

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 347 of 2019

BETWEEN: STATE

PROSECUTION

A N D:

1. LEMEKI TUPALI
2. VEIQARAVI LUTU TATATAU

ACCUSED PERSONS

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

Date of Sentence : 17th February 2020

SENTENCE

1. The Prosecution has charged Mr. Veiqaravi Lutu Tatatau, the second accused, with one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act. The particulars of the offence are that:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

LEMEKI TUPALI and VEIQARAVI LUTU TATATAU on the 29th day of September, 2019 at Pacific Harbour in the Central Division, in the company of each other stole 1 x MacBook mini laptop (silver in colour), 1 x I-phone 6 plus (gold in colour) with cover, 1 x gold ring, 1 x MacBook laptop (silver in colour), 1 x Iphone 6 (pink in colour) with black leather case, 1 x Samsung brand mobile phone and \$450 cash from **MANON HUFFER BOIVERT** and at the time of stealing from **MANON HUFFER BOIVERT**, used force on her.

2. The second accused pleaded guilty to this offence on the 6th of January 2020. Satisfied by the fact that the second accused has fully comprehended the legal effect of his plea and his plea was voluntary and free from influence, I now convict the second accused to this offence of Aggravated Robbery.

Factual Background

3. The second accused and another accomplice entered the house of the complainant at about 5.29 p.m. on the 29th of September 2019. The complainant was alone at home as her mother went somewhere. She is a 19 years old student. The complainant started to shout at the two accused when she saw the two intruders. One of the accused had then run to the complainant, and the other one had got hold of her mobile phone. The two accused had covered her mouth and then grabbed her by the neck and pushed her down. The two accused had then tied a t-shirt on her face.
4. One of the accused had covered his face, and the other was not. They asked the complainant not to shout. The two accused then dragged her to her room. They then tied her hands and legs with her clothes to the bed. One of the accused was very aggressive, asking her where is the money. The two accused spent about 15 minutes at the house and stole the items

therein, as stated in the particulars of the offence. The two accused had gained entry into the home through the window of the bedroom of the complainant.

5. This is a violent home invasion and stealing therein. 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.
6. Given the seriousness of this offence, 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

7. Tariff for the offence of Aggravated Robbery is between eight (8) years to sixteen (16) years of imprisonment. (Wise v State [2015] EJSC 7; CAV0004.2015 (24 April 2015)).
8. The complainant is a 19 years old student. Undoubtedly, this is a horrific and horrendous experience for her. This horrific experience would stay in her mind for an extended period.
9. One of the accused was covering his face when the two accused invaded the house. The two accused have entered the house while the complainant was alone in the house. She was not in a position to react or escape from the scene. This is a properly planned and well executed home invasion. The two accused have used a substantial amount of physical force on the complainant. Accordingly, I find the level of harm and culpability in this offence are significantly high.
10. Taken into consideration the seriousness of this offence, and the level of harm and culpability, I select ten (10) years as the starting point.

Aggravating Factors

11. The medical examination report of the complainant states that she has sustained bruises on her arms and tenderness on her neck. The two accused fled the home, leaving her hands and legs tied to the bed.

Mitigation Factors

12. The second accused in the mitigation submissions highlighted his family and personal circumstances, which I find no mitigatory value.
13. The second accused is the young 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.
14. The second accused pleaded guilty to this matter at the earliest possible opportunity. Therefore, he is entitled to a substantive discount for his plea of guilty.
15. In view of the reasons discussed above, I increase further two (2) years for the aggravating factors to reach twelve (12) years. I reduce one (1) year for his previous character and further three (3) years for your early plea of guilty. The final sentence is eight (08) years imprisonment.
16. Having considered the seriousness of this crime, the purpose of this sentence, and the age of the accused, I fix a non-parole period of six (06) years.

Head Sentence


17. Accordingly, I sentenced the second accused to a period of eight (08) years imprisonment to the offence of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act.

Moreover, the second accused is not entitled to any parole for six (06) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

18. The second accused has been in remand custody for this case for four (4) months, and nine (9) days as the court did not grant him bail. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider five (5) months as a period of imprisonment that has already been served by the second accused.
19. Accordingly, the actual sentencing period of the second accused is seven (7) years and seven (7) months imprisonment with a non-parole period of five (5) years and seven (7) months.
20. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
17th February 2019

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.