

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. HAC 64 of 2024

STATE

-v-

- 1. MITIELI CAMA**
- 2. FINAU BULIVOLIVOLI**

Counsel: **Ms. E. Thaggard for the State**
 Ms. R. Raj for the 1st Accused
 Mr. I. Rusaqoli for the 2nd Accused

Date of Trial: **4 - 10 February 2025**

Date of Judgment: **28 February 2025**

JUDGMENT

1. Mr Mitieli Cama (“the 1st accused”) and Mr Finau Bulivolivoli (“the 2nd accused”) are jointly charged with a count of aggravated robbery, contrary to section 311(a) of the Crimes Act 2009, the particulars being that, on 28 May 2024, at Labasa, they robbed Mr. Ramjam Khan of \$11,773.00, and at the time of such robbery used personal violence on Mr. Khan (count 1).
2. The 1st accused is also charged with serious assault, contrary to section 277(b) Crimes Act 2009, the particulars being that, on 29 May 2024, at Nabalebale, he resisted arrest by A/Sgt 3624 Manoa Kasatoka in the due execution of his duty (count 2).
3. There were two other counts in the Information by the Director of Public Prosecutions in respect of which I ruled there was no case to answer, and about which I need say nothing further.

Trial in absentia

4. The trial was listed to commence on Monday, 3 February 2025, but was not able to proceed on that day because there was no prosecutor available.
5. On 4 February 2025, the 2nd accused failed to attend court in breach of his conditions of bail.
6. I, therefore, had to decide whether to proceed in the absence of the 2nd accused.
7. Mr Rusaqli informed me that he had visited the 2nd accused at his residence on Saturday, 1st February 2025, and he was well aware that his trial was to commence on 3 February 2025. Mr Rusaqli further informed me that he had full instructions from the 2nd accused, and was in a position to continue to represent him at trial.
8. Being satisfied that the 2nd accused had voluntarily absented himself, and balancing the relevant factors, I decided that it was in the interests of justice to proceed with the trial in the absence of the 2nd accused. I was particularly mindful of the fact the 1st accused had been remanded in custody awaiting trial since 29 May 2024, the complainant and prosecution witnesses were available at court, and I was satisfied that it would not prejudice the 2nd accused's right to a fair trial to proceed in his absence. The interests of justice were overwhelmingly on the side of proceeding with the trial without further delay.
9. The fact that the 2nd accused did not appear for his trial does not affect my task, which is to decide whether or not he is guilty of the charge against him. His absence is not evidence against him and must not affect my judgment.

Elements

Count 1 – Aggravated robbery

10. To establish count 1 the prosecution must prove beyond reasonable doubt that:
 - (i) The 1st accused and the 2nd accused, in the company of each other;
 - (ii) Stole \$11,770.00 belonging to Mr. Khan; and

- (iii) Immediately before committing theft, at the time of committing theft, or immediately after committing theft, they used force on Mr. Khan with intent to commit theft or to escape from the scene.

Count 4 – Serious assault

- 11. To establish the offence of serious assault, the prosecution must prove beyond reasonable doubt that:
 - (i) The 1st accused;
 - (ii) Resisted Sgt Manoa;
 - (iii) In the due execution of his duty.

The trial

- 12. The trial ran for four days, from 4 to 10 February 2025.
- 13. The prosecution called fourteen witnesses.
- 14. The 1st accused elected not to give evidence, and called one witness in support of his alibi, Mr Malakai Baleisanaki.
- 15. As discussed above, the 2nd accused voluntarily absented himself.

