

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 031 OF 2017S

STATE

Vs

2. LEMEKI SEVUTIA TAUVOLI

Counsels : Ms. U. Tamanikaiyaroi for State
Ms. S. Daunivesi for Accused No. 2
Hearing : 14 May, 2019.
Sentence : 15 May, 2019.

SENTENCE

1. On 14 May 2019, in the presence of his counsel, Accused No. 2 pleaded guilty to the following amended information:

"Statement of Offence

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

Particulars of Offence

PITA DOMONI, LEMEKI SEVUTIA TAUVOLI and MALAKAI TOKA on the 30 December 2016, at Samabula in the Central Division, robbed JULIE SUTHERLAND of cash valued at \$65.00, 1 x black I-Pad cover valued at \$400.00, 1 x Apple brand I-Pad valued at \$2,000.00, 1 x Sony digital camera valued at \$300.00, 1 x Nikon digital camera valued at \$300.00, 2 x packets of perfume valued at \$150.00, 1 x black backpack bag valued at \$80.00, 1 x bottle Whiskey valued at \$150.00, 1 x bottle of Japanese Choya valued at \$50.00, 2 x bottles of white wine valued at \$40.00, 1 x Samsung S4 galaxy mobile phone

valued at approximately \$1,500.00 and 1 x silver Dell Inspiron laptop valued at approximately \$1,043.00, Australian foreign currency AU\$3,000.00 approximately valued at \$4,735.00, 1 x black Dell Inspiron laptop valued at approximately \$1,250.00 and 1 x black Dell Latitude laptop valued at approximately \$1,250.00, all to the total approximate value of \$13,313.00, the said property of JULIE SUTHERLAND."

2. The prosecutor then presented the following summary of facts in court:

"The Accused

- LEMEKI SEVUTIA - 20 years of age, unemployed of Howell Road.

The Complainant

- JULIE SUTHERLAND – 60 years of age, unemployed of 72 Howell Road, Samabula
1. On 30th December, 2016 at around 6 pm, Julie Sutherland (hereby referred to as the complainant) took her dog for a stroll at Albert Park and returned home at around 7 pm. Upon arriving at her residence, the complainant switched on the front balcony lights, unlocked the front door, entered and locked the door behind her.
 2. Whilst the complainant was inside the house, she heard her dog barking towards one of the bedrooms. The complainant unlocked the main door, switched on the verandah light and upon walking outside to check the compound was suddenly pushed back into the house by the accused and two other persons (hereby referred to as "others").
 3. The accused and others were masked and wore hand gloves; the complainant saw that the accused and others were holding weapons namely a knife, a pair of scissors and a baseball bat. The complainant led the accused and others to the master bedroom where they took \$40 cash from the complainant's purse. The complainant then took them to another bedroom where \$25 cash was stolen.
 4. The accused with others then tied the complainant's hands behind her back with a cable they saw lying on the kitchen counter and used the complainant's

scarf to tie around her eyes. The accused also tied a t-shirt around the complainant's neck, pulled it up to cover the complainant's mouth and wrapped her with a blanket to prevent her from moving.

5. The accused with others stole the following items:
 - a. Cash valued at \$65.00
 - b. 1 x black I-Pad cover valued at \$400.00,
 - c. 1 x Apple brand I-Pad valued at \$2,000.00,
 - d. 1 x Sony digital camera valued at \$300.00,
 - e. 1 x Nikon digital camera valued at \$300.00,
 - f. 2 x packets of perfume valued at \$150.00,
 - g. 1 x black backpack bag valued at \$80.00,
 - h. 1 x bottle Whiskey valued at \$150.00,
 - i. 1 x bottle of Japanese Choya valued at \$50.00,
 - j. 2 x bottles of white wine valued at \$40.00,
 - k. 1 x Samsung S4 galaxy mobile phone valued at approximately \$1,500.00
 - l. 1 x silver Dell Inspiron laptop valued at approximately \$1,043.00,
 - m. Australian foreign currency AU\$3,000.00 approximately valued at \$4,735.00,
 - n. 1 x black Dell Inspiron laptop valued at approximately \$1,250.00
 - o. and 1 x black Dell Latitude laptop valued at approximately \$1,250.00,

All to the total approximate value of \$13,313.00 the properties of the complainant.

