

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

**Criminal Case No. HAC 16 of 2024**

**STATE**

**V**

**1. A M**

**2. S B**

**Counsel:**                   **Mr. T. Tuenuku for the State**  
                                     **Mr. I. Rusaqoli for the Juvenile**  
                                     **Ms. K. Marama for the Accused**

**Date of Trial:**                   **13 – 14 March 2025**

**Date of Judgment:**           **11 April 2025**

**JUDGMENT**

*(As AM is a child and SB is his brother, their full names are suppressed)*

1. AM and SB are jointly charged with a count of aggravated robbery, contrary to section 311(a) of the Crimes Act 2009, the particulars being that, on 22 January 2024, at Labasa, they robbed Mr. Prasant Praneel Chand of his Samsung Galaxy A03 mobile phone and, at the time of such robbery, used personal violence on Mr. Chand.

**Elements**

**Count 1 – Aggravated robbery**

2. To establish charge the prosecution must prove beyond reasonable doubt that:
  - (i) AM and SB, in the company of each other;

- (ii) Stole a Samsung Galaxy A03 mobile phone belonging to Mr. Chand; and
- (iii) Immediately before committing theft, at the time of committing theft, or immediately after committing theft, they used force on Mr. Chand with intent to commit theft or to escape from the scene.

### **The trial**

- 3. The trial ran for two days, from 13 to 14 March 2025.
- 4. The prosecution called six witnesses, and adduced the Records of Interview of both AM and SB, the admissibility of which was not challenged by the defence.
- 5. AM and SB both elected to give evidence in their own defence. SB also called his mother as a defence witness.

### **The prosecution case**

- 6. Mr Chand said that he was walking towards town at around 3.45am on the morning of 22 January 2024. He walked past Namara village and, as he reached the temple, he saw two iTaukei boys running towards him.
- 7. The taller boy was just standing beside him, and the shorter boy punched him in the head a few times. They then restrained him and forced him down on the tarseal road, causing him some injuries. The shorter boy then grabbed his black Samsung A03 mobile phone from his shorts pocket. He identified his phone in court, which was adduced as PE-1.
- 8. As they ran away, he followed them to see where they were going. He saw them enter a white house just beside the main road in Namara village. The house was about 20 meters from where he was assaulted and robbed.
- 9. Mr. Chand went straight to the police station and reported the robbery. He gave a brief description of his assailants as one being tall and the other short. He then led four police officers to the house that he had seen his assailants enter. An old lady came out of the house and was requested by the police to bring out the two boys. When the boys came out they told the police that they had not robbed him and did not have the phone. Eventually, they brought out his phone from the house. The case and his sim card had been removed.

10. The police arrested the boys, and they escorted him to the hospital.
11. Mr. Chand was cross-examined by Mr Rusaqoli on behalf of AM. He confirmed that it was the shorter boy who punched him. When it was suggested to him that he could not tell who had taken his phone from his pocket, Mr. Chand answered that it was the short guy. When I sought to clarify whether he had seen who took his phone, Mr. Chand said that he saw the short one reach into his shorts pocket.
12. When Ms. Marama asked him to confirm that it was the short one who had punched him, and the taller one who was stood beside him, Mr. Chand did so. When questioned about lighting conditions, Mr. Chand said that there was bright street lighting.
13. The second prosecution witness was Dr Fazia Ali. She was an emergency doctor on duty at Labasa Hospital when the complainant was brought in. He relayed that he was assaulted during a robbery that morning. Upon examination, he was found to have injuries on his right eye, bruises on the forehead and abrasions on his forehead and elbows. The Police Medical Examination Form was adduced as PE-2.
14. PC 8061 Siteri was on duty in the early hours of 22 January 2024. At around 4.10am, the complainant came into the charge room. He was bleeding and said that he was robbed at Namara by two iTaukei men. He described one of his assailants as short and the other as tall. He also described the house they had ran to. PC Siteri knew that SB resided at that house. She was part of the team that boarded a police vehicle together with the complainant, and they headed for Namara. As they drove down the road, the complainant pointed out the house that the robbers had ran to.
15. PC Siteri instructed the driver to stand at the front door, and she went round to the back of the house with PC Niumaia. As she shone her torch on the path, she saw wet footprints leading to the back door of the house. She called SB's name several times, but he did not respond. The mother answered the front door, and PC Siteri asked her the whereabouts of her two sons. She said that they were sleeping

inside the house. The mother called them several times. Eventually, SB came and stood beside his mother.

