

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 203 OF 2021S**

**STATE**

**VS**

- 1. MAIKELI SCOTT MANUWAVE**
- 2. RAYMOND JOHNSON**
- 3. PENIJAMINI TUINAVITI**

**Counselors:** Mr. E. Samisoni and Ms K. Dugan for State  
Accused No. 1 in Person  
Mr. I. Keteca for Accused No. 2  
Accused No. 3 in Person and tried in Absentia.

**Hearings:** 24, 25, 26, 27, 31 January, 6 February and 13 March  
2023.

**Judgment:** 15 September 2023

**JUDGMENT**

1. On 24 January 2023, the following information was read over and explained to the accused persons:

**"COUNT 1**

*Statement of Offence*

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

*Particulars of Offence*

**MAIKELI SCOTT MANUWAVE, RAYMOND JOHNSON** and **PENIJAMINI TUINAVITI** with another on the 9<sup>th</sup> day of August, 2021 at Nakasi, in the Central Division, in the company of each other stole a black Toyota Fielder with taxi registration number LT 5183 from **ALVIN RITESH SINGH** and immediately before stealing from **ALVIN RITESH SINGH**, used force on him.

**COUNT 2**

*Statement of Offence*

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

*Particulars of Offence*

**MAIKELI SCOTT MANUWAVE, RAYMOND JOHNSON** and **PENIJAMINI TUINAVITI** with another on the 9<sup>th</sup> day of August, 2021 at Nakasi, in the Central Division, in the company of each other stole a black money bag containing \$249,477.25 cash, 1 x cheque for the amount of \$20,000.00 issued to Kalabu Investment PTE Ltd, 1 x cheque for the amount of \$341.92 issued to Fiji Diary Company Ltd, 1 x cheque for the amount of \$100.00 issued to Uprising Print, 1 x Shop & Save (Nakasi) Supermarket Deposit Book and 1

*x Shop & Save (Nakasi) Bakery Deposit Book from **PENI RAIWALUI** and immediately before stealing from **PENI RAIWALUI**, used force on him."*

2. Accused No. 1 had previously waived his right to counsel and choose to represent himself. Mr. I. Keteca appeared as counsel for Accused No. 2. Accused No. 3 had not attended court previously and was been tried in absentia pursuant to Section 14(2) (h) (i) of the 2013 Constitution.
3. On Count No. 1 of the information, Accused No. 1 and 2 said they understood the information and pleaded not guilty to the same. Accused No. 3 was deemed to have understood count no. 1 and he was deemed to have pleaded not guilty to the same. On count no. 2 of the information, Accused No. 1 and 2 said they understood count no. 2 and pleaded not guilty to the same. Accused 3 was deemed to have understood count no. 2 and he was deemed to have pleaded not guilty to the same.
4. It was trite law that the burden of proving the charges against the three accused persons beyond a reasonable doubt, always lies on the prosecution throughout the trial, and it never shifts to the accused persons, at any stage of the trial. It follows that there was no burden on the accused persons to prove their innocences. If, after all the evidence were examined and analyzed, there remained a reasonable doubt on the accused persons' guilt, they are entitled to an acquittal forthwith.

5. In this case, the prosecution called 12 witnesses – 5 civilians and 7 police officers. After considering the evidences of all the 12 witnesses, it was proven beyond reasonable doubt by the prosecution that:

(i) in relation to count no. 1, four persons, on 9<sup>th</sup> August 2021, at Nakasi in the Central Division, in the company of each other, stole a black Toyota Fielder taxi registration number LT 5183 from Alvin Ritesh Singh, and immediately before stealing the taxi from him, used force on him;

(ii) in relation to count no. 2, three persons, on 9<sup>th</sup> August 2021, at Nakasi in the Central Division, in the company of each other, stole a black money bag containing \$249,477.25 cash, 1 x cheque for the amount of \$20,000 issued to Kalabu Investment PTE Ltd, 1 x cheque for the amount of \$341.92 issued to Fiji Diary Company Ltd, 1 x cheque for the amount of \$100 issued to Uprising Print, 1 x Shop and Save (Nakasi) Supermarket Deposit Book and 1 x Shop and Save (Nakasi) Bakery Deposit Book from Peni Raiwalui, and before the above stealing, used force on him.

