

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 195 of 2019

STATE

V

1. RATU TEVITA RONAIVALU

2. VULI QORINIASI

Counsel : Mr. R. Kumar for the State
Mr. K. Prasad for the Accused

Sentence Hearing : 29 October 2019

Date of Sentence : 17 December 2019

SENTENCE

[1] As per the Consolidated Information filed by the Director of Public Prosecutions (DPP), Ratu Tevita Ronaivalu and Vuli Qoriniasi, you were charged with the following offences:

COUNT 1

Statement of Offence

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

Particulars of Offence

RATU TEVITA RONAIVALU and **VULI QORINIASI**, on the 24th day of May 2019, at Suva, in the Central Division, robbed **PARMESH CHAND** of 1 x Dulan Brand hand watch and 1 x torch light, the property of **PARMESH CHAND**.

COUNT 2

Statement of Offence

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

Particulars of Offence

RATU TEVITA RONAIVALU and **VULI QORINIASI**, on the 24th day of May 2019, at Suva, in the Central Division, robbed **ROHIT RAMAN** of 1 x Samsung J3 Pro mobile phone, the property of **ROHIT RAMAN**.

- [2] The State filed the Consolidated Information and the Consolidated Disclosures relevant to the case, on 15 July 2019.
- [3] When the matter came up before me on 19 July 2019, you were both ready to take your pleas. You pleaded guilty to both counts in the Consolidated Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charges against you and the consequences of your pleas.
- [4] Thereafter, on 16 September 2019, the Summary of Facts were read out and explained to you both and you understood and agreed to the same. Accordingly, Court found your guilty pleas to be unequivocal. I found that the facts support all elements of the two counts of Aggravated Robbery in the Consolidated Information, and found the charges proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own pleas and I convicted both of you of the two counts as charged.
- [5] I now proceed to pass sentence on you.
- [6] The Summary of Facts filed by the State was as follows:

"COUNT 1

The Complainant:

The Complainant in reference to Count 1 is one Parmesh Chand, 54 years old, Salesman at Fresh'et Fiji Limited, of Namadai Settlement, Namadi Heights, Suva.

The Accused(s):

- a. *The First Accused (A1) in reference to Count 1 is one Ratu Tevita Ronaivalu, 30 years old, Unemployed, of Namadai Settlement, Namadi Heights, Suva.*

b. *The Second Accused (A2) in reference to Count 1 is one Vuli Qoriniasi, 26 years old, Self-Employed Carpenter, of 10 Padam Lala Street, Namadi Heights, Suva.*

1. *On 24th May 2019, at about 6:00 a.m. near the roundabout of Dalton Place, the Complainant was on his way to work when he got approached by A1.*
2. *A1 then asked for money from the Complainant and the Complainant gave \$1.00 to A1.*
3. *Thereafter, the Complainant was approached by A2 who also asked for money from the Complainant. The complainant then gave A2 \$1.00*
4. *Both A1 and A2 kept following the Complainant and demanding for money, to which the Complainant responded saying that, "that is all I have". The Complainant then turned around and walked away.*
5. *Soon after that, A1 started punching the Complainant from the back which made the Complainant fall down.*
6. *After that, A1 started punching the Complainant's face and in the midst of this, A1 had also kicked the Complainant.*
7. *During this incident, the Complainant was robbed of his 1 x Dulan Brand watch which was valued at \$80.00 and 1 x torch light which was valued at \$25.00.*
8. *According to Sevuloni Laqekoro (PW2), he states that he saw A1 punch the Complainant on his face, thus causing injuries to the Complainant and that both A1 and A2 fled from the place of offending back into the Settlement.*
9. *The Complainant had undergone medical examination and it was revealed that the Complainant had sustained the following injuries during the incident:*
 - i. *Heent – bruise and swelling on the forehead; both jaws; peri – orbital edema and hematone (left) subconjunctival haemorrhage (left eye)*
 - ii. *Trunk (Right and left side of trunk) – bruise and swelling*
 - iii. *Extremities – cut forearm (close to wrist); superficial and swelling on the finger (left)*
 - iv. *Ear – Superficial cut on right ear lobe*

