina of the complainant Krishi Lata to any extent with his penis without her consent, and that the 1st accused knew that the complainant was not consenting, or he was reckless as to whether she was consenting or not. Insertion of the penis fully into the complainant's vagina is not necessary. The slightest penetration is sufficient to satisfy this element. Consent as defined in Section 206 of the Crimes Act, means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent, and the submission without physical resistance by a person to an act of another person shall not alone constitute consent.

The Elements of Offence of Aggravated Robbery against 1st and 2nd Accused (Counts 2 and 4).

9. The Prosecution must prove beyond reasonable doubt that the 1st and the 2nd accused in the company of each other committed robbery. A person commits robbery if he immediately before or at the time or immediately after committing theft, uses force or threatens to use force on another person with intent to commit theft or to escape from the scene. A person commits theft if that person dishonestly appropriates the property belonging to another with the intention of permanently depriving the other of that property.

The Elements of the Offence of Aggravated Burglary (Count 5)

10. The prosecution must prove beyond reasonable doubt that the accused entered or remained in the building as a trespasser with intent to commit theft. A trespasser is a person who enters and remains in a building without the owner's permission. In other words, that person enters and remains in the building without any lawful authority, thus she or he becomes a "trespasser". "Building" includes a part of the building. Accordingly, the Prosecution must prove that Inoke Dokanavosa & Timoci Rasova in the company of each other entered the dwelling house of Munendra Goundar on 22 March 2020 as trespassers and when they entered that building their common intention was to commit theft.

The Element of Offence of Theft (Count 6)

11. A person commits Theft if that person dishonestly appropriates the property belonging to another with the intention of permanently depriving the other of that property. Accordingly, the Prosecution must prove that Inoke Dokanavosa & Timoci Rasova in the company of each other dishonestly appropriated the

property mentioned in the charge and belonged to Munendra Goundar with the intention of permanently depriving Munendra Goundar of that property.

Circumstantial Evidence

12. The case of the Prosecution is substantially based on circumstantial evidence. It also relies on the confessions admissions of each accused allegedly made to police in their respective caution interviews and charge statements. To test the admissibility of confessions and admissions contained in the caution interviews and the charge statements, a *voir dire* inquiry has been conducted by a judge in Suva in which all confessional statements have been held admissible.
13. The circumstantial evidence can, and often does, clearly prove the commission of a criminal offence, but two conditions must be met. Firstly, the primary facts from which the inference of guilt is to be drawn must be proved. No greater cogency can be attributed to an inference based upon particular facts than the cogency that can be attributed to each of those facts. Secondly, the inference of guilt must be the only inference which is reasonably open on all the primary facts that are so proved. Equally it must be shown that when taken together that the only reasonable inference that can be drawn is incompatible with the innocence of the accused. The drawing of the inference is not a matter of evidence: it is solely a function of this court based on its critical judgment of men and affairs, common sense, experience and reason.
14. In a circumstantial case, the factfinder must look to the combined effect of a number of independent items of evidence when considering the charge. While each separate piece of evidence must be assessed as part of the inquiry, the

ultimate verdict on each charge will turn on an assessment of all items of evidence viewed in combination. The underlying principle is that the probative value of several items of evidence is greater in combination than the sum of the parts. The analogy that is often drawn is that of a rope. One strand of the rope may not support a particular weight, but the combined strands are sufficient to do so.

15. I shall now summarise the salient parts of evidence led in the trial which I consider important to resolve the issues in this case.

PW 1- Krishi Lata (Lata)

16. Lata is a widow aged 62 years. In the year 2020, she was residing at Cuvu Top, Sigatoka with Lekhram Chandra (Chandra), the owner of the house, from 2017 to 2020.
17. She recalls what happened on 22 March 2020. It was Chandra's birthday. In the nighttime, she went to sleep in her room and Chandra went to sleep in his room. It was a 3-bedroom house. At around 8 pm, she heard Chandra making a noise ahh! Ahh!!, from his room. She asked, 'Papa, what is wrong with you? There was no response. Soon after that, she saw one Fijian boy with a beard, whose complexion is a bit dark, standing at her door. She woke up and sat on the bed. Then this boy came and sat inside the room on a chair.
18. This happened at around 9 o'clock. The light in the room was switched on but she could not make this person out as she was not wearing glasses. This boy was

wearing a jacket and a hat. Then this boy closed the door from inside. He demanded money. Lata told him that she didn't have any money. He said, *'no you're lying, you have a house on rent, two cars parked at the compound'*.

19. Then he asked her to remove her clothes. He had a pair of scissors in his hand. She told him, *'I'm at this age and why do you want to do anything such to me?'* He then threatened to kill her if she didn't comply. She was wearing a nighty and a panty. She got frightened and removed her clothes. Then he told her to sleep on the bed. He stood in the middle of her legs and started rubbing the sharp part 'from where she urinates' with his fingers. He said it was beautiful. Then he lifted both of her legs up and, after removing his shorts a bit, he inserted his penis inside the 'hole where she urinates from' for about 15 minutes. He didn't say anything whilst doing this. It was very painful for her. He ejaculated on the panty which she had removed. She made a sound ah!; He told her to be quiet. She didn't give consent to what he was doing. Then he put the panty inside the black plastic bag that was on top of the drawer. He soaked water on the panty and wiped his penis and threw it on the floor beside the bed. She was not able to get up because of the pain. After that, she wore her clothes. He made her sit on the chair, took both her hands and tied them up with her dresses. He also tied her legs together and covered her mouth with a cloth.

20. Then he started to search the house for money and other stuff in the drawer. He took the wallet and \$300.00 which she had saved to buy a fridge. He had taken two button phones, one was of Nokia brand, and the other was of Alcatel, two DVD decks, one emergency battery lamp, a charger, a remote controller and the wires of the deck, a wristwatch. She can't recall the other things taken.

21. He then opened the door to the room when the 2nd boy entered the room. He (the 2nd boy) sat beside her on the bed and told the 1st boy, '*sa mate*', meaning he is dead. Then both went out of that room and closed the door. They later came back to the room and took all the things and put them in a bag, taken from the drawer.
22. They took all the stuff and closed the door while she was still seated in the chair to which she was tied. After that, they came back inside her room at around one o'clock and informed her that they were leaving. After some time, she managed to untie herself and came out. They had taken out all the bulbs. She went back to the room where Chandra was sleeping. He was sleeping upright, the blood stains were all over him, and all the pillows were on top of his face. She got frightened. She came outside and went to the house situated in the same compound, about 10 meters away, where Munen was sleeping. Munen had come to that house after a fight with his wife.
23. She told Munen to call the police and inform them that Chandra has been assaulted by someone. Munen started searching for his phone, but he was not able to find it, so he went to his house and called the police. Since the police officers were not picking up the phone, Munen's tenants went to Cuvu Police Post and brought the police officers to the scene. She told the police what had happened. She was taken to Cuvu Police Post where she recorded her statement. In her statement, she told the police about the items that were taken from her room.
24. Not more than two weeks after this incident, some of the stolen items were shown to her at Cuvu Police Post by the police officers. She recognized the phone

with a camera (MFI-1), the button phone (MFI-2), the emergency lamp (MFI-3), the wristwatch (MFI-4), and the two DVD Decks, [Zebronics brand (MF-5) and Maxton brand (MFI-6)] as the property stolen from her house.

PW 2: Munendra Goundar

25. Munendra is residing at Cuvu Top, Sigatoka. On 22 March 20, he had a problem with his wife and went for a sleepover at a rented house owned by Lekhram who is the deceased in this case.
26. It was raining heavily so he fell asleep at around 8.30 pm, leaving the doors open. He didn't know about anything that happened thereafter. Closer to late midnight, Lekhram's wife came and told him that somebody had assaulted Lekhram. He started to look for his phone to call the police. His two phones were not there. The purse, ID Cards, bank cards, and money had all gone missing. He had roughly more than \$300 in the purse including US \$20. The purse and the two phones were sitting beside him where he was sleeping. One was a black small Nokia button phone with white marks. The other is a touch screen one, the company phone, the back part of which was silver.
27. He went to wake his tenant Richard up and told him what had happened. Then Richard's wife tried to call the police. Police officers were not picking up the phone. Then Richard went to the Police Post and brought the police officers. After this incident, he saw those phones at the Cuvu Police post. He identified the phones and marked them for identification MFI-7 (Nokia button phone) and MFI-8 (Samsung touch screen phone).

PW 3: ASP Harish Prasad

28. On the 23 March 2020, early in the morning, he received information from DC Vunisa of an alleged murder at Cuvu Top. He proceeded to the alleged crime scene at around 12.30 am. The house was situated in an isolated location. He saw the deceased lying across the bed in a room, mouth tied with a piece of cloth which had blood stains on it. His hands too were tied with a belt. The house looked scattered; things were lying inside the house. He could see some blood stains on the walls as well. Referring to the photographs in the photo log, he confirmed what he saw at the crime scene.

29. DC Vunisa informed the witness about another house that was broken into, situated about 5 to 7 meters away from the first house. He went to that house and talked to the victim, Munen. Munen informed the witness that his two phones and purse had been stolen. The entry had been gained through one of the windows from where louvre blades had been removed. He saw the louvre blades placed on the ground.

PW4: Tomasi Tuicakau

30. On 22 March 2020, he went to drink kava at Royal Kava Shop in Naidovi town with his uncle to celebrate his uncle's birthday. They were having kava from 9 pm to 3 am. While having kava at around 1 am, on 23 March 2020, Inoke who used to live in Cuvu, came looking for a cab-a "Night Rider". He knew Inoke as he used to come to the shop very often. He had a brief conversation and helped Inoke to catch a cab.

31. Under cross-examination, he did not know the name of Inoke. His uncle told him the name when he explained to him the face and the figure that same morning. He admitted that, in his witness statement given on 25 March 2020, he had not mentioned the name -Inoke.

