

**IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION**

CRIMINAL CASE NO: HAC 099/ 2010

BETWEEN : **STATE**
AND : **EPARAMA MANI**
COUNSELS: **Mr L Fotofili for the State**
Accused in person
Date of Hearing : **28/04/ 2013**
Date of Sentence : **02/04/ 2013**

SENTENCE

01. The Director of Public Prosecution had preferred the following charges against the accused above named.

FIRST COUNT
Statement of Offence

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

Particulars of Offence

EPARAMA MANI on the 01st day of May 2010 at Samabula in the Central Division, armed with an offensive weapon stole \$350.00 cash, a black berry mobile phone valued at \$800.00 and a Gold diamond ring valued at \$1000.00, all to the total of \$2,150.00 from **ANTHONY PRICE.**

SECOND COUNT

Statement of Offence

GRIEVOUS HARM: Contrary to Section 258 of the Crimes Decree No: 44 of 2009

Particulars of Offence

EPARAMA MANI, on the 1st of May 2010 at Samabula in the Central Division, unlawfully and maliciously did grievous harm to **FILIMONI BOGILEKA**.

02. After trial on the charges, the accused was found guilty for both counts. Accordingly he was convicted for both counts.
03. According to the prosecution the accused on 01/05/2010 armed with a kitchen knife unlawfully entered the compound at Deoji Street in the night entered the rented portion of Anthony Price threatened him with the knife and stole the items listed in the information.

On his getaway a private security officer namely Filimoni Bogileka who tried to apprehend him inside the compound was stabbed several times on his abdomen by the accused. Due to the struggle accused dropped his mobile phone and ran away from the scene. The accused also dropped a red vest he had tied around his face together with a silver colored kitchen knife.

The security officer was taken to hospital and he under gone a surgery in his abdomen.

During investigation, police checked the contents of the mobile phone which was found at the scene and saw several photos of the accused. He was arrested on 03/05/2010 and caution interviewed where he confessed to the police. Further accused claimed the ownership of the phone when gave evidence from the witness box.

04. As per section 311(1) (a) of Crimes Decree, 2009 the maximum sentence for the offence of Aggravated Robbery is 20 years imprisonment.
05. In **State v Rokonabete**[2008] FJHC 226: HAC 118.2007(15th September 2008) Justice Goundar itemized elements to be considered when assessing the seriousness for any types of robbery.

“The dominant factor in assessing seriousness for any types of robbery is the degree of force used or threatened. The degree of injury to the victim or the nature of and duration of threats are also relevant in assessing the seriousness of an offence of robbery with violence. If a weapon is involved in the use or threat of force that will always be an important aggravating feature. Group offending will aggregate an offence because the level of intimidation and fear caused to the victim will be greater. It may also indicate planning and gang activity. Being the ringleader in a group is an aggravating factor. If the victims are vulnerable, such as elderly people and person providing public transport, that will be an aggravating factor. Other aggravating factors may include the volume of items taken and the fact that an offence was committed whilst the offender was on bail.”

The seriousness of an offence of robbery is mitigated by factors such as a timely guilty plea, clear evidence of remorse, ready co-operation with the police, response to previous sentence, personal circumstances of offender, first offence of violence, voluntary of property taken, a minor part, and lack of planning involved.”

In **State V Manoa**[2010]FJHC 409:HAC 061. of 2010 (6th August 2010) the learned judge employed the sentencing tariff for the offence of Robbery with Violence from the old Penal Code when sentencing for the offence of Aggravated Robbery in the new Crimes Decree No: 44 of 2009.

“The maximum penalty for robbery with violence under Penal Code is life imprisonment, while the maximum penalty for aggravated a robbery under the Crimes Decree is 20 years imprisonment. Although the maximum sentence under the Decree has been reduced to 20 years imprisonment, in my judgment, the tariff of 8-14 years imprisonment established under the old law can continue to apply under the new law. I hold this for two reasons. Firstly, the established tariff of 8-14 years under the old law falls below the maximum sentence of 20 years under new law. Secondly, under the new law, aggravated robbery is made an indictable offence, triable only in the High Court, which means the Executive’s intention is to continue to treat the offence seriously”

06. As per Section 258 of the Crimes Decree No: 44 of 2009 the maximum sentence for the offence of Grievous Harm is 15 years imprisonment.
07. In the case of **State v Pauliyasi Yasa** HAC 44 of 2012 at the paragraph 07 of the court’s sentencing remark, his lordship Justice Madigan said that

the tariff is between 2-6 years. His lordship referred to his earlier Appeal decision of **Felix Patel v State** Criminal Appeal HAA 30 of 2011.

08. The accused is 27 years of age and looks after his de facto partner and her son. When arrested he co-operated with the police and made confession in his Record of Interview. He is the sole bread winner of the family.
09. I have carefully considered these submissions in light of the provisions of the Sentencing and Penalties Decree No: 42 of 2009 especially those of the sections set out below in order to determine the appropriate sentence.
10. Section 15(3) of the Sentencing Decree provides that:

“as a general principle of sentencing, a court may not impose a more serious sentence unless it is satisfied that a lesser or alternative sentence will not meet the objectives of sentencing stated in Section 4, and sentence of imprisonment should be regarded as the sanction of last resort taking into account all matters stated in the General Sentencing Provisions of the decree”.

11. The objectives of sentencing, as found in section 4(1) of the Decree, are as follows:

1. *To punish offenders to an extent and a manner, which is just in all the circumstances;*
2. *To protect the community from offenders;*
3. *To deter offenders or other persons from committing offences of the same or similar nature;*
4. *To establish conditions so that rehabilitation of offenders may be promoted or facilitated;*
5. *To signify that the court and the community denounce the commission of such offences; or*
6. *Any combination of these purposes.*

12. Section 4(2) of the Decree further provides that in sentencing offenders, a Court must have regarded to:

- (a) *The maximum penalty prescribed for the offence;*

- (b) Current sentencing practice and the terms of any applicable and guideline Judgments;*
- (c) The nature and gravity of the particular offence;*
- (d) The defender'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;*

13. Now I consider the aggravating factors:

- 1. The Robbery was committed with violence.
- 2. The accused intimidated the inmates of the house with a knife.
- 3. The security officer has received serious injuries.
- 4. Accused has 25 previous convictions and 18 are in the operational period.

14. Now I consider the mitigating circumstances:

- (b) Accused is 27 years old looks after his defacto partner and her son.*
- (d) He co-operated with the Police and made confession in his record of caution interview statement.*
- (e) He is the sole bread winner in the family.*
- (e) He is remorseful.*
- (e) He has been in remand since 01/05/2010.*

15. Considering all aggravating and mitigating circumstances I sentence you as follows:
- For the charge of Aggravated Robbery I take 08 years imprisonment as the starting point. I add 02 years for aggravating factors to reach the period of imprisonment at 10 years. I deduct 02 years for the mitigating factors.
 - For the charge of Grievous Harm I take 06 years imprisonment as the starting point. I add 01 year for the aggravated factors to reach the period of imprisonment at 07 years. I deduct 01 year for the mitigating factors.
16. Considering your remand period, prior to sentence I further deduct 02 years from your sentence.
17. In summary you are sentenced to 06 years imprisonment for the charge of Aggravated Robbery and 04 years imprisonment for the charge of Grievous Harm to run concurrently on both counts.
18. Acting in terms of section 18(1) of the Sentencing and Penalties Decree, I impose 05 years as non-parole period.
19. 30 days to appeal.

P Kumararatnam
JUDGE

At Suva
2nd April 2013