

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 429 OF 2018

STATE

-v-

ESALA RABALOLO

Counsel: Ms. L. Bogitini with Ms. S. Tivao for Prosecution
Mr. K. Chang for Accused

Date of Judgment : 18 March 2019

Date of Sentence : 29 March 2019

SENTENCE

1. Esala Rabalolo, you were jointly charged with two others with Aggravated Robbery on following information.

Statement of Offence

AGGRAVATED ROBBERY: contrary to section 311(1) (a) of the Crimes Act 2009.

Particulars of Offence

ESALA RABALOLO in the company of others, on the 9th of November, 2018 at Nasinu in the Central Division, stole \$150 cash, a BLU brand mobile phone and a wallet with assorted cards, the property of Benjamin Robert and immediately before committing the theft used force on Benjamin Robert.

2. You pleaded not guilty to the above charge and at the ensuing trial, you were found guilty by this Court as charged and convicted accordingly.
3. The complainant in this matter is a taxi driver. One of your accomplices hired complainant's taxi during night time on the pretence that he was going to bring his wife from Vesida back to Suva. You boarded the taxi with 2 other accomplices and sat at the back seat.
4. When the taxi reached Vesida around 10.30 pm., you forced the complainant to drive the taxi to a darker area. When he stopped the taxi, you grabbed his neck from behind. Then you came in front and started punching him in his face causing him injuries. You threatened to kill him if he yelled. You and your accomplices robbed the complainant of his wallet with assorted cards and cash amounting to \$ 150, a BLU mobile phone valued at \$ 3000. Stolen items were never recovered. The complainant managed to escape and report the matter to police. You were apprehended by the civilians in the area while others fled the scene.
5. The maximum sentence prescribed for Aggravated Robbery is 20 years' imprisonment. The tariff depends on the nature and circumstances of the robbery. The tariffs are as follows:

6. Street mugging: 18 months to 5 years' imprisonment (*Raqaugau 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)

Robbery of a taxi driver :4-10 years (*State v Tamani* [2011] FJHC 725;


7. In assessing the objective seriousness of your offending, I looked at the maximum sentence prescribed for offence, the degree of culpability and the harm caused to the complainant. Having considered the objective seriousness of the offending, I start your sentence with a starting point of 6 years, in the middle range of the tariff.

8. The complainant was attacked at night time when he was providing a vital service to the community. The attack was planned. You were ruthless. The complainant was dragged out of his vehicle, and physically beaten causing him injuries and a black eye. He was taken hostage in his own taxi until he managed to escape. These factors aggravated your offending. I increase your sentence by 3 years.

9. In mitigation, your counsel has informed the court that you are 30 year old security officer earning an income of \$190 per week. Your personal circumstances are of little mitigating value. You have number of previous convictions and therefore you will not receive any discount in terms of good character. You have been in remand since 9th November, 2018, for nearly 4 months. I separately discount your remand period and the total deduction is 12 months.

10. The courts have a duty to denounce and deter this kind of anti-social behaviour using violence on innocent people who are providing vital services to the community during night time. These kinds of offences will undoubtedly cause panic in taxi drives and will eventually affect the general public who are the service recipients. The primary purpose of the punishment for offences involving the use of violence is deterrence, both special and general.

11. Taking all these factors into account, I sentence you to 8 years' imprisonment with a non-parole period of 5 years.


Aruna Aluthge
Judge



Counsel: Office of the Director of Public Prosecution for Prosecution
Office of the Legal Aid Commission for Accused