

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO.: HAA 011 OF 2014

BETWEEN : VILIAME ROKINI

APPELLANT

AND : THE STATE

RESPONDENT

COUNSEL : Appellant in person
Ms. P. Low for Respondent

Date of Hearing : 23/06/2014

Date of Judgment : 26/06/2014

JUDGMENT

01. Viliame Rokini (hereinafter “the appellant”) was charged for one count of Aggravated Robbery contrary to section 313(1) of the Crimes Decree No: 44 of 2009 and one count of Theft contrary to section 291(1) of the Crimes Decree No: 44 of 2009. The Charges were filed at the Savusavu Magistrates’ Court on 23/05/2013.
02. The particulars of offences were:
 01. Viliame Rokini on the 15th day of April, 2013 at Savusavu in the Northern Division entered into the dwelling house of Rameshwar Chand as a trespasser with intent to steal.

02. Viliame Rokini on the 15th day of April, 2013 at Savusavu in the Northern Division stole a Philips brand deck valued at \$2500.00, a Red Door brand perfume valued at \$100.00 and \$200.00 cash, all to the total value of \$2800.00, the property of Rameshwar Lal.
03. On 06/11/2013, the charges in respect of Criminal Case No: 149/2013 was read out to the Appellant. He pleaded guilty to the charges and admitted the summary of facts.
04. On 28/01/2014, he was sentenced to a prison term of 24 months for each count run concurrent to each other.
05. Further, the learned Magistrate ordered the prison term of 24 months to run consecutive to his existing prison sentence. Non parole period was not set.
06. The Appellant filed his appeal grounds against then sentence on 14/02/2014. The grounds of appeal against the sentence are that;
- (i) The learned magistrate erred in not giving any weight to the guilty plea that in fact will save the witnesses and court's time and recourses.
 - (ii) The learned magistrate erred in the principle of totality where a reasonable sentence that is just and appropriate should be imposed.
 - (iii) To give effective to the disparity of sentence the learned magistrate should have given a sentence derived from equitable authority.
 - (iv) With respect to above, I believe with similar nature of offence to my previous cases fairly disregarded the consecutive sentence ordered by the learned magistrate.
07. Section 22 of Sentencing and Penalties Decree states as follows:
- “22 (1) Subject to sub section (2), every term of imprisonment imposed on a person by a court must, unless otherwise directed by the court, be served concurrently with any uncompleted sentence or sentence of imprisonment.
- (2) Sub section (1) does not apply to a term of imprisonment imposed-
- (a) In default of payment of a fine or sum of money;
 - (b) On a prisoner in respect of a prison offence or as a result of an escape from custody;
 - (c) On a habitual offender under Part III;

- (d) On any person for an offence committed while released on parole; or
- (e) On any person for an offence committed while released on bail in relation to another offence.

Appeal ground 01 Early Guilty Plea

08. As per the court record the learned magistrate has not awarded discount for his guilty plea. In **Daunabuna v State** [2009] FJCA 23; AAU120.2007 (4 December 2009), the Court of Appeal at para [16] stated:

“A plea of guilty is always a matter which must be taken into account when imposing sentence”.

09. The learned magistrate not awarding discount to Appellant’s guilty plea clearly made an error of principle.

Appeal ground 02 Totality Principle

10. In **Tuibau v State** [2008] FJCA 77; AAU0116.2007S (7th November 2008) the court of Appeal commented on the totality principle in that:

“the totality principle is a recognised principle of sentencing formulated to assist a sentence when sentencing on offender for multiple offences. A sentencer who impose consecutive sentence for a number of offences must always review the aggregate term and consider whether it is just and appropriate when the offences are looked at as a whole”

11. Upon perusal of the Sentence the learned Magistrate has considered the factors relating to the application of consecutive sentence and the totality principle before making orders for consecutive sentence. However section 22 of Sentencing and Penalties Decree 2009 does give discretion to the Magistrate to exercise the same in a judicial manner and this would require an enquiry into whether the circumstances warrant a consecutive sentence or a concurrent sentence.

Appeal ground 03 Equitable Authority

12. The relevant sentencing case authorities in this case can be found in the case of **Kamikamica v The State** Criminal Appeal HAC 156 of 2010 setting out the tariff of

the offence of Burglary, as founded on the basis of the provisions of the old Penal Code, was 18 months to 3 years imprisonment.

13. The tariff set for the offences involving Burglary and Larceny under Penal Code was 1-4 years in imprisonment. In the case of **State v Mikaele Buliruarua** [2010]FJHC 384, the tariff set under Penal Code was made applicable under Crimes Decree.
14. Considering above authorities, the sentence reflects equitable authorities which set out the tariff of both offences.

Appeal ground 04 Consecutive Sentence

15. The respondent submits that in the appellant's previous appeal case which is Criminal Appeal No: HAA 16-19 of 2013 the burglary and theft sentences were not reduced but were made concurrent to each other by the court. Hence respondent submits that the learned magistrate should have made the sentence in this case to run concurrent to other similar cases.
16. In this case the Appellant pleaded guilty to the charges thus saved the court time. The learned Magistrate did not award necessary discount for his guilty plea when he sentenced the Appellant.
17. I agree with learned Magistrate's sentence passed in this case. Considering Appellant's early guilty plea and other circumstances of the case I order the sentence passed in this case to run concurrent to his existing sentence.
18. The Appeal against the sentence is allowed subject to above variation.
19. Appellant has 30 days to appeal.



P Kumararatnam
JUDGE



At Labasa
26/06/2014