

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC. 49 OF 2014

BETWEEN : **STATE**

AND : **1. JANARDHAN**
2. RONIL KUMAR

Counsel : **Mr. Niudamu J. for State**
: **Ms. Vulimainadave K. for the 1st Accused**
2nd Accused appears in Person

Hearing on : **03rd February 2020 – 05th February 2020**

Summing up on : **06th February 2020**

Judgment : **07th February 2020**

Sentence : **28th February 2020**

SENTENCE

1. Mr. Janardhan and Mr. Ronil Kumar, both of you stand convicted of the offence of Aggravated Robbery contrary to section 311 (1) (a) of the Crimes Act 2009 after a full trial.
2. Your charge read thus;

Statement of Offence

AGGRAVATED ROBBERY: *contrary to section 311(1) (a) and section 45 (1) of the Crimes Act, 2009.*

Particulars of Offence

Janardhan and Ronil Kumar on the 16th day of April 2014 at Lautoka in the Western Division, robbed Atishma Devi and Shaiyum Shiraj of \$35,000.00 cash and \$5,000.00 worth of cheques, the property of Shiu Prasad & Sons Limited.

3. You pleaded not guilty to the Charge and it was taken up for trial and the ensuing trial lasted for 3 days. The PW1 Mr. Roneel Kamal Sen, PW2, Ms. Atishma Devi, PW3 Mr. Shaiyum Shiraj Ali and 3 police officers who were attached to Lautoka Police Station gave evidence for the prosecution while you, the accused remained silent exercising your constitutional right and opted to not to call any witnesses on your behalf.
4. At the conclusion of the evidence and after the directions given in the summing up, the assessors unanimously found you guilty to the count of Aggravated Robbery.
5. Accordingly, this Court by its judgment dated 07th February 2020, convicted you of the alleged count of Aggravated Robbery contrary to section 311(1)(a) of the Crimes Act 2009.
6. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years of imprisonment.
7. The tariff for this offence is an imprisonment term between 8 to 16 years. **[Wallace Wise v The State, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015)]**

Explaining the aggravating circumstances of the offence of robbery with violence under the now repealed Penal Code, Goundar J. said in the case of **State v Rokonabete** [2008] FJHC 226 that;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

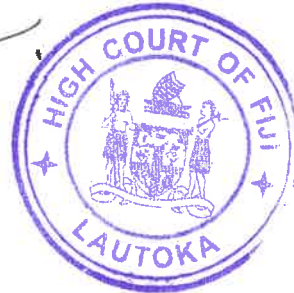
8. The PW2 was not assaulted, but merely pushed for her to fall on the ground. However PW3 was assaulted on the back of his head. Therefore, a reasonably high degree of violence is used. Further, the offence is committed at around 10.30 am on a public road. In addition, this is definitely a preplanned aggravating robbery. That too would be considered as an aggravating factor.
9. I will deal with the 1st accused, Mr. Janardhan first. When looked into your previous character, you have no previous convictions or any other pending cases. Therefore, you are a first time offender. In consideration of the submissions made on your behalf, you are said to be remorseful. Though you have not physically taken part in the robbery it was conducted on the information provided by you and therefore it was facilitated by you.
10. Mr. Ronil Kumar, you have not said much in mitigation other than you seek forgiveness and a lenient sentence from this court. Though your final conviction was quashed and acquitted of the said charge, you have few previous convictions.
11. In consideration of the objective seriousness of the offence and the principles laid down in **Koroivuki v State** [2013] FJCA 15; AAU0018.2010 (5 March 2013),

I would select 09 years imprisonment as the starting point of your sentence in regards to both of you.

12. In respect of the 1st accused, in consideration of the breach of trust and the rest of the aggravating circumstances I enhance it by another year and in consideration of the mitigatory factors, including the previous good character, will deduct 4 years. Therefore Mr. Janardhan the 1st accused's final term of imprisonment would be 6 years. In consideration of section 18 of the amended Sentencing and Penalties Act, I would set the non-parole period at 4 years. He has been in remand for this case for a period of nearly a month. Therefore the term remains to be served by him would be 5 years and 11 months. He would be eligible for consideration of parole after serving 3 years and 11 months.
13. In respect of the 2nd accused, Mr. Ronil Kumar, I do not see any other aggravating factor other than the ones which have been considered in deciding the objective seriousness of the matter. He would not be entitled to a much of a discount on character. In sympathetic consideration of the orally submitted mitigatory factors, I will deduct 18 months from the 9 years, the starting point. Therefore your final sentence would be 7 years and 6 months and I would set the non-parole period at 5 years and 6 months as for the provisions of section 18 of the amended Sentencing and Penalties Act. State submits that you were in remand for a total period of 5 years. As for the material before me you have been a serving prisoner most of that period. However, as your previous conviction was set aside, I will consider that in fairness as a part of the remand period and will deduct as already served. Therefore the remainder period you will have to serve would be 2 years and 6 months and you will be eligible for consideration of parole after serving 6 months.

14. You will be given thirty (30) days to appeal to the Court of Appeal if you desire so.


Chamath S. Morais
JUDGE



At Lautoka

28th day of February 2020

Solicitors: *Office of the Director of Public Prosecutions for the State.*
Legal Aid Commission, Lautoka for the 1st Accused
2nd Accused appeared in person