

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 300 OF 2017S

STATE

Vs

1. NACANIELI BAKATA
2. JOSAI A DOBUI
3. ILAITIA VUIVUDA

Counsel : Mr. E. Samisoni for State
Accused No. 1 in Person
Ms. N. Mishra for Accused No 2
Accused No. 3 in Person

Hearing : 11 and 16 May, 2018

Sentence : 14 September, 2018

SENTENCE

1. On 11 May 2018, the following information was put to the accuseds:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

NACANIELI BAKATA, JOSAI A DOBUI and ILAITIA VUIVUDA on the 15th day of September, 2017 at Navua in the Central Division, in the company of each other, robbed **RAHUL PRAKASH** of 1 X mangal sutra valued at \$3,000.00, 1 x Apple iPad

valued at \$2,500.00, 1x Samsung Galaxy J2 mobile phone valued at \$400.00, microphones valued at \$300.00, a BSP bank card valued at \$10.00, motor vehicle registration number REYNOSH valued at \$50,000.00 and Australian currency of AUD \$4,000.00 (approximately FJD \$6,323.00) to the total value of \$62,533.00 the property of RAHUL PRAKASH.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

NACANIELI BAKATA, JOSAIJA DOBUI and ILAITIA VUIVUDA on the 15th day of September, 2017 at Sigatoka in the Western Division, dishonestly appropriated (stole) \$1,000.00 cash from BSP account no. 81274502 belonging to **PRANEETA PRAKASH** from a BSP automated teller machine with the intention of permanently depriving the said **PRANEETA PRAKASH** of the property.

2. Accused No. 1 and 3, by conduct, appeared to have waived their right to counsel. Accused No. 2 was represented by legal aid counsel, Ms. N. Mishra. The information was read to them in their preferred language, that is, English. It was explained to them, and they said, they understood the same. Accused No. 1 and 3 pleaded not guilty to both counts in the information. Accused No. 2 pleaded guilty to both counts in the information.
3. As for accused no. 2, the matter was adjourned to 16 May 2018, for the prosecution to present their summary of facts. On 16 May 2018, the prosecution presented the following summary of facts:

“On 15 September, 2017 at around 2 am, the accused in the company of others, drove to Navua from Nadi in a motor vehicle and broke into the complainant’s home armed with an iron rod whilst they were asleep and then tied them up using cello tape and pieces of clothing. The complainant’s children aged 2 and 4 years old witnessed the ordeal. The accused and his accomplices had their faces covered with clothing and after restraining the complainants, armed themselves with a kitchen knife from the complainant’s kitchen.

The accused and his accomplices then stole the following items from Rahul Prakash: 1x mangal sutra valued at \$3,000.00; 1 x Apple iPad valued at \$2,500.00; 1 x Samsun Galaxy J2 mobile phone valued at \$400.00, microphones valued at \$300.00; a BSP bank card valued at \$10.00; a motor vehicle registration number REYNOSH valued at \$50,000.00; and Australian currency of AUD \$4,000.00 (approximately FJD\$6,323.00) all to the total value of \$62, 533.00.

Two of the accomplices drove off in the stolen motor vehicle to the nearest BSP ATM (automated teller machine) to check if the PIN number that PW2 had provided them for the BSP bank card was correct whilst the accused stayed watch over Rahul and Praneeta Prakash. Once the PIN number was confirmed, the accused then also fled the scene.

The complainants managed to free themselves soon after and they alerted the police for assistance.

The accused and his accomplices reached Sigatoka, one of the accomplices used the stolen BSP bank card belonging to Praneeta Prakash at a BSP ATM there and withdrew \$1,000.00 from her bank account.

The accused and his accomplices were arrested on 19 September, 2017 traveling towards Raviravi Community Police Post in the Western Division. The accused and his accomplices were charged with these offences thereafter.

