

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No: HAC 039 of 2013

BETWEEN:

STATE

AND:

ERAMI NAMATAGA

Counsel: Mr. S. Vodokisolomone for State
Mr. R. Tagivakatini for Accused

Date of Hearing: 17 July 2013
Date of Sentence: 19 July 2013

SENTENCE

[1] This case was tried in the Magistrates' Court at Labasa under extended jurisdiction. The trial commenced with a *voir dire* to determine the admissibility of the Accused's confession. After the conclusion of the *voir dire* and before the learned Magistrate made her decision on admissibility, the Accused changed his plea from not guilty to guilty to a charge of aggravated robbery contrary to section 311 (1) (a) (b) of the Crimes Decree.

[2] The learned Magistrate accepted the guilty plea and convicted the Accused of the charge. The case was then transferred to the High

Court for sentencing pursuant to section 190 (1) of the Criminal Procedure Decree.

- [3] The facts are that on 9 June 2011, at around 1.00 pm, the victim, a 63-year old woman and her 4-year old granddaughter were confronted with two masked intruders in their home in the rural settlement of Naleba, Labasa. The intruders were armed with cane knife and screw driver. Despite efforts by the victim to lock the front door of the house, the intruders forced their way in and threatened the victim and her granddaughter with the cane knife and screw driver.
- [4] The intruders assaulted the victim, gagged her mouth and hands with masking tape and then ransacked the house. They took off with cash, jewellery and mobile phones to a total value of approximately \$14,000.
- [5] Following arrest, the Accused confessed to the robbery. About \$2,600 cash and three mobile phones have been recovered.
- [6] The victim was called by the State to give evidence of the impact of the robbery on her life. During her testimony, she broke down into tears when she had to re-collect the event. The impact of the crime on her was obvious. She was traumatized by the incident. She said the intruders placed the cane knife on her stomach and threatened her. The intruders also threatened her 4-year old granddaughter with a screwdriver when she started crying. The victim was assaulted and she had to remain in hospital for a few hours for observation. The victim said she cannot overcome her fear after the robbery. She

now locks herself inside her house, hoping she would be safe. In Court, the Accused apologized to the victim but she refused to accept his apology.

[7] The personal circumstances of the Accused are that he is 34 years old and married with children. He supports his family by farming. He pleaded guilty and says he regrets his actions. Although his guilty plea was made late, the Accused has saved court time and resources by avoiding a full trial. There is a partial recovery of the stolen items. At the time of the offending, the Accused was a first time offender. The Accused has been in custody on remand for five months. All these factors mitigate the offence.

[8] The aggravating factors are:

1. This was a home invasion robbery in a rural community.
2. The victim was a vulnerable old woman.
3. The robbery was committed in the presence of a child (the victim's 4-year granddaughter)
4. Substantial stolen items remain unrecovered.

[9] The maximum penalty for aggravated robbery is 20 years imprisonment. In the present case, the statutory aggravation was the involvement of two people and the use of an offensive weapon in the course of the robbery.

[10] In **State v Susu** [2010] FJHC 226.HAC054.2010; HAC055.2010; HAC056.2010 (2 July 2010), this Court identified 8 to 4 years imprisonment to be an appropriate range for armed gang robberies.

This range was identified by using sentences imposed in cases such as **State v. Basa** Criminal Appeal No. AAU0024 of 2005 (24 March 2006); **Wainiqolo v. The State** [2006] FJCA 70; AAU0027.2006 (24 November 2006) and **State v. Rokonabete & Ors.** [2008] FJHC 226; HAC118.2007 (15 September 2008).

- [11] Based on the statutory aggravation, I use 10 years as my starting point. I increase the sentence to 14 years to reflect the aggravating factors identified at paragraph [8]. I reduce the sentence by 4 years to reflect the mitigating factors identified at paragraph [7] and arrive at a final sentence of 10 years' imprisonment. In my judgment, a term of 10 years' imprisonment for an aggravated home invasion robbery fairly reflects the criminality involved. The Court must pass a sentence that denounces the crime committed by the Accused and protects the community.
- [12] Counsel for the Accused has urged the Court not to impose a non-parole period. Counsel submits that the Accused is a person with previous good character and this particular offending was out of character for him. Otherwise, the Accused has no propensity to use violence and he does not pose future threat to the community. He has got good prospect to reform himself. I accept these submissions.
- [13] The primary purpose of the sentence in this case is to deter the Accused and others from committing offences of violent nature. The secondary purpose of the sentence is the rehabilitation of the Accused.

[14] For the offence of aggravated robbery, I sentence the Accused to 10 years' imprisonment. I decline to impose a non-parole period.

Daniel Goundar
Judge

At Labasa
Friday 19 July 2013

Solicitors:

Office of the Director of Public Prosecutions, Labasa for State

Office of the Legal Aid Commission, Labasa for Accused