

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 107 of 2019

STATE

V

- 1. TEVITA TUICKOBIA**
- 2. TALICA RAKANACE**

Counsel : Ms. S. Naibe for the State.
: Ms. P. Reddy for the Second Accused.

Date of Submissions : 21 February, 2020
Date of Sentence : 24 February, 2020

SENTENCE

1. The accused persons are charged with the following offence as per the information filed by the Director of Public Prosecutions dated 13th September, 2019:

ONE COUNT

Statement of offence

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

Particulars of Offence

TEVITA TUICKOBIA and TALICA RAKANACE on the 22nd day of June 2019, at Lautoka in the Western Division robbed **AJMAT ALI** of \$200.00

cash and a Samsung J1 mobile phone valued at \$129.00 and immediately before such robbery used personal violence on the said **AJMAT ALI**.

2. On 17th October, 2019 the first accused pleaded not guilty whereas the second accused pleaded guilty to the above count in the presence of her counsel. Thereafter on 27th January, 2020 the second accused admitted the summary of facts read by the state counsel. The brief facts are as follows:
3. On 22nd June, 2019 at about 1.30 am the victim had parked his taxi along Tukani Street, Lautoka waiting for the next passenger when he saw the second accused calling him. The victim drove to where the accused was standing, after the taxi stopped the accused got into the front passenger seat while Miliakere (PW2) and the first accused got into the back seat.
4. The second accused told the victim to take them to Field 40 Tramline. At the tramline she told the victim to enter the feeder road, after a while she told the victim to stop the taxi. When the taxi stopped the first accused who was sitting in the back seat forcefully grabbed the victim's neck, placed a knife to the victim's mouth and told him to stay quiet while the second accused searched the taxi and stole;
 - (a) Cash of \$200.00;
 - (b) Taxi keys; and
 - (c) Samsung mobile phone valued at \$129.00.
5. Later the matter was reported to the police, upon investigations the second accused was arrested, caution interviewed and charged.
6. After considering the summary of facts read by the state counsel which was admitted by the second accused and upon reading her caution interview,

this court is satisfied that the second accused has entered an unequivocal plea of guilty on her own freewill.

7. This court is also satisfied that the accused has fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offence of aggravated robbery. The second accused also admitted committing the offence in the company of another.
8. In view of the above, this court finds the second accused guilty and she is convicted as charged.
9. Both counsel filed sentence and mitigation submissions for which this court is grateful.
10. The learned counsel for the second accused presented the following mitigation and personal details:
 - (a) The accused is a first offender;
 - (b) Was 20 years of age at the time of the offending;
 - (c) Pleaded guilty at the earliest opportunity;
 - (d) A single mother with a 3 year old child;
 - (e) Maintained and looked after by her parents;
 - (f) Was a waitress earning \$100.00 per week;
 - (g) Seeks mercy and forgiveness of the court;
 - (h) Apologies to the victim;
 - (i) Regrets what she has done and is remorseful;
 - (j) Taxi keys were recovered;
 - (k) Cooperated with the police.

TARIFF

11. The maximum penalty for the offence of aggravated robbery is 20 years imprisonment. The accepted tariff for this offence is from 8 years to 16 years imprisonment (*Wallace Wise vs. The State, CAV 0004 of 2015 (24 April, 2015)*) but the final sentence will depend on the aggravating and mitigating factors.

12. The Supreme Court in *Wallace Wise* (supra) at paragraph 26 has succinctly mentioned some helpful examples where sentences will be enhanced as additional aggravating factors:
 - (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.*
 - (vii) *the victims frightened were elderly or vulnerable persons such as small children.*

AGGRAVATING FACTORS

13. The following aggravating factors are obvious in this case:
 - a) **PLANNING AND PREMEDITATION**

There is a high degree of planning and premeditation involved. The accused played an active role in communicating with the victim and directing him to an isolated spot. It was the accused who had lured the victim making him believe that there was a genuine job waiting for him during the early hours of the morning. The victim was left in the middle of nowhere without any money, keys of his taxi and mobile phone.

b) PUBLIC SERVICE PROVIDER

14. The victim was a public service provider (taxi license holder) who was carrying on with his usual duty in serving members of the public. He was outnumbered by the second accused and the first accused.
15. Considering the objective seriousness of the offending, I select 8 years imprisonment (lower range of the tariff) as the starting point of the sentence. For the aggravating factors I increase the sentence by 5 years imprisonment. The sentence is now 13 years imprisonment.
16. The accused has pleaded guilty at the earliest opportunity she also regrets what she had done which I accept as a sign of remorse, for this I reduce the sentence by 3 years. The sentence now stands at 10 years imprisonment. For mitigation and good character, since the accused is a first offender the sentence is further reduced by 1 ½ years.
17. The interim sentence is now 8 ½ years imprisonment, the accused was in remand for 8 months in accordance with section 24 of the Sentencing and Penalties Act, I further reduce the sentence for the remand period as a period of imprisonment already served.

18. The final sentence is 7 years and 10 months imprisonment which is below the accepted tariff since the accused had pleaded guilty at the earliest opportunity and has expressed remorse, there was a knife in the possession of the other accused but it was not used to injure or harm the victim.
19. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
20. Under section 18 (1) of the Sentencing and Penalties Act (as amended) I impose 6 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and to meet the community expectation which is just in the circumstances of this case.
21. The non-parole period is below the accepted tariff reason being the accused is a young and first offender a person of comparatively good character who appears to have committed this offence without thinking about the consequences. This non-parole period will act as an opportunity for the second accused to rehabilitate herself and also motivate her not to be in conflict with the law.
22. Ms. Rakanace, you have committed a serious offence on an unsuspecting and innocent taxi driver who was carrying out his normal public service duties. This court denounces your behaviour in the strongest of terms. This court will not tolerate offenders who engage themselves in such kind of anti-social behaviour. The accused was selfish and greedy instead of earning a

living through hard work and sweat the accused took a short cut which is intolerable hence an imprisonment term is inevitable.

23. In summary the second accused is sentenced to 7 years and 10 months imprisonment with a non-parole period of 6 years to be served before the accused is eligible for parole.
24. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka

24 February, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.