



IN THE SUPREME COURT OF NAURU  
AT YAREN  
CRIMINAL JURISDICTION

Criminal Case No.13 of 2017

BETWEEN

**REPUBLIC**

AND

**1. BOBSON BILL  
2. FRISCO DAGAGIO**

Defendants

BEFORE : Fatiaki CJ

Date of Hearing : 19 and 23 February 2021

Date of Judgment : 15 April 2021

CASE MAY BE CITED AS : *Republic v Bobson Bill and another*

CATCHWORDS : Accomplice ; “*Accomplice warning*” ; “*Immunity from prosecution*” ; “*cut-throat*” defence ; Corroboration ; “*joint criminal enterprise*” ;

LEGISLATION : Art 10 Constitution ; ss 25 and 159(a) Crimes Act 2016 ;

CASES REFERRED TO : McAuliffe v The Queen [1995] 183 CLR 108 ; McDonald v The Queen [1980] 2 NZLR 102 ; Jenkins v R [2004] HCA 57 ; R v Weightman [1978] 1 NZLR 79 ; R v Baskerville [1916] 2 KB 658 ; Davies v DPP [1954] AC 378.

APPEARANCES :

Counsel for the Prosecution

R.Talasasa DPP

Counsel for Defence

F. Akubor

VERDICT

1. On the evening of 1 July 2017 at around 11pm a Chinese woman , **Huang Jin Feng** (the victim) returned to her home at Location Compound in Denig District after closing her restaurant. On getting out of her vehicle she was tightly held from behind and forcefully dragged to a car that was parked nearby , where she was bundled face down in the rear by her attackers. She was unable to clearly identify her attackers who had their faces covered, other than , recognising their build and skin colour. After she was forced into her attacker's vehicle, it sped off and stopped at the Golf Course area nearby. Then it returned to the Location Compound car park and two of the victim's attackers left with the victim's house keys , leaving her behind with the third attacker in the vehicle. The victim's handbag which had been forcibly taken from her and had its contents removed including an "iPhone 6". The Two attackers that left with the victim's house keys did not return to the vehicle and , after a long interval , the third attacker released the victim and drove off.
2. The victim's "iPhone 6" was recovered and subsequently returned and her three attackers were arrested and charged as a result of police investigations. They were: **Bobson Bill, Michael Jordan, and Frisco Dagagio.**
3. On or about 18 October 2017, after the case had been transferred to the Supreme Court, the Public Prosecutor offered one of the attackers, Michael Jordan, "*immunity from prosecution*" after he agreed to give evidence as a prosecution witness against his co-accused Bobson Bill and Frisco Dagagio. The immunity was reinforced by the filing of a written "*Nolle-Prosequi*" by the Public Prosecutor which discontinued any charges against Michael Jordan and by the filing of an Information charging only Bobson Bill and Frisco Dagagio jointly with a single offence of Aggravated Robbery contrary to section 159(a) of the Crimes Act 2016.
4. The elements of Aggravated Robbery may be summarised as follows :
  - (a) There was a theft of the victim's goods committed by the defendants acting together ;  
and
  - (b) At the time , during , or after the theft , the defendants used physical violence on the victim.
5. This is a criminal trial conducted under the Constitution and the Crimes Act 2016 which contains the following relevant provisions :
  - **Constitution - Article 10(3) :**  
*A person charged with an offence :*

(a) shall be presumed innocent until proved guilty according to law ;

- **Constitution - Article 10 :**

(7) No person who is tried for an offence shall be compelled to give evidence at the trial ;

(8) No person shall be compelled in the trial of an offence to be a witness against himself.

- **Crimes Act 2016 - Section 25 :**

(1) The prosecution has a legal burden of proving each element of the offence.

(2) The prosecution also has a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof...

(3) The legal burden of proof on the prosecution must be discharged beyond a reasonable doubt, ...

