

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 152 OF 2021

BETWEEN : **STATE**

AND : **LASARUSA TAMANI KOLINISAU**

Counsel : Ms B Kantharia and Mr E Samisoni for the State
Mr S Ravu and Mr E Ravuniwa for the Accused

Date of Hearing : **23 – 25 October 2023**

Date of Judgment : **12 December 2024**

JUDGMENT

Charges, elements and principles

- [1] The trial commenced after the Accused pleaded not guilty to one count each of aggravated burglary and theft.
- [2] The burglary charge (count 1) alleges that the accused between 17 April 2021 and 18 April 2021, in the company of others, entered into the Office of Land Transport Authority situated at the Garden City premises in Raiwal, as trespassers, with the intent to commit theft.
- [3] The theft charge (count 2) alleges that the Accused on the same date and place; in the company of others, dishonestly appropriated (stole) a Safe Box containing

cheques and \$8553.80 in cash, the properties of LTA and with the intention to permanently deprive the LTA of the said properties.

- [4] The onus is on the Prosecution to prove each charge beyond a reasonable doubt. There is no onus on the Accused to prove anything. Each element of the charged offence must be proved but not every fact of the story.
- [5] To prove the offence of aggravated burglary as charged, the prosecution must prove the following elements:
1. On the date and place alleged, the accused in the company of another entered a building as a trespasser.
 2. That the entry to the building as trespasser was made with the intention to commit theft from the said building.
- [6] To prove the offence of theft as charged, the prosecution must prove the following elements:
1. On the date and place alleged, the accused dishonestly appropriated property belonging to another.
 2. The appropriation was done with the intention of permanently depriving the owner of that property.
- [7] Trespass means to enter a place or building without authority or permission. Theft simply means stealing. Dishonestly is determined applying the current standards of ordinary decent people.

Admitted facts

- [8] The following facts are not in dispute:

1. The Accused was born on 14 February 2002 and was 19 years old at the time of the alleged offence.
2. The Accused attended forms 3-6 at Queen Victoria School and Form 7 at Gospal High School.
3. The Accused was present at "Lomaiviti Rugby Club House" which is situated at the opposite of Garden City Complex in Raiwai on 17 April 2021.
4. The Accused is a member of the "Lomaiviti Rugby Club House" and had been playing rugby for the "Lomaiviti Rugby Club House".
5. The Accused was arrested on 11 May 2021 from his residence at Kapadia Place, Raiwai.
6. The Accused was charged on 12 May 2021 at Samabula Police Station for the offence of burglary, theft and damaging property.

[9] At the trial, it was not in dispute that a burglary had occurred at the Office of the Land Transport Authority in Raiwai and a Safe Box containing cheques and cash had been stolen. What is in dispute is the Accused's identification and his involvement to the alleged burglary and theft.

Prosecution case

[11] The prosecution led evidence from five witnesses.

[12] The evidence of WPC Miriama Kadavata is that on 23 October 2023 she took and made a booklet of photos of a Safe Box that was kept at Raiwai Police Station. She tendered the photographic booklet as Prosecution Exhibit 1. The Prosecution says the photographs are of the Safe Box that was allegedly stolen from the LTA Office in Raiwai by the Accused.

- [13] The evidence of Rusila Turaga is that she discovered the burglary at the LTA Office, Raiwai on Monday 19 April 2021. She is an employee of LTA and she was the first staff to report to the office that morning. When she arrived at the premises she noticed the front entrance door facing the Gratham Road was open. She immediately called her manager, Mereadani Qalovi.
- [14] Mereadani's evidence is that she immediately came to the office after being alerted about the break in. She was the only one who had the keys to the office. It was her responsibility to open and lock up the office. She was the last person to leave the office after locking it on the previous Friday afternoon.
- [15] After seeing that the office had been broken into, she called the police. She entered the office when the police arrived. She noticed shoe marks on the counter top and a black colour t-shirt lying beside the counter. She also noticed that the locks to the room where the office Safe Box was kept had been removed and the door was open.
- [16] When she entered the room, the Safe Box was missing. The Safe Box was made of steel and was grey in colour. They had purchased the Safe from Vinod Patel. She had the Safe Box under her supervision and custody after it was purchased a month before the theft and that there was a LTA sticker on the Safe but she agreed the sticker was no longer there after the Safe was recovered. The Safe had \$10,383.20 in it when it was stolen and that money was missing when the Safe was recovered.
- [17] Sgt Munilesh Goundar gave evidence that he was asked to assist in the investigation of this case. On 20 April 2021, he and two other police officers searched the nearby locations for evidence. There was a creek that ran behind the Garden City Building near the Total Warehouse. When they came to the creek he

