

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

Criminal Case No. HAC 210 of 2018
[Kadavu Criminal Case No. 556 of 2018]

BETWEEN : STATE

AND : JOSAI A WARODO VATUNICOKO

Counsel : Ms L Bogitini for the State
Ms L David for the Accused

Date of Hearing : 17 September 2018
Date of Sentence : 21 September 2018

SENTENCE

[1] Josaia Warodo Vatunicoko you are jointly charged with two others with aggravated robbery contrary to section 311(1)(a) of the Crimes Act 2009. You have freely and voluntarily pleaded guilty to the charge. You are represented by counsel. Your guilty plea is informed and unambiguous. You are convicted as charged.

[2] You admitted the following facts tendered by the prosecution:

- (1) The complainant in this matter is Uttam Kumar, 38 years old, Businessman, resides at Korociriciri village, Nausori.
- (2) The 2nd Accused is Josaia Warodo Vatunicoko, 25 years old, farmer, resides at Draiba village, Navosa.
- (3) The 2nd accused is charged and has voluntarily pleaded guilty to 1 count of aggravated robbery contrary to section 311(1)(a) of the Crimes Act 2009.
- (4) On 21st March 2018, the complainant went to Kadavu for a business trip to sell second hand items at the Vunisea market. The complainant

took all the sale items in his mini-van registration no: FA 668 and also used his van to sleep at nights during his stay in Kadavu.

- (5) On 3rd April 2018, at about 10pm, after doing business at the Vunisea market, the complainant went to his vehicle which was parked at the market roundabout. At about 1.30am (4/4/18), while he was sitting on the driver's seat inside his van, an i-Taukei man knocked on his glass window asking for time. The complainant then opened his van's door and this is when the man held the back of his head with one hand and tried to pull him out of his van. The complainant resisted and was struggling holding onto the steering wheel when the complainant saw another man approaching him. The complainant could not see their facial features but he managed to see what they were wearing and describes their built.
- (6) They managed to pull the complainant out of his vehicle. One of them then punched the complainant on his nose, chin and back of his head. Both of them then dragged the complainant about seven metres away from his vehicle. One of them asked the complainant about where the money was while the other went back to his vehicle to check. The complainant smelt liquor on one of them.
- (7) The complainant felt blood coming out of his nose and this is when he felt he was in danger so he told them that the money was inside his vehicle in his shirt pocket. One of them then dragged the complainant back to his vehicle.
- (8) The two men then got occupied talking to each other and this is when the complainant managed to lock his vehicle and run to the Kadavu police station to report the matter.
- (9) The following items were stolen from the complainant:
 - 1 × green bag containing \$50 worth of coins;
 - 1 × green bag containing \$100 worth of coins;
 - \$500 cash;
 - 1 × Samsung brand J5 mobile phone valued at \$500;
 - 1 × return boat ticket valued at \$350 and
 - 1 × hawkers license valued at \$30; all to the total value of \$1,530.
- (10) Investigations led to the 2nd accused being arrested by police.
- (11) The 2nd accused was interviewed under caution on 13th April 2018 at Kadavu police station.
- (12) In his interview, the 2nd accused states that on 3rd April 2018, at about 10pm, he was at Uro Kadavu shop. He was then drinking with one of

the accomplice and others at the roadside. They finished drinking at about 12am and then he with his accomplice parted their ways from others. The accomplice bought another 4 cans of Woodstock and they were drinking when another accomplice came. He brought with him another 3 cans of alcohol so they invited him to drink with them.

- (13) After drinking, he states that one of the accomplice (sic) came up with the idea to rob the complainant. One of the accomplice (sic) then went and knocked on the complainant's van's window while the 2nd Accused stood at a breadfruit tree and another accomplice stood beside the van.
- (14) Once the complainant opened the door of the van, the 2nd accused states that his accomplices punched the complainant and dragged him out of the van. He just stood there and watched what they did. He then walked towards the van and searched for money. He found money inside a shirt pocket and a mobile and ran while his accomplices held onto the complainant. All of them then ran and thereafter shared the money.
- (15) The 2nd accused denies taking any green bag in his interview but states that he saw one of the accomplice (sic) holding the bag with some items.
- (16) The 2nd Accused further states in his interview that each of them received \$120 cash as their share. During his caution interview, the 2nd accused also voluntarily gave the police the complainant's mobile phone which was kept at his house. A copy of the caution interview is attached herewith as Annexure 1.
- (17) The complainant was medically examined on 5th of April 2018 at Vunisea Rural Hospital. A copy of the medical report is attached herewith as annexure 2.

[3] The victim's medical report has noted that he has sustained tenderness, scratches, bruises and abrasions on his face, scalp, elbow and foot. The report also states that the victim was in a state of distress following the incident.

[4] 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 (<i>Raqauqau v State</i> [2008] FJCA 34; AAU0100.2007 (4 August 2008).
Home invasion:	8 – 16 years' imprisonment (<i>Wise v State</i> [2015] FJSC 7; CAV0004.2015 (24 April 2015).
A spate of robberies:	10 -16 years' imprisonment (<i>Nawalu v State</i> [2013] FJSC 11; CAV0012.12 (28 August 2013)

- [5] The victim was attacked at night time when he was asleep inside his stationary vehicle. At the material time, the vehicle was used as a temporary shelter. The attack was planned. The perpetrators were drunk and ruthless. Not only the victim was dragged out of his vehicle, he was physically beaten to a point where he feared for his life and disclosed the location of the day's earnings. These factors aggravated your offending.
- [6] Your claim that you are less culpable than others on the basis that you were not involved in the physical assault of the victim carries very little weight. You knew about the plan to rob the victim and with that knowledge you participated in the offence. While the victim was being beaten by your accomplices, you personally removed some of the items from the victim's vehicle. The stolen items were shared between you and your accomplices. Under the principle of joint enterprise, your culpability is same as your accomplices.
- [7] The courts have a duty to denounce and deter this kind of anti-social behaviour using violence on innocent members of the public. The primary purpose of the punishment for offences involving the use of violence is deterrence, both special and general.
- [8] In mitigation, your counsel has informed the court that you have entered an early guilty and that you regret your action on the night in question. I consider your early guilty as evidence of genuine remorse. You have also saved court time and resources by pleading guilty to the charge at a very early stage of the proceedings. For all these factors, I give you a reduction of one third in your sentence. I give you a further reduction in sentence to reflect your previous good character and your young age.

Your remand period of 14 days has also been taken into account as a separate reduction.

- [9] Taking all these factors into account, I sentence you to 5 years' imprisonment with a non-parole period of 3 years.



A handwritten signature in blue ink, appearing to be "D. Goundar", written over a dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

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