

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 156 of 2018

BETWEEN:

STATE

PROSECUTION

AND:

1. JONE TEJI

2. WAISAKE LALABALAVU

ACCUSED PERSONS

Counsel:

Ms. W. Elo for State
Ms. L. David for Accused 1
Ms. N. Mishra for Accused 2

Sentence:

15th June 2018

S E N T E N C E

1. Mr. Jone Teji and Mr. Waisake Lalabalavu, are charged with one count of Aggravated Burglary, contrary to Section 313 (1) (a) of the Crimes Act, which carries a maximum sentence of seventeen (17) years imprisonment, and three counts of Theft, contrary to Section 291 (1) of the Crimes Act, which carries a maximum sentence of ten (10) years imprisonment. The particulars of the offences are that:

JONE TEJI & WAISAKE LALABALAVU are charged with the following offences:

COUNT ONE

Statement of Offence

AGGRAVATED BURGLARY: Contrary to Section 313 (1) (a) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

JONE TEJI & WAISAKE LALABALAVU between the 27th day of March 2018 and the 28th day of March, 2018, at Navua in the Central Division, entered into the Vunibau Village Hall, with intent to steal from therein.

COUNT TWO

Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Act 2009.

Particulars of Offence

JONE TEJI & WAISAKE LALABALAVU between the 27th day of March, 2018 and the 28th day of March, 2018, at Navua in the Central Division, dishonestly appropriated one Samsung Brand S6 White Mobile Phone valued at \$2009.00, the property of **SELA MATAKIBAU**, with intention to permanently deprive the said **SELA MATAKIBAU**.

COUNT THREE

Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Act 2009.

Particulars of Offence

JONE TEJI & WAISAKE LALABALAVU between the 27th day of March, 2018 and the 28th day of March, 2018, at Navua in the Central Division, dishonestly appropriated one Samsung Brand J7 Gold

*Coloured Mobile Phone valued at \$400.00, the property of **JIOJI RALOVO**, with intention to permanently deprive the said **JIOJI RALOVO**.*

COUNT FOUR

Statement of Offence

THEFT: *Contrary to Section 291 (1) of the Crimes Act 2009.*

Particulars of Offence

***JONE TEJI & WAISAKE LALABALAVU** between the 27th day of March, 2018 and the 28th day of March, 2018, at Navua in the Central Division, dishonestly appropriated one 1 X HP Brand Black Laptop valued at \$350.00, the property of **JOANA TATALU**, with intention to permanently deprive the said **JOANA TATALU**.*

2. Both of you pleaded guilty for these four counts before Justice Goundar on the 28th of May 2018. You then reaffirmed your plea of guilty before me on the 12th of June 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 convicted both of you for each of these four counts.
3. According to the summary of fact, which both of you admitted in open court, that you have entered into the village hall, while the three Complainants were sleeping in the night of 27th of March 2018 and stole one Samsung brand S6 white mobile phone valued at \$2009, one Samsung brand J7 Gold in colour mobile phone valued at \$400, and one HP black in colour laptop valued at \$350 therein.
4. The tariff for the offence of Aggravated Burglary is between 18 months to 3 years. (State v Drose - Sentence [2017] FJHC 205; HAC325.2015 (28 February 2017) State v Seru - Sentence [2015] FJHC 528; HAC426.2012 (6 July 2015).

5. The tariff for the offence of Theft has been stipulated in Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012), where Justice Madigan held that:
- i) For a first offence of simple theft the sentencing range should be between 2 and 9 months.*
 - ii) Any subsequent offence should attract a penalty of at least 9 months.*
 - iii) Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years*
 - iv) Regard should be had to the nature of the relationship between offender and victim.*
 - v) Planned thefts will attract greater sentences than opportunistic thefts.*
6. The offence of aggravated burglary is a serious offence. The maximum penalty for this offence is seventeen years of imprisonment. Burglars invade into the space of others freedom in order to steal from them. Hence, the offence of burglary is one of the dangerous forms of property crime as offender can instill the fear and insecurity among the people.
7. All of these four offences are founded on the same series of offending of same and similar characters. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
8. Having taken into consideration the serious nature of this crime and the level of culpability and harm, I select twenty four (24) months as the starting point.
9. You have breached the trust that the Complainants had about your village and the community by committing these offences. They came to your village for an educational tour, thrusting the good will and hospitality of your villagers. Instead, you breached that trust betraying and letting down your fellow villagers. I consider this as aggravating factors.