PW 5 Rejinal Rishnil Nand

32. In the year 2020, Nand was driving a private car. On 22 March 2020, at around 11.30 pm, when he went to have grog in New Town, he received a call from Tomu from Royal Kava in Cuvu that there was a job from Cuvu to town. He picked the person Tomu was referring to from Royal Kava. This person was wearing a hat and a round-neck T-shirt. This person wanted to go to town to pick his friends. He drove this person opposite the Cuvu Police Post, where he pointed to the friend he wanted to pick. The friend came and sat in the back seat. He did not see the friend's face as he was wearing a hoodie. After picking up his friend, he was advised to drive to the Vilisite minibus stand where he dropped them off.

PW 6 Adi Varanisese Naiobasala (Nai)

33. In the year 2020, she worked as a cashier at HD Supermarket in Sabeto. On 22 March 2020, she was doing the night shift. Her night shift ended at 7.30 am on 23 March 2020. At 4.00 am in the morning, she met the accused's Inoke and Ju from Sabeto. The accused persons used to come to her shop to drink grog at night. The accused came to the shop at around 4.00 am. When they came, Inoke put in some money for the drinks. After they had finished the 6 bottles of rum & cola, Ju bought another 6 bottles of Fiji Gold long neck. Inoke had foreign currency,

American Dollars, New Zealand and Canadian currency. She did not accept foreign currency to sell drinks, so Inoke gave the foreign currency for her to keep. The drinking party started shouting. She told them to move to the opposite side where they continued drinking. They started a fight and she heard Inoke scream that they had just come back after beating up someone.

34. She knocked off after 8 am and went to town to do some shopping. Inoke called her and asked her if she could change the foreign currency. She exchanged the money and gave Inoke \$10, Fijian currency. When she came back from town, Inoke called her again and asked her if she wanted to buy the DVD player. She said 'no'. Varanise identified the two accused in Court.

PW 7 Maikeli Varacaqeta

35. The two accused are Maikeli's nephews. He was residing in Sabeto, Nadi where Inoke and Timoci also came to reside with him. In the year 2020, Maikeli was working for a construction company to which Inoke and Timoci were also recruited as labourers.
36. On 23 March 2020, as he was getting ready to go to work, he saw Timoci and Inoke coming home at around 6.30 am. They were drunk and carrying a bag. He went to work and returned home by 3 pm. His wife told the witness to question the accused about the bag. They said the bag was given by a friend. When Inoke went outside, he opened the bag to check what is inside. He saw items like a DVD player, a watch and a mobile phone.

37. He questioned Inoke about the items when Inoke returned home. Inoke said it was given by a friend. He then asked him if he could be given one phone and the watch. He was given a phone and the watch. It was a black button phone but couldn't recall the brand. The watch was a ladies' one, silver in colour. When he asked for the DVD deck, Inoke asked him to talk to Timoci as it belonged to him. When Timoci woke up, Inoke informed Timoci to give the DVD player to him. Tomci gave the DVD player to him. All the items he received were given to his wife for safekeeping.
38. The items he received were given to the police on the same day when Inoke was arrested. He identified the watch, the phone and the DVD deck in Court.
39. Under cross-examination by, Ms Bilivalu, Maikeli said that Timoci, in the morning said that he was going to leave the bag with his friend, and in the afternoon, Timoci said he was leaving for Vanua Levu to leave it with his parents.

PW 8 - Sivaniolo Varo Waqabaca

40. On 24 March 2020, Waqabaca was home in Sabeto. At about 7.30 pm, he walked down to HD Enterprise, on his way back from training. At the shop, he met Saimoni Vatu and Jone, two of his cousins. He wanted to use Vatu's phone. Vatu said the phone was given to him by Inoke who gave the phone to him. It was a black Nokia button phone. He knew Inoke as he used to hang around in the village. When Vatu was leaving the shop, he (Vatu) gave him the other black button Nokia phone. The phone that was given to him by Inoke had a big screen while the phone that was given to him by Vatu had a smaller screen.

41. When he reached home, he saw Inoke looking for someone to sell a black Maxton DVD player. He took the DVD player to his mother, Salele, and sold it for \$5.00 as she had only \$5 with her. He gave the black Nokia button phone with a bigger screen to his big brother, Eminoni Nakelia, and he kept the other phone for himself.

42. After two days, the police officers came and took him to the Namaka Police Station and locked him up in the cell. After recording his statement, police officers accompanied him home and recovered the black Nokia button phone, saying it was stolen. He told the police that he received the phone from Inoke. He identified MFI -2 as the one he received from Vatu. He also identified the Nokia phone with a bigger screen given by Inoke (MFI-9). He identified the black Maxton DVD player (MFI-6) with the wire Inoke had given and then sold to Salele. The witness positively identified the first accused as Inoke.

PW-9 Temalesi Salele

43. Waqabaca is Salele's son. On 25 March 2020, Waqabaca came and wanted to sell a black Maxton brand DVD player that Inoke had given to him. She bought it for \$ 5 and just tried to put in one DVD to see if it is working. After two days, the police came on and took the DVD saying that it was a stolen item. She positively identified the Maxton DVD player (MFI 6) in Court.

PW 9: Saimoni Katiavatu (Vatu)

44. In 2020, Vatu was working at HD Enterprise in Sabeto. On 24 March 2020, he met Inoke, his neighbour. Inoke gave him a Nokia black button phone. He used the phone to play games. He gave the phone to Siva. He positively identified the black button phone (MFI- 2) Inoke had given to him and, Inoke in the dock.
45. Under Cross-examination by Ms Mishra, Saimoni agreed that he was in Namaka police custody for this matter on 26 March 2020. While in police custody, Inoke was brought into the police station. He agreed that the police started assaulting him asking if Inoke was the one who sold the items to him. Because of the assaults he received; he pointed out Inoke. He agreed that the police officers then started assaulting Inoke in his presence. Vatu said he did not give evidence previously.
46. Under re-examination by the State Counsel, Ms Prakash, Vatu said that Inoke gave him the phone and that he told the truth in Court. He agreed that in his witness statement, he did not tell that Inoke was assaulted by police officers.

PW 10 - Inspector Patricia Liga

47. Patricia is currently based at the Crime Scene Investigation Unit at the Lautoka Police Station as a photographer. On 24 March 2020, Sgt. Naupoto instructed her to take photographs at the post-mortem of Lekhram Chandra, conducted by Dr. Avikali at CWM Hospital. She downloaded the photos to the computer and saved the photos on a DVD for safekeeping. Later, she prepared a photographic booklet which she tendered in evidence as (PE1).

PW 11-PC Mate Tukana Korovou

48. On 23 March 2020, PC Tukana took photographs and uplifted the exhibits at the murder scene on Sgt. Naupoto's instructions. He prepared a photographic booklet which he tendered in evidence (PE 2). He described what he saw at the crime scene with reference to the photographs in PE2. He also described the two louvre blades (pictured in Exhibit No.16), which Sergeant Koroi dusted for fingerprint analysis. He then described the photographs taken two days thereafter (26 March) at the house in Sabeto where the suspect had been staying and the bag and the items contained in it. (Exhibit No. 20 and pictured in photos No. 52, 53).
49. He came to the crime scene at Cuvu again to photograph the plastic and piece of cloth lying underneath the chair (photographs Nos. 58 and 59) which he had missed photographing on his first visit.
50. Under cross-examination by Ms Mishra, PC Tukana agreed that from Photo 37, he could not really see the items in Photos 58 and 59 (Exhibit 26). He agreed that Sgt. Koroi uplifted the fingerprints from Exhibits 16 and 17 depicted in photos 47 and 48 and the fingerprints were visible. But those photographs are not included in the photograph booklet. He has no knowledge of where the photographs are; only Koroi would know.

PW12 - Constable Sailosi Rokomatu

51. DC Rokomatu was tasked to seize one phone which had gone missing from the murder scene. The phone was believed to be in the possession of one Peri

Wainiqolo (Peni). On 26 March 2020, she stopped the car Peni was driving in Namaka Town and found a black Alcatel button mobile phone. Peni was escorted to Namaka Police Station with the phone. A search list was prepared for the phone which was tendered as PE-3. She identified MFI-1 as the phone taken from Peni and tendered it as PE 4.

PW13 Detective Sergeant 2118 Satendra Kumar

52. On 23 March 20, Sergeant Kumar was appointed the investigating officer. Being based at Cuvu Police Post, he gathered information about stolen items sold around Nadi and Sabeto area and was handling only the documentation part.
53. On 26th March 2020, he went to Namaka Police Station where the officers brought some items which he later exhibited. He was not part of any of the teams that made recoveries. DC Timoci, DC Sailosi and DC Ulaiyasi brought some of those items. Some of the items were brought by the CSI team from Suva. He listed all the items in his statement dated 12 April 2020. Accordingly, 1 x rechargeable Lenten, 1 x Maxton brand DVD player, 1 x silver wristwatch, 1 x Zebronics brand DVD deck, 2 x eyeglasses with case, 1 x Qantas airways brown bag, 5 x \$1 USD, 1 x black handbag, 1 x Alcatel button phone, 1 Nokia brand mobile phone, 1 Optus branch mobile phone had been recovered.
54. All the items were taken to Sigatoka Police Station and handed them over to the Interviewing Officers, Constable Nadredre and Constable Timoci, who conducted the caution interviews. After the interviews, those items were exhibited at the Sigatoka Police Station.

55. Inoke was arrested on 26 March 2020 and brought to Namaka Police Station. He met Inoke on the 27th when his interview was being conducted by Constable Nadredre. Timoci was arrested on 31 March 2020 by Sam Raj from Tukavesi in Vanua Levu and was brought to Sigatoka Police Station on 3 April 2020. In Court, he identified the listed items which he had received from the officers.

PW 12- Dr Avikali Mate

56. Doctor Mate is a Forensic Pathologist, attached to the CWM Hospital. She is a Senior Forensic Pathology Registrar with 11 years of experience. She has conducted more than a thousand autopsies.
57. On 24 March 2020, she conducted the post-mortem of Mr Lekhram Chandra at the CWM Hospital mortuary. She prepared a post-mortem report which she tendered in evidence marked as PE 5. PC Peni Vunisa and the police photographer were present during the examination. The body was identified by Kishi Lata, the de-facto partner of the deceased.
58. Upon external examination of the deceased, she observed the injuries to the head, the face and the neck area as listed in her report. Most of the injuries were seen in the head and the face. She explained the injuries with reference to the photographs in the photograph booklet. Multiple irregular bruises and abrasions of varying sizes as noted in the report were seen on the forehead and the face of the deceased. Any blunt force trauma, even punches could have caused those injuries. The doctor opined that, given the multiple bruises present on the forehead, the face and the neck area, it is possible that the deceased has received repeated punches in those areas.

