

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No: HAC 183 of 2018

STATE

V

ISIKELI NAQAU MATAIWAI RAVUGA

Counsel : Ms. R. Uce for the State.
: Ms. L. Volau [LAC] for the Accused.

Date of Sentence : 15 March, 2019

SENTENCE

[1] The accused is charged with the following information filed by the Director of Public Prosecutions:

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: Contrary to section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

ISIKELI NAQAU MATAIWAI RAVUGA in the company of another, on the 24th day of September, 2018 at Lautoka in the Western Division, broke and entered into the house of **KARALAINI KARAYAWA** with intent to commit theft from the said property.

SECOND COUNT

Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Act 2009.

Particulars of Offence

ISIKELI NAQAU MATAIWAI RAVUGA in the company of another, on the 24th day of September, 2018 at Lautoka in the Western Division, dishonestly appropriated (stole) Acer laptop valued at \$3000.00, Samsung Tablet valued at \$799.00, Puma Knapsack bag valued at \$108.00, Red Nike cap valued at \$20.00, 5 x perfume bottles valued \$500.00, 40 x small perfume bottles valued at \$400.00, Traditional attire valued \$100.00, ¾ Lee shorts valued at \$45.00, all to the total value of \$4972.00 the said property of **KARALAINI KARAYAWA** with the intention of permanently depriving the said **KARALAINI KARAYAWA**.

2. On 20 December, 2018 the accused pleaded guilty to the above two counts in the presence of his counsel.
3. On 15 February, 2019 the accused admitted the summary of facts read out after it was understood by him which is reproduced herewith:

“The defendant is Mr. Isikeli Nagau Ravuga, 22 years (04/02/96) of Lovu, Vatamai, Lautoka. He is employed as a cane cutter. The defendant has attained up till Form 5 at John Wesley College. The defendant is originally from Nakaunakoro, Nakasaleka, Kadavu and is currently occupying his grandmother’s home at Lovu, Vatamai, Lautoka.

The complainant is Karalaini Karayawa, 29 years, a Sales Executive at Digicel, Lautoka. The complainant resides at a rental house at Naikabula, Lautoka.

On the 24th day of September, 2018 a formal complaint was lodged at the Lautoka Police Station by the complainant that on the same day, unknown persons broke into her house and stole properties amounting to \$4972.00.

On the above mentioned date, the complainant had gone to work and her parents had left for town after securely locking the doors and windows of their house. At 10am the complainant’s parents returned

home to discover that the house had been broken into and items had been stolen. They immediately informed the complainant. The complainant returned home to discover the following properties stolen:

1. Ace laptop valued at \$3000.00
2. Samsung Tablet valued at \$799.00
3. Puma Knapsack bag valued at \$108.00
4. Red Nike cap valued at \$20.00
5. 5 x perfume bottles valued at \$500.00
6. 40 x small perfume bottles valued at \$400.00
7. Traditional attire valued at \$100.00
8. ¾ Lee shorts valued at \$45.00

The defendant with another had broken into the house by damaging the tower bolt which eventually led the padlock to be loose. Entry was made through the front door and after ransacking the house, the defendant with another fled the scene with the stolen properties. All items listed above had been sold by the defendant and as such there were no recoveries in this case.

Matter was reported to Lautoka Police Station by the complainant. A Police team was assigned for the task. The defendant was arrested and brought in for questioning through information received as part of the investigation. The defendant in his record of interview admitted to committing the offences from Q. 32 onwards. In his record of interview the defendant admitted to stealing all the items as stated above. The defendant had participated voluntarily in the reconstruction of the scene.

Attached herewith is record of interview for the defendant.

4. The caution interview of the accused dated 3rd October, 2018 was tendered in court with the summary of facts. The accused admitted committing both the alleged offences in the company of another person.
5. After considering the summary of facts read by the State Counsel which was admitted by the accused in the presence of his counsel and upon reading the caution interview of the accused, this court is satisfied that the accused has entered an unequivocal plea of guilty on his own free will. This court is also satisfied that the accused has fully understood the nature of the charges and the consequences of

pleading guilty. Moreover the summary of facts admitted by the accused also satisfies all the elements of both the offences.

6. In view of the above, this court finds the accused guilty as charged and he is convicted accordingly.
7. The two offences with which the accused has been convicted are founded on the same facts hence it is only proper that an aggregate sentence be imposed.
8. Section 17 of the Sentencing and Penalties Act states:

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

9. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the two offences.
10. The counsel for the accused presented the following mitigation and personal details about the accused:
 - (a) The accused was 22 years at the time of the offending;
 - (b) He is employed as a labourer;
 - (c) Earns \$125.00 per week;
 - (d) Admits his mistake;
 - (e) Committed this offence under peer pressure;

- (f) Seeks forgiveness from the complainant;
- (g) Pleaded guilty at the earliest opportunity;
- (h) Cooperated with the police;
- (i) He is remorseful and extremely sorry for what he has done;
- (j) Willing to reform;
- (k) Promises not to reoffend.