The prosecution case

- 16. On 28 May 2024, Mr Khan withdrew his 4th cane payment, in the amount of \$11,773.00, from his account at the Labasa branch of Bank of Baroda. \$11,000 was paid in \$100 notes, and the balance in smaller denominations.
- 17. At around 1.30pm, Mr Khan boarded a bus home. At around 2.00pm, the bus stopped in Qelewaqa for a passenger to alight, at which point someone came from behind, assaulted him, grabbed his bag containing his cane payment, and ran off the bus. Mr Khan chased after him, but was pushed over by the thief. As he was pushed over, and when he got back up, he saw the thief's face. He described the thief as being a tall i-Taukei man, of medium fair complexion, with a tattoo on the front of his neck. He had a clear unobstructed view, and focused on the tattoo, which he described in the following terms: *“Words were written as a form of tattoo.”*

18. As he continued to chase after the thief, another i-Taukei man told him not to run as he would bring back Mr Khan's bag. When Mr Khan continued to chase, this second man pushed him over, causing injuries to his elbows and knees. He didn't get a good look at the second man, but was able to describe him as being shorter than the first man, with a slightly different complexion.
19. Mr Khan's son came to collect him, and they went to the police station, where Mr Khan gave a description of his assailants as one being tall with a front tattoo, and the other being shorter.
20. When cross-examined by Ms. Raj, Mr Khan accepted that he would not be able to positively identify the notes recovered during the investigation as the notes he withdrew from his bank. He also confirmed that the police had never requested him to positively identify the two men who had taken his cane payment.
21. Mr Khan rejected Mr Rusaqoli's suggestion that the second man had never pushed him.
22. Mr Singh was called as PW 4. He was the bus driver, and gave evidence about the incident on his bus broadly in line with Mr Khan's evidence. He didn't see the faces of the assailants, but was able to confirm that one was tall, and the other one was shorter.
23. The second prosecution witness was Ms. Prasad, the branch accountant at Bank of Baroda. She described her duties as being in charge of the general administration of the branch, looking into all the deposits and withdrawals on a daily basis.
24. Ms. Prasad confirmed that Mr. Khan had withdrawn \$11,773 on 28 May 2024. His bank statement was adduced as PE2. The withdrawal slip dated 28 May 2024, and the "change slip" indicating the denominations in which the withdrawal was tendered to Mr Khan were adduced as PE12A and PE12B respectively.
25. In cross-examination, Ms. Raj elicited from Ms. Prasad that she would not be able to confirm that the bank notes recovered by the police were the same notes that had been withdrawn by Mr. Khan.

26. Ms. Praveen Lata has a shop at Navakasigana. The 2nd accused, who she knows as “*Finau*” had been a regular customer of hers for nearly seven months. On 28 May 2024, at around 4.00pm, she served Finau, who was with another i-Taukei man who she described as being tall and fair. So surprised was she by the amount of money he spent that she inquired of Finau where he had got the money from. He told her that it was his lease money.
27. Normally, Finau purchases about three cans of Woodstock, but on that day he purchased four packs, totalling sixteen cans. He went to drink outside with the other man.
28. Sometime later, Finau requested if she could drop him somewhere. She was not able to, but called her tenant, Ravoama, to drive them. By good fortune for the prosecution, Ravoama got chatting with the two men and realised they had a mutual acquaintance. He took a photograph of the three of them together in his car to send to this friend. When Ms. Lata was shown this photograph, she was able to identify Finau as the shirtless man.
29. Mr Ravoama Ririca Jr gave evidence that he had picked up two men in his car at the request of his landlady. He took a photograph of himself with these two men which he was later requested to send to Cpl Vakatalai by viber. When he was shown a printout of a photograph of three men in a car (PE6), he confirmed that to be the photograph he had taken on 28 May 2024, and sent to Cpl Vakatalai.
30. Mr Ririca also testified that the two men had originally wanted to be taken to Dogoru, but then asked him to drive to Savusavu. Because he had to be at church by 6.00pm, Mr Ririca arranged for another driver to take them. Before rendezvousing with the other driver, however, the shirtless man alighted to relieve himself, and never returned. He was given a \$100 note, whereas the taxi fare would be \$7 - \$10. He had refused to take the money, but it was their “*offer*” to him.
31. The seventh prosecution witness was Mr Tevita Tolo. Around 5.44pm on 28 May 2024, he received a call to collect a passenger at Naduna. He picked up Mitieli, and drove him to Naodamu Supermarket where he bought some

groceries. They went looking for Miti's wife, Asinate, and found her outside a nightclub. They picked up another girl at St Mary's Primary School, and then proceeded to Savusavu.

