

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 189 OF 2018**

**STATE**

**.V.**

- 1. MALAKAI CAKAUNITABUA**
- 2. AKEIMI RAMAGA**
- 3. MARIKA KAMAQESA**

*Counsel* : *Ms. M. Choudhury for the State*  
*Ms. L. Manulevu for the accused*

*Date of Hearing* : *08<sup>th</sup> April 2019*  
*Date of Sentence* : *24<sup>th</sup> May 2019*

**SENTENCE** of the 1<sup>st</sup> Accused

1. Mr. Malakai Cakaunitabua, you have freely and voluntarily pleaded guilty to the counts of Aggravated Burglary, Theft and Serious Assault before the commencement of the trial. I am satisfied and convinced that you have pleaded so, unequivocally and having understood the consequences of such a plea.
2. As for the amended information filed by the Director of Public Prosecution (DPP), you were charged as follows;

**COUNT ONE**

*Statement of Offence*

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

*Particulars of Offence*

Malakai Cakaunitabua, (with others), on the 28<sup>th</sup> day of April, 2018, at Navuso, Nausori in the Eastern Division, entered into the dwelling house of Vikash Atish Prasad as trespassers with intent to steal from therein.

## **COUNT TWO**

### *Statement of Offence*

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

### *Particulars of Offence*

Malakai Cakaunitabua, (with others) on the 28<sup>th</sup> day of April, 2018, at Navuso, Nausori in the Eastern Division, dishonestly appropriated 1 red coloured Ladies purse valued at \$25.00, 1 Ladies handbag (brown) valued at \$70.00, 1 pair of 22 carat gold bangle valued at \$3,000.00, 1 pair of 22 carat gold Ball valued at \$1,700.00, 1 pair of 22 carat gold ear piece valued at \$800.00, 1 22 carat gold ring valued at \$400.00, 1 gold ball valued at \$100.00, 1 pair pearl earring valued at \$25.00, 1 ladies wristwatch (Casio) valued at \$80.00, 1 gold plated wristwatch valued at \$55.00 and cash of \$25.00 all to the total value of \$6,280.00 the property of Josephine Prasad, with the intention of depriving the said Josephine Prasad of the said properties.

## **COUNT THREE**

### *Statement of Offence*

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

### *Particulars of Offence*

Malakai Cakaunitabua, (with others) on the 28<sup>th</sup> day of April, 2018, at Navuso, Nausori in the Eastern Division, dishonestly appropriated 1 black wallet containing \$45.00 the property of Vikash Atish Prasad, with the intention of depriving the said Vikash Atish Prasad of the said property.

## **COUNT FOUR**

### *Statement of Offence*

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

### *Particulars of Offence*

Malakai Cakaunitabua, (with others) on the 28<sup>th</sup> day of April, 2018, at Navuso, Nausori in the Eastern Division, dishonestly appropriated 1 black Nokia Mobile phone valued at \$69.00 the property of Satish Prasad, with the intention of depriving the said Satish Prasad of the said property.

## **COUNT FIVE**

### *Statement of Offence*

SERIOUS ASSAULT: Contrary to section 277(b) of the Crimes Act of 2009.

*Particulars of Offence*

Malakai Cakaunitabua, (with others) on the 28<sup>th</sup> day of April, 2018, at Navuso, Nausori in the Eastern Division, resisted PC 5597 Iakobo and PC 5738 Laisenia whilst effecting arrest in the due execution of their duty.

3. Summary of Facts were submitted by the State and read over and explained to you. Malakai Cakaunitabua, you having understood, admitted the said summary of facts to be true and correct.
4. Summary of facts state that,

Complainants are:

- PW1 - Vikash Atish Prasad 26 year old, plumber of Lot 1, Navuso, Nausori.
- PW2 - Josephine Prasad – 30 year old, employed at Easy Pluming, Taveuni
- PW3 - Satish Prasad – 54 year old, Truck Driver, Lot 1, Navuso, Nausori
- PW4 - PC 5738 – Laisenia

**COUNT 1 - AGGRAVATED BURGLARY**

On 28<sup>th</sup> day of April 2018, between 1am to 3.45am, at Navuso, Nausori, the accused together with others in company of each other, broke and entered into the house of PW1 with intention to steal.

**COUNT 2 – THEFT**

On the said day time and location, the accused together with others in company of each other stole the following items belonging to PW 2 with the intention of permanently depriving her of the said items:-

- 1) 1 Red colored ladies handbag valued at \$25.00
- 2) 1 Brown colored ladies handbag valued at \$70.00
- 3) 1 pair of 22 carat gold bangle valued at \$3,000
- 4) 1 pair of 22 carat gold ball valued at \$1,700
- 5) 1 pair of 22 carat gold ear piece valued at \$800
- 6) 1 x 22 carat gold ring valued at \$400
- 7) 1 gold ball valued at \$100
- 8) 1 pair pearl earring valued at \$25
- 9) 1 ladies wristwatch (casio) valued at \$80
- 10) 1 gold plated wrist watch valued at \$55
- 11) \$25 cash

All to the total value of \$6280

### COUNT 3 - THEFT

On the said day, time and location, the accused together with others in the company of each other stole 1 x black wallet belonging to PW 1 with the intention of permanently depriving him of the said item.

