

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAA 13 OF 2015

BETWEEN : TEVITA UWAKIBAU

APPELLANT

AND : THE STATE

RESPONDENT

Counsel : Appellant in Person
Ms. Fatiaki J for the Respondent

Date of Hearing : 1st of April 2015
Date of Judgment : 16th of April 2015

JUDGMENT

1. This is an appeal filed by the Appellant against the sentence delivered by the learned Resident Magistrate of Sigatoka on 16th of December 2014. This appeal is founded on three grounds, that;

- i. The learned magistrate erred in law and facts by imposing invalid aggravating factors, thereby increasing the sentence,*

- ii. That the learned magistrate erred in law and facts by choosing a starting point that does not reflect the nature of offending,*
 - iii. That the learned magistrate erred in law and facts in arriving at a sentence that is harsh and excessive considering all the circumstances of offending,*
2. The appellant was charged in the Magistrate court for one count of Robbery contrary to section 310 (1) (a) of the Crimes Decree, which carries a maximum sentence of 15 years of imprisonment period. The prosecution has alleged that the appellant stole one gold chain with a gold pendant valued at \$ 7100 from Suruj Kumar. The appellant came towards the victim while she was crossing the road from the Sigatoka Bus stand towards MH supermarket. When he about to pass the victim, he grabbed the gold chain with the pendent and ran away.
3. The appellant has pleaded guilty on his own free will and convicted accordingly. Subsequently, having considered the summery of facts and mitigation submissions of the appellant, the learned Magistrate has sentence him for two (2) years, five (5) months and sixteen (16) days imprisonment period. He is not entitled for parole for a period of 20 months.
4. The Respondent filed their submission on 11th of March 2015, which was followed by the submissions of the appellant. Subsequently the appeal was set down for hearing on the 1st of April 2015, where both parties informed the court that they rely on the submissions which they have filed. Having considered the grounds of appeal and respective submissions of the parties, I now proceed to pronounce my judgment as follows.
5. For the convenient I first draw my attention to the second ground of appeal, where the appellant alleges that the learned magistrate erred in law and fact

by choosing a starting point that does not reflect the nature of offending. It appears that the learned magistrate has taken 4 years as the starting point in his sentencing. He has correctly and appropriately considered the sentencing practices and guidelines discussed in Sakiusa Basa v The State (Criminal Appeal AAU 24/ 2005), State v Mataisai Bulivou Susu (2010) FJHC 226,) and State v Rokonobete and others (2008) FJHC 226). Having considered these judicial precedents, he has reached to his conclusion of 4 years as the starting point.

6. Justice Chandra in Laisiasa Koroivuki v the State (Criminal Appeal AAU 0018 of 2010) has discussed the guiding principles for determining the starting point in sentencing, where his lordship observed that;

“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range”.

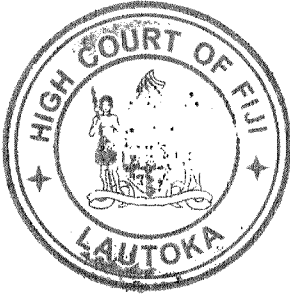
7. Justice Gounder in the State v Timoci Tikina (HAC 180 of 2010) has selected 4 years as the starting point for an offence of robbery involving an incident of street mugging. The incident involve in this instant case is also similar in nature to Timoci Tikina (supra). Having considered the sentencing remarks in State v Tuiyanawai and others (2005) FJHC 180, Justice Thurairaja in State v Solomoni Nakeli (HAC 29 of 2012 found the tariff for robbery is 4 – 7 years.


8. Upon consideration of the above discussed judicial precedents and factual back ground of this alleged incident, it is my opinion that the learned Magistrate has correctly selected the starting point as 4 years, which is within the accepted tariff limit. I accordingly find that the second ground of appeal has no merit.
9. The first ground of appeal is that the learned magistrate erred in law and facts by imposing invalid aggravating factors and increased the sentence accordingly. The appellant submitted that the learned magistrate has erroneously considered that the offence committed in broad daylight in Sigatoka Town in full view of victim's granddaughter aged 14 years and general public as an aggravating factor.
10. The Respondent in their submissions conceded that this ground has some merit as the victim is more vulnerable while in darkness than in the daylight.
11. Section 4 (2) (e) of the Sentencing and Penalties Decree states that the court has to consider the impact of the offence on the victim in the sentencing. I do concur with the submissions of the Respondent to the extent that the victim is vulnerable in darkness, but it is not possible to compare the vulnerability of a victim in daylight with the vulnerability in the darkness.
1. The offences in the nature of street mugging or grab and run in public places are committed on the victim when they least expect of such an attack on them. The sudden nature of such an attack on the victim, prevent them to promptly react or evade from the threat. Accordingly, I find that the victims of the offences of this nature are also vulnerable due to the sudden nature of the attack befalls on them when they least expect such an incident. In this instant case, the victim is 76 years old and was crossing the road from Sigatoka Bus Stand towards the MH supermarket at around 10.15 a.m when her gold chain

with the pendent was suddenly grabbed by the appellant. In view of the reasons discussed above, it is my opinion that the learned magistrate has not erred in considering the vulnerability of the victim when she was robbed in daylight in the presence of her teenage granddaughter. I accordingly, do not find any merits in the first ground of appeal.

2. The third ground of appeal is that the sentence is harsh and excessive. Justice Gounder in **State v Timoci Tikina (HAC 180 of 2010)** sentenced an accused for two years imprisonment period with 12 month of it to be served in prison and the remaining 12 months is suspended for 2 years for an offence of robbery where the accused has snatched the bag of the victim and ran away. Meanwhile Justice Thurairaja in **State v Solomoni Nakeli (HAC 29 of 2012)** sentenced an accused for 6 years of imprisonment period for robbery which involved with snatching a mobile phone and cash from a taxi driver.
3. The value of the stolen property in this case is \$ 7100. However, the appellant is a first offender and no visible force has used apart from grabbing it and run away. The stolen property has recovered at the scene. In view of these findings, it is my opinion that the sentence imposed by the learned magistrate is excessive. I accordingly quash the sentence delivered by the learned magistrate pursuant to section 256(3) of the Criminal Procedure Decree.
4. Having considered the reasons discussed above, I select 4 years as the starting point and add 6 months for the aggravating factors and reduce 30 months for mitigation to reach 2 years of imprisonment period. You have to serve first 12 months in prison and the remaining term is suspended for 2 years from the date of release from prison.

5. If you commit any crime during the suspended period of 2 years and found guilty, you are liable to be charge and prosecute for an offence in pursuant of section 28 of the Sentencing and Penalties Decree.




R. D. R. ThusharaRajasinghe
Judge

At Lautoka
16th of April 2015

Solicitors : Office of the Director of Public Prosecutions
Appellant in person