found a grey colour iron Safe Box lying underneath a culvert that ran within that creek. The door of the Safe was damaged. He said it was the same Safe that is the photographs. He said the photographs 4 and 5 have a sticker and when he discovered the Safe on 20 April there was a hand written label with pen ink saying Property of LTA but by the time the photographs were taken in 2023 the handwritten label had faded.

- [18] An army officer by the name Samisoni Seru gave evidence that on the night of 17th April 2021, he was at the Lomaiviti Rugby Club House drinking grog with his friends after a match. The Club was located at Kauvesi Park, Raiwai. After drinking, his friends left as there was a night curfew due to COVID. Samisoni remained at the Club House. Around 2 or 3 am he heard a bang sound coming from the Garden City Premises. He woke up and peeped through the window and when he did not see anything he went to sleep. The Garden City Premises are about 90-100 meters away from where he was sleeping.
- [19] After about 10 minutes Samisoni heard the gate outside his building open. He got up and came outside. He met some youths at the gate. He recognize one youth by the name Lasa. That is what he called him. He had been playing club rugby with Lasa for two years. He saw a grey colour steel box lying down beside the male toilet and Lasa told him today he was going to get some money. When shown the photographs (PE1) he said it was same steel box he saw that night.
- [20] After seeing the youths and the steel box Samisoni went inside his room. While he was in his room he could hear sounds of breaking the steel box. He also heard sound of coins and one of them say its big money and someone else say not that much money. He heard them dividing the money and then lifting the box and crossing the ground. He got up and peeped through his room window. He saw 3 youths carrying the Box. He saw them discarding the Box near a culvert placed

beneath the road for the stream water to flow. One of the youths who carried the Box to the culvert was Lasa. He had the youths under his observation for about 10 minutes. He did not personally know Lasa but they had been training together as part of the same club almost every week for the past two years. On 17 April 2021 they played together for the same club. He said Lasa is the Accused in the dock.

- [21] On 11 May 2021, the Accused was interviewed under caution by DC Taniela and witnessed by DC Isireli at Samabula Police Station. The Record of Interview of the Accused is admitted in evidence as PE 2A and 2B. Every page of the Interview has the signature of the interviewing officer, the witnessing officer and the Accused.
- [22] The Accused chose to be interviewed in English language. The interview commenced at 9.15 am and was concluded at 5 pm the following day. The Accused was given breaks for water, meals and overnight sleep during the interview.
- [23] The Accused was advised of his right to counsel and his right for a next of kin or a social worker to be present during the interview but he expressly waived that right. He was cautioned and advised of his right to remain silent and he stated he understood the caution.
- [24] When the Accused was questioned about his whereabouts on Saturday 17 April 2021 he said he played club rugby which started at 3 pm and finished after 4 pm. After the match the team met at the Lomaiviti Club House and then disbursed to their respective homes for shower. At about 6.15 pm the Accused returned to the Lomaiviti Club House with his cousin for dinner with his team. They had dinner from 7 pm till 8 pm.

