

IN THE HIGH COURT OF FIJI
AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO: HAA 23 OF 2008

BETWEEN:

1. KAMINIELI TURAGALOALOA
2. JIKOSAYA TOGA
3. JOSUA NABUTO

The Appellants

AND:

THE STATE

The Respondent

Counsel: All Appellants in Person
Ms. A. Tuiketeti for the State

Date of Hearing: Thursday 10th April, 2008

Date of Judgment: Friday 23rd May, 2008

JUDGMENT

[1] The Appellants were jointly charged with the following offence:

Statement of Offence (a)

ROBBERY WITH VIOLENCE: Contrary to Section 293(1)(b) of the Penal Code, Act 1.

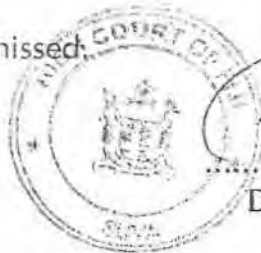
Particulars of offence [b]

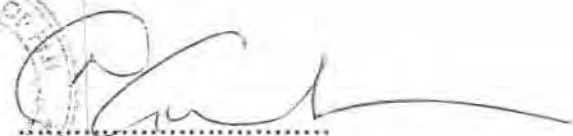
Kaminieli Qasevakatini Turagaloaloa, Jikosaya Toga, Josua Nabuto and others, on the 29th day of June 2007 at Nasinu in the Central Division, robbed the Total Service Station and stole cash register valued at \$350.00, telecards and recharge cards valued at \$579.00, cigarettes valued at \$263.43 and \$150.00 cash to the total value of \$1,342.43, the property of **RAJESH PATEL s/o Ramesh Bhai Patel** and immediately before such robbery did use personal violence to the said **Rajesh Patel s/o Ramesh Bhai Patel**.

- [2] On 21st November 2007 the Appellants pleaded guilty to the charge in the Nasinu Magistrates' Court after waiving their right to legal counsel.
- [3] The 1st Appellant was 21 years old. The 2nd Appellant was 23 years of age while the 3rd Appellant was 19 years old. In mitigation all three Appellants sought leniency and a non custodial sentence.
- [4] The facts were that on 29th June 2007 at 8.00pm, the Appellants armed with cane knives, beer bottles and iron rods, invaded a service station at Laucala Beach. They threatened the sales attendant and robbed \$1,342.43 worth of items and cash from the service station. Only the cash register was recovered. No physical injury was caused to the complainant.
- [5] In sentencing the Appellants, the learned Magistrate considered their early pleas of guilty, young age, previous good character and remorse as mitigating factors. The aggravating factors considered by the learned Magistrate were the use of weapons, the planning involved, the threat of violence against the complainant, the value of the stolen items and the non recovery of most of the stolen items.
- [6] The learned Magistrate used a starting point of 3 years imprisonment. After adjusting for the mitigating and aggravating factors, she arrived at a term of 2 years imprisonment.
- [7] The learned Magistrate took the view that a custodial sentence was warranted because of the prevalence of the offence of robbery with violence and the need to protect the public and deter the offenders.
- [8] I endorse the views of the learned Magistrate. The offence of robbery is prevalent in Fiji, and there is a duty on the courts to pass a sentence which reflect the gravity of such offending. The offence is so prevalent that the Court of Appeal has

increased the starting point of this offence, based on the English guidelines (*Basa v The State*, Criminal Appeal No. AAU0024 of 2005).

- [9] The English sentencing range is 9-12 years (7-9 years after a guilty plea) for robberies involving businesses such as a service station. Service stations provide an important service to the community which can only realistically be provided in circumstances where personal security levels will be low. In *Attorney General's Reference (No. 7 of 1992)* (1993) 14 Cr App R (S) 122, Lord Taylor CJ said that the type of offence which involves somebody committing robbery at a small shop or premises would normally attract a sentence of at least seven years' imprisonment on a plea of guilty.
- [10] The present appeal must be considered in light of the observations in *Basa*. This was a serious offending by a group of young men. Weapons were used to threaten the complainant. Fortunately the complainant was not physically harmed. The seriousness of the offending is not lessened by lack of physical harm to the complainant. It is the threat of violence that makes the offending serious.
- [11] Applying proper principles, it is hard to say an effective 2 years imprisonment is excessive.
- [12] The appeal against sentence is without merits and must be dismissed.
- [13] Appeal dismissed.




Daniel Goundar
JUDGE

At Suva
Friday 23rd May, 2003

Solicitors:

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

