

default was ordered for the 3rd count. The sentence was restored. All sentences to run concurrently with non-parole period of 2 years.

5. This is an appeal against the sentence filed out of time after leave was granted in HAM 180 of 2013 on 19.8.2013.
6. The grounds of appeal against the sentence are:
 - (i) That the learned Magistrate failed to give a proper discount for his early Guilty plea.
 - (ii) That the starting point is excessively high.
 - (iii) That the sentence is harsh and excessive.
7. The learned Magistrate had taken starting points of 30 months for the 1st count and 12 months for the 2nd count.
8. The learned Magistrate had added 1 year for the aggravating factors. But he had failed to identify and mention those in the sentence.
9. Following had been identified as mitigating factors by the learned Magistrate:
 - (i) You are 25 years old,
 - (ii) Married with a child,
 - (iii) Your wife is 5 months pregnant,
 - (iv) You are the sole breadwinner of the family,
 - (v) You do not have a permanent employment,
 - (vi) You asked the court to consider your poor background,
 - (vii) You promised not to re-offend.

A period of 1 year was deducted for the mitigation.

10. The learned Magistrate had erred in not giving a separate discount for the guilty plea of the accused. Further he had failed to mention any aggravating factors. The fact that most of the stolen items were recovered was not considered as a mitigating factor by the learned Magistrate.
11. Acceptable tariff for the offence of Aggravated Burglary in **Tabeusi v State** HAC 95-113/2010 and **Mucunabitu v State** HAC 17 of 2010, the Court accepted between 18 months to 3 years as tariff.

12. Tariff for the offence of theft was discussed in several cases. In **Saukilagi v State** the Court accepted between 2 to 9 months as tariff for simple theft.

*“The tariff for simple larceny on first conviction is 2-9 months (**Ronald Vikash Singh v. State** HAA 035 of 2002) and on second conviction a sentence in excess of 9 months. In cases of the larceny of large amounts of money sentences of 1 ½ years imprisonment (**Isoa Codrokadroka v. State** Crim. App. HAA 67 of 2002) and 3 years imprisonment have been upheld by the High Court (**Sevanaia Via Koroi v. State** Crim. App. HAA 031 of 2001S). Much depends on the value of the money stolen, and the nature of the relationship between victim and the defendant. The method of stealing is also relevant.”*

13. In **Basa v State** [2006] FJCA 23; AAU 0024.2005 (24 March 2006), the Court of Appeal held that:

“The appellant suggests that the reference to the fact the plea of guilty was entered late means he was not given full credit for it. Whenever an accused person admits his guilt by pleading guilty, the court will give some credit for that as a clear demonstration of remorse. However, the amount that will be given is not fixed and will depend on the offence charged and the circumstances of each case. The maximum credit is likely to be given for offences such as rape and personal violence because it saves the victim having to relive the trauma in the witness box. At the other end of the scale, little or no credit may be given if the evidence is so overwhelming that the accused has no real option but to admit it. Where, as here, the accused has admitted the offence and the receipt of his share of the money, the delay in pleading guilty must reduce the value of the plea considerably.”

14. It was held in **Naikelekelevesi v State** [2008] FJCA 11; AAU 0061.2007 (27 June 2008) that *“Where there is a guilty plea, this should be discounted for separately from the mitigating factor in a case.”*

15. This background warrants this Court to exercise its powers in terms of Section 256 (3) of the Criminal Procedure Decree to quash the sentence passed by the Magistrate in respect of the 1st count and pass other sentence which reflects the gravity of the offence within the acceptable range of tariff.

16. Accordingly I take a starting point of 30 months. I add 6 months for the aggravating factors namely home invasion and total disregard to the property rights of others. I deduct 6 months for the mitigating factors of personal circumstances, recovery of items

and remorse. Further 10 months to be deducted for the Guilty plea. Final sentence is 20 months for the 1st count.

17. The sentence for the 2nd and 3rd counts are appropriate and within the tariff.
18. According to the totality principle sentences for 1st and 2nd counts to run concurrently.
19. Learned Magistrate had considered the Section 28 (4) of the Sentencing and Penalties Decree in respect of the sentence for the third count. According to Section 28 (5):

'Any order for an offender to serve a term of imprisonment under sub-section (4) must be served-

(a) Immediately; and
(b) Unless the court orders otherwise, consecutively on any other term of imprisonment previously imposed on the offender by that court or any other court.'
20. No exceptional circumstances to order the sentence for the 3rd count to run concurrently according to Section 28 (4) and (5) of the Sentencing and Penalties Decree. Further appellant is not a first offender and he has 9 previous convictions and 8 of those are for similar offences.
21. Appellant was in remand since 3.9.2012. Thus acting under Section 24 of the Sentencing and Penalties Decree, I order the sentence to run from 3.9.2012.
22. The final sentence is as follows:
 - (i) 1st count of Burglary - 20 months imprisonment
 - (ii) 2nd count of Theft - 12 months imprisonment
 - (iii) 3rd count of Breach of suspended sentence - Fine of \$100 default 10 days imprisonment, suspended sentence of CF 92/10 for 6 months restored.
23. Sentences for the 1st and 2nd counts to run concurrently from 3.9.2012 and the sentence for the 3rd count to run consecutively.
24. Appeal is allowed. Sentence is varied.

Sudharshana De Silva
JUDGE

**At Lautoka
27th March 2014**

**Solicitors : Appellant in Person
Office of the Director of Public Prosecution for Respondent**