

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 031 OF 2017S

STATE

VS

1. PITA DOMONI
3. MALAKAI TOKA

Counsels : Mr. E. Samisoni for State
Mr. L. Qetaki for Accused 1
Mr. L. Qetaki for Accused 3

Hearings : 16 March, 27 April, 17 September and 3 December, 2018

Sentence : 28 December, 2018.

SENTENCE

1. On 16 March 2018, Accused No.1 and 3, in the presence of their counsels, appeared on the following amended information:

"Statement of Offence

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

Particulars of Offence

PITA DOMONI, LEMEKI SEVUTIA TAUVOLI and MALAKAI TOKA on the 30 December 2016, at Samabula in the Central Division, robbed JULIE SUTHERLAND of cash valued at \$65.00, 1 x black I-Pad cover valued at \$400.00, 1 x Apple brand I-Pad valued at \$2,000.00, 1 x Sony digital camera valued at \$300.00, 1 x Nikon digital camera valued at \$300.00, 2 x packets of perfume valued at \$150.00, 1 x black backpack bag valued at \$80.00, 1 x bottle Whiskey valued at \$150.00, 1 x bottle of Japanese Choya valued at \$50.00, 2 x bottles of white wine valued at \$40.00, 1 x Samsung S4 galaxy mobile phone valued at approximately \$1,500.00 and 1 x silver Dell Inspiron laptop valued at approximately \$1,043.00, Australian foreign currency AU\$3,000.00 approximately valued at \$4,735.00, 1 x black Dell Inspiron laptop valued at approximately \$1,250.00 and 1 x black Dell Latitude laptop valued at

approximately \$1,250.00, all to the total approximate value of \$13,313.00, the said property of JULIE SUTHERLAND.”

2. Accused No. 2 was not present. The proceeding continued for Accused No. 1 and 3. Accused No. 1 pleaded guilty to the information, while Accused No. 3 pleaded not guilty.
3. The prosecution presented the following summary of facts for Accused No. 1:

“The Accused

- **PITA DOMONI** - 23 years of age, unemployed of Wailea Settlement, Vatuwaqa

The Complainant

- **JULIE SUTHERLAND** – 60 years of age, unemployed of 72 Howell Road, Samabula

1. On 30th December, 2016 at around 6 pm, Julie Sutherland (hereby referred to as “PW1”) took her dog for a stroll at Albert Park and returned home at around 7 pm. Upon arriving at her residence, PW1 switched on the front balcony lights, unlocked the front door, entered and locked the door behind her.
2. Whilst PW1 was inside the house, she heard her dog barking towards one of the bedrooms. PW1 unlocked the main door, switched on the verandah light and upon walking outside to check the compound was suddenly pushed back into the house by Pita Domoni (hereby referred to as “the accused”) and two other unknown persons (hereby referred to as “others”).
3. The accused and others were masked and wore hand gloves; PW1 saw that the accused and others were holding weapons namely a knife, a pair of scissors and a baseball bat. PW1 led the accused and others to the master bedroom where they took \$40 cash from PW1’s purse. PW1 took them to another bedroom where \$25 cash was stolen.
4. The accused then tied PW1’s hands behind her back with a cable they saw lying on the kitchen counter and used PW1’s scarf to tie around her eyes. The accused also tied a t-shirt around PW1’s neck, pulled it up to cover PW1’s mouth and covered PW1 with a blanket to prevent her from moving.

5. The accused with others stole the following items:
- a. Cash valued at \$65.00
 - b. 1 x black I-Pad cover valued at \$400.00,
 - c. 1 x Apple brand I-Pad valued at \$2,000.00,
 - d. 1 x Sony digital camera valued at \$300.00,
 - e. 1 x Nikon digital camera valued at \$300.00,
 - f. 2 x packets of perfume valued at \$150.00,
 - g. 1 x black backpack bag valued at \$80.00,
 - h. 1 x bottle Whiskey valued at \$150.00,
 - i. 1 x bottle of Japanese Choya valued at \$50.00,
 - j. 2 x bottles of white wine valued at \$40.00,
 - k. 1 x Samsung S4 galaxy mobile phone valued at approximately \$1,500.00
 - l. 1 x silver Dell Inspiron laptop valued at approximately \$1,043.00,
 - m. Australian foreign currency AU\$3,000.00 approximately valued at \$4,735.00,
 - n. 1 x black Dell Inspiron laptop valued at approximately \$1,250.00
 - o. and 1 x black Dell Latitude laptop valued at approximately \$1,250.00,

All to the total approximate value of \$13,313.00 the properties of PW1.

6. The accused and others then fled the residence leaving PW1 tied up. PW1 later managed to loosen the cable to untie her hands as well as remove the cloth covering her mouth and uncovered her eyes. PW1 then went to her neighbour's residence to relay the incident before later reporting the matter to police.
7. The accused was arrested and caution interviewed on 20th January 2017, where he admitted robbing PW1 at her residence at Howell Road Q&A19, climbing the fence from the back compound then onto the back porch Q&A32, walking to PW1 and telling her to keep quiet Q&A33.
8. The accused further admitted to stealing \$65 cash and fastening her hands together with a cable Q&A34, stealing assorted items Q&A35 and 37, taking PW1 into a bedroom fastening her hands behind her back, covering her mouth with a cloth and covering her with a blanket Q&A39.

❖ [A copy of the Record of Interview of the Accused is annexed as A1] [Not included]

9. Police recovered the following stolen properties:

- a. 1 x Samsung S4 galaxy mobile phone;
- b. 1 x Apple brand I-Pad;
- c. 1 x silver Dell Inspiron laptop;
- d. A x black Dell Inspiron laptop;
- e. 1 x black Dell Latitude laptop.

