

IN THE HIGH COURT OF FIJI
AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 084 OF 2010

BETWEEN:

THE STATE

AND:

VILIAME LEABOGI

Counsels : Ms. L. Koto for State
Accused in Person

Date of Hearing : 27th September 2010

Date of Sentencing : 22nd October 2010 *ve. Savou as duty 5/10/10*

S E N T E N C E

[1] The 2nd Accused above named was charged by the Director of Public Prosecution as follows:

"VILIAME LEABOGI is charged with the following offence:

FIRST COUNT
Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311 (1) (b) of the Crime Decree No. 44 of 2009

Particulars of Offence

JONE DI & VILIAME LEABOGI WITH OTHERS on the 19th day of March, 2010 at Suva in the Central Division being armed with offensive weapons stole \$8000.00 cash, 3 Nike canvas valued at \$370.00, assorted men's clothes valued at \$100.00, 1 x men's silver Citizen watch valued at \$235.00, 1 x men's Pulsar watch valued at \$350.00, 1 x black Nixon Camera valued at \$1,500.00 to the total value of \$10,555.00, the properties of the said **MOSES WHIPPY**.

SECOND COUNT

Statement of Offence

AGGRAVATED ROBBERY: Contrary to Section 311(1) (b) of the Crime Decree No.44 of 2009.

Particulars of Offence.

JONE DI & VILIAME LEABOGI WITH OTHERS on the 19th day of March, 2010 at Suva in the Central Division, being armed with offensive weapons stole 1 x Abec ladies wrist watch valued at \$87.00, to the property of the said **SHAYREEN WHIPPY**".

- [2] The 2nd Accused before the trial commences pleaded guilty to the charge against him. On the 18th August 2010 he was not represented by a Legal Counsel. Court granted further time to reconsider his decision and the matter was called on 09.09.2010. On that date summary of facts were not filed and it was mentioned on 15.09.2010. On that date also the 2nd accused maintained that he is pleading guilty to the charge leveled against him. Considering his plea is unequivocal the Court convicted him as charged.
- [3] Now I consider the sentencing against the 2nd accused **VILIAME LEABOGI**.
- [4] You are charged under Section 311 (1) (b) of the Crime^f Decree No. 44 of 2009. The maximum penalty is an imprisonment up to 20 years.
- [5] Now I consider the tariff to the offence of Aggravated Robbery. In **State v Basa (2005) FJHC 52 Justice Shameem** stated that "The tariff for robbery with violence is 4 to 7 years...". In **State vs Wainiqolo (2006) FJHC 52 Justice (Then) A.H.C.T.Gates** imposed 14 years imprisonment. In **State vs Gauna (2010) FJHC 349** 17 years imprisonment imposed on the accused after trial. In **State vs Mataiasi Bulivou Susu (2010) FJHC 226 Justice Goundar** imposed 3 years imprisonment.

- [6] Considering above decided cases the tariff for the offence of Aggravated Robbery is Between 3 years to 17 years imprisonment.
- [7] Now I consider Section 4 (1) of the Sentencing guidelines decree.

"The only purposes for which sentencing may be imposed by a court are –

- (a) to punish offenders to an extent and in a manner which is just in all the circumstances;
- (b) to protect the community from offenders;
- (c) to deter offenders or other persons from committing offences of the same or similar nature;
- (d) **to establish conditions so that rehabilitation of offenders may be promoted or facilitated;**
- (e) to signify that the court and the community denounce the commission of such offences; or
- (f) any combination of these purposes". (*emphasis added*)

- [8] I further consider Section 4 (2) of the Sentencing guidelines decree.

"In sentencing offenders a court must have regard to –

- (a) the maximum penalty prescribed for the offence;
- (b) current sentencing practice and the terms of any applicable guideline judgment;
- (c) the nature and gravity of the particular offence;
- (d) the offender's culpability and degree of responsibility for the offence;
- (e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;
- (f) **whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;**
- (g) **the conduct of the offender during the trial as an indication of remorse or the lack of remorse;**
- (h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;
- (i) **the offender's previous character;**
- (j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and

(k) any matter stated in this Decree as being grounds for applying a particular sentencing option" (*emphasis added*)

[9] Considering the nature of the offence.

