

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 153 OF 2013S

STATE

VS

- 1. KELEMEDI NAIDIRI**
- 2. SEMESA TIKOICINA**
- 3. SITIVENI BAINIVALU**

Counsels : **Mr. M. Vosawale for State**
Mr. H. Rabuku for all Accuseds

Hearings : **2nd and 6th September, 2013**

Sentencing : **20th September, 2013**

SENTENCING

1. On 2nd September 2013, in the presence of their counsel, the accuseds pleaded guilty, to the counts, in the following information:

FIRST COUNT
Statement of Offence

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

Particulars of Offence

KELEMEDI NAIDIRI and **SEMESA TIKOICINA** on the 28th day of March 2013, at Nasinu in the Central Division, stole 1 LG brand mobile phone valued at \$650.00, 4GB USB valued at \$27.00 and \$45.00 cash all to the total value of \$741.00 from **AMZAD ALI**.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

KELEMEDI NAIDIRI and **SEMESA TIKOICINA** on the 28th day of March 2013, at Nasinu in the Central Division, stole \$50.00 cash and 1 x Alcatel Mobile Phone valued at \$79.00 all to the total value of \$129.00 from **MITESH KRISHNA**.

THIRD COUNT

Statement of Offence

THEFT OF MOTOR VEHICLE: Contrary to section 291 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

KELEMEDI NAIDIRI and **SEMESA TIKOICINA** on the 28th day of March 2013, at Nasinu in the Central Division,

stole a taxi registration no. LT 1805 the property of
MITESH KRISHNA.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

KELEMEDI NAIDIRI and **SEMESA TIKOICINA** on the
13th day of March 2013, at Nasinu in the Central Division,
stole \$300.00 cash and an Alcatel Mobile Phone valued
\$39.00 all to the total value of \$339.00 from **RAJESH
CHANDRA.**

FIFTH COUNT

Statement of Offence

THEFT OF MOTOR VEHICLE: Contrary to section 291
(1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

KELEMEDI NAIDIRI and **SEMESA TIKOICINA** on the
13th day of March 2013, at Nasinu in the Central Division,
stole a taxi registration no. LT 7063 the property of
RAJESH CHANDRA.

SIXTH COUNT

Statement of Offence

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

Particulars of Offence

KELEMEDI NAIDIRI and **SEMESA TIKOICINA** and **SITIVENI BAINIVALU** on the 26th day of March 2013, at Nasinu in the Central Division stole \$300 cash, 1 x Alcatel Mobile Phone valued \$80.00 all to the value of \$380.00 from **NARDEEP KUMAR KARAN**.

SEVENTH COUNT

Statement of Offence

THEFT OF MOTOR VEHICLE: Contrary to section 291 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

KELEMEDI NAIDIRI and **SEMESA TIKOICINA** and **SITIVENI BAINIVALU** on the 26th day of March 2013, at Nasinu in the Central Division, stole a taxi registration no. LT 4962 the property of **NARDEEP KUMAR KARAN**.

2. On 6th September 2013, the prosecutor presented his summary of facts. Briefly the facts were as follows. On 13th March 2013, at about 10 am, Accused No. 1 and 2 hired the complainant's taxi from Khalsa Road and went to Colo-i-Suva. At the Crest Chicken farm road, both accused attacked the complainant, and stole \$339 worth of properties from him. They later threw the complainant on the roadside, stole the taxi for a joy ride and abandoned the same at Wainibokasi Hospital Nausori.
3. On 26th March 2013, at about 5.15 pm, all three accuseds hired the second complainant's taxi from Kanace Road, Valelevu. They wanted to go to Kalabu. They attacked the complainant at Kalabu, stole \$380 worth of properties from him and took his taxi for a joy ride. At Vatuwaqa, they forced the complainant out of the taxi, and stole the same. The taxi was later recovered.

