

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 227 OF 2019

STATE

-v-

SAHIL ALI

Counsel: Ms. M. Chowdhury for Prosecution
Mr. K.R. Prasad

Date of Sentence : 30 September 2019

SENTENCE

1. **Sahil Ali**, you were charged with one count of Aggravated Burglary and one count of Theft. The information reads as follows:

COUNT 1

Statement of Offence

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

Particulars of Offence

SHAHI ALI in the company of another on the 26th April 20189, at Raiwaqa in the Central Division, between 8.30 am to 11 am entered into the dwelling house of the **SHAINÉ FARNAAZ BEGUM** as trespasser, with intent to commit theft.

COUNT 2

Statement of Offence

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

Particulars of Offence

SHAHIL ALI in the company of another on 26th April 2019, at Raiwaqa in the Central Division, dishonestly appropriated (stole) a 55 inch television and a Panasonic DVD player, the properties of **SHAINE FARNAAZ BEGUM** with intention of permanently depriving the said **SHAINE FARNAAZ BEGUM** of the said properties.

2. You have freely and voluntarily pleaded guilty to each count. You understood the consequence of the guilty plea and the sentencing tariffs for offences you have committed. I am satisfied that the guilty pleas are informed and unequivocal and entered freely and voluntarily.

3. You have agreed the following summary of facts. The facts you agreed satisfy all the elements of each offence you are charged with. You are found guilty and convicted on each count as charged.

4. The facts you agreed are that:

Complainant – Sahine Farnaaz Begum, aged 29, market vendor residing at 59 Milverton Road, Raiwaqa.

Accused – Sahil Ali aged 20, labourer, residing at 59 Milverton Road, Raiwaqa.

On the said day at about 8.30am, the complainant left her house located at 59 Milverton Road to go to work together with her husband. The complainant had locked the house

securely before leaving. When she reached work, she checked her mobile phone which was connected to the CCTV at her house and found there was no coverage from the CCTV. She informed her husband and they rushed home to check. When the complainant reached home, she discovered that the house was broken into and that her 55 inch Hisense television and a Panasonic DVD player had been stolen. The matter was then reported to the police.

Upon police investigations, the accused was arrested and taken to the Raiwaqa Police Station. The accused was caution interviewed and he admitted that he broke into the house of the complainant with another and stole the 55 inch Hisense television.

(Refer to Shail Ali's Caution Interview Q & A 23-47 annexed as "A1".)

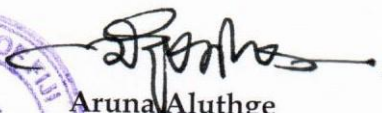

5. The maximum punishment for Aggravated Burglary under Section 313 (1) (a) is an imprisonment term of 17 years and the maximum punishment for Theft is an imprisonment term of 10 years.

6. The tariff for the offence of Aggravated Burglary ranges from 18 months to 3 years imprisonment. This tariff has been adopted in several decided cases: *State v. Mikaele Buliruarua* [2010] FJHC 384; HAC 157.2010 (6 September 2010); *State v. Nasara* [2011] FJHC 677; HAC 143.2010 (31 October 2011); *State v. Tavualevu* [2013] FJHC 246; HAC 43.2013 (16 May 2013); *State v. Seninawanawa* [2015] FJHC 261; HAC 138.2012 (22 April 2015); *State v. Seru* [2015] FJHC 528; HAC 426.2012 (6 July 2015); *State v. Drose* [2017] FJHC 205; HAC 325.2015 (28 February 2017); and *State v. Rasegadi & Another* [2018] FJHC 364; HAC 101.2018 (7 May 2018) and most recently in *State v Tukele* - [2018] FJHC 558; HAC179.2018 (28 June 2018).

7. However, in serious and sophisticated cases of Aggravated Burglary where the value of property stolen is considerably high, this court has recommended a tariff ranging from 6 years to 14 years imprisonment *State v Naulu* [2018 FJHC 548 (25 June 2018)]; *State v Vonu & others* [2018 ; HAC 147.2017 (24 August 2018)]

8. The maximum sentence prescribed for Theft is 10 years' imprisonment. The tariff ranges from 4 months to 3 years imprisonment (*Waqa v State* [HAA 17 of 2015]).
9. In terms of section 17 of the Sentencing and Penalties Act, I would impose an aggregate sentence for both counts in view that you were convicted based on the same facts arising out of a single transaction.
10. In selecting the starting point, I bear in mind the objective seriousness of your offending. The objective seriousness is assessed on the basis of the degree of culpability and the loss caused to the complainant. Having considered all these factors, I have decided to start your sentence with an imprisonment term of 18 months.
11. The offences involve a degree of premeditation. I also take into consideration the fact that these offence are most prevalent in Fiji. Those are the aggravating features in your offending.
12. In mitigation, your counsel has submitted that you are a bachelor of 23 years of age. You earn a livig as a carpenter and you support your step mother and sibligs. You have entered an early guilty plea at the first available opportunity. You are a first and young offender. You have promised not to reoffend and you beg for a second chance to rehabilitate yourself. You have cooperated with police. You seek mercy of this court. I consider your early guilty plea as evidence of genuine remorse. You have also saved court's time and resources by pleading guilty to the charge at a very early stage of the proceedings.
13. You were in remand for approximately 3 months. The time spent in remand is discounted separately. In coming to your final sentence, I have given a one third discount separately for the early guilty plea.

14. For the aggravating factors, I increase your sentence by 6 months to reach 24 months and for mitigating features, I would give you a discount of 12 months to arrive at a sentence of 12 months' imprisonment.
15. The courts have a duty to denounce and deter this kind of anti-social behaviour. At the same time, rehabilitation of young and first offenders should be promoted. You are a young and first offender having a good rehabilitation prospect. Correction centers do not always correct young offenders. The primary purpose of this punishment should be rehabilitation. Having taken into consideration your potential for rehabilitation in view of your youth, clean record and genuine remorse, I have decided to suspend your sentence for a period of 2 years.
16. **Shahil Ali**, you are sentenced to 12 months' imprisonment suspended for a period of 2 years. If you are convicted of any other offence during the next two years, the suspended sentence may be activated.
17. You have 30 days to appeal to the Court of Appeal.

Aruna Aluthge
Judge

At Suva

30 September 2019

Counsel: Office of the Director of Public Prosecution for Prosecution
The Legal Aid Commission for Defence