

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 85 of 2017

[CRIMINAL JURISDICTION]

STATE

V

TURI LESUBULA

Counsel : Ms. U. Tamanikaiyaroi and Mr. E. Samisoni for the State
Ms. L. Ratidara for the Accused

Hearing on : 01 - 05 October 2018

Summing up on : 05 October 2018

Judgment on : 05 October 2018

Sentenced on : 11 October 2018

SENTENCE

1. Turi Lesubula, you stand convicted of two counts of aggravated robbery contrary to section 311 (1) of the Crimes Act 2009 after trial. Your charges read thus;

COUNT 1

Statement of Offence

Aggravated Robbery: contrary to section 311 (1) (a) of the Crimes Decree 2009.

Particulars of Offence

TURI LESUBULA WITH OTHERS on the 26th day of February 2017, at

Samabula in the Central Division, robbed Ameendra Kumar Mudliar of 1 x black Samsung mobile phone valued at approximately \$975.00 and 1 x white Vido mobile phone valued at \$250.00, all to the total approximate value of \$1,225.00, the said property of Ameendra Kumar Mudliar.

COUNT 2

Statement of Offence

Aggravated Robbery: contrary to section 311 (1) (a) of the Crimes Decree 2009.

Particulars of Offence

TURI LESUBULA WITH OTHERS on the 26th day of February 2017, at Samabula in the Central Division, robbed Tarita Mudliar of 1 x iPhone 6 plus mobile phone valued at \$1,700.00, all to the total value of \$1,700.00, the said property of Tarita Mudliar.

2. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years imprisonment. The tariff for this offence is an imprisonment term between 8 to 16 years. [*Wallace Wise v The State*, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015)]
3. You are 44 years old. You are married and you have 4 children; two daughters and two sons. You drove the four individuals who entered the complainants' house, you waited for them till they robbed the complainants and then drove off with them. During the confrontation the complainant in the first count was seriously injured with a cane knife. The only evidence against you was your cautioned interview statement. According to your cautioned interview there was no agreement between you and the four individuals to commit the two offences. However, you intentionally aided and abetted the said individuals to commit the two offences.
4. The two offences are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment for the two offences you have committed.

5. I would select 8 years as the starting point of your aggregate sentence.
6. I would consider the following as the aggravating factors in this case;
 - a) This was a home invasion around midnight;
 - b) The four individuals who committed the robbery were masked; and
 - c) One of the complainants was severely injured.
7. Given the nature of your involvement in the offences committed as revealed by the evidence adduced, I will be cautious when I increase your sentence in view of the aggravating factors. That is, the imprisonment term I would add to your sentence in view of the above aggravating factors would be relatively lesser than the term I would have added if I were to determine the sentence of one of the four individuals mentioned above.
8. Accordingly, I would increase your sentence by 3 years in view of the aggravating factors.
9. Though you challenged the admissibility of your cautioned interview statement during the trial, you have cooperated with the police after you were arrested and you have made admissions at that point in time. I would consider this as a mitigating factor and would deduct 2 years of your sentence in view of same.
10. Now your final aggregate sentence is an imprisonment term of 9 years. The non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 7 years.
11. You have been in custody in view of this matter for a period of 1 year 2 months and 24 days. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and

Penalties Act. I hold that the period to be regarded as served should be 1 year and 3 months.

12. It was submitted that you are currently serving an imprisonment term of 12 years 2 months and 21 days with a non-parole period of 11 years which was imposed on 10/07/18 by the Lautoka High Court. The imprisonment term imposed in this case shall be served concurrently with the said uncompleted sentence.

13. In the result, you are sentenced to 09 years imprisonment with a non-parole period of 07 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 07 years and 09 months
Non-parole period - 05 years and 09 months

14. Thirty (30) days to appeal to the Court of Appeal.



Vinsent S. Perera

JUDGE

Solicitors;

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