6. In summary , the prosecution has the sole burden of proof to call and produce evidence that establishes each and every element or ingredient of the offence of which the defendants are charged to the criminal standard of proof which is “*beyond a reasonable doubt*”. This means that I must be satisfied and feel sure of each defendant’s guilt before he can be convicted. Conversely , if after considering all of the evidence , I am left with a reasonable doubt about a defendant’s guilt then he must be acquitted. The defendants are presumed to be innocent and need not prove their innocence or call any evidence in their defence , but , in this case Frisco Dagagio elected to give sworn evidence and I must carefully consider that testimony in the totality of the evidence in the case.
7. I also remind myself that although the defendants are jointly charged , nevertheless , I am required to analyse and consider the evidence against each defendant separately and decide his guilt or innocence separately from that of his co-defendant. In other words , if I am satisfied beyond a reasonable doubt of the guilt of Bobson bill does not mean that Frisco Dagagio must also be convicted or vice versa. The guilt or innocence of each defendant depends solely and entirely on the evidence led by the prosecution against him and him alone and cannot be used to bolster the case against his co-defendant.
8. Having said that the prosecution relies in this case , on the doctrine of a “*joint criminal enterprise*” which applies where a crime is committed by 2 or more offenders acting together in pursuit of a common criminal purpose or design. Such a common purpose arises where a person reaches an understanding or arrangement amounting to an agreement between that person and another or others that they will commit a crime. The understanding or arrangement need not be express and maybe interfered from all the circumstances. Anything done in accordance with the agreement and necessary to constitute the crime renders all offenders equally guilty of the crime regardless of the actual part played by each offender in the commission of the crime. [ see : McAuliffe v The Queen [1995] 183 CLR 108 at 113ff].
9. The prosecution’s case is that the victim , a Chinese woman , was accosted by the defendants acting jointly , as she alighted from her car at Location Compound to go home on the night of 1 July 2017. A handbag containing her valuables including an “*I-Phone 6*” mobile and some jewellery was forcibly removed from her by her attackers and , at

the time or immediately before that , the Chinese woman was held by the neck from behind and dragged and forced face down in the back seat of her attacker’s vehicle that was stopped nearby.

10. That the Chinese woman was manhandled and forced against her will into the back of her attackers’ waiting vehicle and that her handbag and its contents was forcibly removed from her by her assailants , is not seriously denied or disputed by the defendants (except as to who actually did those acts to the Chinese woman).
11. In the circumstances , I accept and find as proven beyond a reasonable doubt that both events occurred to the Chinese woman victim. Firstly , that a “*theft*” had occurred in which an “*I-phone 6*” and some jewellery was stolen from the Chinese woman and not returned by her attackers. Secondly , before , during , or after such theft , physical violence was used on the Chinese woman to overcome her resistance and to force her against her will into the back seat of her attackers’ vehicle and to forcibly remove her handbag from her possession.
12. The only seriously disputed element or ingredient of the offence charged , is the identity of the person(s) who committed those acts against the Chinese woman. In this regard , the prosecution in the absence of the Chinese woman , relies on the evidence of Michael Jordan a co-accused of the defendants who was originally charged jointly with the defendants before the District Court. Michael Jordan was subsequently granted an “*immunity from prosecution*” by the DPP’s office who also filed a “*Nolle Prosequi*” in his favour on the same day that his plain police statement was recorded. Additionally , the Information filed in the present case charged only the two (2) defendants.
13. Michael Jordan admitted in-chief that he and the 2 defendants (“*we*”) had waited for the Chinese woman and the 2 defendants (“*we*”) had grabbed and pulled her to the car where they held her down in the back seat and covered her mouth. He (“*we*”) then drove the car to Topside area and back to the Golf area near Location Compound where the Chinese woman lived. The 2 defendants got off the vehicle and never returned. After a long time, he told the Chinese woman to get out of the car and he drove straight home. He received nothing for this part in the robbery. In my view , Michael Jordan’s liberal use of the collective “*we*” in his testimony , was an attempt on his part to avoid and downplay his involvement in the robbery of the Chinese woman.
14. In cross-examination , Michael Jordan denied that the car used in the robbery was his or rented by him. Then , after being reminded of his police statement (**MFI-1**) and having his attention drawn to para 4 which reads :

*“On 1<sup>st</sup> July 2017 at 12.00pm onwards , I rented a Chinese vehicle Ford Escapade black in colour and I used the vehicle for personal use. The Chinese owner of the car have no idea about the car was used in a robbery about 8.00pm on 1 July 2017. I drove the car and visited my uncle...who lives in the Location compound in Denig District opposite block 55...”*

Michael Jordan confirmed : “ ***I rented the car. Its correct I rented it.*** ”

15. He also denied ever being arrested or charged with the 2 defendants so he was shown paras 2 & 3 of his police statement which reads :