59. Upon the internal examination of the deceased's body, the doctor noted a haemorrhage in the underlying soft tissues between the skin and the skull bone at the right temporal area. The haemorrhage could have been caused by blunt force trauma. The damage to the brain could have been caused when the brain moved within the closed compartment as a result of a blunt force trauma with a significant or repetitive force applied in that area. There were no bone fractures in the skull except for the displacement of the mandible or lower jaw. It is possible to receive this bone fracture if a significant force was applied to this area from a punch.
60. The doctor noted significant findings in the brain itself. The right and left hemispheres of the brain were swollen, and *cerebral oedema* was present in the brain. She explained several possible causes that could lead to cerebral oedema, namely, infections in the brain, abnormalities or damage in the blood vessel structure of the brain or tumours growing within the brain. Having excluded all unlikely causes, she opined, based on the external examination, that the swelling in the brain could have been caused by injuries and trauma to the head. She further said that any compression or swelling of the brain could generally affect its function and even affect breathing and the heart rate. Without medical management, she opined that the brain would continue to swell thus compressing the blood vessels, eventually leading to death.
61. The other remarkable finding concerned the cardio cardiovascular system, which is made up of the heart, the coronary arteries or blood vessels that supply blood and oxygen to the heart. In these blood vessels, it was found that more than 90% was narrowed by fat accumulation, in medical terms *atherosclerosis*, which could

have a significant effect on the functions of the heart and its ability to supply blood to itself.

62. According to her opinion, there were two possible causes of death that directly led to the death of the deceased. Firstly, severe cardiovascular disease *dilated cardiomyopathy (atherosclerosis)* and secondly, severe cerebral oedema. Cerebral oedema that affects the heart rate centre of the brain is attributed to blunt force trauma. For a person whose heart is already in a compromised state, not being able to supply itself with oxygen, because of the narrowed blood vessels, a swollen brain could exacerbate the problem by causing the heart to be less fast when it's needed to be faster. So, the blood flow is then reduced and the breathing itself, not being able to breathe or take in oxygen. The cerebral oedema will affect the function of the heart in supplying itself with blood which further makes it worse because it will start to affect the part of the brain that controls breathing.

63. Under cross-examination by Ms Bilivalu, the doctor said that even if the deceased did not have any history of heart disease, death could still occur, and the result would have been the same if he suffered severe cerebral oedema and multiple traumatic head injuries. An injury to the brain itself can affect breathing and the respiratory or heart rate control center which could eventually lead to death without medical intervention.

PW 13 -Sakiasi Koroi

64. Sergeant Koroi has been in the Crime Scene Investigation Department (CSI) for the past 15 years. On 23 March 2020, he was assigned to be the sketcher and

fingerprint duster at the crime scene. He prepared two sketch plans of the house of Lekhram Chandra and the 2nd house which had been burgled after removing four louvre blades. He tendered sketch plans PE 6 (overview of the house) and PE7 (bedroom where the deceased was lying).

65. He came to the crime scene again on 25 March 2020 and uplifted the latent fingerprints from the louvre blades when the moisture had evaporated. When dusting the louvre blades with fingerprint powder, he was able to identify two latent fingerprints. He uplifted the fingerprints to a lifting tape for preservation and initialed it with a batch number. The tape was deposited at the Fingerprint Unit by Sergeant Naupoto and was later received by Sergeant Preetika at the Fingerprint Unit in Suva.

66. Under Cross-examination by Ms Mishra, Sgt. Koroi said that the two blades were photographed but not the fingerprints themselves. A minor crime scene report was prepared and dispatched to the fingerprint unit along with the fingerprints.
PW 14: Cpl Ulaiasi Radrovi

67. On 26 March 2020, Radrovi arrested three suspects, namely, Saimoni Vatu and Sivaniolo and Inoke from Sabeto area. He together with DC Rupeni and PC Inoke, and PC Naruma made their way to Nukunawa Settlement to arrest Saimoni Vatu his cousin. Vatu was placed under arrest. They then placed Sivaniolo under arrest and retrieved the phone that was with him. Having dropped Vatu and Sivaniolo at Sabeto junction with DC Rupeni, he and PC Naruma went to arrest Inoke at the address given by Vatu.

68. Inoke was arrested near HD Enterprise and handcuffed. He had to lean Inoke against the wall and turn him over to put on the cuff to ensure their security. The mobile phone that was in Inoke's possession was seized. It was a Samsung J2 phone, golden brown in colour. After affording constitutional rights, Inoke was escorted to Namaka Police Station and handed him over to the ASP. He identified the phone (MFI-8) in Court and tendered it marked as PE-8 and the search list as **PE-9**.
69. Under cross-examination by Ms Mishra, the witness agreed that Inoke did not retaliate, or run away. The witness admitted pushing Inoke and grabbing his collar. He admitted pushing the suspect for him to get into the vehicle. He admitted that the suspect was handcuffed from behind to follow the procedure. He denied assaulting Inoke at the bure.

PW 15 – Detective Sergeant Viliame Naupoto

70. On 23 March 2020, the CSI team commenced the forensic examination. PC Tukana photographed the scene and Sergeant Koroi collected the exhibits and drew the rough sketch plans. Evidence material was uplifted after being photographed.
71. On 24 March 2020, his team recommenced the scene examination, and collected the remaining exhibits from the bedroom of the deceased and that occupied by his Defacto partner.
72. On 25 March 2020, they went to the 2nd house where some louvres had been removed to enter the house. The louvre blades were examined for fingerprints by

Cpl. Koroi who managed to locate two fingerprints which he uplifted to a fingerprint tape. He packed and labelled the tape and prepared a minor crime scene report (PE- 10). He personally deposited the fingerprint tapes and locked them in the special filing cabinets at the Crime Scene Unit in the Forensic Headquarters in Nasova, to ensure that they are not tampered with until they were analyzed by the expert. The key to the filing cabinet is kept with the officer in charge of the fingerprint unit, Sgt. Leone. He removed the fingerprints from the cabinet when it was opened by Sgt. Leone in the presence of the expert on 27 April 2020. He handed the fingerprint tape and the Report over to Cpl. Preetika, who acknowledged the receipt the same by signing on PE 10.

73. On 27 March 2020, his team went to the residence of Inoke in Sabeto and a few other places where the CID was conducting a raid. PC Tukana photographed the relevant exhibits which he identified during the raid. Amongst them was a white shopping bag containing a few items (exhibit 20) seized from Inoke's residence as depicted in photograph No 53.
74. He identified the rechargeable lantern (MFI-3) and tendered it as PE11, the Zebronic Bran DVD player (MFI-5) as PE12, the Quartz brand lady's watch (MFI-4) as PE 13, the Optus brand black button phone (MFI- 7) as PE -14. All the items were documented and handed over back to the investigation officer Satendra Kumar.
75. They then proceeded to the next resident at Sabeto Village where they uplifted the black Nokia button phone (MFI-9) which the witness tendered as PE-15. From the 2nd house, they proceeded to the 3rd house at Nakona settlement where they uplifted another DVD player, a black Maxton DVD player (MFI- 6) which

was tendered as **PE- 16**. All the items were taken to Sigatoka Police Station where they were locked in the exhibit room.

76. On the morning of 28 March 2020, he personally escorted the forensic exhibits collected from the crime scene to the laboratory in Nasova and handed them over to Ms Paulini Saurogo for DNA analysis. He returned to Sigatoka the same day (28 March 2020) for the video-recorded scene reconstruction with Inoke. The scene reconstruction was video recorded by PC Tukana.
77. Upon entering bedroom No. 2, where complainant Lata was allegedly raped, the suspect Inoke voluntarily mentioned a black plastic that was used to wipe himself after the alleged rape. They found it underneath a chair. When Inoke confirmed that it was the same plastic he used, it was photographed (photo No. 58, 59) sealed and marked as Exhibit No.26. When PC Tukana took photograph No 37 on the previous day, he was not able to capture this plastic. Upon black plastic being identified by Inoke, photographs 58 and 59 were taken. After the reconstruction, exhibit 26 (black plastic) was locked in the vehicle and then exhibited in the exhibit room at the Sigatoka Police Station until it was handed over to the chemistry lab.
78. At around 8 pm on the 28th, he was informed that Inoke, during the interview, consented to give his mouth swab. He went with the standard form. He explained the procedure briefly to Inoke. Inoke signed to acknowledge that he has given his consent for buccal swabbing. Inoke swabbed on his own and handed a buccal sample to him. It was sealed and packed for delivery to the laboratory in Suva. On 30 March, all forensic exhibits (the black plastic and the buccal swab) were taken to the lab in Suva and deposited with Paulini Saurogo.

He identified in Court the plastic through the original package (exhibit 26) and the label he had put at the crime scene and tendered it as PE 17.

79. Under Cross-examination by Ms Mishra, Sgt. Noupoto denied that it was him that took the buccal sample from Inoke. He said that, before giving the consent form, the suspect was explained the procedure and the possibility of it being used as evidence against him. The suspect could have easily refused to give the buccal sample, but he voluntarily complied. The witness denied that he did not explain what the form was for.

PW 19: Naomi Tuitoga

80. Tuitoga has been employed at the Bio and DNA Laboratory for the past 13 years. She is currently the Principal Scientific Officer. The lab received 32 items in respect of this case for examination and analysis. After the analysis, a report was prepared. This report is based on the DNA analysis that was carried out for the case involving Lekhram Chandra, Krishi Lata and Inoke Dokanasova. The witness tendered the report marked as PE-18 and its Appendix- 2 prepared by the Principal Scientific Officer which explains the general procedure of the lab as PE 18(a). She further elaborated the methods described in Appendix 2.
81. The evidence samples were submitted by the Crime Scene Officers as well as the Sexual Offences Unit Officer and a Constable from Sigatoka Police Station as described in Appendix 1.
82. The first submission consisting of the crime scene evidence samples was received by Paulini Saurogo, on 28 March 2020 which was submitted by Sergeant Viliame

Naupoto. All the items received by the lab are registered in the records and compiled in a case file. She was assigned to this case as soon as the submissions were received on 28 March 2020.