"On 19/03/2010 at about 3.30am Moses Whippy and his family were asleep in their house. At around the same time Moses Whippy got up to get ready for his prayers when he noticed the lights turned off. Moses Whippy stood up from his bed and decided to check the house when he suddenly met Viliame Leabogi and another inside the passage of their house to the sitting room. Viliame Leabogi and another threatened Moses Whippy and his family inside the main bedroom before stealing \$8000.00 which was kept inside the drawer, 3 Nike canvas, assorted men's clothes, 1 men's silver Citizen watch, 1 Pulsar watch, 1 ladies wrist watch and 1 Nixon camera".

[10] You have co-operated with the investigation and the following items were recovered from your possession.

1. 3 mobile phones
2. \$17.00 cash
3. 1 Nixon camera
4. 2 x ¾ Trousers
5. 1 Flip flop.

[11] You have pleaded guilty to the charges leveled against you and filed certain factors in mitigation. Counsel from Legal Aid Commission appeared. On request of the Court also submitted certain factors in mitigation.

[12] After considering relevant laws, and decided cases I commence your sentencing at 4 years imprisonment.

[13] Now I consider your aggravating factors.

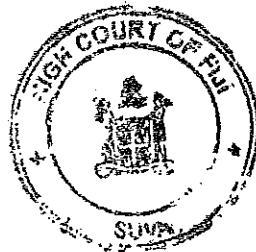
- a. It is a planned robbery.
- b. You entered a dwelling house at the wee hours of the day namely at 3am.
- c. You were armed with deadly weapons.
- d. You have threatened the inmates of the house.
- e. The total amount of the goods stolen was \$10632.00.

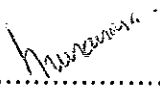
[14] Considering aggravating factors I add another 3 years. Now your sentence is 7 years imprisonment.

- [15] Now I consider your mitigating circumstances.
- a. You have pleaded guilty at a very early stage of the trial.
 - b. You are 21 year old young adult
 - c. You have a wife and just born child
 - d. You are first offender
 - e. Your father was convicted in a different case and serving a jail term at present
 - f. Your mother and brother are living alone
 - g. You are remorseful and regret the incident
 - h. You have learnt your lesson in the period that you spent in the prison waiting for this trial
 - i. You seek an opportunity to live with your just born child and wife
 - j. You promise that you will not commit any offence in the future
 - k. Period spent in remand prison
- [16] Considering your mitigating factors I reduce 4 years from your sentence. Now your sentence is 3 years imprisonment.
- [17] Now I consider your submission and the submission of your Counsel. Both of you are inviting me to consider suspending the sentence. I should place it on record that the State Counsel is not only objecting for a suspended sentence but also requesting a considerable term of imprisonment.
- [18] Section 26 (1) of the Sentencing & Penalties Decree states as follows:
- "On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances".
- Section 26 (2)
- "A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence –
- (a) does not exceed 3 years in the case of the High Court; or
 - (b) does not exceed 2 years in the case of the Magistrate's Court".
- [19] The offence you have committed is unacceptable and it should be

condemned. But in the same time we have to consider you and your family also. Your father is in the prison serving sentence. If you are also imprisoned your family will be destroyed and there is a possibility of creating another criminal from your family.

- [20] I am in agreement with the State Counsel that you should be punished. In the same time I should be mindful that you are a first offender and this is the 1st time your are before this Court. You have spent little over six months in remand prison. I consider that as a part of your custodial sentence.
- [21] I seriously consider your newly born child. She should not be punished without a father. I consider this as a strong point to consider to suspend your sentence.
- [22] Considering all circumstances I suspend your 3 years imprisonment for a period of 5 years.
- [23] Now I explain you the nature of the suspended sentence. If your commit any offence within a period of operation you will be serving this sentence together with the sentence for the other offence.
- [24] You are imposed of 3 years imprisonment and the same is suspended for 5 years.




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S Thurairaja
Judge

At Suva

Solicitors

Office of the Director of Public Prosecution for State
Accused in Person