

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 300 OF 2017S

**STATE**

**vs**

**JOSAIA DOBUI**

**Counsels : Mr. E. Samisoni for State**  
**Accused in Person**

**Hearings : 16 November and 6 December, 2018**

**Sentence : 29 March, 2019.**

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## **SENTENCE**

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1. In this case, the prosecution had filed a total of four (4) informations, at different stages of the proceeding. The first information was dated 24 November 2017. It had four accuseds, which included Mr. Josaia Dobui, as Accused No. 3. The information was amended on 16 February 2018 (Information No. 2). Information No. 2 was dated 15 February 2018. The accused had pleaded guilty to both counts in the information, and had been sentenced on 14 September 2018 to 8 years imprisonment, with a non-parole period of 7 years imprisonment, therefrom.
2. After the above sentencing, the prosecution's previous application to amalgamate this file with Lautoka High Court Criminal Case No. HAC 021 of 2018 was granted. My reasons thereof were provided in a ruling the court made on the same date, that is, 14 September

2018. This amalgamated information became Information No. 3, and it was dated 21 September 2018. There were four counts in the information. Mr. Josaia Dobui was only involved on the first two counts, as Accused No. 2. Mr. Dobui had been represented by counsels from 3 November 2017 to 16 November 2018. On 16 November 2018, Mr. Josaia Dobui waived his right to counsel, and voluntarily chose to represent himself. He was permitted to do so.

3. On 16 November 2018, count no. 1 and 2 of information no. 3 was put to him:

*"[Count 1]*

*Statement of Offence*

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

*Particulars of Offence*

*NACANIELI BAKATA, JOSAI A DOBUI and another on the 9<sup>th</sup> September 2017 at Sigatoka in the Western Division, in the company of each other, robbed RITESH PRASAD of \$1,520.00 cash, a silver & gold TITAN brand watch (oblong face shape) valued at \$140.00, a silver TITAN brand watch (round face shape) valued at \$100.00, a Cool Water brand cologne for Men valued at \$110.00, a laptop bag containing a HP brand laptop valued at \$1,099.00, a SEAGATE brand Hard Drive valued at \$179.00, a smart watch valued at \$75.00, 2 Samsung Galaxy tablets valued at NZD\$900.00 is equivalent to FJD\$1,300.00, a Samsung Galaxy tablet valued at \$199.00, a red VIDO mobile phone valued at \$179.00, a black Nokia mobile phone valued \$59.00, a Black Samsung S2 mobile phone valued at \$1,499.00, a white pocket wi-fi valued at \$59.00, a Green Tea brand perfume valued at \$79.00, an Elizabeth Arden brand perfume valued at \$190.00, a Toshiba brand USB valued at \$115.00, a Toshiba brand USB valued at \$25.00, x2 Santorum brand USB valued at \$115.00 each, an Oakley brand sunglass valued at \$300.00 and a Toyota Fielder vehicle registration number FP 846 valued at \$24,000.00, all to the value of \$31,457.00 the property of RITESH PRASAD.*

*[Count 2]*

*Statement of Offence*

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

*Particulars of Offence*

*NACANIELI BAKATA, JOSAI A DOBUI and another on the 9<sup>th</sup> September 2017 at Sigatoka in the Western Division, in the company of each other, robbed DEVINA*



*DEVIKA DARSHANI of a HP brand laptop valued at \$1,000.00, x2 Samsung Galaxy tablets valued at \$1,000.00 each, a white Samsung S2 smart phone valued at \$1,499.00, a bracelet and gold bangles valued at \$450.00 and an 18 carat pair of earrings valued at \$350.00 all to the total value of \$4,299.00, the property of DEVINA DEVIKA DARSHANI .”*

4. The information was read and explained to Mr. Josaia Dobui in the “i-taukei” and English language. He said, he understood them. He then pleaded guilty to both counts.
5. The prosecution then presented the following summary of facts in court:

*“Accused: Josaia Dobui, 22 years old of Namoli Road, Nadi.*

*Complainants: PW1: Ritesh Prasad, 38 years old of Kulukulu, Sigatoka.*

*PW2: Devina Devika Darshani, 32 years old of Kulukulu, Sigatoka.*

*Counts 1 and 2*

*In the early hours of 9<sup>th</sup> September, 2017 at about 4.40 am, PW1 Ritesh Prasad and his wife PW2 Devina Devika Darshani with their two children were sleeping in the comfort of their home when they were awoken by a sound inside their kitchen.*

*PW1 got out of his bed to investigate what the sound was. When he reached the door of his bedroom he met a man wearing a mask and armed with a pinch bar. The man shone a torch on his face. The man put the pinch bar on PW1's neck and told him to co-operate or else he would kill him and his family and steal their items.*