32. Upon arrival in Savusavu, he dropped them at a nightclub. They left their belongings with him, which they later collected before going to a motel near the club.
33. Mr Tolo described Mitieli as being tall, with a neck tattoo.
34. The next witness for the prosecution was Sgt Manoa. He recalled being on duty at Labasa Police Station on 28 May 2024, and receiving a report of a robbery at Bocalevu. He led a team of three officers who proceeded to the scene. The description given to him of a man with a neck tattoo led him to direct his team to look for the 1st accused. They received information that the 1st accused had been seen with another i-Taukei man at Vakasigani. They were informed by the shop owner that a regular customer by the name of "*Finau*" was at her shop, and had been given a lift by her tenant.
35. They followed up that information, and were informed by the driver that he had dropped one of the men at Nakama junction, and the other at Naduna, where he was picked up by another vehicle to drive to Savusavu. His team mobilised to follow the car to Savusavu. En route, he saw a taxi heading towards Labasa, and was able to obtain the driver's contact number. He called the driver and was informed that he had two female passengers, and that the fare of \$220.00 had been paid at Savusavu by a tall i-Taukei man.
36. Sgt Manoa instructed the taxi driver to take his passengers to Seaqaqa Police Station. He also instructed the police at Seaqaqa to search those passengers. He was informed by a woman police officer that she had conducted a search, and recovered cash and some dried leaves.
37. Whilst proceeding to Savusavu along Belego junction, he saw a private car heading in the direction of Labasa. By the light of their vehicle, he clearly saw the 1st accused on the passenger side of the oncoming vehicle. They were able to stop that vehicle and quickly alighted from the police vehicle. Sgt Manoa ran

to the back of the car. At the same time, the 1st accused alighted, and they collided. There was a “*commotion*”, and they both fell to the ground. The 1st accused was drunk, and trying to free himself. With the assistance of DC Militoni, he was able to arrest the 1st accused.

38. He was taken to the police vehicle and explained the reason for his arrest and his rights. The 1st accused was searched, and a large amount of cash was recovered. Sgt Manoa completed the search list which was adduced as PE10.
39. Sgt Manoa was also involved in arresting and searching the 2nd accused after they received information that he was in a village in Vaturova. When his team approached the house, the 2nd accused fled and jumped in the river. Two police officers jumped into the river and apprehended him. After he was arrested, the 2nd accused voluntarily showed them a large sum of money. Sgt Manoa prepared the search list which was adduced as PE4.
40. When invited by the Court, Sgt Manoa confirmed that the man who he recognized as Mitiela Cama was the 1st accused in the dock.
41. When he was shown the photograph PE6, Sgt Manoa identified the shirtless man as the 2nd accused.
42. In response to a question from Ms. Raj, Sgt Manoa confirmed that out of all the known persons in Labasa, the 1st accused was the only one with a word neck tattoo.
43. When Ms. Raj put to him that he had assaulted the 1st accused after stopping his vehicle, Sgt Manoa was adamant that the 1st accused evaded arrest.
44. When Mr. Rusaqoli put it to Sgt Manoa that he never had a conversation with the 2nd accused about the recovered cash at the time of his arrest, Sgt Manoa said that the 2nd accused had voluntarily handed over the money, and had told him that it was from the robbery at Bocalevu.
45. DC Militoni was the driver of the CID fleet twin cab in pursuit of the 1st accused in the early hours of 29 May 2024. After they stopped a suspicious oncoming vehicle, Sgt Manoa went to the rear passenger side of that vehicle. He saw the

the 1st accused alight and run towards the rear of the vehicle. He collided with Sgt Manoa, and there was a struggle. He saw that Sgt Manoa was struggling to subdue the 1st accused, and ran to assist him. The 1st accused was pushing Sgt Manoa, and struggling to free himself. He said it took around 20 to 30 minutes for them to properly apprehend the 1st accused, and get him inside their vehicle. He searched the 1st accused's bag and found a large amount of cash and other assorted items. The search list was prepared by Sgt Manoa.

