

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 160 of 2019

STATE

V

- 1. ATAMA ROKOVURAI**
- 2. N.R [Juvenile]**

Counsel : Mr. S. Seruvatu for the State.
: Ms. J. Singh for the Accused and the Juvenile

Date of Submissions : 22 June, 2020
Date of Punishment Hearing : 22 June, 2020
Date of Sentence : 29 June, 2020

SENTENCE/PUNISHMENT

(The name of the Juvenile is suppressed he will be referred to as "NR")

1. The accused and the juvenile are charged with the following offence as per the following amended consolidated information filed by the Director of Public Prosecutions dated 9th February, 2020:

ONE COUNT

Statement of offence

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

Particulars of Offence

ATAMA ROKOVURAI and **N.R** on the 3rd day of September, 2019 at Lautoka in the Western Division, robbed **TOMOHIRO YAMASHITA** of 1 x laptop (Apple brand) valued at \$2,000.00, 1 x iPhone valued at \$2,000.00, 1 x pair of earphones valued at \$100.00 and \$80.00 cash, all to the total value of \$4,180.00.

2. On 21st February, 2020 the accused and the juvenile pleaded guilty to the above count in the presence of their counsel. Thereafter on 15th June, 2020 the accused and the juvenile were read and explained the summary of facts in the ITaukei language which was admitted by both of them.
3. The brief facts were as follows:

On 3rd September, 2019 at about 12.10am the victim was walking along Thompson Crescent Road, Lautoka when he realized someone was following him. The victim walked past the Lautoka Hospital and he saw this person in front of him.

4. All of a sudden the victim saw another person riding a bicycle come in front of him and punched him on his right eye and face several times. The victim fell down. The victim's black bag was taken by the assailants. The bag contained the following items:
 - 1 x silver Apple laptop valued at \$2,000.00;
 - 1 x black iPhone valued at \$2,000.00;
 - Earphones valued at \$100.00;
 - Cash \$80.00.

All to the total value of \$4,180.00

5. The matter was reported to the police both the accused and the juvenile were arrested, caution interviewed and charged.
6. After considering the summary of facts read by the state counsel which was admitted by the accused and the juvenile and upon reading their caution interviews this court is satisfied that the accused and the juvenile have entered an unequivocal plea of guilty on their own freewill.
7. This court is also satisfied that the accused and the juvenile have 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 which the accused and the juvenile admitted committing in the company of each other.
8. In view of the above, this court finds the accused guilty and he is convicted as charged. In respect of the juvenile this court finds the juvenile guilty as charged. Both counsel filed sentence and mitigating submissions for which this court is grateful.
9. The learned counsel for the accused and the juvenile presented the following mitigation:

Accused – Atama Rokovurai

- a) The accused is a first offender;
- b) 18 years of age;
- c) He lives with his parents and eldest of the two younger siblings;
- d) He is unemployed but repairs bicycles at home;
- e) Promises not to reoffend;

- f) Pleaded guilty at the earliest opportunity;
- g) Genuine remorse;
- h) Some recovery.

Juvenile – N.R

- a) The juvenile was 15 years of age at the time;
- b) Young offender and first offender;
- c) Resides with his paternal aunt;
- d) Youngest sibling;
- e) Seeks forgiveness of this court;
- f) Cooperated with the police;
- g) Pleaded guilty at the earliest opportunity;
- h) Genuine remorse;
- i) Some recovery;
- j) Year 10 student.

TARIFF

10. 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)*). However, the case of *Wise* was a dreadful home invasion case during the early hours of the morning.
11. This case is one of “*street mugging*” with some degree of planning. The approach adopted by the Court of Appeal when sentencing an offender for aggravated robbery in the form of a “*street mugging*” was discussed

in *Raqauqau v. The State*, criminal appeal no. AAU 100 of 2007 (4 August, 2008). The Court of Appeal stated that the appropriate tariff for cases of “street mugging” is an imprisonment term from 18 months to 5 years. Recently, Perera J. in a reasoned decision in *State vs Sokowasa Buulavou*, HAC 28 of 2018 (10 September, 2019) held that the appropriate tariff for such offences should be a tariff of 5 years to 13 years imprisonment.

12. Considering the prevalence of such offences, denunciation and outrage of the society there is a need to revisit the current tariff towards an increase. In this regard I accept that the acceptable tariff as suggested by Perera J. to be 5 years to 13 years imprisonment with the final sentence dependent upon aggravating and mitigating facts. It is also noted that *Raqauqau* tariff was acceptable in 2008 but after about 12 years such offences are making headlines which needs to stop as a matter of deterrence.

AGGRAVATING FACTORS

13. The following aggravating factors are obvious in this case:

- a) Planning

Both the accused and the juvenile had planned to rob the victim who was walking alone with a black bag in his hand. The victim was outnumbered by the accused and the juvenile.

14. For this case two different sentencing regime applies hence for completeness the sentence for the accused will be considered separately from the juvenile.

