

**IN THE HIGH COURT OF FIJI AT SUVA**

**CASE NO: HAC. 335 of 2018**

**[CRIMINAL JURISDICTION]**

**STATE**

**V**

**WILISONI VAVE**

**Counsel** : Ms. S. Lodhia for State  
Ms. L. Manulevu for Accused

**Sentenced on** : 18 May 2020

**SENTENCE**

1. Wilisoni Vave, you stand convicted of the offence of aggravated robbery contrary to section 311(1) of the Crimes Act 2009 upon you pleading guilty to the relevant charge. Your charge reads thus;

*Statement of Offence*

**Aggravated Robbery:** contrary to Section 311 (1) (a) of the Crimes Act, 2009.

*Particulars of Offence*

**WILISONI VAVE and Others** on the 18<sup>th</sup> day of August, 2018 at Suva in the Central Division, in the company of each other robbed **FILIPO TIKO** of a pair of white pearl cufflinks, 1x welding plant, 1x 42 inch Samsung

brand television and 1x guitar, the properties of **NEIL FOON**.

2. You have admitted the following facts;

1. *The complainant in the matter is Filipino Tiko, 15 years old at the time of the offence, student, resides at Lot 15 Nayavumata Road, Valelevu.*
2. *PW2 is Jona Vida, 47 years old, director of Body Armour Security Services, resides at Lot 15 Nayavumata Road, Valelevu.*
3. *PW3 is Neil Foon, 44 years old, Architect, resides at Lot 3 Donu Place, Namadi Heights.*
4. *PW2 is the complainant's father.*
5. *The accused is Wilisoni Vave, 32 years old at the time of the offence, Carpenter, resides at Lapanoni, Pacific Harbour.*
6. *The accused is charged and has voluntarily pleaded guilty to 1 count of aggravated robbery contrary to section 311(1)(a) of the Crimes Act 2009.*
7. *On the 18<sup>th</sup> August 2018, at about 6pm, the PW1 accompanied PW2 to guard PW3's house at Lot 3 Donu Place, Namadi Heights.*
8. *PW3 was away in Lautoka due to work commitment.*
9. *At about 11:15pm, PW2 left PW1 alone at PW3's house. PW2 then went to get their dinner from their house in Valelevu. PW1 was alone sitting on a couch outside the verandah when he heard the sound of the gate and saw two boys. One boy was of part – Indian descent referring to the accused and had dark brown skin colour, hairy hands and was wearing an earring on his left ear. The other boy was of i-Taukei descent. They were both wearing hoods. They approached PW1 and the accused covered the complainant's face whilst the accused's accomplice ransacked the house.*
10. *During the period that PW1's face was covered, he was able to see the accused's accomplice taking the guitar and a TV. The accused and his accomplice then fled the scene.*
11. *Once PW2 returned, PW1 informed him about what had transpired and the matter was reported to police. PW2 also informed PW3.*
12. *On 20<sup>th</sup> August 2018 PW3 returned to his house and noted that the following items were stolen:*
  - *1x Guitar (white and red in colour) valued at \$700.*
  - *1x 42 inch Samsung brand flat screen TV valued at \$2,000*
  - *1x pair of White pearl cufflinks valued at \$2,000*
  - *1x Welding plant valued at \$500.*
13. *During the robbery, the front door locks and the doors of the house were damaged.*
14. *On 21<sup>st</sup> August 2018, investigations led to the accused being arrested. The accused*

*was interviewed under caution by DC 4579 Josia at Raiwaqa Police Station. In his interview, he states that on 18<sup>th</sup> August 2018, at about 6pm, he was at Namadi drinking grog at a shed where a funeral was held. He finished at midnight. At around 10pm, while he was drinking grog, his cousin Sam came and asked him if they could go "somewhere". He then went up to one road with him. Sam was leading and he did not know where they were going until they went to one house. They climbed the fence and he followed him to the front of the house where he saw a boy (PW1) laying on the chair. Sam asked him to look after PW1 while he went inside the house. The accused then covered PW1's face so that he could not see anything. The accused heard the glasses smashing while Sam was inside. He then saw Sam walking out from the door and he was carrying a guitar. Sam gave him the guitar and went back inside and brought a blue box with a handle and a flat screen TV. The accused admits that he was wearing an earring on his left ear as confirmed by PW1. He further admits that he sat on PW1's legs but denies punching him. After taking the items, they went to an empty house and hid the items there and went home. Later, Sam and one Josh came to him at his house and gave him the guitar to sell. He does not know where the other items are. He tried to sell the guitar to one Talatala but he did not buy it so he gave it to his cousin Tukai.*