4. On 28th March 2013, after 4 pm, Accused No. 1 and 2 robbed two taxi drivers. At 4 pm, they hired the third complainant's taxi from Kanace Road to Tovata. At Tovata, they attacked the complainant and stole \$129 worth of properties from him. They later stole the complainant's taxi and abandoned the same at Lami. On the same day at 6.15 pm, they did the same thing to the fourth complainant. They boarded his taxi from Walu Bay and went towards Cunningham Road. At Sakoca Road, they attacked the driver, and stole \$741 worth of properties from him. They later fled from the scene.
5. "Aggravated Robbery" carries a maximum sentence of 20 years imprisonment (section 311 (1) (a) of the Crimes Decree 2009). The tariff is a sentence between 4 to 10 years imprisonment. Where the force and threats used on the complainants are serious, and the resultant injuries are severe, a sentence at the higher end of the tariff is required: see Joji Seuseu and Another vs The State, Miscellaneous Case No. HAM 043 of 2003S, High Court, Suva; Peniasi Lee v The State, Criminal Appeal No. 3 of 1992, Fiji Court of Appeal; State v Maciu Tamani, HAC 90, 91 and 92 of 2011, High Court, Suva.
6. "Theft" carries a maximum sentence of 10 years imprisonment (section 291 (1) of the Crimes Decree 2009). The tariff is a sentence between 1 to 4 years imprisonment: see State v Maciu Tamani (supra). In any event, the overall sentence will depend on the aggravating and mitigating factors.
7. In this case, the aggravating factors were as follows:
 - (i) The three accuseds obviously choose to live outside the law, by robbing taxi drivers, to obtain some income. They deliberately choose not to work hard and earn their money the honest way;
 - (ii) They organized themselves as a group, and committed the offences. They had no regard whatsoever to the personal safety of the complainants, and had no regard to their property rights when they stole their properties;
 - (iii) By committing the crimes, they created fear in the community, especially the taxi drivers;

- (iv) They caused injuries to some of the complainants;
- (v) Some of the properties were not recovered;
- (vi) For Accused No. 1 and 2, they offended more than Accused No. 3.

8. The mitigating factors were as follows:

- (i) All the accused pleaded guilty, after the 5th call in the High Court, and therefore saved the court's time;
- (ii) As for Accused No. 2 and 3, both were first offenders;
- (iii) The complainants suffered minor injuries;
- (iv) Some of the properties were recovered.

9. I start with the serious offence of "Aggravated Robbery" in Count No. 1. I start with a sentence of 6 years imprisonment. I add 3 years for the aggravating factors, making a total of 9 years imprisonment. For the mitigating factors, I deduct 4 years for the guilty plea, leaving a balance of 5 years imprisonment. For mitigating factors number 8 (iii) and 8 (iv) and other mitigating factors, I deduct a further 1 year, leaving a balance of 4 years imprisonment. For Accused No. 2 and 3, being first offenders, I deduct a further 2 years from their sentence, leaving a balance for them of 2 years imprisonment each. The final sentence for each accused on Count No. 1 are as follows:

- (i) Accused No. 1 : 4 years imprisonment
- (ii) Accused No. 2 : 2 years imprisonment
- (iii) Accused No. 3 : 2 years imprisonment

10. I repeat the above process and sentences for Counts Nos. 2, 4 and 6.

11. On the theft charges, on each count, I sentence each accused to 12 months imprisonment each.

12. In summary, the sentences are as follows:

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|-------|-------------|---|---------------|---|----------------------|
| (i) | Count No. 1 | : | Accused No. 1 | : | 4 years imprisonment |
| | | : | Accused No. 2 | : | 2 years imprisonment |
| (ii) | Count No. 2 | : | Accused No. 1 | : | 4 years imprisonment |
| | | : | Accused No. 2 | : | 2 years imprisonment |
| (iii) | Count No. 3 | : | Accused No. 1 | : | 1 year imprisonment |
| | | : | Accused No. 2 | : | 1 year imprisonment |
| (iv) | Count No. 4 | : | Accused No. 1 | : | 4 years imprisonment |

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|-------|-------------|---|---------------|---|----------------------|
| | | : | Accused No. 2 | : | 2 years imprisonment |
| (v) | Count No. 5 | : | Accused No. 1 | : | 1 year imprisonment |
| | | : | Accused No. 2 | : | 1 year imprisonment |
| (vi) | Count No. 6 | : | Accused No. 1 | : | 4 years imprisonment |
| | | : | Accused No. 2 | : | 2 years imprisonment |
| | | : | Accused No. 3 | : | 2 years imprisonment |
| (vii) | Count No. 7 | : | Accused No. 1 | : | 1 year imprisonment |
| | | : | Accused No. 2 | : | 1 year imprisonment |
| | | : | Accused No. 3 | : | 1 year imprisonment |

13. Because of the “totality principles” of sentencing, I direct that all the above sentences are concurrent to each other, that is, a final total sentence, as follows:

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|-------|---------------|---|----------------------|
| (i) | Accused No. 1 | : | 4 years imprisonment |
| (ii) | Accused No. 2 | : | 2 years imprisonment |
| (iii) | Accused No. 3 | : | 2 years imprisonment |

14. Accused No. 1 is sentenced to 4 years imprisonment, with a non-parole period of 3 years imprisonment. Accused No. 2 and 3 are each sentence to 2 years imprisonment, with a non-parole period of 18 months imprisonment. I order so accordingly.

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JUDGE

Solicitor for the State	:	Office of the Director of Public Prosecutions, Suva.
Solicitor for all Accused	:	H. Rabuku, Barrister and Solicitor, Suva.