83. Exhibits 28 (the black plastic bag) and Exhibit 29 (the buccal swab of the 1st suspect), submitted by Sgt. Naupoto of the Crime Scene Unit was received at the lab on 30 March 2020 by Paulini Saurogo. Exhibits 30 – 32, (the buccal swab of the complainant Krishi Lata) were submitted by Const. Kolora of the Sexual Offences Unit in Sigatoka Police Station and these were received at the lab by Nacanieli Gusu on the 12th of June 2020.
84. Out of 34 samples, only 14 samples were examined for DNA purposes. The reference samples were processed separately from the evidence samples. The plastic bag (E 28) had to go through an item examination and was swabbed under her supervision. The purpose of the item examination was to determine if there were any suspected biological stains on the evidence. This exhibit (plastic bag) had a foul smell, and the interior of the plastic bag was a bit sticky. Because of the circumstances surrounding the case and the information she had received; she had to test and determine if it contained semen fluid. Upon carrying out the confirmatory tests, it was positive for semen stain. Then she had to ascertain if sperm was present. Upon viewing under the microscope, she was able to identify the presence of sperm.
85. The DNA profiles obtained from the reference sample of Krishi Lata (E 30-32) and Inoke Qilai Dokanavosa (E-29) were compared with the DNA profiles obtained from the representative evidence samples extracted from the black plastic bag (E28) submitted for examination. A mixed DNA profile was obtained

from this sample indicating that at least two individuals had contributed DNA to this sample. The major DNA profile obtained was consistent with the reference DNA profile of Inoke Dokanavosa. Therefore, Inoke Dokanavosa cannot be excluded as the major contributor of the DNA to this sample, she said. The minor component profile obtained from this sample matched that of the reference DNA profile of Krishi Lata. Therefore, Krishi Lata cannot be excluded as the minor contributor to this sample. The witness identified in Court the sealed plastic bag (PE 17) she had examined.

86. Under Cross-examination by Ms Mishra, Tuitoga said that she is not aware of who did the registration when the samples were received at the laboratory.

PW 20 -Sgt. Pritika Nand

87. Sgt. Nand is employed as a fingerprint analyst at the Fiji Police Forensic Unit at Nasova for the last thirteen years. Her role, in this case, was to compare latent fingerprints developed at the crime scene with the roll or controlled fingerprints of the suspects received at the Criminal Records Office (CRO).
88. The latent fingerprints, in this case, were received from Sergeant Naupoto on 9 April 2020. She checked them for suitability. After the suspect was charged, the controlled fingerprints were received, and the comparison was done.
89. She examined the latent fingerprint using a magnifying glass to verify if it had the minimum number of ridge characteristics, which is twelve, for the purpose of comparison with the rolled fingerprints. The latent fingerprint received from Sgt Naupoto passed the suitability test as it had more than twelve ridge

characteristics. After checking the suitability, she came to know that a person by the name of Inoke Qilai Dokanavosa was charged. His controlled fingerprint was compared with the latent fingerprint. She identified that the latent print belongs to Inoke Qilai Dokanavosa. In the process of comparison, she managed to identify more than 12 similar ridge characteristics which matched the latent fingerprint with the rolled fingerprint. She tendered the charts she used to do the comparison marked as **PE -19A** and the explanation attached to it as **PE-19(B)** and explained the matching positions. By looking at the description attached to the controlled fingerprints, the witness confirmed that they were taken by DC Benedito of the Sigatoka Police Station and deposited at the Criminal Records Bureau with a criminal records number under the name of the accused.

90. She recognized the chain of custody (Crime Scene Investigation Report) form (**PE-10**) signed by her and Sgt. Naupoto dated 27 April 2020. She explained the time gap between the date she received the latent prints from Sergeant Naupoto which was 9 April 2020 and the date of signature in PE 10 which was 27 April 2020. She said that she signed the form when the latent prints have been checked for suitability to do the fingerprint analysis.
91. Under cross-examination by Ms Mishra, the witness, by looking at the day stamp, confirmed that the controlled fingerprint uplifted by DC Benadito had been received by the CRO on 03 April 2020. She could not confirm who received the controlled fingerprints at the CRO as the CRO is physically separated from her office.

PW 21- DC Adriu Nadredre

92. From 27 March 2020 to 29 March 2020, DC Nadredre conducted the caution interview with Inoke Qilai. He started the interview at Namaka Police Station. It was conducted in I'Taukei language which was witnessed by Sgt Yagavito. After the reconstruction of the scene, the interview was moved to Cuvu Police Post. Inoke did not complain about anything. The caution and the rights of an accused were given.
93. The record was translated into English. The original record of the interview (PE-20A) and the translation (PE-20B) were identified and tendered in evidence. He read the contents of the record of the interview in Court. He said that during the time of the interview, there was no assault, force or intimidation done on the accused.
94. He explained the process of swabbing for DNA analysis and questioned to verify if the suspect was consenting. The suspect agreed to give consent. Consent forms were provided by the CSI officers. When the suspect voluntarily agreed, he suspended the interview, and the CSI officer entered the room to take the DNA sample.
- After the swabbing was completed by the CSI officer, the suspect did not complain of any assault, threat, intimidation or force used on him.
95. He went for scene reconstruction with the cameraman who video-recorded that part of the interview. He tendered the DVD and the transcribed version of the interview. The DVD (PE 21(A)) was played in Court while the English translation of the transcript (PE 21(B)) was being read simultaneously by DC Nadredre. DC Nadredre identified the items shown to suspect Inoke at the interview.

96. Under cross-examination by Ms Mishra, DC Nadredre denied writing his own version instead of the answers given by Inoke and fabricating the answers. He denied that, before the scene reconstruction, he was narrating the facts to the suspect as to what he had to say in the video.

PW 22- Corporal Misidomo Baseisei

97. On 29 March 2020, Baseisei formally charged Inoke Qilai at Cuvu Community Post. Constable Viliame Uqeuqe was present as the witnessing officer. Inoke did not complain to him about anything. He identified and tendered the original charge statement of Inoke Qilai Dokanavosa (23A), and its English translation 23(B). No one assaulted or threatened Inoke to make a statement.
98. Under cross-examination by Ms Mishr, Baseisei denied taking Inoke's signature to a statement already prepared. He said that Inoke voluntarily gave the statement, in question No 12.

PW 23- Corporal Timoci Tavurunaqiwa

99. Corporal Timoci conducted the interview of Timoci Mataitini Rasova at Cuvu Community Post for two days from 3 April 2020. Witnessing Officer, Inspector Meli Doughty and the Escorting Officer PC Naibuka were present during the interview. Rasova did not complain about anything before or during the interview.
100. He tendered the record of caution interview (PE 24) and read it in evidence. The escorting officer was there to escort Rasova to the washroom during breaks.

Rasova was not assaulted, intimidated, or threatened in any way by any officer. He was part of the scene reconstruction conducted on 4 April 2020 with the Escorting Officer and DC Author Bibi, who video-recorded the scene reconstruction.

101. The video of the scene reconstruction was played in Court. He tendered the video (PE- 25) as part of his evidence. Before the commencement of this scene of reconstruction, Rasova was not assaulted, threatened, or intimidated in any way by anybody. Corporal Timoci identified in Court the exhibits that were shown to Rasova during the interview.

102. Under Cross-examination by Ms Bilivalu, DC Timoci denied that somebody else was recording the interview of Rasova. He admitted that the witnessing officer was not present during the scene reconstruction. He denied that some of the question and answers were pre-typed and that Rasova was never cautioned. He denied that Rasova was given only the last page to read before his signature was taken to pages 1-38. He admitted that nowhere it is recorded that Rasova was given an opportunity to read the remaining pages (pages 1 to 38) of the record of the interview. He denied that he fabricated Rasova's record of caution interview from pages 1 to 38. He denied that he had shown Inoke's video to Rasova before he (Rasova) was taken for scene reconstruction and had instructed Rasova to do exactly what Inoke did and where to point to. He denied that Rasova was assaulted before the reconstruction of the scene.

PW 24- Inspector Savenaca Mara

103. IP Mara conducted the charge of Timoci Rasova in English at Cuvu Police Post on 4 April 2020. Constable Asaeli was present as the witnessing officer. He tendered the charge statement and read the statement made by Rasova in question No. 16. Rasova was not assaulted, intimidated, threatened or forced before or during the charge.
104. Under Cross-examination by Ms. Bilivalu IP Mara denied that Rasova's signature was taken to a pre-typed statement.

Case for Defence

105. DW 1- Inoke Qilai Dokanavosa (1st Accused)

In February 2020, Inoke moved to his uncle Maikeli's residence in Sabeto, Nadi. On 22 March 2020, he was at his uncle's place in Sabeto during the daytime and went to Namaka. Timoci also went with him to meet his girlfriend. At Namaka, Timoci met with his girlfriend and after having a conversation for about one hour with Timoci and his girlfriend he left for Nadi town.

106. At Nadi town, he met with some of his old friends and started drinking opposite the bus stand. Close to the midnight, another friend by the nickname Nicks came in a car, and he bought some drinks too. Nicks mentioned that he got some items that no one wanted to buy so Nicks wanted him to keep the bag of items and return it to him the next day. Nicks gave him the items because he had to rush to another place. When he opened the bag, he saw a DVD player and a mobile phone.