46. Cpl Vakatalai was part of the team investigating the robbery at Bocalevu. Mr Rapoama showed him a viber of a photograph he had taken of himself and two men inside his car. Mr Rapoama later sent him this photograph, and he sent it to Cpl Sailosi to print it. Cpl Vakatalai was shown the photograph PE6, and confirmed it to be the same photograph sent to him by Mr Ravuama.
47. Cpl Sailosi testified that he was on duty at the forensic office at Labasa Police Station on 29 May 2024. Cpl Vakatalai sent a photograph to his email and requested that he print it. He was shown the photograph, and confirmed that it was the same photograph sent to him by Cpl Vakatalai. The photograph was tendered as PE6.
48. The ninth prosecution witness was Ms. Asinate Ralulu. She is the 1st accused's *de facto* partner. She was drinking Woodstock at Lions Park on 28 May 2024. Around 7.00pm, she went to Revolver Nightclub, but did not enter as the 1st accused came to pick her up. They drove to Savusavu together with her cousin. They went to a night club, and then to a hotel.
49. Inside the hotel room, the 1st accused took out cash from his pocket. It was a roll of cash of various denominations. When she asked him where he got the cash, he told her it was from selling marijuana. That was the first time she had seen him with loads of cash.
50. The 1st accused threw all the cash to the floor. Ms. Ralulu picked up the cash that was rolled in a rubber band, and put it inside her bra. The 1st accused did not see her pick up the cash. Shortly afterwards, she and her cousin took a taxi to return to Labasa. The 1st accused paid for the taxi.

51. En route, CID called the taxi driver, and they were taken to Seaqaqa Police Station where they were searched by a female officer named Sasilia. The cash she had taken from the hotel was seized.
52. Ms. Raj put to Ms. Ralulu that the 1st accused had told her that the money he had on him that day was from the sale of yaqona and cassava. Ms. Ralulu replied that he was drunk, and had told her that he got the money from selling marijuana.
53. Ms. Ralulu accepted that she did not know how much cash was left on the floor after she put the cash in her bra.
54. WPC 7898 Sisilia Valelala testified that she was on duty at Seaqaqa Police Station in the early hours of 29 May 2024. Around 2.30am, Sgt Manoa instructed her that a vehicle would come to the station, and she was to search the two female passengers. She took Asinate inside a room and strip searched her. She found \$2,400 in \$100 notes wrapped with a rubber band. She prepared a search list. The search list and the recovered cash were tendered as PE9A and PE9B.

Defence submission of no case to answer

55. At the close of the prosecution case, Ms. Raj quite properly accepted that the 1st accused had a case to answer on count 1 and count 4.
56. Mr Rusaqoli for the 2nd accused made a submission that he had no case to answer on count 1.
57. The prosecution resisted that application, and outlined the circumstantial evidence supporting that the 2nd accused was the shorter i-taukei man who was on the bus with the 1st accused, and who participated in the robbery, principally by pushing Mr Khan to the ground to aid their escape from the scene.
58. I found that the 1st accused had a case to answer on count 1 and count 4, and that the 2nd accused had a case to answer on count 1.
59. When he was given his options, the 1st accused indicated that he would not give evidence in his own defence, and informed the Court that he would call one alibi witness.

