

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 024 OF 2010S

SERU DOLOURA

v.

STATE

Counsels : Appellant in Person  
Ms. J. Cokanasiga for the State  
Hearing : 8<sup>th</sup> July 2010  
Judgment : 10<sup>th</sup> September 2010

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**J U D G M E N T**

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1. On 13<sup>th</sup> October 2009, the appellant appeared in the Nausori Magistrate Court, on the following charge:

***Statement of Offence***

***ROBBERY WITH VIOLENCE:*** contrary to Section 293(1)(b) of the Penal Code, Cap 17.

***Particulars of Offence***

***SERU DOLOURA*** on the 8<sup>th</sup> day of October, 2009 at Muaniweni, Naitasiri in the Central Division robbed ***SNEH LATA*** of cash \$500.00, assorted re-charge cards valued at \$78.00 and assorted cigarettes valued at \$90.00, all to the total value of \$673.00 and immediately before such robbery used personal violence to the said ***SNEH LATA***.

2. His right to counsel was explained to him. He waived the same. The charge was then read and explained to him. He said, he understood the same. He elected a Magistrate Court trial and pleaded guilty to the offence. The prosecution then read his summary of facts to the court. Because the victim lay seriously injured in Suva's Private Hospital as a result of the offending, the matter was adjourned to 16<sup>th</sup> November 2009. On that date, the appellant admitted the prosecution's summary of facts, and he was convicted as charged.
  
3. The brief facts were as follows. It was a Thursday, the 8<sup>th</sup> October 2009, at Muaniweni, Naitasiri, between 9am and 9.30am. The victim's family own a double storey concrete house. They lived in the top floor, and a shop, at the ground floor. The victim was manning the family shop at the time. The other family members had gone to work. The accused came to the shop and bought two rolls of BH cigarettes. He later went away, and returned a while later. He violently attacked the 60 years old female victim, by banging her head three times against the concrete wall. The victim was seriously injured as a result. He later ransacked the shop and stole \$673 worth of properties. According to the prosecution, the victim was in a coma for 2 weeks, at the Suva Private Hospital.
  
4. The accused admitted 5 previous convictions of "damaging property", "throwing object", "criminal trespass", "larceny" and "drunk and disorderly". The court took his plea in mitigation, and adjourned for sentence on 27<sup>th</sup> November 2009. The court sentenced the accused to 8 years imprisonment, and gave him 28 days to appeal. He now appeals on sentence on two grounds:
  - (i) That the learned Magistrate erred when he took into account his previous conviction when sentencing him;
  - (ii) that the learned Magistrate did not take into account his guilty plea, when sentencing him.
  
5. The appellant (accused) did not appeal on conviction, but I will treat this appeal as an appeal on conviction and sentence. I have carefully perused the court record to find out whether or not the learned Resident Magistrate had erred in convicting and

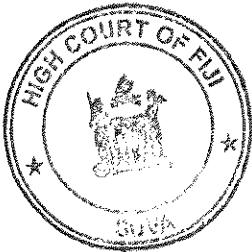
sentencing the appellant. On convicting the appellant, the learned Resident Magistrate took the standard and correct procedures in convicting the appellant. His right to counsel was put to him. He waived the same. The charge was read and explained to him. He said, he understood. He pleaded guilty. The prosecutor's summary of facts was read to him. He agreed with the same. As a result, he was convicted as charged. No wonder, the appellant found it futile to appeal on conviction. I can find nothing to fault the learned Resident Magistrate in convicting the appellant

6. On ground 4(i) of the sentence appeal, the appellant complained that the learned Resident Magistrate took into account his previous convictions, as a factor, in sentencing him. He quoted the learned Resident Magistrate's comment, "...*The court cannot allow you any discount for your character as you have 5 previous convictions...*", as evidence of his complaint. Normally previous convictions of accused person are not taken into account, as a factor to increase sentence, because they have already served their sentence on those convictions, and therefore cannot be punished twice for the same offence. In this case, the appellant had made a point, and the necessary adjustments will have to be made.
7. On ground 4(ii) of the sentence appeal, the appellant complained that the learned Resident Magistrate did not take into account his early guilty plea. I have perused the court record, and it would appear that this complaint was not made out. In his sentencing remark, the learned Resident Magistrate said, "... *The court notes your mitigation and the early guilty plea and the time you have spent in remand for this the court allow 6 months discount...*" This comment showed the learned Resident Magistrate did take into account the appellant's early guilty plea.
8. "Robbery with violence" is a serious offence and carried a maximum penalty of life imprisonment (section 293(1)(b) of the Penal Code, Chapter 17). The tariff is a sentence between 6 to 14 years imprisonment: *State v Sakiusa Rokonabete & Others*, Criminal Case No. HAC 118 Of 2007, High Court, Suva; *Sakiusa Basa v State*, Criminal Appeal No. AAU 0024 of 2005, Fiji Court of Appeal; *Semisi*

Wainiqolo v The State, Criminal Appeal No. AAU 0027 of 2006, Fiji Court of Appeal. The actual sentence passed will depend on the aggravating and mitigating factors. Since the appellant elected a Magistrate Court trial, the learned Resident Magistrate was limited to his maximum sentencing powers of 10 years imprisonment per count (see section 7(1)(a) of the Criminal Procedure Decree 2009).

9. On an appeal from the Magistrate Court, the High Court may confirm, reverse or vary the decision of the Magistrate Court (section 256 (1)(a) of the Criminal Procedure Decree 2009). In this case, the learned Resident Magistrate started with a sentence of 7 years imprisonment, which was well within the tariff for "robbery with violence". He decreased it by 6 months for the mitigating factors, the early guilty plea and the time spent in remand. In my view, given what was said in paragraph 6 hereof, I would make a total deduction of 18 months for the mitigating factors, the early guilty plea, the time spent in custody, and the adjustment necessary after considering paragraph 6. That would result in a sentence of 5½ years.
10. The aggravating factors noted by the learned Resident Magistrate was not disputed by the appellant. However, he and others like him ought to note, that when committing a "robbery with violence", the injuries left on victims will result in the scaling up or down of sentences, depending on how serious and violent the attack was. In this case, the appellant was "lucky" to be facing a "robbery with violence" charge instead of a "murder" charge. The attack by the appellant on the victim was extremely violent. It was a cowardly attack by a 33 year old male on a 60 years old female. According to the record and medical report, the victim nearly died as a result of her injuries. As of today, she is still receiving medical treatment and attending periodic reviews. The aggravating factors therefore needed to be increased from 18 months to 4½ years. Adding this to the 5½ years balance, the total sentence ought to be 10 years imprisonment. The sentence is to act as a deterrent to would-be robbers, who violently assault robbery victims.

11. Given the above the appeal against sentence is dismissed. The Magistrate Court sentence of 8 years imprisonment is set aside and replaced by a sentence of 10 years imprisonment.



AT Suva  
10<sup>th</sup> September 2010

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Salesi Temo  
ACTING JUDGE