107. They continued drinking until early morning and called Timoci at around 5-6 am on 23 March 2020. Timoci too was on his way home and he told Timoci to wait for him at the Sabeto junction. He and Timoci first went to his uncle's place in Sabeto. He told Timoci to take the stuff inside the house and then both went to HD Enterprise, the liquor shop. A lady named Nai was on her night shift duty at the shop. They bought some more drinks and started drinking with some of their friends who came to drink with them. He gave Nai some foreign currency, AUD Nicks had given him. Nai said she could not receive foreign currency but only Fijian dollars. Then he told Nai to keep foreign currency and give him any amount later. They were drinking from 5 to 6 am till lunchtime when they had a fight at the place where they were drinking. Timoci went home and he went to another place to drink near Sabeto and then went to Uncle Maikali's place. He saw Timoci sleeping. He also slept at home.
108. When Uncle Maikali came home in the afternoon, he questioned about the stuff he had brought. He told his uncle that he got them from a friend. Then his uncle needed some of the items. He gave the uncle a phone and a watch and went to sleep again.
109. The next day, 24 March 2020, he met Saimoni Vatu at HD Enterprise where he talked about the stuff he had brought from Nicks. Vatu needed some of the items. He gave Saimoni a black Nokia button mobile phone. He met Sivaniolo the same evening. He gave one black button phone to Sivaniolo and told him about the DVD deck. He wanted to sell it because Nicks didn't contact him. Then they went to Sivaniolo's friend beside Sabeto village. Sivaniolo's friend's mum wanted to buy the deck, but she had only \$ 5. He sold the DVD deck to

Sivaniolo's friend's mother for \$5.00. He gave an Alcatel mobile phone to one Peni Wainiqolo.

110. The rest of the items were kept at home and later recovered by the police upon his arrest on 26 March 2020 at Sabeto. **He told the police that the items were given to him by Nicks, but they didn't want to listen to him.** He told the police officers when they were torturing and asking from where he had bought the items.
111. On 26 March 2020, he was arrested at Sabeto, Nadi near HD Enterprises, the liquor shop. Two officers in civilian clothes came to him and asked his name. When he revealed his name, they grabbed the Samsung J2 mobile phone that Nicks had given him and slapped his face. They told him to face the wall and kneel down putting his hands back and took him to the main road. When the vehicle arrived, they threw him inside and started punching his stomach. He told his Counsel everything that had happened the very first day he met her.
112. He was taken to the bure at the Namaka Police Station where he saw Peni Naolo, Sivaniolo and Vatu being questioned. In front of them, the police officers started torturing him at the bure.
113. The caution interview was started on 27 March 2020 at the Namaka Police Station. The arresting officer, three other officers and the interviewing officer threatened to torture him again if he did not answer. Inoke said that some of the answers in the record of the interview were not given by him and pointed out the answers that he had given on day one from questions 1 to 88 till 8.20 pm.

114. The interview recommenced on 28 March 2020 at the same place. He pointed out the answers that he never gave from 89 to 220. After question and answer 220, the interview was suspended for the reconstruction of the scene, and he was taken to Cuvu Police Post.
115. At the Cuvu Police Post, the police officer briefed him on everything that had happened at the crime scene and told him to point to the places and describe the incidents for the video recording according to their instructions. At the scene, throughout the reconstruction, he just obeyed the instructions. After the reconstruction of the scene, they returned to Cuvu Police Post and an Indian police officer took his fingerprints when the interview resumed.
116. As recorded in the interview notes, his saliva was not taken at Q 225 & 226. They took his saliva before they took him to the scene when the interviewing officer told an officer to take him outside. He was then taken to another room and told to open his mouth and rubbed inside his mouth with something and then told to sign a document, but he did not know what he was signing. He denied giving some of the answers recorded from Q 227 to 250 and pointed out the answers that he had given.
117. When the interview recommenced on Sunday 29 March 2020, it was conducted at Cuvu Police Post when questions 251 – 323 were recorded. He denied giving some of the answers recorded in the interview notes. He said that, before coming to give evidence, he had pointed out to his counsel the answers that he never gave at the interview.

118. When the interview concluded at 1.20 pm on 29 March 2020, he was charged at the same place. He denied making the so-called charge statement in answer to question 12.
119. Under cross-examination by Mr Singh, Inoke agreed that he was staying with his cousin Timoci at his uncle's place in Sabeto and that they had lost their jobs in 2020. He denied having resided in Cuvu Top in the year 2018.
120. On 22 March 2018, he went to Nadi Town because he had nothing to do in Namaka. He can't recall the names of the friends whom he had met and drunk with in Nadi town except for Nicks who had later joined them. He had known Nicks when he was in Suva. It was not a planned meeting. Although Nicks knew the other friends also, he preferred to give the bag of items to him for safekeeping because he trusted him most. He agreed that he sold some of the items. He agreed that Nick's name was never mentioned anywhere at the trial until he gave evidence. He denied that the only reason he was calling Krishi Lata "Aunty" was because he knew her since 2018.
121. He was tortured and threatened before the scene reconstruction. That's why he told what he told at the scene reconstruction. The reconstruction video was like a drama that was staged according to the script prepared by the police. During the interview, two officers took him to the toilet and told him to urinate in a plastic bottle for the DNA test.
122. Before the officers did the video, he was taken to the scene where he was told to put the louvres aside. He had seen the report of the fingerprint analyst before coming to give evidence. In his instructions, he gave the same explanation to his

counsel as to how his fingerprints came to be on the louvre blades. He admitted that his signature is present in the consent form for DNA swabbing, but he said he was not explained why he had to sign that form.

123. He did not complain to the Magistrate because the police officers were present when he was produced in the Magistrates Court. He said he did not read question 244 fully when he admitted that its answer was his. He agreed that he gave the phone to Vatu but he did not admit that he stole it from the scene. He denied having planned and shared that plan with his cousin Timoci to rob the house at Cuvu Top on 22 March 2020. He denied robbing the two houses and raping the complainant Lata on that night. He denied using the stolen foreign money to buy beer. He used his own money that he had saved when he was working. He asked for money from Nicks because he always had money. He admitted that Nicks was not coming to give evidence for him. Nick's address was not known to him and could not be located as he was in remand. He meant the fight they had in front of Nai's shop when he said to Nai that they had just punched someone.

DW 2 - Timoci Mataitini Rasova (2nd Accused)

124. In 2020, Timoci was 19 years old. In the year 2020, he moved to Sabeto, Nadi, to reside with his uncle Maikeli and worked for True Value Constructions with Inoke Dokanavosa. On 22 March 2020, he was at his uncle's place in Sabeto and went to see his girlfriend Rusila in Namaka with Inoke in the afternoon. He met Rusila in Namaka at around 4.30 pm and planned to go to her place in Denarau and went there at around 6 pm and stayed there till the next morning. On 23 March 2020, he woke up at 4.30 am and left his girlfriend's residence early in the

morning. On his way, Inoke called and told him to wait for him, at the junction in Sabeto.

125. Inoke came to Sabeto junction in a car with a bag of items at around 6 am and dropped him off in front of the junction near home and asked him to put the bag at home and come back to the HD Enterprise shop. When he reached home, he met Uncle Maikali. He put the items at his uncle's house and left for HD Enterprise shop where Inoke was seen in a grog session with a boy. He also joined them and put in (money) for drinks and started drinking. Then they had a fight with the boy in front of the shop and left the gang and headed home blacked out the whole day.
126. He was arrested in Vatuvonu Village, in Vanua Levu on 31 March 2020 and kept at Tukavesi Police Station until 2 April 2020 and arrived at Delainavesi Police Post in the early morning of 3 April and from there he was taken to Cuvu Community Post by Corporal Timoci who conducted the interview.
127. His caution interview was conducted on 3rd and 4th of April 2020 at Cuvu Community Post. He was questioned by Talemaitoga about his personal details but none of them was written down. He said to the police that he knew nothing about this case, but he only received the bag that was filled with items from Inoke. He did not see Corporal Timoci on the first day of the interview. Talemaitoga, the officer who questioned him gave evidence in Suva (at the *voir dire*) but never gave evidence at this trial. He was just told to sign on every page by Corporal Timoci on the third day of the interview. He signed all 39 pages of the record of the interview on the last day. He was not given an opportunity to read through. Before he was taken for scene reconstruction, he was shown the

video of Inoke going through the house at the Cuvu Police Post and the officers told him to take note of every point of places where Inoke was pointing and was coached on how to act in the video shooting. He feared the officers and was just following the instructions when his video was done at the scene. Inspector Meli was not present on the first day of the interview and at the scene reconstruction.

128. He never made the statement in the charge statement to Inspector Mara on 04 April 2023. He just signed the papers on 6 April 2020 which were already prepared by Talemaitoga. Going through the record of the interview, Timoci pointed out to Court the answers he had never given at the interview. He had no idea why the answers have been fabricated by the police officers.
129. Under cross-examination by State Counsel, Timoci said that he received the bag of items on Monday and travelled to Suva the same day and left for Savusavu on Wednesday early morning. He surrendered to the police at home. He did not have good relationship with his father. Timoci agreed that he had sustained injuries on his knuckles. He denied the injuries were a result of him repeatedly punching the deceased Lekhram Chandra. He said he received those injuries when being hit by an Indian police officer with handcuffs. The officer who hit him gave evidence at the *voir dire* proceedings, but he was not cross examined by his counsel.
130. Tomoci agreed that he knew prosecution witness Varanise (Nai) for quite some time as he and Inoke used to have grog at HD Enterprise where she was the cashier. Timoci agreed that Varanise told the truth in her evidence that he and Inoke were having grog at HD Enterprise between 4 and 6 am on 23 March 2020 and that he bought 6 bottles of long neck from her at the shop.

131. Timoci said he last met his girlfriend whose full name is Rusila Wasa in 2021. To prepare his alibi notice, he admitted to giving instructions to his lawyer that his girlfriend's full name is Rusila Vorokitaki. He said Vorokitaki is her third name. He agreed that Sabeto is somewhere between Lautoka and Nadi. He did not agree with the time Nai mentioned in her evidence that he was at HD Enterprise at 4 am. He denied that the police could not locate Rusila because she never existed and that he made up Rusila to cover up his involvement in the murder.
132. Timoci agreed that, in Inoke's reconstruction video, he was talking about the incidents that happened in the bedroom of Krishi Lata whereas in his video he talked about the incidents that happened in Lekhram Chandra's bedroom and about enjoying the ice cream, peanut butter bread and biscuits. He agreed that he couldn't have crammed where to point looking at what happened in Krishi Lata's room. He admitted that most of the answers recorded in the record of the interview were provided by him.
133. Under re-examination by Ms. Bilivalu, Timoci said that he had to go to Savusavu because his mother called and informed that she needed him to build a house in the village. He could not recall the exact time he had left Varaniseve that morning. He left Rusila's house so early before her uncle woke up.

