

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 403 OF 2016S

STATE

Vs

1. ASESELA NIUBASAGA
2. SAMISONI WAQAVATU

Counsels : Mr. S. Shah for State
Mr. J. Daurewa for Accused No. 1
Mr. N. Tuifagalele for Accused No 2

Hearings : 2, 3, 4, 5, 8, 9 and 11 October, 2018

Summing Up : 12 October, 2018

Judgment : 12 October, 2018

Sentence : 16 October, 2018

SENTENCE

1. In a judgment delivered on 12 October 2018, the court found you two guilty and convicted you two on the following information:

Statement of Offence

AGGRAVATED ROBBERY: *Contrary to section 311(1)(a) of the Crime Act 2009*

Particulars of Offence

ASESELA NIUBASAGA and SAMISONI WAQAVATU WITH OTHERS on the 28th day of October 2016, at Samabula in the Central Division, robbed one NITYA NAND SHANKAR and stole 1 x steel safe valued at \$1,000.00, cash \$11,000.00 (FJD), assorted liquor valued at \$1,100.00, assorted jewelleryes valued at \$15,000.00, cash of AUD \$4,000.00, 1 couch brand bag valued at \$2,000.00, assorted clothes valued at \$300.00, 1 x Samsung mobile phone valued at \$800.00, 1 x Suzuki van registration FH 170 valued at \$8,000.00, all to the total value of \$43,200.00, the property of NITYA NAND SHANKAR.

2. The brief facts of the case were as follows. On 28 October 2016, you two and others broke into the complainant's house at Princes Road, Tamavua. You were masked and armed with pinch bars, screw drivers and cane knives. You two and your friends tied the complainant and his wife up. You and your friends threatened them not to resist, or they will be hurt. You demanded money and jewelleryes from them. You then ransacked their house, and stole the items mentioned in the information. You and your friends fled from the crime scene in the complainant's car. The matter was reported to police. An investigation was carried out. You two were arrested by police. You two were caution interviewed by police. You both admitted the offence to police. You were later charged, tried and convicted of aggravated robbery.
3. "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.
4. 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..."

5. 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..."*

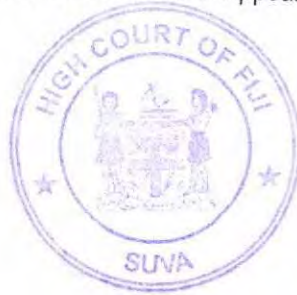
6. The aggravating factors in this case were as follows:

- (i) The offence was a home invasion. The complainant (68) and his wife were about to go to sleep early morning on 28 October 2016. You two and your friends then invaded them in their house, making it a home invasion offence;
- (ii) You two and your friends carefully pre-planned this offence, and you robbed the complainant because he was a businessman;
- (iii) The offence was carried out with frightening circumstances. A group of armed masked men broke into the complainant's house, tied him and his wife up, threatened them not to resist or they will be harmed and demanded money and jewellery. They were armed with pinch bars, cane knives and screw drivers;
- (iv) The complainant and his wife were alone in the house, and elderly;
- (v) By stealing the items mentioned in the information, you two and your friends had no regard to the complainants' property rights;

(ii) Accused No. 2 to 7 years imprisonment, effective forthwith. I will not impose a non-parole period.

11. 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 and his family on 28 October 2016.

12. You two 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 : **Legal Aid Commission, Suva**
Solicitor for Accused No. 2 : **N Tuifagalele, Barrister and Solicitor, Suva**