15. *The accused was taken for a scene reconstruction where he co-operated with the police and showed the police PW3's house where they had stolen the items from. The accused also assisted the police in showing them where the stolen red guitar was hidden and this was beside the accused's house. The red guitar was found under the house and this information was voluntarily given by the accused to the police. A copy of the caution interview of the accused is attached herewith as "Annexure1".*
16. *On 22<sup>nd</sup> August 2018, PW3 was called to the Raiwaqa police station where he identified the red guitar that was recovered as his property.*

3. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years imprisonment. 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)]
4. 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.”*

5. In your mitigation it is submitted that you are 34 years old, you are separated from your wife and a single parent to two children who are 04 years and 06 years of age. You and the two children live with your father.
6. I would select 8 years imprisonment as the starting point of your sentence.
7. I would consider the following as aggravating circumstances in order to add 01 year to your sentence;
  - a) You were the one who used force on PW1 who was 15 years old in order to facilitate the stealing of the items. However, I am mindful of the nature of force used as revealed in the summary of facts; and
  - b) The doors and door locks in the house were damaged in order to gain entry.
8. I consider the following as mitigating factors to deduct 04 years of your sentence;
  - a) You are a first offender;
  - b) You are remorseful; and
  - c) You have cooperated with the police where the stolen guitar which appear to be your share of the loot was recovered with your assistance.
9. In determining your sentence I have decided to give significant weight to the fact that you are a first offender, the fact that you have accepted responsibility of your wrong doing, the role you played in the crime that was committed and that you are looking after two young children. The fact that you had a clean record of 34 years

and your minimal involvement, the minimal force you have used, the fact that you have been persuaded by an offender (who is yet to be charged) to take part in committing this crime will be regarded in your favour.

10. Now your sentence is an imprisonment term of 05 years. I would regard your guilty plea as an early guilty plea and would grant you a discount of 02 years in view of same.
11. Accordingly, I sentence you to an imprisonment term of 03 years. I order that you are not eligible to be released on parole until you serve 02 years of your sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
12. It is submitted that you have been in custody in view of this matter from 21/08/18 to 11/12/18. Accordingly, you have spent a period of 03 months and 20 days in custody. The period you were in custody in relation to this case shall be regarded as a period of imprisonment already served by you in view of the provisions of section 24 of the Sentencing and Penalties Act. I hold that the period that should be regarded as served is 04 months.
13. In the result, you are sentenced to an imprisonment term of 03 years with a non-parole period of 02 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence – 02 years and 08 months


Non-parole period – 01 year and 08 months

14. There are strong mitigating factors in this case in your favour. Given the impact due to the present COVID-19 pandemic faced by the world, I consider it appropriate to take a step back and weigh your previous good character and the role you played

in committing the crime relevant to this case, against the implications of incarcerating you further at this point in time on the two young children who are dependent on you. Given all the circumstances and the fact that you have already spent about 04 months in custody, I have decided to suspend the remaining period of your sentence for a period of 05 years.

15. The court clerk will explain the effects of a suspended sentence. It is important that you bear in mind that you have a suspended term of imprisonment hanging over your head for the next 05 years and any offence committed by you during that period may result in your incarceration in view of this matter.
16. Thirty (30) days to appeal to the Court of Appeal.



  
Vinsent S. Perera  
JUDGE

**Solicitors;**  
**Office of the Director of Public Prosecutions for the State**  
**Legal Aid Commission for the Accused**