*PW1 was afraid after hearing that threat and switched the bedroom light on. PW1 then asked the masked men if he could wake up PW2 Devina Devika Darshani who was sleeping with their baby because if she awoke on her own she would scream. While he was walking to the room where PW2 was sleeping he saw another man in another room checking all the drawers. This second man was not wearing a mask but was wearing a white hat and long sleeve t-shirt with long pants (jeans).*

*After waking his wife, PW1, PW2 and their baby all went to their son's room which was guarded by the masked men. They entered their son's room and were directed to sit on the bed. The masked men started asking for jewellery and started checking all their drawers again. PW1 and PW2 were then told to go to the sitting room when they saw one of the robbers coming out of their prayer room with their items.*

*The accused was one of the men who had entered the home and helped pack some of the stolen items. The accused and his friends then stole the items itemized in count no. 1 and 2.*

*After taking all the above items from PW1 and PW2's home, the accused and his accomplices drove off in a Toyota Fielder vehicle registration number FP 846 belonging to PW1.*

*The accused was arrested by the police and interviewed in relation to these offences.*

*The accused made full admissions in his Record of Interview at Question and Answers 50, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 80, 81, 82, 83, 84 and 85. The accused admitted to travelling with three accomplices to Kulukulu, Sigatoka from Nadi. The accused and his accomplices entered the home of PW1 and PW2 by using a pinch bar to open a side door. They then committed robbery and stole the items as listed above. The accused and his accomplices then drove off in a Toyota Fielder owned by PW1. The accused also admitted to the offences in his Charge Statement.*

*\$25,457.00 worth of items were recovered.*

*The accused in the presence of his counsel, pleaded guilty as charged, of his own free will".*

6. The court then checked with the accused to find out whether or not he was admitting to all the elements of the offence of "aggravated robbery", contrary to section 311 (1) (a) of the Crimes Act 2009. The accused admitted the prosecution's summary of facts. As a result of the above admission, the court found him guilty as charged on both counts and convicted him accordingly on those counts. The court noted that he was a first offender and had also considered his plea in mitigation.
7. "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.

8. 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...”*

9. 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...”*

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

- (i) The offence was a home invasion offence. The complainant (PW1) and his wife (PW2), both aged 38 and 32 years old, were fast asleep in their house with their two young children, early morning (4.40 am) on 9 September 2017.
- (ii) The offending was obviously carried out after careful pre-planning.
- (iii) The offending was carried out in frightening circumstances, that is, they broke into the complainant's home armed with a pinch bar, in the company of others and they were masked.
- (iv) The complainants were forced into their son's and later the sitting room, and warned not to resist or they will be killed.

- (v) The offending was carried out in the presence and witnessed by two young children.
- (vi) By offending against the complaints, you had no regard to their property rights, their rights to safety, their rights as human beings and their rights to a happy and peaceful life.

11. The mitigating factors were as follows:

- (i) At the age of 23 years, this is your first offence;
- (ii) Although you pleaded guilty to the offence 3 months 10 days after first call in the Lautoka High Court and again on 16 November 2018, at Suva High Court, you nevertheless saved the court's time;
- (iii) You had been remanded in custody since 25 September 2017, when you first appeared in the Navua Magistrate Court, that is, approximately 1 year ago;
- (iv) You co-operated with police during the investigation, by admitting the offence when cautioned interviewed by police.

12. On count no. 1 (aggravated robbery), I start with a sentence of 12 years imprisonment. I add 4 years for the aggravating factors, making a total of 16 years imprisonment. For time already served, while remanded in custody, I deduct 1 year, leaving a balance of 15 years imprisonment. For intending to plead guilty to the offence 3 months 10 days after first call in the Lautoka High Court, and actually pleading guilty on 16 November 2018 at the Suva High Court, I will give a 2 years deduction, leaving a balance of 13 years imprisonment. For being a first offender, I deduct 3 years, leaving a balance of 10 years imprisonment. For co-operating with police during their investigation when you admitted the offences during your caution interview, I give you a further 2 years deduction, leaving a balance of 8 years imprisonment. On count no. 1, I sentence you to 8 years imprisonment.

13. On count no. 2 (aggravated robbery), I repeat the above process and sentence.

14. The summary of your sentences are as follows:

- (i) Count No. 1; Aggravated Robbery : 8 years imprisonment.
- (ii) Count No. 2 Aggravated Robbery : 8 years imprisonment.

15. Because of the totality principle of sentencing, I direct that the above sentences, be made concurrent to each other, making a final sentence of 8 years imprisonment.
16. Mr. Josaia Dobui, for committing two "aggravated robberies" against the complainants in count no. 1 and 2, at Sigatoka in the Western Division, by violently robbing them, in company with others, I sentence you to 8 years imprisonment, with a non-parole period of 7 years, effective forthwith. This sentence is concurrent to any present prison term.
17. You have 30 days to appeal to the Court of Appeal.



  
**Salesi Temo**  
**JUDGE**

**Solicitor for State** : **Office of the Director of Public Prosecution, Suva**  
**Solicitor for Accused** : **Accused in Person.**