

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 411 of 2018

STATE

vs.

- 1. ALIKI KAIKOSO**
- 2. TIMOCI SORO**

Counsel: Mr. S. Shah for the State
Mr. K. Cheng for the 1st Accused
Ms. N. Mishra for the 2nd Accused

Date of Hearing: 03th, 04th, 05th and 06th February 2020

Date of Closing Submission: 07th February 2020

Date of Summing Up: 10th February 2020

Date of Judgment: 11th February 2020

Date of Sentence: 14th February 2020

SENTENCE

1. The court found the first accused, Mr. Alikai Kaikoso and the second accused, Mr. Timoci Soro, guilty of two counts of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act and one count of Attempted Aggravated Robbery, contrary to Section 44 and 311 (1) (a) of the Crimes Act and convicted to the same accordingly.
2. The prosecution proved beyond a reasonable doubt that two accused, together with two others, had robbed Mr. Nitya Nand Singh on the morning of the 27th of October 2018. The two accused had then gone to the Mad Hatter Coffee Shop and tried to rob Ms. Chung when

she was having her birthday breakfast with her parents. Having failed to execute the planned crime at the Mad Hatter Coffee Shop, the two accused had then gone to the town and robbed Ms. Noor Farida Fleming when she was walking towards the town from Holiday Inn Hotel.

Purpose of the Sentence

3. This is a case of a spate of robberies committed within a few hours, targeting the civilians who were at public places. Aggravated Robbery is the worst and severe form of property crime in this jurisdiction, which carries a maximum penalty of twenty years imprisonment. Therefore, the Court finds the Aggravated Robbery as a serious offence.
4. Given the seriousness of these offences, it is the opinion of the Court that such offenders must be dealt with severe and harsh punishment. Therefore, the purpose of this sentence is founded on the principle of deterrence and protection of the community.

Tariff

5. Tariff for the offence of Aggravated Robbery is between eight (8) years to sixteen (16) years of imprisonment. (**Wise v State [2015] FJSC 7; CAV0004.2015 (24 April 2015)**). The Supreme Court of Fiji in **Nawalu v State [2013] FJSC 11; CAV0012.12 (28 August 2013)** held the tariff limit of ten (10) to sixteen (16) years is appropriate for a spate of crimes.
6. All of these three counts are founded on the same series of offending of the same and similar characters. Therefore, the Court finds it is appropriate to impose an aggregate sentence according to Section 17 of the Sentencing and Penalties Act.
7. By the nature of the service provides by the taxi, the taxi drivers are vulnerable to the danger of violent robberies. The two accused have manipulatively used the vulnerability of Mr. Singh in order to commit the crime. They have tried to take Mr. Singh to a location where he cannot find any help or assistance. The two accused with others had punched and then

dragged Mr. Singh out of the taxi. They have then kicked him. This horrendous experience will haunt Mr. Singh for the rest of his life.

8. Ms. Chung was enjoying her birthday with her parents at the Mad Hatter Coffee Shop when the two accused walked into the cafe and tried to rob Ms. Chung using force on her.
9. Ms. Fleming was walking to the town when she was robbed by the two accused, coming from her behind. She is a foreigner who visits Fiji periodically to engage in her consultancy works. She did not chase after the robbers because she was afraid and shocked. Having taken into consideration the manner and the circumstances of these offending, The Court finds that the level of harm and culpability in these offences are significantly high.
10. Taken into consideration the seriousness of these offences, and the level of harm and culpability, the court selects eleven (11) years as the starting point.

Aggravating Factors

11. The two accused had robbed Mr. Singh while he was operating his taxi business. The taxi service provides a valuable public service to the general public. It is one of the most used and convenient modes of transportation for the general public. Such violent attacked on the taxi drivers undoubtedly affects the public. The medical examination report of Mr. Singh states that he had suffered tenderness and swelling on his mandibular and also abrasion on his left lips due to the assault by the two accused. attacks
12. The Mad Hatter Coffee Shop is open to the public to come and enjoy their food and time. Such places are essential parts of society. Coffee shops and eateries must be opened and easily accessible to the public. Such robberies would affect the business of such places.
13. ~~Ms. Fleming is a visitor to this country. Instead of friendly hospitality, the two accused had extended a violent force on her and steal her belongings.~~

14. The Court finds these reasons as the aggravating factors in these three offences.

Mitigation Grounds

15. Both of the accused in the mitigation submissions highlighted their family and personal circumstances, which the Court finds no mitigatory value.
16. The first accused has nine previous convictions. Six of them are related to property crimes. There is no evidence or information before this Court to consider the general reputation of the first accused in the society and also no information about any significant contribution that he had made to the community. Therefore, the first accused is not entitled to any discount for his previous character.
17. The second accused is a first offender. However, there is no evidence or information before this court to consider the general reputation of the second accused in the society. Moreover, no information about any significant contribution that he had made to the community. Therefore, the second accused is only entitled to a meager discount for his previous character.
18. In view of the reasons discussed above, the Court increases further two (2) years for the aggravating factors to reach thirteen (13) years. The Court does not find any mitigation grounds in favor of the first accused. Accordingly, the final sentence of the first accused is thirteen (13) years imprisonment.
19. In respect of the second accused, the Court reduces one (1) year for his previous character. The final sentence of the second accused is twelve (12) years imprisonment.
20. Having considered the seriousness of this crime, the purpose of this sentence, and the age of the two accused, the Court fixes a non-parole period of ten (10) years for the first accused and nine (9) years for the second accused.

Head Sentence

21. Accordingly, the Court sentenced the first accused to a period of thirteen (13) years imprisonment as an aggregate sentence to the two counts of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act and one count of Attempted Aggravated Robbery, contrary to Section 44 and 311 (1) (a) of the Crimes Act. Moreover, the first accused is not entitled to any parole for ten (10) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
22. The Court sentenced the second accused to a period of twelve (12) years imprisonment as an aggregate sentence to the two counts of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act and one count of Attempted Aggravated Robbery, contrary to Section 44 and 311 (1) (a) of the Crimes Act. Moreover, the second accused is not entitled to any parole for nine (9) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

23. The first accused has been in remand custody for this case for one (1) year, three (3) months, and eighteen (18) days before the hearing as the Court did not grant him bail. In pursuant of Section 24 of the Sentencing and Penalties Act, the Court considers one (1) year and four (4) months as a period of imprisonment that has already been served by the first accused.
24. Accordingly, the actual sentencing period of the first accused is eleven (11) years and eight (8) months imprisonment with a non-parole period of eight (8) years and eight (8) months.
25. The second accused has been in remand custody for this case for ten (10) months and twenty-eight (28) days before the hearing as the court did not grant him bail. In pursuant of Section 24 of the Sentencing and Penalties Act, the court considers eleven (11) months as a period of imprisonment that has already been served by the second accused.

26. Accordingly, the actual sentencing period of the second accused is eleven (11) years and one (1) month imprisonment with a non-parole period of eight (8) years and one (1) month.
27. Thirty (30) days to appeal to the Fiji Court of Appeal.

R.D.R.T. Rajasinghe
Judge

At Suva
14th February 2020

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the 1st Accused.
Officer of the Legal Aid Commission for the 2nd Accused.