

FIRST COUNT

Statement of Offence

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

Particulars of Offence

FILIBE NAIVALUBASAGA & Others on the 17th of June, 2018 at Nasinu in the Central Division, attempted to rob RONALD KUMAR and RITIK KUMAR and immediately before such attempt used force by restraining the said RONALD KUMAR and RITIK KUMAR.

2. You pleaded guilty for this offence on the 9th of November 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 other accomplices came to the complainants while they was getting into their car. One of your accomplices got hold of one of the complainants from his back, while you seached his pocket for money. The complainant managed to get himself free. You and your accomplices then pushed him forward. The complainant knelt down on the ground. You and accomplices then came on top of him and tried to take his mobile phone and the wallet. At this point of time, the shop owners of the nearby shop came to assist the complainant. You and your accomplices then ran away from the scene.

4. This is a case of attempting to rob individuals, using violence force, while they were at public place in the early morning of 16th of June 2018. 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:

Street mugging: 18 months to 5 years’ imprisonment (Raqaugau v State [2008] FJCA 34; AAU0100.2007 (4 August 2008).

Home invasion: 8 – 16 years’ imprisonment (Wise v State [2015] FJS 7; CAV0004.2015 (24 April 2015).

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 complainants were getting into their car at around 12.45 a.m., on the 16th of June 2018. You have used substantive amount of force in committing the offence. Certainly, the impact of this offence on the complainant must be a frustrating experience. Specially, he was suddenly grabbed from his behind and tried to steal his belongings. Therefore, I find the level of harm and culpability in this offending are substantially high.

8. You are a 20 years old young first offender. Therefore, you are entitled for a substantial discount for your previous good character.

9. You have entered a plea of not guilty on the 27th of July 2018. However, on the 2nd of November 2018, you informed the court that you wanted to change your plea. Accordingly, you pleaded guilty to this offence on the 9th of November 2018. You pleaded guilty to this offence at the early stages of this proceeding, though it was not at the first available opportunity. Moreover, you have admitted that you committed this crime during your caution interview, 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.
10. Having taken into consideration the above discussed factors, I sentence you to a period of three (3) years imprisonment for this offence of attempted Aggravated Robbery as charged.
11. I do not find any compelling reasons to suspend this sentence.
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 three (3) 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 three (3) months and (9) 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 four (4) months as a period of imprisonment that have already been served by you.

15. Accordingly your actual sentencing period is **two (2) years and eight (8) months** of imprisonment, with **eight (8) 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
21st November 2018

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