

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 145 OF 2014S

STATE

vs

ERONI QIO

Counsels : Ms. S. Navia and Ms. S. Lodhia for State
Mr. I. Romanu for Accused
Hearings : 10 and 11 May, 2016
Summing Up : 13 May, 2016
Judgment : 13 May, 2016
Sentence : 20 May, 2016

SENTENCE

1. In a judgment delivered on 13 May 2016, the court found you guilty and convicted you on the following information:

Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311 (1)(a) of the Crimes
Decree No. 44 of 2009.

Particulars of Offence

ERONI QIO with others on the 11th day of March 2014 at Mulomulo Place, Nakasi in the Central Division, stole cash in the sum of \$4,110.00, 1 Ripcurl bag valued at \$105.00, 1 pair of canvas shoes valued at \$100.00, 5 x 22 carat gold chain valued at \$3,000.00, 3 pairs of gold earrings valued at \$2,000.00, 1 x bracelet valued at \$2,000.00, 10 x gold rings valued at \$3,000.00, all to the total value of \$14,315.00 from **NISHA SHAH** and immediately before stealing used force on the said **NISHA SHAH**.

2. The brief facts of the case were as follows. You and three others, while masked and armed with pinch bars and cane knives, broke into the complainant's house on 11 March 2014 at 4 am in the morning. The complainant and her family were fast asleep in their house. You and your friends repeatedly punched the complainant's father, who was 75 years old at the time, and threatened her mother in her bedroom.
3. You and your friends then ransacked the complainant's house, and stole the items mentioned in the information. You also threatened the complainant by putting a knife to her head, during the robbery. You and your friends later fled from the crime scene. You and your friends cut the complainant's boundary fence to aid your escape.
4. "Aggravated Robbery", as a criminal offence, is viewed seriously by the law-makers of this country, and it carried a maximum sentence of 20 years imprisonment. For a spate of robberies, the tariff is a sentence between 10 to 16 years imprisonment: see **Livai Nawalu v The State**, Criminal Appeal No. CAV 0012 of 2012, Supreme Court of Fiji. With a single case of aggravated robbery, the tariff is now a sentence between 8 to 16 years imprisonment: see **Wallace Wise v The State**, Criminal Appeal No. CAV 0004 of 2015, Supreme Court of Fiji. The actual sentence will depend on the aggravating and mitigating factors.
5. In **Wallace Wise v The State** (supra), the Hon. Chief Justice A. Gates said as follows, "...It is our duty to make clear these type of offences will be severely disapproved by the courts and be met with appropriately heavy terms of imprisonment. It is a fundamental requirement of a harmonious civilized and secure society that its inhabitants can sleep safely in their beds without fear of armed and violent intruders..."
6. Furthermore, the Hon. Chief Justice, in the above case, commented as follows:

“...Sentences will be enhanced where additional aggravating factors are also present. Examples would be:

- (i) offence committed during a home invasion.
- (ii) In the middle of the night when victims might be at home asleep.
- (iii) carried out with premeditation, or some planning.
- (iv) Committed with frightening circumstances, such as the smashing of windows, damage to the house or property, or the robbers being masked.
- (v) The weapons in their possession were used and inflicted injuries to the occupants or anyone else in their way
- (vi) Injuries were caused which required hospital treatment, stitching and the like, or which come close to being serious as here where the knife entered the skin very close to the eye.
- (vii) the victims frightened were elderly or vulnerable persons such as small children...”

7. The aggravating factors in this case were as follows:

- (i) This offence was a home invasion offence,
- (ii) The offence was committed against the complainant's family when they were fast asleep in their house at 4 am in the morning on 11 March 2014;
- (iii) Obviously the offence was carried out with premeditation and planning;
- (iv) The offence was committed in frightening circumstance with the accused and his 3 friends being masked, they cut the boundary fence and broke down the front door;
- (v) They were armed with pinch bars and cane knives, and these were used on the complainant's family;
- (vi) The complainant's father, who was 75 years old at the time, suffered swelling and laceration to the face, pain and tenderness to the right ear, which also bled as a result of the robbers punching and assaulting him at the time;
- (vii) The victims frightened in this offending included the complainant's elderly parents, who were in their 70's, and her young daughter.

8. The mitigating factor is as follows:

- (i) In your case, I can only find one mitigating factor, and that was you had been remanded in custody since 7 May 2014, that is, 2 years 13 days ago.

9. During the sentence hearing, the prosecutor asked that you be treated as a habitual offender, under Part III of the Sentencing and Penalties Decree 2009. Part III above involved offenders engaged in offences involving robbery, housebreaking and violence. Your offending was one involving robbery, housebreaking and violence (Section 10 (b) and (c) of the Sentencing and Penalties Decree 2009).

10. Section 11 and 12 of the Sentencing and Penalties Decree 2009, reads as follows:

“...11(1) A judge may determine that an offender is a habitual offender for the purposes of this Part –

- (a) when sentencing the offender for an offence or offences of the nature described in section 10;**
 - (b) having regard to the offender’s previous convictions for offences of a like nature committed inside or outside Fiji; and**
 - (c) if the court is satisfied that the offender constitutes a threat to the community**
- (2) The powers under this Part may be exercised by the Court of Appeal and the Supreme Court when hearing an appeal against sentence.**

12. Where any court is proposing to impose a sentence of imprisonment on a person who has been determined to be a habitual offender under section 11 for an offence of a nature stated in section 10, the court, in determining the length of the sentence –

- (a) shall regard the protection of the community from the offender as the principal purpose for which the sentence is imposed; and**
- (b) may, in order to achieve that purpose, impose a sentence longer than that which is proportionate to the gravity of the offence...”**

11. Section 11(1) (b) of the Sentencing and Penalties Decree 2009 authorises the court to look at your previous conviction in order to determine whether or not you should be classified as a “habitual offender” for the purpose of sentencing. Your previous convictions in the last 10 years had been shown to you by the prosecutor and you had admitted the same. I will not consider any conviction that may be more than 10 years old. On 27 November 2007, you were convicted and sentenced for two “Robbery with Violence” offences, each sentence was 3 years imprisonment. The sentences were made concurrent to each other.

12. On 31 March 2008, you were convicted and sentenced on your third “Robbery with Violence”, been sentenced to 5 ½ years imprisonment. Given that the present offence was “Aggravated

Robbery”, and it involved robbery, house breaking and violence, and that you had three previous convictions for “Robbery with Violence”, which makes you a threat to the community, I determine you to be a habitual offender, pursuant to Section 11(1) of the Sentencing and Penalties Decree 2009.

13. The protection of the community from you will be the principal purpose of my sentencing you. I start with a sentence of 14 years imprisonment. I add 4 years 13 days for the aggravating factors, making a total of 18 years 13 days imprisonment. For the mitigating factors, I deduct 2 years 13 days, leaving a balance of 16 years imprisonment.
14. Mr. Eroni Qio, for the “Aggravating Robbery” that you committed on the Shah family on 11 March 2014 at 4 am in the morning, at Nakasi in the Central Division, I sentence you to 16 years imprisonment, with a non-parole period of 15 years, effective forthwith.
15. In accordance with Section 4(1) of the Sentencing and Penalties Decree 2009, the above sentence is to punish you in a manner that is just in all the circumstances, to protect the community from you, to deter other would-be offenders and to signify that the court and the community denounce these types of offences. I order so accordingly.




Salesi Temo
JUDGE

Solicitor for the State
Solicitor for the Accused

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Office of the Director of Public Prosecution, Suva
Tuifagalele Law, Barrister and Solicitor, Suva.