

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 227, 229 AND 231 OF 2014S

STATE

vs

JULIAN TUINASAKEA

Counsels : Mr. Y. Prasad for State
Ms. P. Lal for Accused
Hearing : 15 August, 2014
Sentence : 21 March, 2016

SENTENCE

1. In Suva High Court Criminal Case No. HAC 229 of 2014S, the accused was charged with the following in the Nasinu Magistrate Court, on 7 August 2014:

FIRST COUNT

Statement of Offence

BURGLARY: Contrary to Section 312 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JULIAN TUINASAKEA on the 14th day of December, 2013 at Nasinu in the Central Division, entered into the dwelling house of SANGITA NAIKAR, 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

JULIAN TUINASAKEA on the 14th day of December, 2013 at Nasinu in the Central Division, stole assorted gold jewelries valued at \$4500, assorted cosmetic valued at \$75.00, 1 x Nokia mobile phone valued at \$100.00 and 1 x wallet valued at \$20.00 and 1 x purse valued at \$48.00 with the total value of \$4743.00 the property of **SANGITA NAIKAR**.

2. It appeared he waived his right to counsel. The charge was read and explained to him. He elected a Magistrate Court trial. He pleaded guilty to both charges. The facts were read to him. They were as follows. The complainant left her home on 14 December 2013 to visit her neighbour. The accused later entered her house as a trespasser with intent to steal and did steal her properties as itemized in count no. 2.
3. The above facts were admitted by the accused and he was later found guilty as charged on both counts, and convicted accordingly. The accused made his plea in mitigation. He said, he was married with one child. He worked as a farmer, earning \$20 a day. He asked for forgiveness.
4. In Suva High Court Criminal Case No. HAC 231 of 2014S, the accused was charged with the following in the Nasinu Magistrate Court, on the same day, that is, 7 August 2014:

Statement of Offence

ROBBERY: Contrary to Section 310 (1) (a) (i) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JULIAN TUINASAKEA on the 1st day of January, 2014 at Kings Road, 9 miles Nasinu in the Central Division robbed **NIRMALA WATI** of one gold chain valued at \$1100.00, and one Mohar valued at \$400.00 to the total value of \$1500.00 and immediately before stealing uses force to the said **NIRMALA WATI**.

5. He appeared to waive his right to counsel. He elected a Magistrate Court trial. The charge was put to him and he pleaded guilty to the same. The facts were put to him. They were as follows. The complainant was sweeping the corridor of her shop on 1 January 2014. The accused suddenly approached her from the back, forcefully held her, grabbed her gold chain and mohar, valued at

\$1,500, and fled the crime scene. The accused admitted the above facts, was found guilty as charged and convicted accordingly.

6. In Suva High Court Criminal Case No. HAC 227 of 2014S, the accused was charged with the following in the Nasinu Magistrate Court, on 7 August 2014:

Statement of Offence

ROBBERY: Contrary to Section 310 (1)(a)(i) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JULIAN TUINASAKEA on the 30th day of July, 2014 at Kings Road, 9 miles Nasinu in the Central Division, stole cash of \$45.00 from **LOSENA VOKABI** and immediately before stealing he used force to the said **LOSENA VOKABI**.

7. He appeared to waive his right to counsel. He elected a Magistrate Court trial. The charge was put to him and he pleaded guilty to the same. The facts were as follows. The accused and the complainant were at Wainibuku on 30 July 2014. They had an argument. The accused later punched the complainant, stole \$45 from her, and fled the crime scene. The accused admitted the above, and he was convicted as charged.
8. The Nasinu Magistrate Court sent the above three cases to the High Court for sentencing. They are of the view that given the circumstances surrounding the above three cases, a greater punishment ought to be imposed.
9. In HAC 229/14, the accused was convicted of burglary (count no. 1) and theft (count no. 2). Burglary carries a maximum sentence of 13 years imprisonment, while theft carries a maximum sentence of 10 years imprisonment. The tariff for burglary is a sentence between 18 months to 3 years imprisonment, while for theft, the tariff is between 9 months to 3 years, depending on the amount stolen.
10. In HAC 227 and 231 of 2014S, the accused was convicted of robbery, which carries a maximum sentence of 15 years imprisonment. The tariff for robbery would be a sentence between 5 to 10 years imprisonment. However, the actual sentence will depend on the aggravating and mitigating factors.
11. In this case, I will deal with the cases together, and the aggravating factors are as follows:
- (i) Between 14 December 2013 and 30 July 2014, you committed burglary and theft, and two robbery offences on three female complainants in the Nasinu area. Obviously, you had no respect for the complainant's rights to their privacy and their property rights.

- (ii) By offending against the complainants, you had no regards to their rights to personal safety and their right to live a peaceful life.
- (iii) On the two robbery charges, you had no regard to the complainants' right not to be physically violated.

12. The mitigating factors are as follows:

- (i) At the age of 26, this is your first offence.
- (ii) You pleaded guilty to the offences, and as a result, saved the court's time.
- (iii) You have been remanded in custody since 7 August 2014, that is, 1 year 7 months 14 days ago.

13. On the burglary charge (HAC 229/14: Count no. 1), I start with a sentence of 2 years imprisonment. I add 2 years for the aggravating factors, making a total of 4 years. For time already served while remanded in custody, I deduct 1 year 8 months, leaving a balance of 2 years 4 months. For pleading guilty, I deduct 1 year, leaving a balance of 1 year 4 months. For being a first offender, I deduct 4 months leaving a balance of 1 year.

14. On the theft charge (HAC 229/14 : count no. 2), I sentence the accused to 12 months imprisonment.

15. On the robbery charge (HAC 231/14), I start with 5 years imprisonment. I add 2 years for the aggravating factors, making a total of 7 years imprisonment. For time already served while remanded in custody, I deduct 1 year 8 months, leaving a balance of 5 years 4 months. For pleading guilty at the first opportunity, I deduct 2 years 4 months, leaving a balance of 3 years imprisonment. For being a first offender, I deduct 12 months, leaving a balance of 2 years imprisonment.

16. I repeat the above process and sentence for the robbery charge in HAC 227/14.

17. The summary of your sentence are as follows:

- | | | | | | |
|-------|-------------|---|-----------------------|---|----------------------|
| (i) | Count No. 1 | : | Burglary (HAC 229/14) | : | 1 year imprisonment |
| (ii) | Count No. 2 | : | Theft (HAC 229/14) | : | 1 year imprisonment |
| (iii) | Robbery | : | HAC 231/14 | : | 2 years imprisonment |
| (iv) | Robbery | : | HAC 227/14 | : | 2 years imprisonment |

18. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, that is, a final sentence of 2 years imprisonment.

19. Mr. Julian Tuinasakea, for the offences you committed in HAC 227, 229 and 231 of 2014S, I now sentence you to 2 years imprisonment, with a non-parole period of 12 months, effective forthwith.



Salesi Tempo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused : **Legal Aid Commission, Suva.**