

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 332 of 2018

BETWEEN: **STATE**

PROSECUTION

A N D: **1. JOVILISI GONEKALOU**
2. ILAI TUINASAVUSAVU

ACCUSED PERSONS

Counsel : Mr. Z. Zunaid for the State
 : Ms. L. David for 1st Accused

Date of Sentence : 22nd October 2018

SENTENCE

1. Mr. Jovilisi Gonekalou, you have been charged with another for one count of Attempted Aggravated Robbery, contrary to Section 44 (1) and 311 (1) (a) of the Crimes Act, which carries a maximum penalty of twenty (20) years imprisonment. The particulars of offence are that:

Count 1

Statement of Offence

ATTEMPTED AGGRAVATED ROBBERY: *Contrary to Section 44 (1) and 311 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

*JOVILISI GONEKALOU & ILAI TUINASAVUSAVU with others, on the 19th day of August 2018 at Nasinu in the Central Division, in company of each other attempted to rob one **GULSER ALI**.*

2. You pleaded guilty for this offence on the 15th of October 2018. Satisfied by the fact that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I now convict you for the said offence.
3. According to the summary of fact, which you admitted in open court, that you and three other accomplices came behind the complainant when he was walking with his nine years old daughter along Kalokalo Crescent on the 19th of August 2018. One of your accomplices then started to talk to the complainant. At that point of time, you wrapped the complainant from behind, while other accomplices started to search the pocket of the complainant to steal money. The complainant managed to free himself and the passing vehicles had started to honk to alert the public. With that, you and the three accomplices fled the scene.
4. This is a case of attempting to rob an individual, using violence force, while he was walking along a public road. Crimes of this nature are prevalent, and have created insecurity and vulnerability in the society. Aggravated Robbery is the worst and serious form of property crime in this jurisdiction, which carries a maximum penalty of twenty years imprisonment. Therefore, I find this is a serious offence.
5. In view of the seriousness of this offence, it is my opinion that such offenders must be dealt with severe and harsh punishment. Therefore, the purpose of this sentence is founded on the principle of deterrence and protection of community.

6. Goundar J in State v Vatunicoko [2018] FJHC 885; HAC210.2018 (21 September 2018)

found that:

"In assessing the objective seriousness of your offending, I am mindful that aggravated robbery in the company of others is punishable by 20 years' imprisonment. The tariff depends on the nature and circumstances of the robbery. The tariff is as follows:

- i) Street mugging: 18 months to 5 years' imprisonment (Raqauqau v State [2008] FJCA 34; AAU0100.2007 (4 August 2008).*
- ii) Home invasion: 8 – 16 years' imprisonment (Wise v State [2015] FJSC 7; CAV0004.2015 (24 April 2015).*
- iii) A spate of robberies: 10 -16 years' imprisonment (Nawalu v State [2013] FJSC 11; CAV0012.12 (28 August 2013)."*

7. Crimes of this nature have the effect of endangering innocent public and their freedom of life. You and your accomplices have found an opportunity when the complainant was walking along the road with his daughter. You then grabbed him from behind using substantial amount of force. Certainly, the impact of this offence on the complainant must be a horrific and frustrating experience. Specially, he was suddenly grabbed from his behind. Therefore, I find the level of harm and culpability in this offending are substantially high.
8. The complainant is 62 years old. You have committed this offence in the presence of nine year old daughter of the complainant. I find these grounds as aggravating factors.
9. You are a 18 years old young first offender. Therefore, you are entitled for a substantial discount for your previous good character.

10. You have pleaded guilty at the first available opportunity. Moreover, you have admitted that you committed this crime during your caution interview and maintained that position until you pleaded guilty, which demonstrates your remorse and repent in committing this crime. Therefore, you are entitled for a substantial discount for the early plea of guilty and remorse.
11. Having taken into consideration the above discussed factors, I sentence you to a period of four (4) years imprisonment for this offence of attempted Aggravated Robbery as charged.
12. Having considered the seriousness of this crime, the purpose of this sentence, your age, and opportunities for rehabilitation, I find one (1) year of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of one (1) year pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

13. Accordingly, I sentence you to a **period of four (4) years imprisonment** for the offence as charged. Moreover, you are not eligible for any parole for a period of **one (1) year** pursuant to Section 18 of the Sentencing and Penalties Act.

Actual Period of Sentence

14. You have been in remand custody for this case for a period of fifty-eight (58) days as you were not granted bail by the Court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of two (2) months as a period of imprisonment that have already been served by you.
15. Accordingly, your actual sentencing period is **three (3) years and ten (10) months** of imprisonment period, with **ten (10) months** of non-parole period.

16. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
22nd October 2018

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Defence.