*“ I have been offered immunity from prosecution by the officer Director of the Public Prosecutions and I have accepted to give evidence as a witness against Bobson Bill and Frisco Dagagio in relation to the robbery against a female Chinese namely Feng Jin HUANG.*

*I am willing to give evidence (testify) against the two defendants as I have been told that the charges against me will be dismissed and be granted with prosecution immunity. I would like a police officer to write my statement.”*

and Michael Jordan’s cross examination continued as follows :

***“Q : So you were charged?***

***A : Yes.***

***Q : So which is correct , your evidence or the statement ?***

***A : The statement is correct : I’d forgotten it’s a long time.***

16. The foregoing retractions although admitted by Michael Jordan , is further evidence of his attempts to distance himself from any active participation in the robbery of the Chinese woman , as well as any criminal association with the defendants. Michael Jordan’s “yes” answers below are particularly telling about his motivations for becoming a prosecution witness against the defendants.

17. The relevant questions and answers in Michael Jordan’s cross-examination are :

***“Q : You made a deal or arrangement with the police ?***

***A : Yes.***

***Q : You knew you could face many years in jail if you didn’t accept the deal ?***

***A : Yes.***

***Q : You would say anything to avoid going to jail ?***

***A : Yes.***

***Q : Put you rented the vehicle and had been involved in surveillance of the Chinese lady’s residence ?***

***A : No.***

***Q : You often drove there and knew where she lived ?***

***A : No.***

***Q : Robbing was your idea ?***

***A : No.***

*Q : Put my clients were tagging along to your plan ?*

*A : No.*

*Q : Put you grabbed the Chinese lady ?*

*A : No.*

*Q : You are now trying to avoid years of jail by testifying ?*

*A : Yes.”*

18. In re-examination , Michael Jordan said in answer to the DPP :

***“Q : What do you mean by the last “ yes ” ?***

***A : When I spoke with prosecutions ? ...not to go in...(to jail)”***

19. Astonishingly , in re-examination , the DPP asked Michael Jordan :

***“Q : Do you know you can still be charged ?***

***A : (Court) ; Don ’t threaten the witness”***

The question was unfair and inappropriate and Michael Jordan was stopped from answering it. It should not have been asked for several reasons. It constituted a gratuitous threat and undermined the immunity that was granted to the witness by the DPP’s office as well as the reason(s) for and the actual entering of a “*nolle prosequi*” in favour of Michael Jordan.

20. As was said by the NZ Court of Appeal in McDonald v The Queen [1980] 2 NZLR 102 :

*“It is in our view immaterial whether such an undertaking is one which is as a matter of law strictly binding...because it is quite unthinkable that such an undertaking (ie. the grant of immunity) would not be honoured and in reality **the importance of such an undertaking to the evidence given by an accomplice lies in the practical effect which it will have both in protecting that accomplice and in bringing about a state of mind on his part wherein so far as possible he is removed from the fear of consequences of giving evidence incriminating himself and knows that he has nothing to gain by giving false evidence.”***

21. And , finally , in answer to the DPP’s leading questions Michael Jordan said :

***“Q : The story you told Court did you make it up ?***

***A : No.***

***Q : Is that your story ?***

***A : Yes ”.***

22. The third retraction arose from Michael Jordan’s answer to the court’s question about being refreshed by being shown his police statement in cross-examination was and he

claimed : “(it was) ... *the first time I’m seeing my police statement since I gave it in October 2017*”. Then , when asked by defence counsel after the Court’s question , about him meeting the DPP earlier that morning at 9.30am , Michael Jordan agreed and admitted : “***I was shown my statement when we discussed the case***”.

23. Michael Jordan denies he personally did anything to the Chinese woman even though he was present and was fully aware of what the defendants did to her and he admits driving his rented vehicle away while she was being held down in the back of the vehicle. He also admits being told by the defendants , the day after the robbery , about the items they stole from the Chinese woman but , he denies he was given anything for his part in the robbery.
24. By his own admissions , Michael Jordan was fully aware of the abduction and robbery of the Chinese woman and he willingly and actively participated in the robbery by driving his rented “ *get away* ” vehicle from the scene of the crime. He was also initially charged jointly with the defendants before the District Court.
25. Michael Jordan is what is described , in law , as an “*accomplice*” ***ie.*** someone who had participated with others in a criminal activity. Whatsmore he is an accomplice who has not been convicted and sentenced on any charge(s) ***ie.*** with nothing to gain , instead , Michael Jordan was granted an “*immunity from prosecution*” despite his earlier denials of involvement during police inquiries and investigations which were disbelieved , in return for his testimony against his co-accuseds , the defendants.
26. Of such a person it has been said in the leading case of Davies v DPP [1954] AC 378 :

“In a criminal trial , ***where a person who is an accomplice gives evidence on behalf of the prosecution it is the duty of the judge to warn (himself) that , although (he) may convict on his evidence , it is dangerous to do so unless it is corroborated. This rule , although a rule of practice , now has the force of a rule of law.***”
27. The existence and justification for this “*rule of law*” is further explained by the High Court of Australia in Jenkins v R [2004] HCA 57 where the Court said :

“ *The rule exists for a reason. That reason is related to the potential unreliability of accomplices , ... **The principal source of unreliability , ..... , is what is regarded as the natural tendency of an accomplice to minimise ... (his)... role in a criminal episode, and to exaggerate the role of others , including the accused.** Accomplices are regarded by the law as a notoriously unreliable class of witness , having a special lack of objectivity. The warning ... is for the protection of the accused. The theory is that fairness of the trial process requires it*” (my emphasis).
28. Accordingly , I direct and warn myself that it is dangerous to convict Bobson Bill and Frisco Dagagio on the bare evidence of Michael Jordan alone. I must not only critically consider the quality and veracity of Michael Jordan’s evidence , but also , I must look for any corroboration of his evidence.

29. In this latter regard I direct myself that evidence in corroboration is witness testimony or documentary evidence from an independent source (ie. other than the accomplice) which affects the defendants by connecting or tending to connect them with the crime. In other words , it must be evidence which implicates the defendants that is , which confirms in some material particular , not only , that the crime of Aggravated Robbery was committed against the Chinese woman , but also , that the defendants committed it. (see : R v Baskerville [1916] 2 KB 658 at 667).
30. A further similar warning is required in this case owing to the fact that Michael Jordan was given “*immunity from prosecution*”. The reason that such a warning is required is that a person seeking immunity from prosecution may be tempted to implicate another person falsely in order to obtain immunity or may have previously lied and is seeking to maintain the same lie under the cloak of immunity.
31. Having said that and despite the contrary view expressed by the DPP , the grant of immunity to Michael Jordan is quite legal. It is not uncommon , and is often given to a lesser or minor player in any crime in order to bring the main perpetrator or mastermind to justice. (see : R v Weightman [1978] 1 NZLR 79 at 81).
32. But such a person too may have a motive to tell lies and so for that reason also , I am required to scrutinise Michael Jordan’s evidence critically and with great care to rule out any possibility or motivation that might exist for Michael Jordan to lie and/or to minimise his role in the robbery of the Chinese woman. I should also look for independent confirmation of his evidence in a material particular.
33. In this latter regard , during the DPP’s closing submissions , I specifically asked him if there was any corroboration of Michael Jordan’s evidence and he said “**yes**” , but , he was then unable to identify any corroborative evidence and instead he referred to evidence that was common to both the prosecution and defence cases. Such evidence does not constitute independent corroboration.
34. Defence counsel was equally certain in her closing submissions that Michael Jordan’s evidence was not corroborated and even the stolen items and the Chinese woman’s recovered “*I-phone 6*” was not connected or linked to the defendants by the prosecution.
35. The prosecution’s evidence concerning the victim’s “*I-phone 6*” came from Moeole Folau Hedmon who testified that he bought it for \$300 , two (2) weeks after the robbery , from a woman called “**Fonga**” who had visited and was chatting with his wife at their home when he returned home from work. He kept the “*I-phone 6*” for a week before he sought help from a Chinese friend to explain some “*Apps*” on the phone that were in the Chinese language. The Chinese friend took the phone and after a few days she refused to return it, instead , she refunded his \$300 that he had paid for the phone. He didn’t know if “**Fonga**” was married or single and although they are from the same community they were “*...not really close friends.*”
36. The next prosecution witness who testified about the “*I-phone 6*” was Insp. Iyo Adam who received it from the victim Huang Jin Feng along with the original box in which it



was contained. He had taken photos of the “I-phone 6” and then returned it to the victim. He had viewed the picture gallery in the “I-phone 6” and saw photos of an “islander woman” which he downloaded and printed. Asked if he found out about the islander woman , he answered “**A** : **Yes , but I can’t remember who she was..** ”

37. Insp Adam was not questioned further about the “islander lady” to try and establish her name , ethnic identity , marital status , or residence on Nauru , nor was the islander woman’s , photos tendered in Court or used in the cross-examination of Frisco Dagigio. Indeed , they weren’t even shown to Folau Hedmon the purchaser of the “I-phone 6” .
38. In the result , the singular item of evidence that was admittedly taken during the Chinese woman’s robbery and which was later recovered from her by Insp Adam , namely , the “I-phone 6” and which could have independently corroborated Michael Jordan’s evidence went begging , because the police investigations and the prosecution’s evidence was unable to establish any link between the “I-phone 6” and the defendants who the prosecution alleges stole the phone during the robbery.
39. In light of the foregoing I am satisfied that there is no independent corroboration of the evidence of Michael Jordan. The prosecution’s case is entirely dependent on the accomplice evidence of Michael Jordan , and whether it satisfies the Court beyond a reasonable doubt. Before determining that difficult question I turn to the defence.
40. The defendant’s answer to the charge was initially their pleas of “not guilty”. Then after the Court found a case to answer against each defendant and after each was advised of his rights , Bobson Bill (**BB**) elected to remain silent and Frisco Dagagio (**FD**) elected to give sworn evidence on behalf of the defence. FD’s evidence is what may be described as a “cut-throat” defence where he blames Michael Jordan (**MJ**) for masterminding the robbery of the Chinese woman because he needed money.
41. FD described his version of the robbery as follows :

*“MJ is a close relative. He is my cousin and comes to my place often. He talks and tells stories and on one occasion he talked about the Chinese lady..... MJ told me lets’ kidnap her and rob her and at that time BB came he was under the influence (of alcohol). When he came we went into the car and started talking. As we were talking the Chinese lady arrived and parked there. As soon as she stopped MJ got off and grabbed her on the neck , pulled her and put her in the car. We sped off and went to the Golf Course. When we arrived , I was angry and got off the car , left them and headed home and whilst walking I turned and saw BB following me. I arrived home and 3 days later the police came and arrested me , took me into custody and the 2 defendants were already there MJ and BB...*

*I was angry because my relatives knew the Chinese lady who rented our land and was feeding our family. Where she lives is my sister Ronaian’s rental place...*

*MJ visited us on a daily bases at his place or mine. MJ discussed on one occasion about kidnapping the Chinese lady. He had been planning it for a while and on that day he mentioned it again...*

*Whenever he comes to my place he always talks about the Chinese lady and I keep telling him I don't want to get involved as she is (one of) ours. MJ kept talking about kidnapping the Chinese lady and on that specific day it happened. MJ was really desperate that day. MJ really wanted money from any of the Chinese there and I told him not to do anything to the Chinese at our place....*

*I drove the vehicle straight to the Golf area. I rushed , I got off there as I was very angry with MJ and everything happened so suddenly I didn't call the police to help the Chinese lady because I wanted to protect my brother MJ who had done that".*

42. More particularly , when cross-examined about MJ's evidence , FD said :

***“Q : Heard MJ's evidence , he said you had called him the next day after the incident and told him you had stolen items from the Chinese lady ?***

***A : I didn't tell him anything like that.***

***Q : Did you take anything from the Chinese lady ?***

***A : No nothing I did not take anything at all from the Chinese lady.***

***Q : See anyone taking anything from the Chinese lady that night ?***

***A : I saw MJ struggling with her but didn't see anyone take anything from her.***

***Q : See anyone else besides MJ take anything from Chinese lady ?***

***A : No no-one else.”***

43. Asked why he had not told his story to the police in his caution interview FD said after his arrest and on the way to the police station :

***“A : I told them it wasn't me , that I didn't want to do anything as the Chinese lady is ours. ”***

44. In cross-examination FD confirmed that he lived next door to the Chinese lady. He had often seen her there because she was renting his sister's place and he considered “*her part of us , our family.*” He didn't warn or tell the Chinese lady about MJ's plan because “*...she is always away at work staring early and returning home late.*” However he did tell his sister to warn the Chinese lady a week before the incident.

45. FD confirmed leaving the car and going home angry at what had happened. He saw BB following him after he left. BB went to his bike and left. MJ was left in the vehicle with the Chinese lady.

46. Asked about the Chinese woman's abduction FD said :

**A : MJ covered his face , got off and took the Chinese lady. Opened the door and put her in there and told her to face the wall of the car.**

**Q : Inside the back seat ?**

**A : In the boot behind the back seat inside the car.**

**Q : Who was inside the car at the time ?**

**A : Bobson in the back seat and MJ in the passenger seat and I drove and the Chinese lady in the boot of the car.**

**Q : What type of vehicle ?**

**A : It's a Tribune. It was MJ's it belongs to his wife. It's not a rental.**

**Q : Anyone speak to the Chinese lady ?**

**A : Just MJ telling her to face the corner I didn't talk to her. I was in a panic and looked ahead. Bobson didn't speak to her. I was driving."**

47. Asked why he had not driven the car to the police station or helped the Chinese lady FD replied :

**A : I didn't , I panicked and didn't know what to do."**

48. Asked how he became involved , FD said :

**A : MJ came to my place and MJ told me to sit in the driver's seat and we were talking."**

49. Finally in re-examination , FD said : ***"what happened on the night was unexpected. I was taken by surprise at what MJ had done."*** He was torn between MJ and the Chinese woman and didn't know who to assist or be loyal to.

50. FD denied calling MJ to come to his place that evening. He denied waiting for the Chinese lady or knowing what MJ planned or that anything was going to happen to the Chinese lady. When she arrived they were already in MJ's car. He saw MJ strangling the Chinese lady but he didn't know if MJ took anything.

51. So much for the defence evidence , I now turn to consider the credibility of MJ's evidence in the light of FD's directly contradictory evidence and ever mindful of the prosecution's burden and standard of proof.

52. In his oral submissions , the DPP invited the Court to accept and believe MJ's evidence as more compelling and convincing and as representing the truth about the Chinese

woman's robbery and that it was the defendants who committed it with minimal assistance from himself (as the driver of the get-away vehicle) ; and where MJ received no benefit or reward for his part in the robbery.

53. In particular , the DPP doubted FD's explanation for not forewarning the Chinese woman or telling the police about her robbery. He also dismissed FD'S so-called anger at the robbery and described his asserted "*panic*" as contrived.
54. In similar vein , and equally forcefully, defence counsel urges the court to disbelieve MJ's uncorroborated evidence which by his own admission in cross-examination , was given in return for the grant of immunity and to avoid the possibility of him going to prison for a long time.
55. In particular , defence counsel highlight that FD had a motive not to rob the Chinese woman who he considered "...part of their family one of ours..." also FD didn't own a vehicle and unlike MJ , who was given immunity from prosecution and who admitted he would say anything to "*..avoid going to jail..*" , FD was consistent in his evidence and never waivered under cross-examination. On the other hand , MJ was at pains to down-play his role and involvement in the robbery of the Chinese woman and was forced to retract his sworn testimony on no less than 3 occasions even after refreshing himself from his police statement before testifying in Court.
56. The main differences in the 2 versions are :
  - (1) Whose plan or idea it was to abduct and rob the Chinese woman ? ;
  - (2) Whether the defendants agreed with the plan and voluntarily participated in it ? ;
  - (3) Who was involved in the Chinese woman's abduction and her restraint inside the defendant's vehicle ? ;
  - (4) Where in the defendant's vehicle was the Chinese woman held captive ? and
  - (5) Who drove the vehicle after the Chinese woman's abduction from the Location Compound ?

but , the greatest lacuna in the case is the true identity of the islander woman "*Fonga*" and how she came to be in possession of the victims "*I-phone 6*" that she sold to Moeole Folau Hedmon for \$300 and more especially , what relationship (if any) she has with either of the defendants or both ?

57. After carefully considering counsels submissions and the diametrically opposed versions of Michael Jordan and Frisco Dagagio , I am left with a stale-mate position where the evidence is so equally and finely balanced that I am left unsure of the defendant's guilt. In the end I am reluctantly driven to the conclusion that the prosecution has failed to discharge its burden of proof and accordingly , I find the defendants not guilty and they are acquitted of the offence charged.

Dated this 15<sup>th</sup> day of April , 2021

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**Daniel. V. Fatiaki**  
**Chief Justice**