

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 293 of 2017

STATE

-vs-

KITIONE CAGI

Counsel: Ms. S. Lodhia with Mr. Z. Zunaid for the State
Accused is absent

Date of Hearing: 03rd and 4th June 2019

Date of Summing Up: 05th June 2019

Date of Judgment: 05th June 2019

Date of Sentence: 07th June 2019

SENTENCE

1. Mr. Kitione Cagi, you stand convicted to one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act, which carries a maximum sentence of twenty years imprisonment. The particulars of the offence are that:

Statement of Offence

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

Particulars of Offence

KITIONE CAGI, EMOSI BALEDROKADROKA and another on the 29th day of August 2017 at Suva in the Central Division, in the company of each other robbed JANG WAN BANG & MYOUNG HEE KIM of 1 x Samsung brand S7 mobile phone, 1 x Kia 3 smart watch, 1 x Swiss brand wrist watch, 1 x brown German brand wrist watch, 1 x National Assembly of Korea brand wrist watch, 1 x black leather wallet containing \$150 cash, ATM and credit cards, 1 x bottle of black label whiskey, 1 x bottle of blue label whiskey, 1 x bottle of chivas regal whiskey, 1 x bottle of champagne, 15 bottles of other assorted alcohol and 1 Kia brand sorento vehicle registration number FZ079 approximately valued at \$65, 000, \$250 cash, 1 x gold ring, 1 x pair of 18ct gold earrings, 1 x blue sapphire 18ct white gold ring, 1 x 18ct gold chain, 1 x diamond white gold ring, 1 x wrist watch, 1 HP brand laptop, 1 x pink apple brand IPOD, 1 x translator machine, 1 x pair of black Adidas brand shoes, 1 x pair of black Nike brand shoes, 1 x black puma bag and 1 x black jacket, the properties of JANG WAN BANG & MYOUNG HEE KIM.

2. It was proved during the course of the hearing that you have committed this crime with four other accomplices. You and your accomplices had entered into the house of the complainant at about 2 a.m. on the 29th of August 2017, while the complainant, his wife and his nephew were sleeping in their respective rooms. All of you were masked and armed with knives and pinch bars. You have entered into the house by removing the louver blade from the window. You have then entered into the room of the nephew of the complainant, who was eighteen years old at that time. You and your accomplices had threatened him with a bolt cutter. You then tied up the hands, legs and mouth of the young nephew of the complainant using neck ties. After stealing certain items from the room of the nephew of the complainant and also

from the sitting room, you have entered into the bedroom of the complainant and his wife. After threatening them not to shout, the hands, legs and mouth of the complainant was tied up with neck ties. The hands of the wife of the complainant was also tied in the same manner. You and your accomplices have then stolen the items as described in the information. Having stolen those items, you and your accomplices had fled the house, using the vehicle of the complainant, which is registered as FZ 079.

3. This is a violent home invasion in the night while the occupants were sleeping and then stealing therein. The Supreme Court in Wise v State [2015] FJSC 7; CAV0004.2015 (24 April 2015) found that:

“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.”

4. In view of the above observation made by the Supreme Court in respect of violent home invasions in the night, I find this is a very serious offence.
5. 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.
6. Tariff for the offence of Aggravated Robbery is between **eight (8) years** to **sixteen (16) years** of imprisonment. (**Wise v State (supra)**).
7. The Supreme Court in **Wise v State (supra)** has further outlined the aggravating factors that the sentencing court could take into consideration when sentencing offenders to offences of this nature, where Hon Former Chief Justice Gates held that:

“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 eye.*
- v) The victims frightened were elderly or vulnerable persons such as small children.*

8. The complainant was 58 years old and his wife was 56 years old at that time. The nephew of the complainant was 18 years old. Undoubtedly, this is a horrific and horrendous experience to them. This horrific experience would definitely stay in their minds for a long period. The victim impact report explains the depth of the emotional and psychological effect caused by this dreadful crime to the complainant and his wife.

9. You and your accomplices were masked and armed with offensive weapons when you invaded the house of the complainant. You have entered into the house while the occupants were sleeping in the night. They were not in a position to react or escape from the ordeal that you and your accomplices were going to unleash on them. This is a properly planned and well executed home invasion. You have used substantial amount of physical force by tiding up the hands, legs and mouths of the complainant, wife of the complainant and the nephew of the complainant. Accordingly, I find the level of harm and culpability in this offence are significantly high.

10. Most of the stolen items were not recovered, which I find as an aggravating factor.
11. You have not been adversely recorded with any previous convictions. Therefore, you are entitled for a discount for your previous character.
12. Having taken into consideration the above discussed reasons, I sentence you to a period of ten (10) years imprisonment to the offence of Aggravated Robbery.
13. Having considered the seriousness of this crime, the purpose of this sentence and your age, I find eight (8) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of eight (8) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

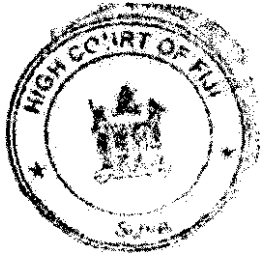
Head Sentence

14. Accordingly, Mr. Kitone Cagi, I sentence you to a period of **ten (10) years** imprisonment to the offence of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act. Moreover, you are not entitled to any parole for a period of **eight (8) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

15. You have been in remand in custody for this case for a period of eleven (11) months and eighteen (18) days before the sentence 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 one (1) year as a period of imprisonment that have already been served by you.
16. Accordingly, the actual sentencing period is **nine (9) years** imprisonment with non-parole period of **seven (7) years**.

17. 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".

R.D.R.T. Rajasinghe
Judge

At Suva

07th June 2019

Solicitors

Office of the Director of Public Prosecutions for the State.

Accused is absent.