10. Mr. Jone Teji, you have been reported with two previous convictions. Both of them are for the offences of similar nature. Hence, you are not entitled for any discount for your previous good character.
11. Mr. Waisake Lalabalavu, you are a first offender and 23 years old. Hence, you are entitled for a discount for your previous character.
12. Both of you pleaded guilty for these offences at the first available opportunity. You have admitted that you have committed these offences, during the respective caution interviews and maintained the same position by pleading guilty at the first available opportunity, which demonstrate your remorse and repent in committing these crimes. Hence, you are entitled for a substantive discount for your early plea of guilty and remorse.
13. Both of you are young offenders.

Mr. Jone Teji

14. Having considered aggravating factors, I increase twelve (12) months, to reach thirty six (36) months of interim imprisonment. I reduce four (4) months for your young age and your family circumstances, where you look after your sickly father. I further reduce ten (10) months for your early plea of guilty, making the final sentence as twenty two (22) months imprisonment period.
15. Having considered your adverse record of previous conduct and also the seriousness of these offences, I do not find any appropriate reasons to suspend your sentence.
16. Having considered the seriousness of this crime, the purpose of this sentence, your age, family circumstances and opportunities for rehabilitation, I find twelve (12) months of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of twelve (12) months pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Mr. Waisake Lalabalavu

17. Having considered aggravating factors, I increase twelve (12) months, to reach thirty six (36) months of interim imprisonment. I reduce eight (8) month for your young age, unblemished previous character and your family circumstances. I further reduce ten (10) months for your early plea of guilty, making the final sentence as eighteen (18) months imprisonment period.
18. As stated above, the offences of this nature are serious offences. However, the court could suspend the sentence, if the courts find any appropriate reasons to do so. The learned counsel in her mitigation submissions stated that you are a final year student at Fiji Maritime Academy and follow a course of Advanced Bachelors in Nautical Science- Class 5 Master. The final semester of the program will begin on 15th of June 2018.
19. Having considered your current educational engagement and prospects of completing it successfully, I find that immediate custodial sentence would adversely affect your education. Hence, I suspend your sentence for a period of three (3) years, pursuant to Section 26 of the Sentencing and Penalties Act.

Head Sentence

20. Accordingly, Mr. Jone Teji, I sentence you for a period of **twenty two (22) months** imprisonment for these offences as charged. Moreover, you are not eligible for any parole for a period of **twelve 12 months** pursuant to Section 18 of the Sentencing and Penalties Act.
21. Mr. Waisake Lalabalavu, I sentence you for a period of **eighteen (18) months** imprisonment for these offences as charged and suspended it for a period of three (3) years pursuant to Section 26 of the Sentencing and Penalties Act. If you commit any crime during the period of three (3) years and found guilty by the court you are liable to be charge and prosecute for an offence in pursuant of Section 28 of the Sentencing and Penalties Act.

Actual Period of Sentence of Mr. Jone Teji

22. You have been in remand custody for this case for a period of nearly thirty (30) 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 one (1) month as the period of imprisonment that have already been served by you.
23. Accordingly, Mr. Jone Teji, your actual sentencing period is **twenty one (21) months** of imprisonment period, with **eleven (11) months** of non-parole period.
24. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R. T. Rajasinghe
Judge

At Suva
15th June 2018

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Accused 1.
Office of the Legal Aid Commission for the Accused 2.