Annexed hereto is the Medical Examination Report of Parmesh Chand, dated 24th May 2019 and marked as "Annexure A".
10. *A Search Warrant was conducted on A2 at Namadai Settlement, Namadi Heights, Suva however, there were NIL recoveries. Annexed hereto is the Search Warrant and Search List of A2 marked as "Annexure B".*

11. A1 made full admissions to the allegation of Aggravated Robbery in his Record of Interview at Q & A 43 – 96. Annexed hereto is the record of interview of A1 marked as “**Annexure C**”.
12. A2 had also made full admissions to the allegation of Aggravated Robbery in his Record of Interview at Q & A 16 – 41. Annexed hereto is the Record of Interview of A2 marked as “**Annexure D**”.

COUNT 2

The Complainant:

The Complainant in reference to Count 2 is one Rohit Raman, 45 years old, Bus Driver for Nasese Buses, of Namadai Settlement, Namadi Heights, Suva.

The Accused(s)

- a. The First Accused (A1) in reference to Count 2 is one Ratu Tevita Ronaivalu, 30 years old, Unemployed, of Namadai Settlement, Namadi Heights, Suva.
- b. The Second Accused (A2) in reference to Count 2 is one Vuli Qoriniasi, 26 years old, Self-Employed Carpenter, of 10 Padam Lala Street, Namadi Heights, Suva.
 1. On 24th May 2019, between 4:45 a.m. to 5:00 a.m., the Complainant was walking along Padam Lala Road heading towards the Namadi Heights Police Post.
 2. Whilst the Complainant was making his way towards the place where the bus was parked, the complainant heard someone running towards him from behind saying “Tavale”.
 3. Subsequently, the Complainant felt a punch on the back which made him fall down.
 4. The Complainant then turned around to see who it was that punched him and saw that it was a male i-Taukei person (A1) punching his face.
 5. During the process, A2 had searched the Complainant’s Lee pants pockets and robbed the Complainant of 1 x Samsung J3 mobile phone valued at \$499.00 with his sim card from the front right side of the Complainant’s Lee pants.
 6. According to Sevuloni Laqekoro (PW2), he states that he saw that both A1 and A2 run towards to complainant and saw A1 punch the Complainant, thus

causing injuries to the Complainant. Thereafter, both A1 and A2 fled from the place of offending and ran towards the shortcut to Dalton Street.

7. *A Search Warrant was conducted on A1 at Namadai Settlement, Namadi Heights, Suva where the items that the Police had seized from A1 were:*

- i. 1 x Golden Coloured Samsung J3 Pro Mobile Phone with IMEI # 354814095154387*
- ii. 1 x Vodafone Sim Card # 8071417*
- iii. 1 x 2GB SD Memory Card*

Annexed hereto is the Search Warrant and Search List of A1 marked as “Annexure E”.

8. *The Complainant had undergone medical examination and it was revealed that the Complainant had sustained the following injuries during the incident;*

- i. Laceration over left cheek bone*
- ii. Tender left zygomatic area*
- iii. Laceration of nasal bridge*
- iv. Deviated nasal bridge*
- v. Swelling over left peri – orbital region*
- vi. Unable to open left eye.*

Annexed hereto is the Medical Examination Report of Rohit Raman, dated 24 May 2019 and marked as “Annexure F”.

9. *A1 made full admissions to the allegation of Aggravated Robbery in his Record of Interview at Q & A 30 – 75. Annexed hereto is the Record of Interview of A1 marked as “Annexure G”.*

10. *A2 had also made full admissions to the allegation of Aggravated Robbery in his record of Interview at Q & A 30 – 75. Annexed hereto is the Record of interview of A2 marked as “Annexed H”.*

11. *A1 is known but has NIL previous Convictions. Annexed hereto is the Previous Conviction of the A1 marked as “Annexure I”.*

12. *A2 had NIL Previous Convictions and is a first offender. Annexed hereto is the Previous Conviction of the A2 marked as “Annexure J”.*

[7] Ratu Tevita Ronaivalu and Vuli Qoriniasi you have admitted to the above Summary of Facts and taken full responsibility for your actions.

