

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC117 of 2018

STATE

vs.

- 1. EMOSI BALEDROKADROKA**
- 2. LOTE WAISALE**

Counsel: Mr. E. Samisoni for the State
Ms. N Mishra for the 1st Accused
Ms. L David with Ms. Prasad for the 2nd Accused

Date of Hearing: 11th, 12th and 13th March 2019

Date of Summing Up: 15th March 2019

Date of Judgment: 15th March 2019

Date of Sentence: 28th March 2019

SENTENCE

1. Mr. Emosi Baledrokadroka and Mr. Lote Waisale, you both are stand convicted for one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act, which carries a maximum penalty of 20 years imprisonment. The particulars of the offence is that:

Statement of Offence

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

Particulars of Offence

EMOSI BALEDROKADROKA and LOTE WAISALE on the 11th day of March, 2018 at Nasinu in the Central Division, in the company of each other, robbed NILESH CHAND of \$40.00 cash and an Alcatel mobile phone valued at \$79.00 all to the total value of \$119.00, the property of NILESH CHAND.

2. It was proved during the course of the hearing, that two of you have grabbed the complainant and dragged him to the nearby car-wash, when the complainant was walking down to his home in the evening of 11th of March 2018. The time was around 8.00 p.m. to 8.30 p.m. Having dragged him to the car-wash, one of you have punched him on his face and then tried to strangle him. Other one then took the money and mobile phone of the complainant and left the scene. You both have committed this offence in company of each other. Therefore, each one of your culpability and degree of responsibility for inflicting of violence and robbing the complainant are same.
3. This is a case of robbing of an individual, using violence force, while he was walking along a public road in the night. Crimes of this nature are prevalent, and have caused insecurity and vulnerability in the society. Aggravated Robbery is the worst and serious form of property crime in this jurisdiction, which carries a maximum penalty of twenty years imprisonment. Therefore, I find this is a serious offence.
4. In view of the seriousness of this offence, it is my opinion that such offenders must be dealt with severe and harsh punishment. Therefore, the purpose of this sentence is founded on the principle of deterrence and protection of community.
5. Tariff for the offence of Aggravated Robbery is between **eight (8) years to sixteen (16) years** of imprisonment. **(Wise v State [2015] FJSC 7; CAV0004.2015 (24 April 2015)).**

6. You have approached the complainant while he was walking to his home in the dark along the road. You have then attacked and assaulted the complainant when he has no prospect of escaping or seeking for assistance. The impact of this offence on the complainant must be a horrified experience as he was suddenly attacked and robbed in the dark. In view of these factors, I find the level of harm and culpability is significantly high in this matter. I accordingly select 8 years as the starting point.
7. While committing this crime, you have inflicted injuries on the complainant as stated in the medical examination report. I find it as an aggravating factor.
8. Both of you in your respective mitigation submissions highlighted your family and personal circumstances, which I do not find much mitigatory value.
9. Mr. Emosi Baledrokadroka, you have been adversely recorded with three previous convictions. Mr. Lote Waisale, you have been recorded with two previous convictions. There is no evidence or information before this court to consider your general reputation in the society and also no information about any significant contribution that you have made to the community. Therefore, you are not entitled for any discount for your previous character.
10. In view of the reasons discussed above, I increase further one (1) year for the aggravating factor to reach nine (9) years. I do not find any mitigation factors in your favour. Accordingly, your final sentence is nine (9) years imprisonment.
11. Having considered the seriousness of this crime, the purpose of this sentence and both of your age, I find seven (7) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of seven (7) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

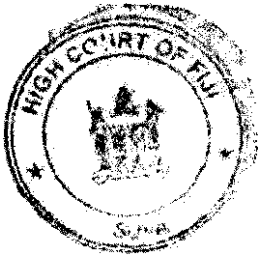
Head Sentence

12. Accordingly, Mr. Emosi Baledrokadroka, I sentence you for a period of **nine (9) years** imprisonment to the offence of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act.
13. Moreover, you are not entitled to any parole for a period of **seven (7) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.
14. Mr. Lote Waisale, I sentence you for a period of **nine (9) years** imprisonment to the offence of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act.
15. Moreover, you are not entitled to any parole for a period of **seven (7) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

16. Mr. Emosi Baledrokadroka, you have been in remand in custody for this case for a period of five (5) months and three (3) days before the hearing as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of six (6) months as a period of imprisonment that have already been served by you.
17. Accordingly, the actual sentencing period is **eight (8) years** and **six (6) months** imprisonment with non-parole period of **six (6) years** and **six (6) months**.
18. Mr. Lote Waisale, you have been in remand in custody for this case for a period of three (3) months before the hearing as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of three (3) months as a period of imprisonment that have already been served by you.

19. Accordingly, the actual sentencing period is **eight (8) years** and **nine (9) months** imprisonment with non-parole period of **six (6) years** and **nine (9) months**.
20. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to be "R.D.R.T. Rajasinghe", written in a cursive style.

R.D.R.T. Rajasinghe
Judge

At Suva
28th March 2019

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