Analysis

134. The prosecution case is that both accused planned to rob the house in Sigatoka belonging to the deceased and they carried out the robbery as planned on 22 March 2020; in the course of that robbery, the 1st accused, deviating from their

common plan, raped the 1st complainant Krishi Lata; and the 2nd accused, deviating from their common plan, murdered Lechram Chandra; and after committing the robbery, they entered the house occupied by Munendra Goundar with the common intention to commit theft where they stole the items belonging to said Munendra Goundar.

135. The Prosecution relies on circumstantial evidence and the admissions/confessions made in their respective caution interviews and charge statements. The strands of circumstantial evidence that the Prosecution intends to prove to link the accused to the alleged offences can be summarized as follows:

- The stolen items were found in the possession of the accused persons soon after the theft, murder, rape, robbery and burglary.
- The fingerprint of the 1st accused was found on the louvre blades of the house burgled.
- The reference DNA profile of the 1st accused matched that of the DNA profile found in the evidence sample uplifted from the crime scene.

136. The case of the Defence is one of denial. They don't deny however that the offences charged in the information took place and that some of the stolen properties were in their possession soon after offences. The position of the Defence is that they were never present at the crime scene on the 22 or 23 of March 2020 and that they were not involved in the offences. In their evidence, the accused persons appear to be mounting an alibi although no formal notice of alibi was given or no alibi witnesses were called. However, it is for the

Prosecution to prove beyond reasonable doubt that the accused were present at the crime scene, and they committed the offences as charged.

Factual Presumption Arising out of Possession of the Recently Stolen Property:

137. In *Rokodreu v State* [2022] FJSC 36; (25 August 2022), the Supreme Court, comprehensively discussed the common law principle of recent possession of stolen property as follows:

[30] In common law jurisdictions there is a presumption that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. In order to apply this presumption, the prosecution is required to establish several requirements.

- i. Stolen property
- ii. Recent possession
- iii. Exclusive and conscious possession

When the above factors are established, the possessor has to give an account as to how he came to possess. In other words, he should give a reasonable or plausible explanation.

[34] The case of *Wainiqolo v State* [2006] FJCA 49; AAU0061.2005 [28 July 2006] is relevant to this case. It states:

"The principal ground relates to the so-called doctrine of recent possession which is that where property has been stolen and is found in the possession of the accused shortly after the theft, it is open to the Court to convict the person in whose possession the property is found of theft or receiving. It is no more than a matter of common sense and a Court can expect assessors properly directed to look at all the surrounding circumstances shown on the evidence in reaching their decision. Clearly the type of circumstances which will be relevant are the length of time between the taking and the finding of the property with the accused, the nature of the property and the lack of any reasonable or credible explanation for the accused's possession of the property. What is recent in these terms is also to be measured against the surrounding evidence."

138. This factual presumption can be applied in respect of the other offences associated with the theft, committed in the same transaction.

i. Stolen Property:

139. The property must be stolen property. It is therefore necessary to establish the identity of the property. In this case, the witnesses Krishi Lata and Munendra Goundar identified the property which belonged to them. Krishi Lata was the *de-factor* partner of the deceased Chandra who owned the house that was robbed. She had been occupying that house for a considerable period and was familiar with the property stolen from that house. She identified the phone with a camera (MFI-1), the button phone (MFI-2), the emergency lamp (MFI-3), the wristwatch (MFI-4), and the two DVD Decks, [Zebronics brand (MF-5) and Maxton brand (MFI-6)] She identified this property at the police station not more than two weeks and in Court at the trial. Munendra Goundar identified the Nokia button phone (MFI-7) and the Samsung touch screen phone (MFI-8) in Court and after this incident at the Cuvu Police Post. He was familiar with those phones as one was sent by his daughter from abroad and the touch screen one was his official phone given by his company. The Defence did not dispute the evidence of the Prosecution in this regard. The identity of the stolen property is established.

ii. Recent Possession:

140. The property should be recently stolen property. In other words, recent possession has to be established. The Defence did not dispute that the stolen property was in the custody of the accused soon after the robbery. The robbery was committed on 22-23 March 2020. Maikeli saw the bags of items on 23 March

2020 in the possession of the accused. On 27 March 2020, Sgt. Naupoto and his CIS team went to the residence of the accused in Sabeto and recovered the rechargeable lantern (MFI-3/ PE11), the Zebronic Bran DVD player (MFI-5/ PE12), the Quartz brand lady's watch (MFI-4/ PE 13), the Optus brand black button phone (MFI- 7/ PE -14). On same day, at Sabeto Village, his team recovered the black Nokia button phone (MFI-9/ PE-15) and, at Nakona settlement, the Maxton DVD player (MFI- 6 PE- 16). On 26 March 2020, the Samsung J2 (MFI-8) was seized from the possession of the 1st accused.

141. Maikeli said that the watch (MFI-4) and the phone were given to him by the 1st accused and the DVD deck by the 2nd accused on 23 March 2023. Sivaniolo and Vatu in their evidence said that the button phone (MFI -2) and the Nokia phone (MFI-9) and the Maxton DVD player (MFI-6) were given by the 1st accused on 24 March 2020. The phone (MFI-8) stolen from Munendra Goundar was recovered by Corporal Radrovi from the 1st accused upon his arrest. The evidence of the Prosecution in this regard was not disputed by the Defence. The accused persons admitted in their respective evidence that the stolen items were in their possession on 23 March 2020, soon after the robbery and the burglary. The Prosecution established that the stolen property was in the possession of the accused persons soon after the theft.

iii. Exclusive Possession

142. The next element the prosecution is required to prove is that the stolen items were in the exclusive possession or control of the accused. Sgt. Naupoto confirmed that the said stolen items were recovered from the house where the accused were residing. Maikeli the uncle of the accused persons in his evidence

confirmed that one phone and wristwatch that were given to him were in the possession of the 1st accused and that the DVD player that was given to him was in the possession of the 2nd accused. Corporal Rodrovi said that the Samsung J2 phone (MFI-8) was in the exclusive possession of the 1st accused. Maikeli saw the accused persons coming home carrying the bags of items on 23 March 2020. These items were later recovered by the police on 26 March 2020 and proved to be the stolen property of this case. The Prosecution evidence in this regard was not disputed by the Defence. The accused admitted in their evidence and the caution interview that they were in their possession. The Prosecution established that the stolen items were in the exclusive possession of the accused persons.

Explanations of the Accused

143. Once the said elements have been established, a factual presumption arises that the accused were either the thieves or the persons who knowingly received stolen property. Unless they could give a plausible explanation as to how they came to possess those items, the theft and their presence at the crime scene are established. The accused do not have to prove anything but is required to raise reasonable doubt in the Prosecution's version of events either by producing evidence or pointing to evidence of the Prosecution case to create reasonable doubt in the version of the Prosecution case. In other words, the Defence has an evidential burden.
144. Both accused persons produced evidence under oath. Were they able to show that the version they narrated in Court is true or may be true to create a reasonable doubt in the Prosecution case? Let me now analyse the evidence presented by each accused.

The 1st Accused

145. The evidence of the 1st accused is that on 22 March 2020, he went to Nadi town, where he met with some of his old friends with whom he started drinking. Close to midnight, another friend by the nickname 'Nicks' came in a car with a bag of items. Nicks wanted him to keep the bag and return it to him the next day. Nicks gave him the bag because he had to rush to another place. He saw a DVD player and a mobile phone when he opened the bag.
146. 1st accused accepted this bag without hesitation and raising any doubt. It is surprising that the 1st accused could not recall the names of any of the friends with whom he had had drinks in Nadi town except for Nicks. If Nicks came in a car, there is no reason why he could not keep the bag until the next day in his car. Although Nicks knew the other friends too, he preferred to give the bag of items to the 1st accused because Nicks trusted the 1st accused the most. The bag of items was given only for safekeeping until the following day. However, the 1st accused admitted that he gave most of the items to his friends and sold some of them for a nominal price, for eg. a DVD player for \$ 5. The version of the 1st accused is not plausible.
147. The 1st accused admitted that Nick's name was never mentioned anywhere at the trial until he gave evidence. 1st accused confirmed that he gave full instructions to his counsel before the trial. However, it was never put to the police witnesses who had recovered the items by his counsel that those items was given to him by a person called Nicks. If he had given instructions to that effect, his Counsel would have recorded it as an admission to narrow down the issues of the trial and the precious time of this Court could have been saved. In his interview, the

1st accused admitted to stealing those items from Lekhram Chandra's house and his evidence is inconsistent with his previous statement.

148. The 1st accused admitted that he was in possession of some foreign currency which he gave to Nai to buy drinks. His explanation under cross-examination for being in possession of foreign currency was that it was given by Nicks. However, he never mentioned in his examination-in-chief that Nicks gave foreign currency, in addition to the bag. The 1st accused further said that he spent money saved from his former employment to buy drinks. He did not satisfactorily explain why he would have to ask for money from Nicks, and why he had to sell a DVD deck for \$ 5 if he had money saved from the employment which he had lost a few months ago.
149. The 1st accused in his caution interview has never told the police that the property later found to be stolen was given to him by Nicks. His explanation in Court was that he did mention Nicks's name to the police, but they did not want to listen to him. However, this position was never put to the interviewing or witnessing officers by his counsel at the trial.
150. If those items had been given by a friend by the name of Nicks, given the importance of Nicks to his defence, the 1st accused must have taken every effort to locate Nicks and his description and address given to the police. There is no evidence that the 1st accused tried to do so when he was released on bail. In these circumstances, it is reasonable to assume that he did not give Nicks's name either to the police or to his counsel because Nicks never existed, and that he made up this story at the last stage of the trial as a cover-up.