6. On 6 February 2023, at the end of the prosecution's case, the court found a case to answer against Accused No. 1, on count no. 1, simply because the complainant, Mr. Alvin Ritesh Singh, said that he identified Accused No. 1 robbing him of his taxi, at the material time. Mr. Singh appeared to say that he could not identify any other robber, at the material time. Consequently, the court found no case to answer against Accused No. 2 and 3, found them not guilty as

charged and acquitted them on count no. 1. As for count no. 2, no police witnesses identified Accused No. 1, at the crime scene at the material time, thus he was found not guilty as charged and acquitted accordingly. Some of the police officers, after viewing the CCTV footage of the alleged robbery at the material time, identified Accused No. 2 and 3 at the crime scene, thus a case to answer was found against them.

7. On count no. 1, Accused No. 1 said he was at Namadi at the time of the alleged robbery, and thus he submitted, he was not the one that allegedly robbed the complainant, at the material time. On count no. 2, Accused No. 2 said he was at Nadera at the material time, and he submitted he did not commit the offence at the material time. As for Accused No. 3, he was deemed to have chosen to exercise his right to remain silent, as he was been tried in absentia.
8. On count no. 1 and 2, the prosecution's case was based solely on its identification evidence produced in court. On count no. 1, the complainant Mr. Alvin Ritesh Singh said, he identified Accused No. 1 as one of the persons, who violently robbed him of his taxi, at the material time. This evidence will have to be examined in accordance with the guideline laid out in R v Turnbull & Others [1976] 3 All E.R. 549. First, the court warns itself of the special need for caution when the prosecution's case was based substantially on the correctness of the complainant's identification evidence which the defence alleges to be mistaken. Second, the circumstances surrounding the identification must be closely examined. How long did the witness had the accused under observation? Mr. Singh said, he observed Accused No. 1 for about 5 to 7 minutes. At what distance? Mr. Singh

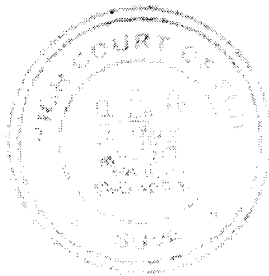
said he was 30 to 50cm away from him. In what light? Mr. Singh said it was between 8.30am to 9am. He said, the sunlight was coming into the car. Was the observation impeded in any way? Mr. Singh said all the alleged robbers wore covid face mask. He said, one of them was blocking his eyes with his hands.

He said, the men later taped his eyes and mouth. He said, he saw them through the tapes. He said, he was taken from the back car seat and put in the car booth. He said, he was blindfolded with the tapes. Has the witness ever seen the accused before? Mr. Singh said that was the first time he saw the accused. Was a police identification parade held? It appeared none was done.

9. On count no. 2, the police witnesses identified Accused No. 2 and 3 while observing the CCTV footage that recorded the actual robbery at the material time. The CCTV footage recorded in a disc was tendered in evidence as Prosecution Exhibit No. 2. The Court carefully observed the CCTV footage numerous times during the trial. The footage recorded the actual robbery from Peni Raiwalui. The two robbers, as shown in the CCTV footage, wore covid 19 type masks, wore hats that covered the top of their heads. You could only see their eyes, but the major part of their faces were covered by the covid 19 masks. It was difficult to identify their faces properly. Despite the above, the police witnesses said it was Accused No. 2 and 3. They identified them in the way they moved, height, built and the way they fled.
10. In my view, I had carefully observed the CCTV footage of the crime actually taking place. I had carefully listened to Mr. Alvin Ritesh

Singh's evidence. I had carefully reminded myself of the R v Turnbull (supra) identification guidelines. In my view, with respect, the prosecution's identification evidence was of a low quality. It was not enough to prove beyond reasonable doubt the guilt of the accused in both counts. When looking at the identification evidence, because its quality was not high, it left a reasonable doubt in the Court's mind. The law required the prosecution to prove their case beyond a reasonable doubt. The Court had a reasonable doubt on both counts. The benefit of that doubt, according to law, must go to the accused persons.

11. Given the above, I find Accused No. 1 not guilty as charged on count no. 1 and I acquit him accordingly. On count no. 2, I find Accused No. 2 and 3 not guilty as charged and I acquit them accordingly.
12. 30 days to appeal to the Court of Appeal.



  
Salesi Temo  
**Acting Chief Justice**

**Solicitors:**

Solicitor for the State: Office of the Director of Public Prosecutions,  
Suva.

Solicitor for Accused No. 1: In Person.

Solicitor for Accused No. 2: Mr. I. Keteca, Barrister & Solicitor, Suva.

Solicitor for Accused No. 3: In Person.