The accused made full admissions in his Record of Interview at Question and Answers 60, 64, 65, 66, 68, 69, 71, 74, 75, 76, 79, 80, 82, 83, 98, 100, 115, 121, 122, 127, 128, 132 and 138. The accused admitted to being picked up in a vehicle together with his accomplices and that they travelled from Nadi to Navua to commit the robbery armed with a pinch bar. He further admitted that after committing the robbery, the accused and his accomplices then travelled back to Nadi through Sigatoka and withdrew money from an ATM using Praneeta Prakash's BSP bank card. The accused also admitted to stealing the assorted items as stated in the Amended information, [Annexed is a copy of the Record of Interview] [not included].

There were nil recoveries made of the stolen items apart from the motor vehicle "REYNISH".

On 11 May, 2018, the accused in the presence of his counsel, pleaded guilty to both counts as charged, of his own free will..."

4. The court then checked with defence counsel on whether or not Accused No. 2 was admitting the above summary of facts. Defence Counsel, on behalf of Accused No. 2, said, Accused No. 2 admitted the above summary of facts, including the particulars of the offences in the information. As a result of the above, the court found Accused No. 2 guilty as charged on both counts and convicted him accordingly on those counts.

5. The court then heard Accused No. 2's plea in mitigation. It noted he was 23 years old, a first offender and was attending a technical school prior to the offending. He pleaded guilty 7 months 2 days after first call in the High Court, and thus saved the court's time. He co-operated with police during the investigation by admitting the crime when caution interviewed. He said he was remorseful and ask for a lenient sentence.
6. "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.
7. 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..."

8. 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 with 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...*"

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

- (i) The offence was a home invasion offence. The complainant (PW1) and his wife (PW2), both aged 32 years old, were fast asleep in their house with their 2 and 4 years old children, early morning (2 am) on 15 September 2017.
- (ii) The offending was obviously carried out after careful pre-planning.
- (iii) The offending was carried out in frightening circumstances, that is, they broke into the complainant's home armed with an iron rod, in the company of others and they were masked. In the house, they further armed themselves with the complainant's kitchen knife.
- (iv) The complainants were tied up with cello tape and clothing.
- (v) The offending was carried out in the presence and witnessed by two young children.
- (vi) By offending against the complaints, you had no regard to their property rights, their rights to safety, their rights as human beings and their rights to a happy and peaceful life.

10. The mitigating factors were as follows:

- (i) At the age of 23 years, this is your first offence;
- (ii) Although you pleaded guilty to the offence 7 months 2 days after first call in the High Court, you nevertheless saved the court's time;
- (iii) You had been remanded in custody since 25 September 2017, when you first appeared in the Navua Magistrate Court, that is, approximately 1 year ago;
- (iv) You co-operated with police during the investigation, by admitting the offence when cautioned interviewed by police;

11. On count no. 1 (aggravated robbery), I start with a sentence of 12 years imprisonment. I add 4 years for the aggravating factors, making a total of 16 years imprisonment. For time already served while remanded in custody, I deduct 1 year, leaving a balance of 15 years imprisonment. Although your guilty plea came 7 months after first call in the High Court and thus not an early guilty plea, I will reward you nevertheless with a 2 years deduction, leaving a balance of 13 years imprisonment. For being a young first offender, I deduct 3 years, leaving a balance of 10 years imprisonment. Lastly, for co-operating with the police during the

investigation when you admitted the offence when cautioned interviewed, I give you a further 2 years deduction, leaving a balance of 8 years imprisonment. On count no. 1, I sentence you to 8 years imprisonment.

12. On count no. 2 (theft), I sentence you to 18 months imprisonment.

13. The summary of your sentences are as follows:

- (i) Count No. 1 : Aggravated Robbery : 8 years imprisonment
- (ii) Count No. 2 : Theft : 18 months imprisonment

14. Because of the totality principle of sentencing, I direct that the above sentences, be made concurrent to each other, making a final sentence of 8 years imprisonment.

15. Mr. Josaia Dobui, for offending against the complainants on 15 September 2017 at Navua and Sigatoka in the Central and Western Division, by robbing and stealing from them, I sentence you to 8 years imprisonment, with a non-parole period of 7 years, effective forthwith.

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




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JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused No. 1 : **Accused No. 1 in Person**
Solicitor for Accused No. 2 : **Legal Aid Commission, Suva**
Solicitor for Accused No. 3 ; **Accused No. 3 in Person**