

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 018 OF 2012S

DEI VAKABOGI

VS

STATE

Counsels : **Appellant in Person**
Mr. J. Nuidamu for State

Hearings : **15th February and 15th March, 2013**

Judgment : **12th April, 2013**

JUDGMENT

1. On 22nd February, 2012, the appellant appeared in the Suva Magistrate Court, on the following charge:

Statement of Offence

THEFT: Contrary to Section 291(1)(a) of the Crimes

Decree Number: 44 of 2009.

Particulars of Offence

DEI VAKABOGI, JOTAME NACILI and another on the
19th day of February, 2012, at Suva in the Central

Division, dishonestly appropriates (stole) 1 x blue handbag valued at (AUD) \$80.00, (AUD) \$6,750.00 cash, 1 x Chinese passport, 1 x digital camera valued at (AUD) \$490.00 and 1 x white ear phone valued at (AUD) \$39.00 all to the value of (AUD) \$7,359.00, the property of **ZHEN YAN ER**.

2. The appellant was unrepresented. The charge was read to him. He said, he understood the charge. Out of his own free will, he pleaded guilty to the same. The prosecution read the summary of facts in court. Basically, it said that, at the material time, the appellant ran behind the complainant, as she was walking along Victoria Parade, grabbed her bag and fled. In the bag, were the properties mentioned in the charge. A while later, the appellant was apprehended by members of the public and police. The properties were recovered, and the appellant charged for theft.
3. He admitted the above facts, and the court found him guilty as charged. The court later convicted him of the charge. On 22nd March, 2012, the court sentenced the accused to 21 months imprisonment, with a non-parole period of 15 months.
4. The appellant did not complain about his conviction. However, he was not happy with his sentence. He said:
 - (i) The learned Magistrate erred in not taking into account that he used no violence on the complainant;
 - (ii) The learned Magistrate erred in not taking into account that all properties were recovered, and he saved the court's time by pleading guilty earlier;
 - (iii) The sentence was harsh and excessive.
5. On the appellant's complaint in paragraph 4(i) above, I must say that the appellant was misguided. To run from behind a person, grab her bag containing \$6,750 cash in Australian Dollars etc and fled, is in my view, certainly an act of violence. You had no right to the property. You forced your

way to the property by snatching it away from its owner. This was certainly an act of violence, although no physical injury occurred. I therefore dismiss your complaint in paragraph 4(i) above.

6. On the complaint in paragraph 4(ii) above, I have carefully read the court record to find out whether or not your complaint was justified. In paragraph 18 of the sentence, the learned Magistrate gave you an 8 months discount for pleading guilty earlier. On the recovery of the stolen properties, in my view, the learned Magistrate was justified in not treating it as a mitigating factor. The recovery of the stolen properties was not brought about by a voluntary act by you. In fact, the recoveries of the stolen properties were forcefully taken from you, when you were apprehended, by members of the public and police. You were fleeing with the stolen properties. Were you not apprehended, these properties would have disappeared. You had no right to claim any benefit from its recovery. I therefore dismiss your complaint in paragraph 4(ii) above.
7. On the complaint in paragraph 4(iii), in my view, the sentence was not harsh and excessive. In fact, it was a lenient sentence. For someone with 8 previous convictions in the last 10 years, and 2 of which were for “robbery with violence”, a proper sentence in this case would be 3 years imprisonment. This was so because this was an attack on a tourist to this country. An attack on any tourist to this country should always attract a deterrent sentence. Tourist should always be protected when in this country, because a lot of people depend on tourism for their economic wellbeing. In any event, I will not disturb the learned Magistrate’s sentence. I consequently dismiss your complaint in paragraph 4(iii) hereof.
8. In summary, I dismiss your appeal against sentence.

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JUDGE

Solicitor for the Appellant : **In Person.**
Solicitor for State : **Office of the Director of Public Prosecution, Suva.**