

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 224 of 2018

BETWEEN : STATE

AND : MELI KENAWAI

Counsel : Mr Z. Zunaid for the State
Ms L. Ratidara and Ms M. Cobona for the Accused

Dates of Hearing : 4 and 5 February 2020

Closing speeches : 6 February 2020

Date of Summing up: 6 February 2020

Judgment : 10 February 2020

Sentence : 14 February 2020

SENTENCE

1. Meli Kenawai, you are convicted by this Court for one count of aggravated robbery contrary to section 311(1)(a) of the Crimes Act. The maximum punishment for aggravated robbery is imprisonment for 20 years.

2. At the trial the State proved that 25 May 2018 at about 10 pm you approached the complainant with three other persons and robbed him. You were known to the complainant for 10- 15 years as you used to drink yaqona and smoke cigarettes with the complainant. At the time of the incident the complainant was on his way to the shop. You grabbed the complainant with others, and you took the complainant's mobile phone, \$ 50 cash, a BSP ATM card and an e-ticketing card from the complainant's pocket. The complainant was punched on his face, neck and on his chest when he tried to save his belongings. On the following day the matter was reported to the Police and you were arrested. The stolen ATM card was recovered from you. The other items were not recovered. As per the medical evidence only tenderness was observed upon palpation on the complainant's left temporal region and over the left mandibular region. Later you were charged for aggravated robbery. After a full trial you were found guilty by this court and you were convicted for the offence of aggravated robbery.

3. Both the State and the Defence submitted that this Court must adopt the tariff recognized for this type of offending in State v Josia Vatuicoko [2018] FJHC 885; HAC210.2018(21 September 2018). In the said case the following tariffs have been identified depending on the nature of offending;
 - i. Street mugging - 18 months to 5 years imprisonment
 - ii. Home invasion - 8 years to 16 years imprisonment
 - iii. A spate of robberies - 10 years to 16 years imprisonment

4. In Tawake v State [2019] FJCA 182; AAU0013.2017 (3 October 2019) where a complainant was assaulted with a knife and an iron rod before robbing \$20 by a neighbor and another person, the Court of Appeal substituted the sentence of 9 years and 6 months with a sentence of 3 years and 2 months. Further the Court of Appeal remarked the following while picking the appropriate tariff based on the circumstances of offending;

“34] The trend followed recently in the High Court (**State v Matagasau** [2019] FJHC 633; HAC17.2019 (28 June 2019); **State v Ketewai** [2019] FJHC 468; HAC210.2018 (21 May 2019) is to treat cases such as these where the incidents have taken place in the streets unlike in **Wallace Wise** (Supra) differently and adopt the approach in **Raquauqau** (Supra) where the tariff for instances of street mugging was set at 18 months to 5 years. However, it would be necessary to be mindful of the dicta in **Raquauqau** (Supra) that the upper limit of 5 years might not be appropriate ‘if the offences are committed by an offender who has a number of previous convictions and if there is a substantial degree of violence, or if there is a particularly large number of offences committed’.

[35] The adoption of the tariff in **Wise** (Supra) does not seem to be appropriate to the present case as it does not come within the nature of a home invasion category of aggravated robbery and is a situation which would come within the type of street mugging cases. Considering the objective seriousness of the offending and the degree of culpability, the harm and loss caused to the complainant it would be appropriate to follow the sentencing pattern suggested for instances of street mugging”.

5. It State v Taubale [2019] FJHC 1071; HAC 18.2019 (8 November 2019) Justice Aluthge adopted the tariff of 18 months to 5 years where the complainant was punched and a mobile phone and \$ 70 cash was robbed by the accused with others.
6. Justice Goundar stated in State v Raj [2020] FJHC 36; HAC 299.2018 (31 January 2020) that the tariff for grab and run street robbery is between 18 months and 5 years imprisonment. In that case the accused snatched a mobile phone and \$30 cash with three other persons. The accused was a friend of the complainant. He was imposed with a 4 years imprisonment.

7. The State initially submitted that you have no previous convictions. Nevertheless, your Counsel informed the court, upon your instructions, that you have previous convictions. Later the State submitted that you have three previous convictions recorded against you in 2019 which were not updated with Criminal Records Office. Further it was noted that there had been a confusion with the records of another person by the same name. In any event those convictions are not for similar offences and the offence in the present case is committed well before the suspended sentences imposed on you in those matters.
8. In view of the above sentencing guidelines followed in similar circumstances I adopt the tariff of 18 months to 5 years for this case. Having considered the objective seriousness of the offence you committed, I pick a starting point of 3 years.
9. You have not used any weapon to inflict injuries on the complainant. However, you have committed this offence during the night at a time when the complainant was alone. You breached the trust of the complainant as you had been a friend for more than 10 years. The complainant had believed that you would not do anything to him as you were his friend. I add 2 years to your sentence as those factors aggravate your offending.
10. In mitigation your counsel submitted that you are 29 years old and in a de facto relationship. You have a 1-year old son. You are a fisherman. Although personal circumstances do not carry any mitigatory value I have noted that you have co-operated with the police according to the evidence adduced in this case. I consider it as a mitigating factor, and give you a discount of 6 months.
11. Accordingly, I impose a sentence of 4 years and 6 months imprisonment on you.

12. You had been in remand custody for 9 months. According to section 24 of the Sentencing and Penalties Act that period must be regarded as a period of imprisonment already served by you. Therefore, I make a downward adjustment of 9 months to your sentence to reflect the time that you were in remand custody.
13. Pursuant to the amendment to section 18 of the Sentencing and Penalties Act by the Corrections Services (Amendment) Act 29 of 2019 which came in to force by gazette notification no 42, dated 22 November 2019 when a court sentences an offender to be imprisoned for life or for a term of 2 years or more the court must fix a period during which the offender is not eligible to be released on parole. As per the said amendment the Courts no longer have any discretion to decline the setting of a non-parole period. However, I consider your personal circumstances in setting the non-parole period in this case.
14. Accordingly, you should serve a period of 3 years and 9 months imprisonment with a non-parole period of 2 years and 6 months.

30 days to appeal to the Court of Appeal



At Suva

14 February 2020

Solicitors

Solicitors for the State: Office of the Director of Public Prosecutions

Solicitors for the Accused: Office of the Legal Aid Commission