The 2nd Accused

151. The 2nd accused admitted that he was in possession of the property later found to be stolen. His uncle Maikeli confirmed that the DVD player was given to him by the 2nd accused which evidence was not disputed. The 2nd accused admitted under cross-examination that he left the Sabeto house for Suva and then for Vanua Levu at the first available opportunity after keeping the bag of items in the Sabeto house. He never mentioned this in his evidence-in-chief and his explanation under re-examination was that his mother wanted him to be in Vanua Levu to build a new house. It can reasonably be assumed that the 2nd accused decided to leave the Sabeto house because he was guilty. The explanation provided by the 2nd accused is not plausible to create reasonable doubt in the version of events of the Prosecution case.

The DNA Evidence

152. The Prosecution relies on the DNA evidence to establish the link between the 1st accused and the alleged crimes, particularly to implicate the 1st accused in the offence of rape. As I said before, a *voir dire* inquiry has been run in Suva by a Judge to test the admissibility of DNA evidence and was held to be admissible. Despite that, the Defence challenged the admissibility on the basis that the buccal swab was obtained without the informed consent of the 1st accused. Since some issues were raised in respect of the chain of custody of both the reference and evidence DNA samples, I shall deal with those issues as well.
153. The Principle Scientific Officer Tuitoga confirmed that the DNA profile extracted from the reference sample of the 1st accused (E 29) matched the DNA profile

extracted from the evidence sample [the plastic bag (E28) that Sgt Naupoto had found underneath the chair at the crime scene]. Tuitoga also said that a foul odor emitted from the plastic bag and the interior side was found to be sticky and had a strong odor. Upon carrying out the confirmatory tests, she found it to be positive for semen stain. Upon viewing under the microscope, she was able to identify the presence of sperm. The result of the DNA analysis was not challenged by the Defence.

154. The complainant Krishi Lata said that her rapist ejaculated outside on a panty, and he put that panty inside the black plastic bag (E28). She also said that the rapist wiped his penis with a panty soaked with water and threw it on the floor beside the bed. It is noteworthy that this evidentiary DNA sample was extracted from a plastic bag found by Sgt. Naupoto underneath the chair as a result of the information provided by the 1st accused in his caution interview. The evidence of PC Tukana and Sgt. Naupoto reveals that the CIS team had missed this important piece of evidence when they first visited the crime on 23 March 2020. By then, it was just a plastic bag until it was attached with evidential value at the investigation which included the recording of the statement of the complainant Krishi Lata and the caution interview of the 1st accused.

155. As to the chain of custody of the evidentiary DNA sample (PE 28), Sgt Naupoto said that his CSI team visited the crime scene for the second time on 28 March 2020, during scene reconstruction and when the 1st accused confirmed that it was the same plastic bag he used, it was photographed (photo No. 58, 59) by PC Tukana. [PC Tukana said when he took the photograph No 37 on the previous day, he did not capture this plastic bag]. Sgt. Naupoto sealed and marked the plastic bag as Exhibit No.26 and after the reconstruction, he locked it in his

vehicle and then exhibited in the exhibit room at the Sigatoka Police Station exhibit room until it was handed over to the chemistry lab on 30 March 2020.

156. As to the chain of custody of the reference DNA sample, Sgt. Naupoto said that on 28 March 2020, he was informed that the 1st accused, during his caution interview, consented to give his buccal swab, so he went with the standard form and, after explaining the procedure and the purpose for which the sample is taken, he obtained the 1st accused's signature and gave the swab to the accused do the swabbing for himself. He said that the 1st accused signed to acknowledge that he has given his consent for buccal swabbing.
157. This evidence was confirmed by the interviewing officer DC Adriu. He said he explained the process of swabbing for DNA analysis to the suspect and questioned to verify if he was consenting. The suspect agreed to give consent. Consent forms were provided by the CSI officers. When the suspect voluntarily agreed to give the buccal sample, he suspended the interview, and the CSI officer entered the room to take the DNA sample. After the swabbing was completed by the CSI officer, the suspect did not complain of any assault, threat, intimidation or force used on him.
158. However, the State counsel failed to tender the consent form in evidence although it was acknowledged to be disclosed to the Defence. It appears that this consent form was tendered at the *voir dire* proceeding. The 1st accused admitted that he signed the form. Therefore, the non-production of the consent form at the trial proper would not affect the credibility of the version of the Prosecution.

159. The officers were cross-examined on the basis that swabbing was done without 1st accused's informed consent and that the swabbing was not done by the 1st accused himself but by the CIS officer. The 1st accused in his evidence however said that, during the interview, two officers took him to the toilet and told him to urinate in a plastic bottle for the DNA test. This evidence is inconsistent with the basis upon which the challenge was mounted by the counsel. I am satisfied that the accused gave informed consent for the DNA test.
160. Our Constitution provides that every person charged with an offence has the right not to have unlawfully obtained evidence adduced against him or her unless the interests of justice require it to be admitted [Section 14(k)]. Interests of justice are served only when a real culprit is convicted, and the innocent is exonerated. Even if the position of the Defence that the accused's informed consent was not obtained were to be accepted, no prejudice will be caused to the accused as the DNA test will ultimately ascertain the truth. The result obtained in the testing established the truth. In the circumstances of the case, I am satisfied that the interest of justice requires the DNA test to be admitted. The DNA report established that the 1st accused was present at the crime scene on the 22-23 of March 2020 and that his sperm and the DNA profile of complainant Krishi Lata were present on the plastic bag implicating the 1st accused in the rape.
161. Coming back to the chain of custody, Sgt. Naupoto said he sealed and packed the reference buccal sample (obtained from the 1st accused) for delivery to the laboratory in Suva. On 30 March, he had taken both the black plastic bag (evidentiary sample) and the buccal swab (reference sample) to the lab and deposited them with Paulini Saurogo at the lab. Tuitoga confirmed that Exhibit 28 (the black plastic bag) and Exhibit 29 (the buccal swab of the 1st accused),

submitted by Sgt. Naupoto, were received at the lab on 30 March 2020 by Paulini Saurogo. Paulini was not called by the Prosecution. However, Tuitoga confirmed that all the items received by the lab are registered in the records and compiled in a case file as reflected in her report. She had been assigned to this case as soon as the first submission was received on 28 March 2020. Although she could not confirm who did the registration at the lab, all submissions have been registered and documented. It was not suggested that either of the samples, after receiving them at the lab, were contaminated or tampered with. I am satisfied that the chain of custody of both samples are established.

Fingerprint Evidence

162. The fingerprint analysis report was not challenged by the Defence. The fingerprint analyst Cpl. Preetika Nand said that the latent fingerprint received from Sgt. Naupoto passed the suitability test as it had more than twelve ridge characteristics. She then compared the latent fingerprint with the controlled fingerprint of the 1st accused when his fingerprint had been received at the CRO after his arrest. In the process of comparison, she managed to identify more than 12 similar ridge characteristics which matched the latent fingerprint with the rolled fingerprint. She confirmed with certainty that the latent fingerprint belongs to the 1st accused. She tendered in evidence the charts she had used to do the comparison and explained to Court the matching positions to justify her finding.
163. As to the chain of custody, Sgt. Koroi on 25 March 2020, uplifted to a lifting tape for preservation the latent fingerprints found on the louvre blades that had been removed to gain entry to the burgled house. He had initialed it with a batch

number and handed it over to Sgt. Naupoto. Sgt. Naupoto confirmed this evidence and said that he packed and labelled the tape and locked it in the special filing cabinet at the Crime Scene Unit in Suva until he delivered it to the Forensic Headquarters in Nasova. He also prepared a minor crime scene report (PE-10). He handed the fingerprint tape and the Report over to the analyst, Cpl. Preetika Nand, who acknowledged the receipt the same by signing PE 10.

164. Cpl. Nand recognized the chain of custody report for the latent fingerprint tape, (PE-10) which contains the details, signed by her and Sgt. Naupoto dated 27 April 2020. She explained the time gap between the date she received the latent prints from Sgt. Naupoto, which was 9 April 2020, and the date of her signature in PE-10, which was 27 April 2020. She said that she signed the form only when the latent prints have been checked for suitability for fingerprint analysis on 27 April 2020.

165. The Prosecution failed to call the officer who took the controlled or rolled fingerprint of the 1st accused and failed to explain how it came to be deposited at the CRO. However, the 1st accused in his evidence admitted that his fingerprint was taken by a police officer at the police station. By looking at the description attached to the controlled fingerprints, Cpl. Nand confirmed that the fingerprint of the 1st accused had been taken by DC Benedito of the Sigatoka Police Station and that the CRO has received it on 03 April 2020 with a criminal record number under the name of the 1st accused. Although the officer who obtained the fingerprints from the 1st accused did not testify at the trial, the evidence of Cpl. Nand, based on the document in her possession, established the identity of the controlled fingerprint.

166. The 1st accused in his evidence does not deny that the fingerprint found on the louvre blade was his. His position was that during reconstruction, he was asked by the officers to handle the louver blades, suggesting the possibility of his fingerprints being present when handling it. However, it was never suggested to any of the CSI officers by his Counsel whether they had ordered the 1st accused to handle the louvre blades during reconstruction. In the video, the 1st accused was not seen handling the louvre blades and there was no suggestion that the video was edited by the police officers. Therefore, the explanation advanced by the 1st accused is not plausible. The Prosecution established the presence of the 1st accused at the crime scene by fingerprint evidence.

The Confessions and Admissions in the Caution Interviews

167. Both accused, in their respective caution interviews, admitted to committing the offences which each of them is charged with. Although the admissibility of the caution statements has already been tested and held admissible at a *voir dire* proceeding, I reviewed the evidence led in trial to satisfy myself as to the voluntariness of those statements. The video recording of each scene reconstruction, which formed part of the interview, no doubt bolstered the integrity of the whole interview process. I viewed the videos screened in the Court very cautiously.
168. No one who had an opportunity to watch those videos would believe that the accused were assaulted or pressurized to make admissions or confessions or that they were acting in accordance with a script written and coached by police officers. The way each accused was describing every detail of how the events took place during the home invasion, bears clear testimony to the voluntariness

of the interview processes. The evidence of the 2nd accused that he was shown the reconstruction video of the 1st accused before he was taken to the scene and that's how he was able to describe the events could not be believed as none of the events that had taken place with the deceased in room No. 1 was not featured in the video of the 1st accused's reconstruction which contained what happened in room No.2.