- [25] After dinner the Accused and four of his team members boarded a taxi and went clubbing in the city while the rest of the team stayed back at the Lomaiviti Club House. They went to Down Under Club and drank till 10.30pm when they returned to Lomaiviti Club House. They went and bought liquor from a shop in Raiwai and came to Lomaiviti Club House to continue drinking. There were seven of them at the Club House drinking Joske. They drank till midnight when they realized the curfew had started. Someone came and told them to come down as they were not supposed to drink at the top floor of the Club House. They came down and continued drinking. When they came down one of the players by the name Valevatu left the Club House. After Valevatu went away Samisoni came and opened the gate to the Club so that they can all go and sleep inside. They laid down for a while when the Accused wanted to use the washroom.
- [26] When the Accused came out to relief himself he met three boys who were planning to steal from the LTA office. He knew the boys by their name. The Accused joined the boys. He was told to be the lookout with another boy while two boys were to enter the LTA office. He was also told to prepare some stone and throw it at anyone who tries to disturb the intruders while they are at the LTA office. He saw two boys forcefully opened the LTA office entrance door and went inside. The two boys who entered the office then came out carrying out a silver colour Safe Box.
- [27] The Accused helped the boys to lift the Safe Box and brought it to the Club House. They then forcefully opened the Safe door using a flat screw driver and the Accused then helped a boy to carry the Safe and dump it inside a culvert nearby. One of the boys shared the money and the Accused received \$800.00 in cash and three bags of coins. The Accused then went home and he later spent the money on food and buying clothes for himself.

[28] That is a summary of the evidence led by the prosecution.

Defence case

[29] The Accused elected to give evidence. He was not obliged to give evidence. He does not have to prove his innocence. He does not have to prove anything. However, he has chosen to give evidence. I am obliged to take what he has said into account when considering the charges. Even if I entirely reject the account given by him that would not relieve the Prosecution of its burden of proving the Accused's guilt.

[30] The Accused's evidence is that after the rugby match he went home to shower before returning to the Club House for dinner. While at the Club House they consumed kava and liquor. The Accused drank liquor on the top floor of the Club House while the kava session took place at the ground floor.

[31] After drinking, some team members went to town while others stayed back at the Club House to continue drinking. The Accused stayed back at the Club House. They finished drinking around 2-2,30 am on 18 April 2021. When the drinks were finished the Accused went through the backdoor to relieve himself. When he came out he saw three boys outside the toilet.

[32] While the Accused was at the toilet Samisoni came, looked at them and went back inside. The Accused said the boys asked for an iron rod and the Accused went and brought a steel rod and gave it to the boys. He knew the boys. The boys then tried to open the box with the rod. The boys managed to open the box and they gave the Accused some bags of coins. The Accused's cousin came to the scene and they then left for their home while the boys left with the Box.

[33] The Accused said that he confessed to the police because they assaulted him by punching him on his ribs and head following his arrest and during his caution interview at Samabula Police Station. He only confessed because he was afraid while being assaulted by the police officers.

[34] That is a summary of the evidence led by the defence.

[35] **Analysis**

Samisoni's evidence is that he saw the Accused with a Safe Box outside the male toilet with some other boys. He then saw the Accused discarding that same Box inside a culvert. According to Mereadani, the Safe Box retrieved from inside the culvert by Sgt Munilesh is the same Safe Box containing cash and cheques that was stolen from the LTA office

[36] The Accused does not dispute that Samisoni saw him with some other boys outside the toilet on the night in question. There is no question of Samisoni being mistaken in recognizing the Accused. I believe Samisoni when he said that the Accused was together with the boys that brought the Safe Box and later discarded the Safe Box inside a culvert.

[37] The Accused's evidence is when he went out to relieve himself he met the boys who came along with a box, asked him for a rod, he provided them with a rod they opened the box and then gave him some bags of coins. He denies any involvement in the burglary and theft from the LTA office.

[38] I don't believe the Accused is telling the entire truth. His evidence is not adding up. He is not making any sense saying that he met three boys with a Safe Box at an odd hour of the night during a curfew period, helped the boys to break the

safe by providing a rod and then taking bags of coins, without knowing the Safe Box had been stolen.

[39] I find what the Accused said in his caution interview is true. His police statement amounts to a full confession to a joint enterprise with three others to burgle and steal from the LTA office. He gave a detailed account of his involvement saying his role was to act as a lookout with one other accomplice while two of his accomplices entered the LTA office to steel. He got his share of the stolen property in the sum of \$800.00 cash. His confession adds up with the rest of the evidence led by the prosecution and the admitted facts.

[40] I feel sure of the Accused's guilt in respect of both charges.

[41] **Verdict**

The verdict of the Court is:

- **Count 1 – Aggravated Burglary – Guilty – Convicted.**
- **Count 2 – Theft – Guilty – Convicted.**




Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused