

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 243 OF 2014S

STATE

VS

DESHWAR KISHORE DUTT

Counsels : Mr. S. Shah and Mr. E. Samisoni for State
Ms. S. Vaniqi for Accused
Hearings : 19, 20, 21, 24 and 25 April, 2017
Summing Up : 26 April, 2017
Judgment : 27 April, 2017
Sentence : 28 April, 2017

SENTENCE

1. Yesterday, prior to the judgment been given in this case, the court was advised that the accused had escaped from the custody of police officers, while awaiting judgment. Section 14(2)(h)(i) of Fiji's 2013 Constitution reads as follows:

"...Every person charged with an offence has the right to be present when being tried, unless the court is satisfied that the person has been served with a summon or similar process requiring his or her attendance at the trial, and has chosen not to attend..."
2. In this case, the accused had a history of not attending court when required. Ever since 29 August 2016, he had not attended court. Enquiries were made of his non-attendance. On 28 October 2016, a bench warrant was issued against him. His trial was supposed to start on 18

April 2017. However, the court was advised he had been arrested at Nadi and was in police custody. Trial was adjourned to 19 April 2017 to enable his attendance.

3. On 19 April 2017, his trial started and he was remanded in custody. The trial went on from 19, 20, 21, 24, 25 and 26 April 2017. As mentioned above, prior to judgment, he absconded from court. Pursuant to section 14(2)(h)(i) of Fiji's 2013 Constitution, the court deemed his actions as a desire not to attend his trial and ruled that he be tried in absentia. Judgment was accordingly delivered yesterday in absentia. He was found guilty and convicted on the following counts in the following information:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

DESHWAR KISHORE DUTT with others on the 20th day of July 2014 at Suva in the Central Division robbed **KISHORE KUMAR** and stole cash totaling \$108,000.00, HP Brand Laptop valued at \$1,800.00, assorted jewelleries valued at \$5,000.00, Lumix brand camera valued at \$600.00, Fuji Film brand camera valued at \$300.00, Phone in box valued at \$449.00, a Nokia brand mobile phone valued at \$49.00, a Casio brand wrist watch valued at \$100.00, a Binoculars valued at \$400.00, a rice cooker valued at \$100.00, a sandwich maker valued at \$50.00, a Toaster valued at \$50.00, assorted clothes valued at \$200.00 and vehicle registration number FK 102 valued at \$45,000.00 all to the total value of \$162,098.00 the properties of the said **KISHORE KUMAR**.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

DESHWAR KISHORE DUTT with others on the 20th day of July 2014 at Suva in the Central Division robbed **DHARMENDRA RAJ** and stole cash totaling \$3,600.00 and assorted clothes valued at \$165.00 all to the total value of \$3,765.00 the properties of the said **DHARMENDRA RAJ**.

4. The facts in this case was very disturbing. It was a home invasion type “aggravated robbery”. The accused was 30 years old, married to one Shiwani Vikashni (DW2) and they had two young sons. The couple live at Waituri, Nausori. Ten years prior to the offending, the accused had 17 previous convictions. Eight were for driving types offences, four for burglaries and other type of offences. On 16 July 2014, he met a group of friends. They planned to rob the complainants in this case. They assigned him and he agreed to be the getaway driver.
5. On 19 July 2014, the accused again met his friends at Maqbool Road Nadera. Later they walked to the complainant’s house. They were all dressed in black and armed with pinch bars. They waited near the complainant’s house until it was 2am on 20 July 2014. They went and climbed over the complainant’s fence, broke through the front door, and entered the house. They were four robbers, including the accused. They attacked Kishore Kumar (PW3) and Dharmendra Raj (PW2) with a pinch bar, and both were seriously injured. They repeatedly punched Shaleshni Devi (PW1) and threw her 3 year old baby against the bedroom wall. They ransacked the house and stole the items mentioned in the information. They later fled in PW3’s pajero, which was driven by the accused.
6. “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.
7. 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...”

8. 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...”

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

- (i) These offences were home invasion offences;
- (ii) The offences were carried out while the complainants were asleep at 2.00am on 20 July 2014;
- (iii) The offences were carried out with pre-planning by the accused and his friends;
- (iv) The offences were committed in frightening circumstances where they broke open the front door, with four masked men dressed in black bursting into the house;
- (v) They were armed with pinch bars and cane knife and the same were used on PW2 and PW3;
- (vi) All the complainants were injured. PW3 was hit with a pinch bar on the head and he was severely injured. PW2 was also attacked with a pinch bar and cane knife and was knocked unconscious in a pool of blood. PW1, a woman, was repeatedly punched by the robbers. PW1's 3 year old baby was thrown against the bedroom wall.
- (vii) The victims frightened were a mother and 3 year old child.

10. The mitigating factors is as follows:

- (i) In your case, I can only find one mitigating factor, and that was you had been remanded in custody for approximately 8 months, that is, from 22 August 2014 to 20 April 2015. You were sentenced to 1 ½ years imprisonment on 20 April 2015 and since your release from prison, you had not attended court until 19 April 2017. Then you were remanded in custody for 9 days.
11. On count no. 1, I start with 11 years imprisonment. For the aggravating factors, I add 5 years, making a total of 16 years. I deduct 1 year for time spent in custody while in remand, leaving a balance of 15 years imprisonment.
12. For count no. 2, I repeat the above process and sentence.
13. In summary, your sentence are as follows:
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|------|-------------|---|--------------------|---|-----------------------|
| (i) | Count No. 1 | : | Aggravated robbery | : | 15 years imprisonment |
| (ii) | Count No. 2 | : | Aggravated robbery | : | 15 years imprisonment |
14. Because of the totality principle of sentencing, I direct that the above sentence be concurrent to each other, making a final sentence of 15 years imprisonment.
15. Because you have absconded from court, the above 15 years imprisonment will commence on the date you are arrested. You will serve a non-parole period of 14 years imprisonment.
16. Pursuant to section 4(1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner that is just in all the circumstances, to protect the community, to deter other would-be offenders and to signify that the court and community denounce what you did to the complainants on 20 July 2014. Your role as getaway driver was just as bad as the ones who attacked the complaints in this case.
17. You have 30 days to appeal to the Court of Appeal as from today.



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JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Vaniqi Lawyers, Suva.**