ACCUSED

15. Considering the objective seriousness of the offending, I select 6 years imprisonment (lower range of the tariff) as the starting point of the

sentence. For the aggravating factors I increase the sentence by 4 years the sentence is now 10 years imprisonment.

16. For mitigation and good character, since the accused is a first offender the sentence is reduced by 1 ½ years. The interim sentence is now 8 ½ years imprisonment.
17. The accused has pleaded guilty at the earliest opportunity he also regrets what he had done which I accept as a sign of remorse, but not genuine since the prosecution had a strong case against the accused who had voluntarily admitted his wrong doing and for this I further reduce the sentence by 1 ½ years only. The sentence now stands at 7 years imprisonment. The accused was not in remand for this matter. The final sentence is 7 years imprisonment.
18. 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.
19. Under section 18 (1) of the Sentencing and Penalties Act, I impose 5 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.
20. Mr. Rokovurai you have committed a serious offence on an unsuspecting and innocent member of the public. 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.

21. In summary the accused is sentenced to 7 years imprisonment with a non-parole period of 5 years to be served before he is eligible for parole.

PUNISHMENT - JUVENILE

REASONS FOR THE COMMISSION OF THE OFFENCE

22. The counsel for the juvenile submitted that the reason for committing the offence was due to peer group influence and lack of supervision by his father who resides in Suva.

SOCIAL WELFARE REPORT

23. As per the order of this court the Social Welfare Department prepared a pre-punishment report after conducting home assessment and interviews. The Social Welfare Officer recommends:
 - (a) That the juvenile be given a non-custodial sentence;
 - (b) The juvenile to work in collaboration with Social Welfare Department to assist him in his rehabilitation.

PARENTAL SUPPORT

24. From the pre-punishment report it is obvious to me that the father of the juvenile takes responsibility for the actions of his son. It appears to me that since the father of the juvenile is not living with him that things had gone out of control. However, the juvenile now has a stable home environment with his paternal aunty who has pledged her support for the juvenile. The father of the juvenile has also pledged his support for

his son and he has agreed to pay \$300.00 as compensation to the victim and also be bonded in the sum of \$500.00.

25. The juvenile has also taken full responsibility of his actions, is genuinely remorse and promises not to reoffend. After the death of his mother he has been personally affected which has led him to move from place to place and live with different families without a stable upbringing.
26. Considering the objective seriousness of the offence committed, I select 5 years imprisonment (lower range of the tariff) as the starting point of the punishment. For the aggravating factors I add 6 months. The interim punishment now stands at 5 ½ years imprisonment. For the early guilty plea and mitigation the sentence is reduced by 3 ½ years.
27. The juvenile falls under a special categorization than adults when it comes to punishment under section 30(3) of the Juveniles Act as a young person which prescribes the maximum punishment for a young person at 2 years imprisonment.
28. The final punishment is 2 years imprisonment. Under Section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final punishment since it does not exceed 3 years imprisonment.
29. In *State vs. Alipate Sorovanalagi and others*, Revisional Case No. HAR 006 of 2012 (31 May 2012), Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

“[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and

those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

30. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing immediate imprisonment or a suspended punishment.
31. The juvenile is a young person as per the Juveniles Act, of good character, isolated offence was committed by him, he was living with his sister when he committed this offence without any parental support or supervision, he was 15 years of age at the time of the offending, pleaded guilty at the earliest opportunity, is genuinely remorseful, cooperated with police and takes full responsibility of his actions. These special reasons render immediate imprisonment inappropriate.

32. I am certain that with parental and his aunt's guidance, supervision and support the juvenile has a bright future ahead of him hence an imprisonment term will not augur well for his future, the juvenile is back at school continuing his year 10. This court has taken into account rehabilitation over and above deterrence.
33. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that the punishment is just in all the circumstances of the case.
34. In summary the juvenile is given a punishment of 2 years imprisonment which is suspended for 3 years. The effect of suspended sentence is explained. The following orders are to take effect immediately.

ORDERS

- a) The juvenile is given a punishment of 2 years imprisonment which is suspended for 3 years with immediate effect;
- b) The father of the juvenile is to sign a good behaviour bond on behalf of the juvenile in the sum of \$500.00. The father of the juvenile is also to pay the victim \$300.00 as compensation within 21 days from today at the Magistrate's Court in Suva.
- c) The Social Welfare Department is to immediately arrange for the counseling of the juvenile in the presence of his father and aunty with the view of assisting the juvenile in keeping out of peer group influence and to engage in education and training;
- d) The Social Welfare Department is also at liberty to work out any programs or plans which will be in the interest of the juvenile;

- e) It is the responsibility of the father and the aunt of the juvenile namely Vasemaca Tabuakoro to ensure that the juvenile obeys any directions given by the Social Welfare Department;
- f) A copy of this punishment is to be served on the Officer in Charge of the Social Welfare Department;
- g) The juvenile and the accused have 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge

At Lautoka

29 June, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.