- [8] Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.
- [9] In terms of Section 311 (1) of the Crimes Act No. 44 of 2009 (Crimes Act), “A person commits an indictable offence (of Aggravated Robbery) if he or she-
- (a) Commits a robbery in company with one or more other persons; or
 - (b)

The offence of ‘Robbery’ is defined at Section 310 (1) of the Crimes Act as follows:

“A person commits an indictable offence (which is triable summarily) if he or she commits theft and —

(a) immediately before committing theft, he or she—

(i) uses force on another person; or

(ii) threatens to use force then and there on another person —

with intent to commit theft or to escape from the scene; or

(b) at the time of committing theft, or immediately after committing theft, he or she—

(i) uses force on another person; or

(ii) threatens to use force then and there on another person—

with intent to commit theft or to escape from the scene”.

- [10] The offence of Aggravated Robbery in terms of Section 311 (1) of the Crimes Act carries a maximum penalty of 20 years imprisonment.
- [11] The tariff for the offence of Aggravated Robbery is between 8 and 16 years imprisonment. This tariff has been endorsed by the Supreme Court in **Wallace Wise v. State** [2015] FJSC 7; CAV 04 of 2015 (24 April 2015); where it was held:

“.....We believe that offences of this nature should fall within the range of 8-16 years imprisonment. Each case will depend on its own peculiar facts. But this is not simply a case of robbery, but one of aggravated robbery. The circumstances charged are either that the robbery was committed in company with one or more other persons, sometimes in a gang, or where the robbers carry out their crime when they have a weapon with them.”

[12] However, in **State v. Josaia Warodo Vatunicoko** [2018] FJHC 885; HAC210.2018 (21 September 2018); His Lordship Justice Goundar summarised the various tariffs for the offence of Aggravated Robbery depending on the nature and circumstances of the robbery in the following manner:

“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 (**Raqauqau v. State** [2008] FJCA 34; AAU0100.2007 (4 August 2008).*

*Home invasion: 8 – 16 years’ imprisonment (**Wise v. State** [2015] FJSC 7; CAV0004.2015 (24 April 2015).*

*A spate of robberies: 10 -16 years’ imprisonment (**Nawalu v. State** [2013] FJSC 11; CAV0012.12 (28 August 2013).”*

[13] His Lordship Justice Vinsent Perera in **State v. Sokowasa Bulavou** [2019] FJHC 877; HAC28.2018 (10 September 2019); held that the appropriate tariff for cases of this nature, which he termed as “street or less sophisticated robberies”, should be a tariff of 5 – 13 years’ imprisonment. I am inclined to agree with His Lordship’s reasoning in arriving at the said tariff.

[14] Therefore, in my opinion, the appropriate tariff in the instant case, should be between 5 and 13 years’ imprisonment (as decided in **State v. Sokowasa Bulavou** (*supra*)).

[15] In determining the starting point within a tariff, the Court of Appeal, in **Laisiasa Koroivuki v State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”

[16] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offences, including the maximum sentence prescribed for the offences, the nature and gravity of the offences and the degree of culpability, Ratu Tevita Ronaivalu and Vuli Qoriniasi, I commence your sentences at 5 years’ imprisonment for the two counts of Aggravated Robbery.

[17] The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) You paid scant regard to the safety and security of the complainants.
- (iii) You committed these offences in the very early hours of the morning.
- (iv) You are now convicted of multiple offending.

[18] In addition, Ratu Tevita Ronaivalu, you assaulted both the complainants and thereby caused serious injuries to both of them. I consider this as an additional aggravating factor against you.

[19] Ratu Tevita Ronaivalu and Vuli Qoriniasi, in mitigation, you have submitted as follows:

- (i) That you are both first offenders and that you have no previous convictions to date. The State too confirms that there are no previous convictions recorded against you.
- (ii) You have fully cooperated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (iii) You have sought forgiveness from this court and have assured that you will not re-offend. You have submitted that you are truly remorseful of your actions.
- (iv) That you have entered a guilty plea at the first available opportunity.