6. The accused and others then fled the residence leaving the complainant tied up. The complainant later managed to loosen the cable to untie her hands as well as remove the cloth covering her mouth and uncovered her eyes and later then went to her neighbour's residence to relay the incident before later reporting the matter to police.
7. The accused was arrested and caution interviewed on 20th January 2017, where he admitted to planning with his accomplice to breaking into the complainant's home (Q&A 39), walking through the backyard and climbing up the verandah (Q&A 51), looking inside the house and seeing the complainant cutting something on the kitchen counter (Q&A 52), entering the house and bedroom (Q&A 56), forcefully opening a cabinet drawer in the bedroom and

stealing 3 x laptops, 1 x I-pad and 1 x packet of perfume (Q&A 58-59), covering the complainant's eyes with a scarf (Q&A 61), stealing Australian currencies inside an envelope from the money safe (Q&A 62), after stealing from the bedroom left the complainant's house with his accomplice through the main door and walking down the steps to the driveway then across the road to a creek (Q&A 91) and sharing the money with his accomplices at a vacant house in Vatuwaqa (Q&A 92-93).

❖ [A copy of the Record of Interview of the Accused is annexed as A1]
[Not included]

8. Police recovered the following stolen properties:
 - a. 1 x Samsung S4 galaxy mobile phone;
 - b. 1 x Apple brand I-Pad;
 - c. 1 x silver Dell Inspiron laptop;
 - d. A x black Dell Inspiron laptop;
 - e. 1 x black Dell Latitude laptop.

The said items were positively identified by the complainant as the same items that were stolen from her residence."

3. The court then checked with defence counsel on whether or not the accused was admitting the above summary of facts. Defence counsel, on behalf of her client, told the court that the accused admitted the summary of facts mentioned above. She also told the court that, the accused also admitted the particulars of the offence mentioned in the information. On the basis of the above admissions, the court found Accused No. 2 guilty as charged and convicted him accordingly.
4. The prosecution then presented Accused No. 2's previous convictions. He had five previous convictions of theft, two absconding bail, burglary and theft between 2015 and 2016. Through his counsel, Accused No. 2 admitted the above previous convictions. No antecedent report nor victim's impact report were submitted by prosecution. Defence counsel then presented a well written plea in mitigation.

5. "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.

6. 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..."

7. 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 which 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..."*

8. The aggravating factors were as follows:

- (i) **Cowardly attack and the invasion of the home of an elderly person.** The female complainant was 60 years old and rightly enjoying the comfort of her house. You and others invaded her house, attacked her and tied her up, and stole her properties, as itemized in the information. The court will not tolerate these types of cowardly attack on vulnerable members of the community;
- (ii) You and your friends pre-planned this offending. You came prepared to implement your evil deeds;
- (iii) You and your friends were masked and armed with weapons, that is, a knife, scissors and a baseball bat. You and your friends bullied the 60 year old complainant, subdued her, tied her up and stole her properties;
- (iv) By offending against her, you showed no regard to her right as a human being, her right not to be harmed and disregarded her property rights by stealing her properties.

9. The mitigating factors were follows:

- (i) Although you pleaded guilty late at trial time, you nevertheless saved some court time;
- (ii) You had been remanded in custody for approximately 9 months.

10. I start with a sentence of 12 years imprisonment. I add 3 years for the aggravating factors, making a total of 15 years imprisonment. For time already served while remanded in custody, I deduct 1 year, leaving a balance of 14 years imprisonment. For the guilty plea, I deduct 1 year, leaving a balance of 13 years imprisonment.

11. Mr. Lemeki Sevutia Tauvoli (Accused No. 2), for committing aggravated robbery against the complainant on 30 December 2016 at Samabula in the Central Division, I sentence you to 13 years imprisonment, with a non-parole period of 12 years imprisonment, effective forthwith. This sentence is concurrent to any prison sentence presently served.

12. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner that is just in the circumstances, to protect the community, to deter other would-be offenders and to signify that the court and the community denounce what you did to the complainant on 30 December 2016.
13. You have 30 days to appeal to the Court of Appeal.




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JUDGE

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