Defence Case

60. As mentioned, neither accused gave evidence in their own defence. Their respective defences were advanced through cross-examination of prosecution witnesses and submissions. The 1st accused called an alibi witness, Mr. Malakai Baleisanaki.
61. Mr. Baleisanaki testified that he was drinking with a group of men, including the 1st and 2nd accused, at Lions Park between 2.00pm and 4.00pm on 28 May 2024.

Closing submissions

62. All parties filed comprehensive and helpful written submissions for which the Court is grateful.
63. I will not address each and every point made in this Judgment, but I have considered everything advanced in the written submissions.
64. In the absence of any direct formal identification, the prosecution relies on circumstantial evidence to prove that it was the 1st accused and the 2nd accused who together robbed Mr Khan on 28 May 2024. A significant strand of that circumstantial case is that, within a couple of days after the robbery, both accused were found in possession of large sums of cash in the same denominations as that stolen from Mr Khan.
65. In a nutshell, the prosecution submit that when the several pieces of circumstantial evidence are considered together, namely the large amount of money, mainly in \$100 notes, found on them shortly after the robbery, the absence of any credible explanation as to how they came to be in possession of that cash, and the fact that they were in the general locale of the robbery shortly after the robbery took place, the only reasonable inference available to the Court is that the 1st accused and the 2nd accused are guilty of count 1.
66. The prosecution case on count 4 is straightforward. Sgt Manoa and DC Militoni gave truthful and reliable accounts of how the 1st accused had resisted arrest in the early hours of 29 May 2024.

67. For the 1st accused, Ms. Raj argues that the prosecution have not met their burden of proving that it was her client who robbed Mr. Khan. Whilst the description provided by Mr. Khan may match the 1st accused, that does not exclude the possibility that there may be others matching that description who committed the robbery. Ms. Raj also makes the point that the prosecution have not established that the bank notes recovered from the accused persons were the same notes as stolen from Mr. Khan.
68. As for count 4, Ms. Raj argues that her client was not informed that he was being arrested, and he did not resist arrest, but was simply protecting himself when he clashed with Sgt Manoa.
69. For the 2nd accused, Mr. Rusaqoli, in essence, argues that the circumstantial evidence relied upon by the prosecution is insufficient to make the Court sure that it was the 2nd accused who participated in the robbery. He too makes the point that the prosecution have not established that the bank notes recovered from his client were the same notes as stolen from Mr. Khan.

Analysis

70. 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.
71. At the outset, it is helpful to identify the issues in dispute in this case.
72. Realistically, it is not disputed that Mr Khan was robbed by two i-taukei men of his cane payment in the amount of \$11,770.00.
73. The central, indeed the only, issue for my determination in relation to count 1 is whether I am sure that those two men were the 1st accused and the 2nd accused.

74. It is not in dispute that the 1st accused was apprehended by Sgt Manoa in the early hours of 29 May 2024. The issue in relation to count 4 is whether I am sure that the 1st accused resisted arrest.

Alibi

75. Since I must acquit both accused unless I am sure that they do not have an alibi for the time of the alleged offending reflected in count 1, it is convenient to deal with the alibi first.

76. 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.

77. The only evidence adduced in support of the accuseds' alibi came from Mr Baleisanaki. He described a chance encounter with a group of men in Lions Park on the afternoon of 28 May 2024. He was sure that the 1st accused and the 2nd accused were there between 2.00pm and 4.00pm.

78. Whilst his evidence was consistent and unshaken by cross-examination, I have no hesitation in rejecting his account of being with the 1st accused and the 2nd accused between 2.00pm and 4.00pm. Firstly, it seems to me to be inherently unlikely that a fairly routine meeting with friends in the park would have been sufficiently memorable for Mr. Baleisanaki to be able to reliably recall it several months later. Secondly, and critically, Mr Baleisanaki's evidence is undermined by Ms. Lata's evidence about having served the 2nd accused in her shop at around 4.00pm. I found Ms. Lata to be a truthful and reliable witness, whose evidence was supported by Mr. Ririca's account of picking both accused persons from her shop, at around 5.00pm.

