

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 231 of 2018

[CRIMINAL JURISDICTION]

STATE

V

USAIA TIKOICINA  
SERUPEPELI DRAUNIMASI

Counsel : Ms. S. Tivao for State  
Ms. L. Ratidara for Accused

Hearing on : 22 October 2018

Sentenced on : 16 November 2018

SENTENCE

1. Serupepeli Draunimasi, you stand convicted of the offence of aggravated robbery contrary to section 311 (1) of the Crimes Act 2009 upon your plea of guilty. Your charge reads thus;

*Statement of Offence*

**Aggravated Robbery:** contrary to section 311 (1)(a) of the Crimes Act of 2009.

*Particulars of Offence*

**USAIA TIKOICINA** and **SERUPEPELI DRAUNIMASI** in the company of each other on the 2<sup>nd</sup> June 2018 at Suva in the Central Division, robbed Elvin Sumit Sen of his Samsung Galaxy phone valued at \$300, house keys and \$10 cash, all to

2. You have admitted the following facts;

**Background:**

- *The Complainant is one Elvin Sumit Singh, 23 year old construction worker of Raiwaqa.*
- *The Accused is one Serupepeli Draunimasi, 23 year old labourer, of Jittu Estate, Raiwaqa.*

**Incident:**

- 1 *At around 3am on the 2<sup>nd</sup> of June 2018 the complainant who was traveling in a taxi disembarked the same at Shamilar Street roundabout. Whilst he approached the New World Supermarket bakery on foot, he was attacked from behind by the Accused and Usaia.*
2. *Upon being attacked, the complainant was assaulted by Usaia while the accused searched the pockets of the complainant.*
3. *The complainant as a result of the above received various injuries which are reflected in his Medical Report which was prepared by a Medical Doctor on the 2<sup>nd</sup> of June 2018.*
  - *A copy of the complainant's Medical Report is attached as Annexure 1.*
4. *The Accused and Usaia searched the complainant's pockets and stole from him his Samsung Galaxy Mobile Phone worth \$300.00 and \$10.00 cash.*
5. *The Accused and Usaia fled the scene by foot. Not long after the confrontation Police Officers came to the complainant's aid. The complainant described to the Officers the physical appearance of his assailants and the type of clothing they were wearing.*
6. *The Officers went in search of the Accused and Usaia. They were able to locate and arrest them. Accused and Usaia were found at Raiwasa Street along Ratu Dovi Road. They were both searched and found on them was a Samsung Galaxy Mobile Phone and \$10.00 cash.*
7. *The Accused and Usaia were thereafter arrested and escorted to the Grantham Police Post at Raiwaqa.*

8. *The Accused and Usaia acted together with the common intention to rob the complainant of his property.*
  9. *On the 3<sup>rd</sup> of June 2018 the Accused was interviewed under caution in the i-taukei language by WDC 3714 Lorini Chan at the Nabua Police Station where he voluntarily admitted to the allegation that he and Usaia on the 2<sup>nd</sup> of June 2018 at around 3am at Shamilar Street assaulted and had robbed the complainant of his mobile phone and cash.*
  10. *According to the Accused in his Record of Interview, he was sitting at the verandah of the bakery located at the New World Supermarket when he saw Usaia punch the complainant. Usaia told him to take from the complainant the things he had in his pocket. He then put his hand in the complainant's pocket and took from him a Samsung Galaxy Mobile Phone, 1 x packet BH(10) cigarettes and \$10.00 cash.*
    - *A copy of the Accused's RO1 is attached as Annexure 2.*
  11. *Full recoveries were made.*
3. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years imprisonment. The tariff for this offence is an imprisonment term between 8 to 16 years. [*Wallace Wise v The State*, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015)]
  4. Explaining the aggravating circumstances of the offence of robbery with violence under the now repealed Penal Code Goundar J said in the case of *State V Rokonabete* [2008] FJHC 226 that;

*"The dominant factor in assessing seriousness for any types of robbery is the degree of force used or threatened. The degree of injury to the victim or the nature of and duration of threats are also relevant in assessing the seriousness of an offence of robbery with violence."*
  5. Section 4(1) of the Sentencing and Penalties Act outlines the following as the purposes of which a sentence should be imposed;

- (a) to punish offenders to an extent and in a manner which is just in all the circumstances;
- (b) to protect the community from offenders;
- (c) to deter offenders or other persons from committing offences of the same or similar nature;
- (d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;
- (e) to signify that the court and the community denounce the commission of such offences; or
- (f) any combination of these purposes.

6. In sentencing you, I consider it necessary to signify that this court and the community denounce your conduct. However, I would also bear in mind the fact that you are a young first offender and that therefore, I should facilitate rehabilitation.
7. I would select 8 years imprisonment as the starting point of your sentence.
8. I would take into account the following as aggravating circumstances in order to add 02 years to your sentence;
  - a) the nature of force used on the victim by the co-accused when you teamed up with; and
  - b) the fact that the offence was committed around 3.00am in the morning.
9. You are 23 years old I consider the following as mitigating factors to deduct 03 years of your sentence;
  - a) You are a young first offender;
  - b) You are remorseful; and
  - c) You cooperated with the police.

10. Now your sentence is an imprisonment term of 07 years. You pleaded guilty to the charge on the first day your plea was taken. By pleading guilty at the earliest opportunity, you have saved this court's time. In view of your early guilty plea I would grant you a discount of 02 years and 04 months which is equivalent to one-third of your sentence.
11. Accordingly, I sentence you to an imprisonment term of 04 years and 08 months. I order that you are not eligible to be released on parole until you serve 03 years of your sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
12. As I have applied the two-tiered approach to determine your sentence, the above reasoning process that led to your final sentence clearly indicate why your final sentence is below the established tariff.
13. Section 24 of the Sentencing and the Penalties Act reads thus;  
  
*"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*
14. It is submitted that you are in custody in view of this matter since 02/06/18. Accordingly, you have spent a period of 05 months and 14 days in custody. The period you were in custody in relation to this case shall be regarded as a period of imprisonment already served by you in view of the provisions of section 24 of the Sentencing and Penalties Act. I hold that the period that should be regarded as served is 06 months.


15. In the result, you are sentenced to an imprisonment term of 04 years and 08 months with a non-parole period of 03 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 04 years and 02 months

Non-parole period - 02 years and 06 months

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



  
Vincent S. Perera  
JUDGE

Solicitors;

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