[20] Ratu Tevita Ronaivalu, you are 30 years of age [Date of Birth 29 May 1989]. Prior to the offending, you were said to be employed as a Fitter at Water Authority of Fiji, earning approximately \$180.00 per week. However, it is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.

[21] Vuli Qoriniasi, you are 26 years of age [Date of Birth 5 August 1993]. You were said to be residing at Lot 10, Padam Lala Road, Namadi Heights, with your parents and sister. Prior to the offending, you were said to be employed as a Carpenter at a Private Construction Company, earning approximately \$250.00 per week. You were said to be supporting your family with the household expenses and they are said to be facing financial hardship. You were also said to be studying Mechanical Engineering for the past two years at Fiji National University and only one month is left to finish the course. However, it is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.

- [22] Considering the aforementioned aggravating factors, Ratu Tevita Ronaivalu, I increase your sentence by a further 5 years. Now your sentences for the two offences would be 10 years imprisonment each.
- [23] Considering the aforementioned aggravating factors, Vuli Qoriniasi, I increase your sentence by a further 3 years. Now your sentences for the two offences would be 8 years imprisonment each.
- [24] Ratu Tevita Ronaivalu, I accept that you are a person of previous good character. This is confirmed by the Antecedent Report filed by the State. I also accept that you have fully co-operated with the Police in this matter and also accept your remorse as genuine. Accordingly, considering these mitigating factors, I deduct 3 years from your sentences. Now your sentences for the two offences would be 7 year's imprisonment each.
- [25] Ratu Tevita Ronaivalu, I accept that you entered a guilty plea in this case at the first available opportunity. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a further discount of 2 years. Now your final sentences would be 5 years' imprisonment for each count.
- [26] Accordingly, Ratu Tevita Ronaivalu, I sentence you to a term of 5 years' imprisonment for each count. I order that the two sentences to run concurrently. Therefore, your final total term will be 5 years' imprisonment.
- [27] In terms of the provisions of Section 18 (1) of the Sentencing and Penalties Act, I fix your non-parole period as 3 years imprisonment.
- [28] Vuli Qoriniasi, I accept that you are a person of previous good character. This is further confirmed by the Antecedent Report filed by the State. I also accept that you have fully co-operated with the Police in this matter and also accept your remorse as genuine. Accordingly, considering these mitigating factors, I deduct 3 years from your sentences. Now your sentences for the two offences would be 5 year's imprisonment each.
- [29] Vuli Qoriniasi, I accept that you entered a guilty plea in this case at the first available opportunity. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a further discount of 2 years. Now your final sentences would be 3 years' imprisonment for each count.
- [30] Accordingly, Vuli Qoriniasi, I sentence you to a term of 3 years' imprisonment for each count. I order that the two sentences to run concurrently. Therefore, your final total term will be 3 years' imprisonment.
- [31] In terms of the provisions of Section 18 (1) of the Sentencing and Penalties Act, I fix your non-parole period as 2 years imprisonment.
- [32] Section 24 of the Sentencing and Penalties Act reads thus:

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”

[33] Ratu Tevita Ronaivalu and Vuli Qoriniasi, you have been in custody for this case since your arrest on 24 May 2019. This is approximately 7 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that the period of 7 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[34] In the result, Ratu Tevita Ronaivalu, you are sentenced to a term of 5 years’ imprisonment with a non-parole period of 3 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 4 years and 5 months.

Non-parole period - 2 years and 5 months.

[35] In the result, Vuli Qoriniasi, you are sentenced to a term of 3 years’ imprisonment with a non-parole period of 2 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 2 years and 5 months.

Non-parole period - 1 year and 5 months.

[36] You have 30 days to appeal to the Court of Appeal if you so wish.



Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 17th Day of December 2019

Solicitors for the State : **Office of the Director of Public Prosecutions, Suva.**
Solicitors for the Accused : **Office of the Legal Aid Commission, Suva.**