79. As I have already said, 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 the accused's guilt.

80. With this in mind, I am sure that the accused do not have an alibi for the alleged offending on 28 May 2024.
81. Since I have concluded that the accused persons have made up a false alibi to bolster their defence, it is appropriate to give myself the conventional warning.
82. 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

83. 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.
84. I remind myself that I must consider the evidence against each accused, and in relation to each count, separately.
85. I also make it clear that the fact that it came out in evidence that the 1st accused was known to the police has no relevance to my determination in this matter.
86. Likewise, I have disregarded Sgt Manoa's evidence that the 1st accused is the only person known to him with a front neck tattoo. There may well be other neck-tattooed potential ne'er - do - wells in the Northern Division who have yet to come to Sgt Manoa's attention.
87. I have disregarded as inadmissible Sgt Manoa's evidence that the 2nd accused made a statement against interest when he was arrested.

Determination

88. There can be no doubt that two i-Taukei men acted together to rob Mr. Khan of \$11,773.00 in the denominations listed in PE12A.

89. The only issue I have to determine is whether I am sure that those two men were the 1st accused and the 2nd accused.
90. There are several strands to the prosecution case:
- (i) Mr. Khan gave a description of being assailed by a tall man with a front neck tattoo, and then by a shorter man. The 1st accused is tall and has a front neck tattoo. The 2nd accused is shorter than the 1st accused.
 - (ii) The 2nd accused was seen together with a taller man at Ms. Lata's shop at Navakasigani about two hours after the robbery.
 - (iii) The 2nd accused was unusually flush with cash, as evidenced by his purchase of four packs of Woodstock.
 - (iv) The 1st accused and the 2nd accused were photographed together by Mr Ririca after he picked them up from Ms. Lata's shop.
 - (v) Ms. Asinate Ralulu saw the 1st accused with an unusually large amount of cash at a hotel in Savusavu in the early hours of 29 May 2024.
 - (vi) Ms. Ralulu picked up a roll of cash which had been thrown on the floor by the 1st accused, which was later seized from her by the police and found to comprise of 24 x \$100 notes.
 - (vii) When searched on 29 May 2024, the 1st accused was found in possession of a large amount of cash, including 14 x \$100 notes.
 - (viii) When he was arrested on 30 May 2024, the 2nd accused voluntarily handed to the police 10 x \$100 notes.
91. In my considered view, the prosecution case is overwhelmingly strong.
92. Defence counsel have sought to make much out of the fact that the serial numbers of the cash withdrawn by Mr Khan were not recorded, and the prosecution are not able to prove that the recovered notes are the same notes stolen from Mr Khan.
93. In my view, this is a red herring. Whilst there may well have been some intermingling as the accused persons enjoyed the proceeds of their recent

criminal endeavour, I have no difficulty in reaching the sure conclusion that the \$100 notes recovered from both accused persons, including the 24 x \$100 notes recovered from Ms. Ralulu, were substantially the bank notes withdrawn by Mr Khan on 28 May 2024.

94. The only inference reasonably open to me is that it was the 1st accused and the 2nd accused who jointly robbed Mr Khan on 28 May 2024. There is no reasonable inference that can be drawn compatible with their innocence.
95. It follows that I find the 1st accused and the 2nd accused guilty of count 1 and convict them accordingly.
96. I am also satisfied so that I am sure that the 1st accused resisted arrest on 29 May 2024. Sgt Manoa and DC Militoni gave unshaken evidence, which I accept as truthful and reliable, that he resisted in circumstances where it must have been obvious to the 1st accused that the police were endeavouring to arrest him.
97. It follows that I find the 1st accused guilty of count 4 and convict him accordingly.
98. You have 30 days to appeal to the Court of Appeal.




Hon. Mr. Justice Burney

At Labasa
28 February 2025

Solicitors
Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused