

IN THE HIGH COURT OF FIJI  
AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO: HAA 35 OF 2008

BETWEEN:

LOMANI TAMANI

The Appellant

AND:

THE STATE

The Respondent

Counsel: Appellant in Person  
Ms. H. Tabete for the State

Date of Hearing: Friday 11<sup>th</sup> April, 2008

Date of Judgment: Friday 23<sup>rd</sup> May, 2008

## JUDGMENT

- [1] The appellant was charged with two counts of robbery with violence. The charges arose from a single transaction and alleged a joint enterprise.
- [2] On 7<sup>th</sup> May 2007 the appellant appeared in the Suva Magistrates' Court and pleaded guilty to the charges. The record shows the appellant was 17 years old and his mother was present in court. He was remanded in custody for sentencing. On 24<sup>th</sup> May 2007 a counsel from the Legal Aid Commission mitigated for the appellant. Due to the young age of the appellant the learned Magistrate obtained a social welfare report on him to assist in sentencing.
- [3] On 1<sup>st</sup> June 2007 the appellant was sentenced to 3 ½ years imprisonment on each count. The sentences were made concurrent. The overall sentence was 3 ½ years imprisonment.

- [4] The appellant appeals against sentence saying the sentence is harsh and excessive for a young first time offender who has pleaded guilty and was a sole bread winner for his family.
- [5] I accept the appellant is a young offender and has pleaded guilty at the first reasonable opportunity. However, I do not accept he was the sole bread winner for his family and was of previous good character. He comes from a family of six members – parents and 4 siblings. The appellant is the second youngest child. He has attained up to class 6 education. The appellant was a shoe shine boy and supplemented his father's income with his earnings.
- [6] The circumstances of the offending show a planned group attack on an elderly couple. The complainants, Don Stewart aged 65 years and Daisy Stewart aged 64 years, on 27<sup>th</sup> April 2007 at around midnight were awoken by noise of glass breaking in their home. The couple came out of their bedroom to the living room and saw the appellant and his accomplice in the process of entering their house. The couple was frightened. Don locked himself in the bedroom while Daisy locked herself in the bathroom. The invaders tried to open the bedroom door but were unsuccessful. However, they managed to break the glass wall of the bathroom and hit Daisy on the head with a timber. Daisy received serious injuries to her head. The invaders stole items of substantial value and fled the house. The accused was arrested. He admitted being involved in the alleged robbery. Only a laptop was recovered. Items valued \$6,100.00 remains unrecovered.
- [7] The learned Magistrate gave credit to the appellant's young age and guilty pleas. She noted the appellant had convictions for robbery with violence in the Juvenile Court. The counsel for the State on appeal informed the Court that the appellant committed the offences in the present case while on a suspended sentence. If this is correct then the appellant is fortunate that the learned Magistrate did not activate his suspended sentence.

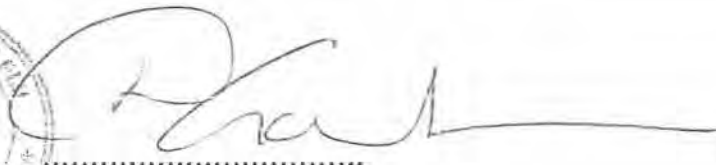
- [8] As a matter of general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse (*Suren Singh and Others v The State*, Criminal Appeal No 79 of 2000). If these factors are present then the offender is usually given a non custodial sentence.
- [9] In the present case, the appellant is a young offender and has pleaded guilty. His previous convictions were imposed in the Juvenile Court. Juvenile convictions are not criminal convictions in its true sense because the nature of juvenile proceedings is not considered criminal proceedings.
- [10] Albeit the learned Magistrate had ignored the previous convictions of the appellant, she did not consider the appellant to be a first time offender deserving credit for previous good character. I entirely agree with the learned Magistrate's approach. The appellant by his conduct has clearly demonstrated a propensity to use violence at a very young age. The courts have a duty to protect the public from any form of violence by imposing sentence that deters the offender from committing such offence.
- [11] The learned Magistrate quite correctly took a serious view to the offences committed by the appellant. This was an unproved attack on an elderly couple in the security of their home.
- [12] If a young person commits a violent crime on vulnerable members of the public such old people and women, an immediate custodial sentence should be imposed regardless of the young age of the offender. In *Navukailomalagi v State* HAA 103 of 2007, the High Court upheld a term of 4 years imprisonment imposed on a young offender who had pleaded guilty and had previous convictions for robbery with violence.

- [13] In *Basa v The State* Criminal Appeal No AAU0024 of 2005, the Court of Appeal reconsidered the earlier decisions in which New Zealand cases have been used as guidance in assessing appropriate penalties for robbery with violence. In *Basa*, the Court of Appeal has endorsed the English cases as guidance to determine an appropriate term of imprisonment. The Court said:
- In Fiji, the maximum penalty is life imprisonment showing clearly that it is regarded as being in the most serious category of offences. The maximum penalty in England is also life imprisonment and so it may be more appropriate in future to consider English cases as guidance for the appropriate term of imprisonment.**
- [14] In *R v Richardson and Others*, *The Times*, February 10<sup>th</sup>, 1988 sentences of up to 13 years were held to be right in principle for the defendants who were of previous good character, and who had taken part in a series of robberies on houses where the victims were asleep but were disturbed and attacked with knives. Ewbank J said that home invasion robberies were so serious that a plea of youth or of previous good character was of little relevance, and that where the victims were old, the sentence would be even longer.
- [15] In *R v Driscoll* 8 Cr. App. R (S) 121, the English Court of Appeal held that where robbery was committed in the course of a burglary of a home, a 15 year prison term was justified for causing grievous harm to an elderly victim.
- [16] These English cases indicate the sentencing range is 13-16 years for robbery in the home involving physical violence.
- [17] The term of 3 ½ years of imprisonment when considered in light of *Basa's* decision could hardly be considered harsh and excessive. As I have said, this was a cowardly attack on an elderly couple in the security and safety of their home. Despite the appellant's young age, an immediate custodial sentence was warranted. The learned Magistrate gave substantial credit to the appellant's young

age and early guilty pleas. The overall sentence of 3 ½ years imprisonment is neither wrong in principle nor manifestly excessive.

[18] The appeal against sentence is dismissed.



  
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Daniel Goundar  
JUDGE

At Suva  
Friday 23<sup>rd</sup> May, 2008

**Solicitors:**

Appellant in Person  
Office of the Director of Public Prosecutions, Suva for the State