16. PC Siteri inquired whether he had been at home the whole night, and he said that he had. She saw grass on his feet, which indicated to her that SB had been outside recently. He then told her that he had been at a night club. He denied punching the complainant. He said it was his brother that did it.
17. PC Siteri questioned AM and SB about the whereabouts of the phone, and they took her to the kitchen. They were searching for the phone, and she heard AM saying that he did not hide the phone. AM told SB that SB had hidden the phone. SB then went inside the house and brought out the phone. She showed the phone to the complainant who confirmed that it was his phone. She then arrested AM and SB, and they were taken to the police station.
18. In cross-examination, Ms. Marama suggested to PC Siteri that what she had, in fact, heard was her client telling AM to go and get the phone. PC Siteri replied that she clearly heard AM telling SB that it was SB who hid the phone. PC Siteri did accept that at the station SB denied being involved in the robbery.
19. 5174 Pita Moce interviewed AM under caution. He read the record of interview into evidence at trial. AM said that he was drinking beer with a friend since 10am on 21 January 2024. He returned home briefly before heading back out to town. He played billiards at Kava Bar and, after midnight, went to Revolver Nightclub with a couple of friends and SB. He returned home after 1am and was joined on the porch by SB. Around 3am they saw a man of Indian descent walking down the main road. He went to ask this man for a cigarette. When he refused, he punched him in the face three times. As he punched him, his mobile phone fell onto the road. He picked up this phone and SB came and took the phone from him. AM said that he went first, and his brother came after that man started running away. The Record of Interview was adduced as PE-3.
20. SB's caution interview was video recorded. The transcript was read into evidence at trial by DC 5221 Ravneet Goundar. SB said that he was at home on the evening of 21 January 2024. He went to sleep after 10pm. His father woke him up and

told him to check who was shouting outside. He saw AM fighting with another man of Indian descent. That man was already running away. When he arrived at the scene, he saw a phone. He picked it up and took it home. His brother told him that it was the Indian fella's phone. The police came to his house and asked for the phone and he handed the phone to the police. When questioned about the iTaukei youth punching the complainant, SB suggested: *"maybe it was my small brother."* He confirmed that AM is taller than him. When he asked AM about where the phone was hidden, AM told him it was inside their room under AM's jacket. SB denied punching the complainant. The transcript was adduced as PE-4.

### **Election**

21. At the close of the prosecution case, Mr. Rusaqoli and Ms. Marama quite properly accepted that AM and SB had a case to answer.
22. When he was given his options, AM indicated that he wished to give evidence in his own defence. SB likewise elected to give evidence, and informed the Court that he would call one defence witness.

### **Defence Case**

23. AM said that he was drinking in town with his friends on 22 January 2024. Later, he played billiards at a kava bar with *"the oldies who were drinking grog"*. He played up until 1am and then walked home alone. When he came close to Namara, he met an Indian man. He asked this man for suki and, when he refused, he punched him up. When asked why he did that, AM replied: *"I think I was drunk, black out"*. He said that he then took hold of the man's phone. He was alone at that time. After the altercation his elder brother came along. His brother took the phone and wanted to talk to the Indian man, but he had already fled, and they went straight home. They were lying down at home. After a while, police officers came. When asked whether he planned the assault with anyone else, or acted alone, AM said: *"It was me alone"*.
24. Under cross-examination by Ms. Marama, AM said that when he saw the Indian man SB was not outside with him. SB came after he had punched the man. The

Indian man had already fled. SB was holding the phone. The police came ten minutes after they arrived home.

25. SB asked him to go inside to get the phone. He did not want to, so SB went to get it. When Ms. Marama suggested to AM that he had taken back the phone from SB as they headed home, he denied it. He said it was SB who put the phone inside his jacket.
26. Under cross-examination by Mr. Tuenuku, AM said that, when he was drinking at Revolver, SB had already left. He accepted that after playing billiards he went home and sat on the porch with SB. He said that he was alone outside when he saw the Indian man. SB had already gone inside the house. His brother did not see him punch the man as it happened near the shop, about 20 meters away from the house. When it was put to him that he was not acting alone, and was with his brother, AM maintained that he did act alone.
27. When I sought to clarify the state of his memory in light of his evidence that he was very drunk that night, AM said: *“I was really drunk. I was near to the point of passing out ... in the morning I could remember some stuffs that happened and some I didn’t remember.”*
28. In examination-in-chief, SB said that he was at home at around 10pm on 22 January 2024. He walked to town and met AM and two other men at Revolver. He then left, and reached home after midnight. His brother got home after 1am. SB had a smoke outside and then went inside to sleep. He woke up when his father and mother were calling him. His mother came to his room and said that someone was shouting outside. He heard someone shouting for help, and when he went outside he saw his brother fighting with an Indian man. They were about 20 meters away. He shouted at AM to stop punching the man, and then ran towards them. AM ran towards him. The Indian man ran in the opposite direction towards the police station. He saw the phone. AM told him it was the Indian man’s phone. He took the phone from AM as he wanted to follow the man to return his phone. The man was running and had gone past a school so he returned home. He asked AM about what happened and AM told him the man refused to give him suki and they

started fighting. He said that he gave the phone back to AM. After a while AM gave him the phone and asked him to hide it.

