

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

**CASE NO: HAC. 193 of 2019**

**BETWEEN**                   :                   **STATE**

**AND**                         :                   **PETAIA RATUMAIYALE**

*Counsel*                    :                   *Mr. Sharma N. for the State*  
                                  :                   *Mr. Chang K. for the Accused*

*Hearing on*                :                   *21<sup>st</sup> of August 2019*  
*Sentence*                   :                   *06<sup>th</sup> of September 2019*

**SENTENCE**

Mr. Petaia Ratumaiyale, you were charged as follows;

*Statement of Offence*

Aggravated Robbery: contrary to section 44 (1) and section 311 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

Petaia Ratumaiyale together with another person unknown, on 22<sup>nd</sup> May 2019, at Nasinua in the Central Division, attempted to commit theft of assorted properties, belonging to Vasemaca Kaususu Vunivalu and immediately before such attempt, used force on the said Vasemaca Kaususu Vunivalu.

At the very first opportunity, Mr. Petaia Ratumaiyale, the accused, having well understood the contents of the information and the consequences of such plea, pleaded guilty to the above count.

Thereafter, the State having filed the Summary of Facts, on the 21<sup>st</sup> of August 2019 the said Summary of Facts were read over and explained to you on 28<sup>th</sup> of August 2019. You having understood, agreed and accepted the said summary of facts to be true and correct and have taken full responsibility for your actions.

The Summary of Facts filed by the State discloses that:

The victim: The victim in this matter is one Vasemaca Kaususu Vunivalu, 22 years old, Fiji, Student of Lot 15 Ramatau Road, Narere.

The Accused: The accused in this matter is one Petaia Ratumaiyale, 19 years old. Fiji, Student of Lot 38, Makoi Road.

1. On 22 May 2019 at about 1.00am, in Makoi, the Victim got off the Makoi Bus stop, with one Atelina Gonerogo (PW2) after returning from class.
2. The victim and PW2 noticed that the Accused together with another itaukei male was following them.
3. The accused then grabbed the victim whilst the other person grabbed PW2.
4. The Accused hereafter attempted to grab the Victim's bag whilst the Victim struggled and tried to fight back.
5. The accused kept trying to pull the victim's bag whilst the victim struggled and tried to fight back.
6. During this incident, the Accused told the victim "sis give me the bag. Nonetheless the victim kept pulling her bag away from the accused.
7. During the process of attempting to pull the victim's bag, the Accused dragged the Victim to a drain near Methodist Church at Beaumont road, whilst the Accused's accomplice pushed the victim into the drain. However, the victim was strong enough and managed to pull her bag away from the Accused.

8. The victim then tried to run towards the said Methodist church to call her uncle for assistance. The victim also kept yelling for assistance during the incident and as a result, some boys chased the Accused and the other person.
9. The Accused and the other person failed to take anything from the victim.
10. The Accused made full admissions to the allegation of Attempted Aggravated Robbery in his Record of Interview at Q & A 26 – 30.
11. Annexed hereto is the Record of Interview of the Accused marked as “Annexure A.”
12. Annexed hereto is the Previous Conviction of the Accused who is a first time offender marked as “Annexure B”.

I find that the above summary of facts support all elements of the charge in the Information, and find the charge proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and I convict you of the count of Attempted Aggravated Robbery contrary to section 44 (1) and 311(1)(a) of the Crimes Act 2009, as charged.

The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years imprisonment. As for section 44 (1) of the Crimes Act, the same that is prescribed for the offence if committed will apply for an attempt.

Explaining the aggravating circumstances of the offence of robbery with violence under the now repealed Penal Code, Gounder J said in the case of **State v Rokonabete** [2008] FJHC 226 that;

*“The dominant factor in assessing seriousness for any types of robbery is the degree of force used or threatened. The degree of injury to the victim or the nature of and duration of threats are also relevant in assessing the seriousness of an offence of robbery with violence.”*

Accordingly, His Lordship Justice Gounder in **State v Josaia Warodo Vatunicoko** [2018] FJHC885; HAC210.2018, summarized that;

The tariff depends on the nature and circumstances of the robbery. The tariff is as follows:

Street mugging: 18 months to 5 years' imprisonment (**Raqauqau 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)

As for the facts of this case, this would come under the category of street mugging mentioned above and therefore, the appropriate tariff would be from 18 months to 5 years of imprisonment.

As for the facts established by the summary of facts, though there is not much violence used, the victim was pushed into a drain. The accused is only 18 years old. His remorse is apparent through his co-operation with the police and the early plea of guilt. He has no previous convictions and assures that he will not re-offend.

In consideration of the objective seriousness of the offence I select 30 months of imprisonment as the starting point of your sentence. There aren't many aggravating factors other than this being done on a public road and the fact that this was attempted on a female. I will enhance your sentence by 12 months due to the said aggravating factors. In consideration of the early guilty plea and the submission made on your behalf in mitigation, I will deduct 18 months. Therefore your final sentence is 02 year of imprisonment.


You have been in remand for a period of 3 months and 2 weeks. I consider it as already served and deduct 3 ½ months from the final sentence. Therefore the remainder will be an imprisonment term of 20 ½ months.

Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act.

Petaia Ratumaiyale, you have no previous convictions or pending cases. Further, you are only 18 years of age. Therefore, in consideration of the submissions made on your behalf, I am of the view that majority of your sentence should be suspended. In the result, 2 ½ months of your sentence is made operational forthwith and the balance 18 months of your sentence is suspended for a period of 5 years.

The consequences of a violation of the suspended term of imprisonment will be explained to you by the court clerks.

You will have thirty (30) days to appeal to the Court of Appeal, if you so desire.

  
Chamath S. Morais  
JUDGE



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