169. Katiavatu (Vatu) (PW9) under cross-examination said that he saw the 1st accused was being assaulted at the Namaka Police Station on 26 March 2020 in his presence. However, Vatu admitted that he was not called as a witness previously in this case. If the 1st accused was assaulted in Vatu's presence, the 1st accused would have known Vatu to be a good eye witness to the assault and Vatu would have been called as a witness at the *voir dire* hearing. It can be assumed that Vatu made up his evidence at the trial to support his friend who had given him stolen property.
170. I am satisfied beyond reasonable doubt that the admissions and confessions contained in the caution statements have been made by the accused persons voluntarily. Even if the confessions/admissions had been obtained illegally from the 1st accused, his admissions led the police officers to discover important evidence implicating the 1st accused (DNA evidence). Therefore, the interests of justice require his admissions to be admitted under section 14(2)(k) of the Constitution.
171. Then I carefully examined each caution statement separately, bearing in mind that the admissions/confessions made by one accused is admissible against him alone and not against the other, to see if they told the truth in their respective

statements. I find that those statements are consistent with the other evidence led by the Prosecution at the trial. Those consistencies are capable of dismissing the allegation of the Defence that certain parts of the record of interviews have been fabricated by the police. The accused at the interview in fact admitted that the stolen property were in their possession. Having considered the caution statements as a whole, I am satisfied that the accused persons told the truth to police.

The Alibis of the Accused

172. I analyzed the evidence of the accused persons, bearing in mind that they had nothing to prove, alibis or anything at all.

The 1st Accused

173. Evidence of the 1st accused is that he was drinking in Nadi Town with his old friends from the evening of 22 March 2020 till 5-6 am on 23 March 2020 and, then came to Sabeto, and continued drinking at HD Enterprise, and some other place until lunch time, and that he was never present at the crime scene during that period. None of his old friends of the 1st accused were called to support his version.
174. The evidence given by the witnesses called by the Prosecution suggests that both accused were present in Sigatoka area that night. Adi Varanisese /Nai (PW 6) saw the accused persons drinking at HD Supermarket in Sabeto at 4.00 am on 23 March 2020 when, she was doing her night shift. Her evidence was never challenged by the Defence and in fact it was admitted by the accused.

175. Tomasi Tuicakau (PW4) saw the 1st accused at 1 am at Royal Kava Shop in Naidovi on 23 March 2020. He knew Inoke as he used to come to that shop very often. He had a brief conversation with Inoke and helped Inoke to catch a cab. Although, Tuicakau admitted that he never mentioned the name Inoke to police in his statement, the description given by this witness is consistent with the caution statement of the 1st accused.
176. PW 5 Rejinal Rishnil Nand, the taxi driver, picked a person from Royal Kava in Cuvu at around 11.30 pm on 22 March 2020. This person wanted to pick up his friend from opposite the Cuvu Police Post. Rajinil dropped them off at Vilisite minibus stand. Although Rejinal could not confirm the identity of the accused, the admissions in their caution interviews are consistent with Rajinil's evidence.
177. The evidence of the 1st accused is totally inconsistent with his statement given under caution. The late alibi raised in Court is not appealing to me and thus rejected. The 2nd accused failed to create a reasonable doubt in the version of the Prosecution case.

The 2nd Accused.

178. According to the 2nd accused, he met her girlfriend Rusila Wasa in Namaka on 22 March 2020 and left for a sleepover at her place in Denarau at around at 6 pm. He stayed there till the next morning. On 23 March 2020, he woke up at 4.30 am and left his girlfriend's residence early in the morning to meet the 1st accused in Sabeto. After receiving the bag from the 1st accused, he went home in Sabeto.

After dropping off the bag home, he went and joined the 1st accused to drink at HD Enterprise.

179. However, his evidence is not consistent with the evidence of Varanise which was admitted by him to be true. The 2nd accused agreed that Varanise told the truth in her evidence that he and the 1st accused were having grog at HD Enterprise between 4 and 6 am on 23 March 2020. If the 2nd accused left Denarau at 4 pm, it was not possible for him to be at Sabeto by 4 am on the same day. There was no plausible reason for him to wake up as early as at 4 am to go and meet the 1st accused to have drinks.
180. The 2nd accused failed to call Rusila wasa to give evidence to support his alibi. To prepare his alibi notice, he has given a different name- Rusila Vorokitaki to his counsel as his alibi witness. His explanation was that Vorokitaki is her third name. Then why didn't he give her full name and address to his counsel so as to enable the police to locate this important witness for his defence. I accept that the police could not locate Rusila because she never existed. 2nd accused never mentioned Rusila at his caution interview. I am sure he made up Rusila to cover up his involvement in the offences. I reject the version of the Defence. The 2nd accused failed to create a reasonable doubt in the version of the Prosecution case.
181. Having accepted the version of the Prosecution, I proceed to see if the charges against each accused have been proved by the Prosecution beyond reasonable doubt.

Rape charge against the 1st Accused.

182. The complainant Krishi Lata said that the boy who entered her room asked her to remove her clothes with a pair of scissors in his hand. She pleaded with him, *'I'm at this age and why do you want to do anything such to me?'* He then threatened to kill her if she didn't comply. She got frightened and removed her clothes. Then he told her to sleep on the bed. He lifted both of her legs up and inserted his penis inside the 'hole where she urinates from'. He ejaculated on the panty which she had removed. She didn't give consent to what he was doing. She could not identify the rapist as she was not wearing her glasses. However, the identity of the rapist was established by the DNA evidence. Although Krishi Lata did not use the word vagina to describe her genitalia, in conjunction with the evidence of Tuitoga, the only inference that can be drawn is that the accused penetrated the vagina of the complainant. Furthermore, the 1st accused in his caution interview confessed to the rape. I am satisfied that the Prosecution proved the charge of rape against the 1st accused beyond a reasonable doubt.

The Murder Charge against the 2nd Accused.

183. The 2nd accused in his caution interview admitted that he grabbed the old man tightly and blocked his mouth and started punching using his fist countless times to the point the deceased became unconscious. When the deceased became unconscious, he tied his mouth with a cloth and hands and legs with a belt and a cloth. He noticed the deceased breathing motionless, and his lower jaws detached, blood covering his nose and chest. Still he did nothing to revive the old man and proceeded to accomplish his task.

184. The 2nd accused admitted under cross-examination that he had injuries on his knuckles. Although he attributed those injuries to police brutality, his counsel

never questioned any of the police witnesses on that basis. Doctor Avikali Mate's evidence is consistent with the admission made by the 2nd accused that he repeatedly punched the deceased. Upon external examination, the doctor observed injuries to the head, the face and the neck area of the deceased. Most of the injuries were seen in the head and the face, the most vulnerable part of the body. She opined that blunt force trauma by repeated punches with a significant force could have caused those injuries.

185. Doctor's evidence also established that the accused was reckless in causing the death of the deceased and that the conduct of the 2nd accused substantially contributed to the death of the deceased. The deceased was 78 years old, and the 2nd accused knew he was old. He could have foreseen the risk involved and the consequence of his action. He took the risk of causing the death of the deceased when he repeatedly punched this old man in his head. The risk he took is unreasonable in the circumstances known to him. The willful conduct and the recklessness as to causing death on the part of the 2nd accused are established.

Medical Evidence

186. According to the opinion of the doctor Avikali (PW-12), given the multiple bruises present on the forehead, the face, the neck and the displacement of the mandible or lower jaw, the deceased has received repeated punches in those areas. According to her, there were two possible causes of death that directly led to the death of the deceased. Firstly, severe cardiovascular disease dilated cardiomyopathy (atherosclerosis) and secondly, severe cerebral oedema.

187. Cerebral oedema affects the heart rate centre of the brain and attributed this phenomenon to blunt force trauma. For a person whose heart is already in a compromised state, not being able to supply itself with oxygen, because of the narrowed blood vessels, a swollen brain could exacerbate the problem by causing the heart to be less fast when it's needed to be faster. The doctor linked the *haemorrhage* and the damage to the brain to blunt-force trauma. She opined that the damage to the brain could have been caused when the brain moved within the closed compartment as a result of a blunt force trauma with a significant or repetitive force applied in that area. The blunt force trauma has resulted in *cerebral oedema* and *haemorrhage* in the brain. She excluded all unlikely causes and boiled down to the opinion that the swelling and *haemorrhage* in the brain could have been caused by the trauma to the head. She further said that any compression or swelling of the brain could generally affect its function and even affect breathing and the heart rate. Without medical management, she opined that the brain would continue to swell thus compressing the blood vessels, eventually leading to death.
188. The 2nd accused noticed that the deceased was not breathing and he informed the same to the 1st accused, but he did nothing to save the deceased' life. The deceased had succumbed to his injuries at the crime scene itself. The Prosecution proved beyond reasonable doubt that the conduct of the 2nd accused caused the injuries to the head of the deceased and those injuries substantially contributed to the death of the deceased. The elements of Murder as charged are established.
189. The Prosecution also proved that the accused persons acting in a joint enterprise robbed the belongings of the deceased and robbed the complainant Krishi Lata. It also proved that the accused persons burgled the house occupied by Munendra

Goundar and stolen the belongings of Goundar. Although there is no evidence that the 2nd accused entered the house in which Munendra was sleeping, he got closer to the window to peep inside when the 1st accused entered the house. "Building" includes a part of the building according to Crimes Act definition (s 312 (7)). The 2nd accused was in the company of the 1st accused who entered the house and he shared the looted money with the 1st accused.

190. The prosecution proved all the elements of Murder against the 2nd accused, Rape against the 1st accused, Aggravated Robbery, Aggravated Burglary and Theft against both accused as charged in the information beyond a reasonable doubt.
191. I find the accused persons guilty of the counts as charged in the information and convict them accordingly.



Aruna Authge
Judge

23 August 2023

At Lautoka

Solicitors:

Office of the Director of Public Prosecution for Prosecution

Legal Aid Commission for Defence