29. Mr. Rusaqoli did not cross-examine SB.
30. Under cross-examination by Mr. Tuenuku, SB said that he was sleeping when his father called him. When his brother ran towards him, he saw that he was carrying a phone. He took the phone from his brother and then went after the Indian man to return his phone. When it was put to him that he was trying to save himself by blaming his brother for the robbery, SB denied this.
31. When I sought to confirm whether he told the truth in his police interview that his younger brother, AM, was taller than him, SB said that was true. I asked AM and SB to stand next to each other, and the parties agreed that SB was significantly shorter than AM.
32. SB's mother gave evidence on his behalf. At around 10pm on 22 January 2024, she was at home with her husband and SB. She did not recall what time AM returned home. Late at night she heard someone shouting for help and went to SB's room to wake him. She asked him to see who was shouting. SB went out to see what was happening. She said that her husband was sleeping. When I asked why she had not woken her husband, she replied: *"My Lord, he was like dope from kava, from grog, so I didn't find the sense of waking him up, so I went to wake up (SB)"*.
33. SB's mother said that she stood on her porch and saw SB running towards two people. SB was saying to his brother that was enough and to stop. SB pulled AM away. When the police came, she called SB that the police wanted to speak to him.
34. Under cross-examination by Mr. Tuenuku, the witness said that she did not see SB running after the Indian man.

### **Closing submissions**

35. Mr. Rusaqoli made a closing speech for AM. It was not clear to me what his case was. He made several points seeming to accept sole responsibility, and to

exculpate SB. When I pressed him on this, Mr. Rusaqoli said that AM admits to committing this offence and says that he acted alone. When I queried what I was to make of the conflict between AM's admission that he punched the complainant and the complainant's evidence that it was the shorter man (SB) who punched him and took his phone, Mr. Rusaqoli eventually submitted that it was not his client who assaulted the complainant. He submitted that his client played a lesser role in the offending.

36. In closing, Ms. Marama reminded me that AM had admitted acting alone. The gist of SB's defence is that he only came onto the scene after the complainant had fled. In relation to the doctrine of recent possession, SB had given a reasonable explanation – namely, that SB was in possession of the phone because he took it from his brother after his brother had taken it from the complainant.
37. Mr. Tuenuku submitted that the complainant's evidence clearly established that he was robbed by two men, and there is strong circumstantial evidence supporting that those two men were AM and SB.
38. In the absence of any direct formal identification, the prosecution relies on circumstantial evidence to prove that it was AM and SB who together robbed Mr Chand on 22 January 2024. A significant strand of that circumstantial case is that, within an hour after the robbery, SB was found in possession of the stolen mobile phone at the home he shared with AM.

### **Analysis**

39. The prosecution must prove that the accused are guilty. The accused do not have to prove anything to me. The defence does not have to prove that the accused are innocent. The prosecution will only succeed in proving that the accused are guilty if I have been made sure of their guilt. If, after considering all of the evidence, I am not sure that the accused are guilty, my verdict must be not guilty.
40. At the outset, it is helpful to identify the issues in dispute in this case.
41. AM does not dispute that he robbed Mr. Chand, but he says that he acted alone.
42. SB maintains that he arrived on the scene after Mr. Chand had fled.

43. The prosecution case is that Mr. Chand was robbed of his mobile phone by two i-taukei men, and that he suffered injuries in the process.
44. The central issues for my determination are, firstly, whether I am sure that Mr. Chand was robbed by two men in the company of each other and, secondly, whether I am sure that those two men were AM and SB.

