

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 426/ 2012

BETWEEN : **STATE**

AND : **RUPENI DIANI**

COUNSELS: **Mr M Vosawale for the State**
Ms N Nawasaitoga for the Accused

Date of Hearing : **15.11.2013**

Date of Sentence : **22.11.2013**

SENTENCE

[1] The Director of Public Prosecution had preferred the following charges against the accused above named.

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: Contrary to Section 313(1) (a) of the Crimes Decree No: 44 of 2009.

Particulars of Offence

RUPENI DIANI together with another, between the 19th day of March, 2011 and 21st day of March 2011, at Nausori in the Eastern Division, entered into the shop of DHARMENDRA PRASAD as a trespasser with intent to steal.

SECOND COUNT

Statement of Offence

THEFT: Contrary to Section 291(1) of the Crimes Decree No: 44 of 2009

Particulars of Offence

RUPENI DIANI together with another, between the 19th day of March, 2011 and 21st day of March 2011, at Nausori in the Eastern Division, stole 73 whales tooth valued at \$7,763.00, 2 laptops valued at \$300.00, assorted wrist watches valued at \$310.00, assorted shoes valued at \$310.00, 1 DVD player valued at \$30.00 and cash \$125.00, all to the total value of \$13,573.00 at the property of DHARMENDRA PRASAD.

- [2] When the Plea was taken on 10/04/2013 the accused had pleaded guilty to all the charges against him. Accepting the Plea to be unequivocal this court found him guilty and convicted him under Sections 313(1) (a) and 291 of Crimes Decree No: 44 of 2009.
- [3] State Counsel submitted the following summary of facts of which the accused admitted.

On 20th of March 2011 Rupeni Diani (hereinafter referred to as the 1st accused) was drinking with 3 other Itaukei male at the back of Hot Ba Motor Shop Store in Nausori when the accused decided to relieve himself. As the accused was relieving himself at the back yard of Roops Shop he noticed a gap at the back door of the said shop, the accused then made up his mind to break the back door of the shop.

The accused then went inside the shop with another male Itaukei where he stole 10 whales tooth (Tabua) valued at \$1000.00, 1 laptop valued at \$300.00, all to the total value of \$1300.00.

The accused was caution interviewed and admitted breaking into the shop and stealing 10 whales tooth (Tabua) and 1 laptop. Upon police investigations only \$1255.30 worth of items were recovered.

TARIFF

[4]

1. Aggravated Robbery attracts a maximum sentence of 17 years imprisonment Pursuant to Section 313 of the Crimes Decree.
2. Theft attracts a maximum sentence of 10 years imprisonment Pursuant to Section 291 of the Crimes Decree 2009.

[5] The Tariff for both aggravated robbery and theft was discussed in the recent case of **State v Jese Driu** High Court Criminal Case No: HAC 143/2010 where **Hon. Justice Nawana** stated the following remarks in paragraphs 3-5 of his sentencing remark.

[6] The tariff for the offence of burglary as founded on the basis of the provisions of the old Penal Code, was 18 months to 3 years in imprisonment (**State Vs Mikaele Buliruarua**) [2010] FJHC 384; (**Tomasi Vs State**) [2002] HAA 086/02. The tariff set out for the offences involving burglary and larceny under the Penal Code was 1-4 years of imprisonment. (**Cavuilagi v State** [2004] FJHC 92)

[7] In **Buliruarua's case** (supra) the tariff for the offence of Burglary under the Penal Code, was made applicable in relation to the offence of Burglary under the Decree.

[8] Justice Madigan made the following observation in **Ratusili v State** [2012] FJHC 1249; HAA011.2012 (1 August 2012).

- (i) for a first offence of simple theft the sentencing range should be between 2 and 9 months.
- (ii) any subsequent offence should attract a penalty of at least 9 months.
- (iii) Theft of large sums of money and theft in breach of trust, whether first offence or not can attract sentences of up to three years.
- (iv) regard should be the nature of relationship between the offender and the victim.
- (v) planned thefts will attract greater sentences than opportunistic theft.

- [9] I would accordingly adopt the same tariff for the offence of Burglary and of Theft under the Decree in this case.
- [10] The accused is 30 years of age. He is married with a three years old son.
- [11] 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.
- [12] 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”.
- [13] The objectives of sentencing, as found in Section 4(1) of the Decree, are as follows:
- (a) To punish offenders to an extent and 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.
- [14] 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 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;
- (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 that a court may consider under this Decree;
- (i) The offender's previous character;
- (j) The presence of any aggravating pre 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.

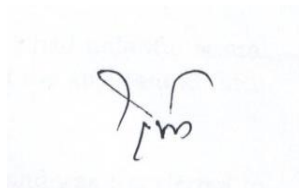
[15] Now I consider the aggravating factors:

- (a) Burglary committed with another,
- (b) Entered the shop by break open the back door,
- (c) \$1300.00 worth of items were stolen from the shop..

[16] Now I consider the mitigating circumstances:

- (a) The accused pleaded guilty before the commencement of the trial.
- (b) Accused was 28 years old young person at the time of committing the offence.
- (d) He co-operated with the Police and helped to recover stolen items.
- (e) \$1255.00 worth of items recovered by the police.
- (f) He is remorseful.
- (g) He has to support his wife and his three years old son.

- [17] Considering all aggravated and mitigating circumstances I impose sentences as follows.
- (a) For 1st count of Aggravated Burglary I impose 2 years imprisonment as starting point. I add one year for the aggravated factors and I deduct one year for mitigating factors.
 - (b) For 2nd count of Theft I impose 9 months Imprisonment as starting point and add one 6 months for aggravating factors and deduct 3 months for the mitigating factors.
- [18] I order all the sentences to run concurrently. In summary you are sentence to 2 years imprisonment.
- [19] Since the accused has been remanded in prison, he has undergone training in small business. With this course and training he has acquired knowledge in starting up his own business. Now he wishes to set up a small business in the village.
- [20] After his arrest he co-operated with the police and helped to recover \$1255.00 worth of items.
- [21] The prosecution and the defense counsels filed their sentencing submissions. Both counsels failed to mention why accused spent two years in the prison. Upon inquiry the Officer In charge of Suva Remand Prison informed this court that the accused was convicted by Magistrate's Court for Aggravated Robbery and he had just completed his sentence.
- [22] This clearly shows that the accused has a previous conviction.
- [23] Considering all factors and acting under Section 18 (1) of Sentencing and Penalty Decree, 2009, I impose 6 months as non-parole period.
- [24] 30 days to appeal.



P Kumararatnam

JUDGE

At Suva
22/11/2013