The said items were positively identified by PW1 as the same items that were stolen from her residence.”

4. The matter was adjourned to 27 April 2018 for counsel and Accused No. 1 to discuss the prosecution's summary of facts. On 27 April 2018, Accused No. 1's counsel told the court that Accused No. 1 admits the prosecution's summary of facts and the particulars of offence in the information. On the basis of the above admission, the court found Accused No. 1 guilty as charged and convicted him accordingly.
5. Through his counsel, Accused No. 1 admitted he had 3 previous aggravated burglary convictions, and 2 theft convictions since 2013, 2017 and 2018. In his plea in mitigation, he said he was 21 years old, single and resided at Howell Road with his extended family. He said, he is farmer at Naitasiri and earns approximately \$100 per week. He said, he comes from a broken family. He said, he pleaded guilty and had been remanded in custody since January 2017. He is serving 4 years 10 months from 2 February 2018. He asks for a concurrent sentence. The matter was later adjourned for sentencing.
6. On 17 September 2018, the information was read to Accused No. 3, in the presence of his counsel. He pleaded guilty to the same. The prosecution read their summary of facts in court. It was similar to the summary of facts presented to Accused No. 1, in terms of its material facts. Counsel for Accused No. 3 ask for an adjournment to enable her to consult her client on the summary of facts. Time was given to them. On 3 December 2018, counsel for Accused No. 3 told the court that he agrees with the prosecution's summary of facts, and the particulars of the offence in the information. On the basis of the above admissions, the court found Accused No. 3 guilty as charged and convicted him accordingly.
7. Through his counsel, Accused No. 3 admitted he had a conviction on 2 May 2018 for aggravated burglary and theft, and is serving 30 months imprisonment. In his plea in mitigation, he said he is 25 years old, living with his defacto-wife and 1 year old daughter. He

said, he is a casual labourer and earns about \$100 per week. He pleaded guilty and had been remanded in custody since 23 January 2017. He asks for leniency. He said, some stolen properties were recovered.

8. "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.

9. 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..."

10. 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 eyes.*
- (vii) The victims frightened were elderly or vulnerable persons such as small children..."*

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

- (i) The offence was a home invasion. The female complainant was 60 years old. She was in her house at 7 pm after going for a walk. You Accused No. 1 and 3, with another, attacked her in her own house. It was dark at the time. You obviously showed no respect to her right to live peacefully in her house. I am sure you would not want 3 armed i-taukei men attack your family in your own house. Thus you must expect to serve a long prison term in this case to teach you to respect other people's home.
- (ii) Pre-planning. You obviously prepared yourselves when you attacked the complainant. You knew the surroundings well, and came prepared as a group, to counter oppositions.
- (iii) The two of you, and your friend were masked and wearing gloves. You were armed with a knife, scissors and a baseball bat. You confronted the 60 year old complainant as a group, and completely subdued her and threaten her to surrender her properties.
- (iv) You tied her up, gagged her and confined her, so she could not resist. The complainant was vulnerable.
- (v) By offending against her, you had no regards to her right as a human being, her right not to be harmed, and her right to a happy and peaceful life.

12. The mitigating factors were as follows:

- (i) Accused No. 1, you pleaded guilty to the charge after 1 year 3 months 4 days after first call in the Suva Magistrate Court. Accused No. 3, you pleaded guilty to the charge 1 year 8 months after first call in the Suva Magistrate Court. For this, you are entitled to some discount, as you had saved some court time.
- (ii) Accused No. 1, you had been remanded in custody for approximately 5 months, while awaiting sentence. This was because on 13.6.17 and 2.1.18, you were sentenced to 13 months and 4 years 10 months imprisonment, both to be concurrent to each other.
- (iii) Accused No. 3, you had been remanded in custody for approximately 1 year 4 months, as you were sentenced to 30 months imprisonment on 2.5.18.
- (iv) Some stolen properties were recovered.

13. I start with a sentence of 12 years imprisonment. I add 4 years imprisonment for the aggravating factors, making a total of 16 years imprisonment. For Accused No. 1, for time

already served while remanded in custody, I deduct 5 months, leaving a balance of 15 years 7 months imprisonment. For Accused No.3 for time already served while remanded in custody, I deduct 1 year 4 months, leaving a balance of 14 years 8 months imprisonment. Accused No. 1, for indicating a guilty plea since 5 May 2017 and pleading guilty on 27 April 2018, that is, 1 year 3 months 4 days after first call in the Suva Magistrate Court, I deduct 2 years 1 month, leaving a balance of 13 years 6 months. Accused No. 3, for pleading guilty 1 year 8 months after 1st call, I deduct 1 year 2 months, leaving a balance of 13 years 6 months. I deduct 6 months from your sentences to account for the properties recovered. The balance for Accused No. 1 is 13 years imprisonment, and for Accused No. 3, 13 years imprisonment.

14. Mr. Pita Domoni (Accused No. 1) and Mr. Malakai Toka (accused No. 3), for committing aggravated robbery against the complainant on 30 December 2016 at Samabula in the Central Division, I sentence both of you to 13 years imprisonment each with a non-parole period of 12 years imprisonment each, effective forthwith. This sentence is concurrent to any prison sentence presently served.

15. 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 the circumstances, to protect the community, to deter other would-be offenders and to signify that the court and the community denounce what you did to the complainant on 30 December 2016.

16. You have 30 days to appeal to the Court of Appeal.




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JUDGE

Solicitor for State	:	Office of DPP, Suva.
Solicitor for Accused No. 1	:	Legal Aid Commission, Suva
Solicitor for Accused No. 3	:	Legal Aid Commission, Suva