TARIFF

11. The maximum penalty of the offence of aggravated burglary is 17 years imprisonment.
12. The accepted tariff for this offence is a sentence between 18 months to 3 years imprisonment (see *Leqavuni v. State, Criminal Appeal No. AAU 106 of 2014 (26 February, 2016)*).
13. For the offence of theft the maximum penalty is 10 years imprisonment.
14. The tariff for the offence of theft is settled. In *Mikaele Ratusili v. State, Criminal Appeal no. HAA 011 of 2012 (1 August, 2012)* Madigan J. set out the tariff for theft as follows:
 - “(i) For the first offence of simple theft the sentencing range should be between 2 and 9 months.*
 - (ii) any subsequent offence should attract a penalty of at least 9 months.*
 - (iii) Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.*
 - (iv) regard should be had to the nature of the relationship between offender and victim.*

- (v) *planned thefts will attract greater sentences than opportunistic thefts.*"

AGGRAVATING FEATURES

(a) Daylight invasion

The accused had entered the vacant house of the victim by damaging the tower bolt during broad daylight after the victim had left her house to go to work and thereafter her parents left for town. The break in was discovered at about 10am that same day. A substantial amount of properties were stolen.

(b) Planning

There is some degree of planning involved the accused knew the house was vacant so he with another planned to break into the house.

15. Considering the objective seriousness of the offending, I select 1 year and 8 months imprisonment (lower range of the tariff) as the aggregate sentence for both the offences. For the aggravating factors I increase the sentence by 3 years. The interim sentence of imprisonment now stands at 4 years 8 months.
16. For the mitigation I reduce the sentence by 8 months bringing the sentence to 4 years. The accused has a previous conviction for theft dating back to 2015 as a result he does not get any discount for good character. The accused pleaded guilty at the earliest opportunity which I accept was out of genuine remorse. I further reduce the sentence by 1 year bringing the interim sentence to 3 years imprisonment.
17. The aggregate sentence is now 3 years imprisonment since the accused has been in remand for about 5 months and 12 days in

accordance with section 24 of the Sentencing and Penalties Act I further reduce the sentence by 5 months and 12 days as a period of imprisonment already served. The final aggregate sentence to be served is 2 years 6 months and 18 days imprisonment.

18. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment.
19. The discretion to suspend the term of imprisonment must be exercised judiciously after identifying special reasons for doing so.
20. In order to suspend the sentence of the appellant the court has to consider whether the punishment is justified taking into account the offences committed by the accused. In this regard the guidance offered by Goundar J. in *Balaggan vs State, Criminal Appeal No. HAA 031 of 2011 (24 April, 2012)* at paragraph 20 is helpful:

“Neither under the common law, nor under the Sentencing and Penalties [Act], there is an automatic entitlement to a suspended sentence. Whether an offender’s sentence should be suspended will depend on a number of factors. These factors no doubt will overlap with some of the factors that mitigate the offence. For instance, a young and a first time offender may receive a suspended sentence for the purpose of rehabilitation. But, if a young and a first time offender commits a serious offence, the need for special and general deterrence may override the personal need for rehabilitation. The final test for an appropriate sentence is whether the punishment fits the crime committed by the offender?”

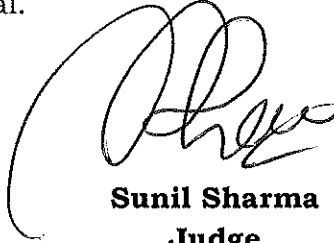
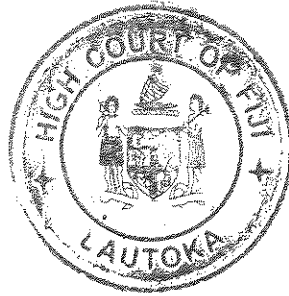
21. This court accepts that the factors in favour of the accused is that he was 22 years of age, has shown genuine remorse by pleading guilty at the earliest opportunity, takes responsibility of his actions and had

cooperated with the police. On the other hand the accused committed serious offences in broad day light after much planning and premeditation and his culpability is obvious. The offences committed are also prevalent.

22. After carefully weighing the factors in favour of the accused and the serious nature and circumstances of the offences committed I consider there are no special reasons which would convince this court to impose a wholly suspended sentence.
23. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that a partial suspended sentence is just in all the circumstances of the offending.
24. Although the accused is a young offender this court has to balance rehabilitation with retribution, specific and general deterrence. It is obvious that the accused takes responsibility of his actions, cooperated with the police and by admitting the charge in court suggests to me that he is genuinely interested in reforming himself. In view of these factors this court considers partially suspending the sentence of the accused which means this court has taken into account rehabilitation over and above retribution and deterrence.
25. This court is satisfied that the aggregate sentence of 2 years 6 months and 18 days imprisonment for one count of aggravated burglary and one count of theft is an appropriate punishment, however, in exercise of the discretion provided for under section 26 of the Sentencing and Penalties Act this court partially suspends the imprisonment term.
26. In summary the accused will serve a term of 1 year and 6 months imprisonment immediately with the balance term of 1 year 18 days imprisonment suspended for 4 years which will be effective from the

time the accused is released from the Corrections Center. The effect of suspended sentence is explained to the accused.

27. 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge

At Lautoka

15 March, 2019

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.