### COUNT 4 – THEFT

On the said day, time and location, the accused together with others in company of each other stole 1 x black Nokia Mobile phone valued at \$69.00 belonging to PW 3 with the intention of permanently depriving him of the said items.

PW3 had woken up on the said day and discovered that the door of the house was open. PW3 then woke up PW1 and PW2 and they all then searched the house to see if any items were stolen. PW1, PW2 and PW3 discovered that assorted items (as mentioned above) belonging to them were stolen.

### COUNT 5 – SERIOUS ASSAULT

On the said day, after sometime, PW4 was patrolling the area with PC Iakabo (hereafter PW5) along Saweni Road. As they approached close to Navuso Junction, they saw the accused with others and noticed that one of them threw a wallet on the ground. As PW4 and PW5 approached them, they ran away. Later PW5 discovered that this wallet belonged to PW1. Upon this discovery, PW5 accompanied by PW4 and another officer searched the area again and were able to locate accused with 2 others. As PW4 approached the accused to effect arrest in the due execution of his duty, the accused tried to run away, hence resisting the arrest.

The accused was arrested and taken to the Nausori Police Station. He was searched and \$25 cash belonging to PW2 was recovered from him. The area where accused was arrested from was thoroughly checked and the following items were recovered:

- 1) Mobile phone \$69
- 2) 1 brown ladies handbag \$70
- 3) 1 red ladies purse \$25
- 4) Assorted jewelleries valued at \$6025
- 5) 1 Casio wrist watch valued at \$70
- 6) \$70 cash

Total value of items recovered \$6394

The accused was caution interviewed and shown items recovered. He said that he found the plastic of jewelries and the Casio Wrist watch inside the brown ladies handbag which he found lying on the road. He also said that he tried to run away from the police but was caught.

The accused was charged under the Crimes Act 2009 as follows:

- Count 1 : Aggravated burglary contrary to section 313 (1)(a)
- Count 2, 3 and 4 : Theft contrary to section 291(1)
- Count 5 : Serious Assault contrary to Section 277(b)

5. I find that the admitted facts support all elements of the charges in the Information, and find the charges proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and I convict you for the offences of Aggravated Burglary, Theft and Serious Assault as charged.
6. A person who enters a building with one or more other persons as a trespasser, with the intention to steal commits an aggravated burglary punishable by 17 years' imprisonment under section 313(1)(a) of the Crimes Act. Theft is committed if a person dishonestly appropriates property belonging to another with the intention to permanently depriving him of the property. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act. The offence described here as Serious Assault under section 277 (b) is committed once a person obstructs the arrest. The maximum punishment under section 277 is 5 years of imprisonment.
7. The accepted tariff for Aggravated Burglary is 6 to 14 years imprisonment. Though there is some uncertainty in respect of the recommended tariff, as I have reasoned out in **State v Chand** - Sentence [2018] FJHC 830; HAC44.2018 (6 September 2018), I prefer to follow Hon. Justice Perera in **State v Naulu** - [2018] FJHC 548 (25 June 2018), as it gives effect to the intention of the legislature, best.

As for the offence of theft the accepted tariff would range from 2 months to 3 years (**Ratusili v State** [2012] FJHC 1249; HAA 011.2012).

As for the offence of Serious Assault, the tariff is 6-9 months imprisonment (**State v Batiratu** [2012] FJHC 864; HAR001.2012).

8. The offences you have committed are founded on the same facts. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("*Sentencing and Penalties Act*") states;

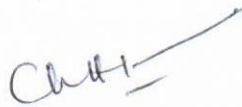
*"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment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

9. Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in *Brewster* 1998 1 Cr App R 220 observed at 225:

*“Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organization, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism.”*

10. There are not many aggravating factors mentioned above present in your case other than the fact that this invasion occurred at night. Further, these types of offences have increased due to the leniency they are dealt with and society now demands an unsympathetic and/or stern judicial approach on these types of offences in order to curtail them.
11. The mitigating factors are your expression of remorse, cooperating with the police and that almost all of the stolen items were recovered. You are only 21 years of age.

12. I would select 6 years as the starting point of your aggregate sentence. I would enhance 1 year due to aggravating factors mentioned above and deduct 2 and ½ years in view of the above mitigating factors. Now your sentence is an imprisonment term of 4 and ½ years. Considering your guilty plea through which you have saved this court's time and resources, you will be given a discount of 14 months. Accordingly, your final aggregate sentence is an imprisonment term of 40 months.
13. Presently you are a serving prisoner. You have been sentenced in HAC 105/2018. Though it would not operate as a previous conviction, the facts would compel the court to rule out provisions of section 26 of the Sentencing and Penalties Act as inapplicable. Furthermore, the period you have been in remand has already been considered and discounted in the said case. Taking into account all the circumstances of this case, the non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 32 months.
14. Malakai Cakaunitabua, your final sentence would be 40 months of imprisonment with a non-parole period of 32 months.
15. You have 30 days to appeal to the Court of Appeal if you so desire.

  
Chamath S. Morais  
JUDGE



At Suva  
20<sup>th</sup> November 2018

**Solicitors : Office of the Director of Public Prosecutions for the State**  
**The accused appeared in person**