### **Alibi**

45. Although not framed as an alibi, it was a strand of SB's defence that he could not have been involved in the robbery because he was in bed at home at the time his younger brother robbed Mr. Chand in the street outside.
46. Since I must acquit SB unless I am sure that he does not have an alibi for the time of the alleged offending, it is convenient to deal with the alibi first.
47. An alibi is evidence tending to show that by reason of the presence of an accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.
48. The evidence adduced in support of SB's alibi came from SB himself, and his mother. SB testified that he was sound asleep when he was awoken by his father calling him, and his mother coming into his room. He said that by the time he arrived at the scene the complainant had already run away.
49. SB's mother lends support to his evidence insofar as she said that she went to his room and asked him to investigate the shouting outside. However, her evidence also undermines SB's account in two important respects. Firstly, she was clear that her husband (SB's father) was in a deep sleep after a grog session. In that case, SB's evidence about his father having called him must be wrong. Secondly, she said that when she was at her porch she saw two men fighting, and saw SB pull AM away from the other man. If true, that means that SB's account of the complainant already having run away when he reached his brother must also be wrong.

50. I have no hesitation in rejecting SB's account of being in bed at the time his brother robbed the complainant. Not only was his claim to have been awoken by his father calling inconsistent with his mother's evidence, it was further undermined by his frankly preposterous account of having chased after the complainant in an attempt to return his phone to him.
51. The defence does not have to prove an alibi. The prosecution must prove that it does not arise. I must acquit if either I accept the evidence which would constitute a defence, or short of accepting it, the evidence leaves me in some doubt as to SB's guilt.
52. With this in mind, I am sure that SB does not have an alibi for the alleged offending at around 3.45am on 22 January 2024.
53. Since I have concluded that SB has made up a false alibi to bolster his defence, it is appropriate to give myself the conventional warning.
54. The fact that I am sure that the alibi raised is false does not of itself prove guilt. A false alibi may sometimes be raised by an accused person who thinks that it is easier or better for them to invent an alibi than to tell the truth. Sometimes an innocent person who fears the truth may not be believed may instead invent an alibi.

#### **Directions/warnings**

55. There is no prescribed form of direction when the prosecution's case is based on circumstantial evidence alone. The essential point is that, when the different pieces of evidence are taken together, I must be sure of the accuseds' guilt, because there is no reasonable explanation for them other than the accuseds' guilt.
56. I remind myself that I must consider the evidence against each accused separately.
57. I also make it clear that the fact that it came out in evidence that SB was known to the police has no relevance to my determination in this matter.
58. Finally, to the extent that AM and SB implicated each other, I warn myself that, since they may have their own interests to serve, I should treat that evidence with

caution. Other than that caution, I must assess their evidence in the same fair manner as I would any other witness.

### **Determination**

59. Whilst it must have been disorientating for Mr. Chand to be assailed in the street in the middle of the night, I have no hesitation in accepting his clear, unchallenged, evidence that he was robbed of his phone by two i-Taukei men acting together.
60. The only issue I have to determine is whether I am sure that those two men were AM and SB.
61. There are several strands to the prosecution case:
  - (i) Mr. Chand gave a description of being punched by a short man whilst the taller man stood to his side, and the short man reached into his pocket and took his phone.
  - (ii) SB is shorter than AM.
  - (iii) Mr. Chand observed his two assailants enter a white house at the road side. When he led the police to that house, SB and AM were found inside.
  - (iv) When the police asked for the phone, SB went to retrieve it and handed it to the police. That phone was identified by Mr. Chand as his phone.
  - (v) AM admitted under caution, and in the witness box, that he assaulted Mr. Chand and took his phone.
  - (vi) AM had a motive to lie about acting alone, namely that he wanted to protect his older brother.
62. In my considered view, the prosecution case is overwhelmingly strong.
63. The only inference reasonably open to me is that it was AM and SB who jointly robbed Mr. Chand on 22 January 2024. There is no reasonable inference that can be drawn compatible with their innocence.

64. I am also sure that it was SB who took the lead role. He was the shorter man who punched Mr. Chand and reached into his pocket to steal his phone. The disposal of the sim card establishes that he had the intention to permanently deprive Mr. Chand of his phone. I reject as patently absurd SB's account of having acted as a good samaritan in chasing after Mr. Chand to return his phone.
65. I also reject AM's evidence that he acted alone. His recollection of the incident was impaired by being heavily intoxicated. As the younger brother, I find that he was open to manipulation, and subject to family pressure to take sole responsibility for the robbery. It is sad, and also understandable, that he felt obligated to shoulder the blame in order to protect his elder brother.
66. It follows that I find AM and SB guilty as charged and convict them accordingly.
67. 30 days to appeal to the Court of Appeal.



  
Hon. Mr. Justice Burney

**At Labasa**

11 April 2025

**Solicitors**

**Office of the Director of Public Prosecutions for the State**

**Office of the Legal Aid Commission for the Accused**