

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 181 of 2020
[CRIMINAL JURISDICTION]

STATE

V

1. WILLIE SELO

2. RATU JOSAIYA RAYAWA

Counsel : Mr. Z. Zunaid for the State
Mr. K. Chang for the 1st Accused
Ms. T. Kean for the 2nd Accused

Sentenced on : 9th March, 2021

SENTENCE

1. Willie Selo and Ratu Josaia Rayawa you have pleaded guilty to the charge produced below and were convicted as charged accordingly on 20/01/21;

Statement of Offence

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

Particulars of Offence

WILLIE SELO & RATU JOSAIYA RAYAWA with another on the 10th day of June, 2020 at Nakasi, in the Eastern Division, in the company of each other stole 1x Samsung Galaxy S7 mobile-phone from **ABBRAAR HUSSEIN** and immediately before stealing from **ABBRAAR HUSSEIN**, used force on him.

2. You have admitted the following facts;

Accused [A1]: A1 in this matter is one, Willie Selo, 25 years old, Carpenter, resided at Lot 12 Sasawira, Farm Road

Accused [2]: A2 in this matter is one Ratu Josaia Rayawa, 18 years old, unemployed, resided at Lot 28 Sukanaivalu Road, Nabua.

Complainant: The complainant in this matter is one, Abraar Hussein, 17 years old, unemployed, of Waidamudamu settlement.

Prosecution Witness 2 [PW2]: PW2 in this matter is one, Shalvin Prasad, 18 years old, student, of Waidamudamu settlement.

Prosecution Witness 3 [PW3] Conducted civilian arrest of the accused's accomplice: PW3 in this matter is one, Apakuki Jawai, Security officer, of Farm Road, 10, miles.

Prosecution Witness 4 [PW4] Arresting and Charging Officer: PW4 in this matter is one, DC 6003 Suliasi, Police Officer, of Kinoya.

Prosecution Witness 5 [PW5] Witnessing Officer: PW5 in this matter is one, DC 5432 Sanil, Police Officer.

Prosecution Witness 6 [PW26] Investigating Officer: PW6 in this matter is one, DC 5976 Khan, Police Officer.

Prosecution Witness 7 [PW7] Medical Examiner: PW7 in this matter is one, Doctor Alena Tawake, of Nakasi Health Centre.

Prosecution Witness 8 [PW8] Accomplice: PW8 in this matter is one, Ratu Jonetani Tavadroka, 17 years old, unemployed, of Sasawira Farm Road.

Prosecution Witness 9 [PW9] Arresting Officer: PW8 in this matter is one, D/Cpl Ame, Police Officer.

Brief Facts

1. On the 10th of June 2020, at around 8.00pm, the complainant was walking back home from Waidamudamu settlement after charging his mobile-phone at his friend's house.
2. The complainant was accompanied by PW2 who was a friend of his. As the complainant and his friend were about to reach the complainant's house, they noticed three i-Taukei boys were following them.
3. The three i-Taukei boys were the two accused's and their accomplice PW8.
4. PW2 stated that the complainant had his mobile-phone in his hand as they were using the torch-light from the mobile-phone to watch where they were walking as it was dark.
5. Suddenly, when one of the youths ran up to the complainant and began grabbing the complainant's mobile-phone. The complainant resisted and tried to save his mobile-phone and in the process of the struggle, the complainant received a few punches to his face and back from one of the three robbers. One of the three robbers then grabbed the complainant's mobile-phone and all three then ran away.
6. As the group of three robbers were in the process of running away, the complainant and PW2 gave chase whilst yelling out for help. PW3 who was on duty as a private security, saw three i-Taukei youths running into the property he was guarding and this is when he simultaneously heard people yelling out "butako butako". The particular saying is usually a cry out of help in the i-Taukei language when a robbery is committed.

7. *Hearing the cries for help, PW3 chased the three i-Taukei boys towards Farm Road where he managed to grab and arrest one of the robbers, that being PW8. PW8 tried to hide in a nearby bush but was apprehended by PW3. PW3 then conducted a civilian arrest of PW8 and escorted him back to Waidamudamu settlement where he was met by the complainant who had informed him of the robbery. The police were then contacted in which the juvenile (PW8) was then arrested by the police.*
8. *On the 15th of June 2020, A2 surrendered himself at the police station and handed over the stolen mobile-phone to the police. PW9 recognized A2 as he was one of the suspects in relation to this matter. PW9 then seized the stolen mobile-phone and effected arrest of A2.*
9. *On the same day (15th of June 2020), the complainant was called to the Nakasi police station where he positively identified his Samsung Galaxy S7 mobile-phone which was stolen from him during the robbery.*
10. *On the 17th June 2020, following the information that the police received, police officers then went to arrest the third suspect in this case, which was A1, Mr. Willie Selo. PW4, PW6 together with Detective Corporal Ame, then went to Farm Road where PW4 then arrested A1. The accused was then escorted to the police station.*
11. *A1 was then later caution interviewed at the Nakasi police station whereby he made full confessions. The accused admitted that on the date and time of the offence he was walking with his friends from Sasawira Farm Road to Waidamudamu (Q&A 19-20). The accused admitted that he was with two of his friends at that time namely Jonetani and Josaia (Q&A 22-23). The accused admitted that at Waidamudamu junction, his friend Jonetani saw two Indian boys walking about five meters in front of them (Q&A 31-33). The accused admitted that this is when Jonetani said for them to rob the two Indian boys (Q&A 34). The accused further admitted that this is when Jonetani ran towards one of the Indian boys and wrapped his arms around him (Q&A 35). This is when the accused and his other accomplice Josaia then ran to assist Jonetani in which the accused grabbed the Indian boy's mobile-phone from his hand (Q&A 36). The accused admitted that after grabbing the mobile-phone, they then ran towards the Farm Road junction (Q&A 40). The accused stated that whilst running to the Farm Road junction, Jonetani ran towards the LDS church and hid in the bushes whilst he and Josaia ran though the cross cut from Farm Road to Sasawira (Q&A 42-43). The accused admitted that one Fijian security was chasing them up to the bus stop at Farm Road (Q&A 44). The accused stated that he then checked the mobile-phone and gave it to Josaia as the mobile-phone was locked (Q&A 45). The accused in his record of interview stated that he then told Josaia to meet him the next day so that they can discuss what to do with the mobile-phone (Q&A 47). The accused stated that after that he then went home (Q&A 48). The accused in his record of interview denies punching the Indian boy (Q&A 41).*
12. *A2 in his record of interview made full admissions. A2 was caution interviewed in the presence of his mother. A2 admitted that on the date and time of the incident he was with one Jonetani and Bill (Q&A 17). A2 stated that Jonetani saw two Indian boys cross the road and this is when Jonetani made the plan to rob them (Q&A 19-20). A2 admitted that they then followed the 2 Indian boys and this is when Jonetani grabbed one of the Indian boys and managed to pull away a mobile-phone from the Indian boy (Q&A 21-23). A2 admitted that they all then ran away and whilst running Bill gave him the mobile-phone (Q&A 26-32). A2 did not know*

where Bill and Jonetani ran to thereafter (Q&A 29-30). A2 denies assaulting the Indian boy (Q&A 37). A2 stated that he brought the mobile-phone to the police station because he knew he would be arrested (Q&A 42).

13. *On the same night of the incident, at around 10.00 pm, the complainant was taken for medical examination in which PW7 begin the examining doctor noted the following injuries:
 - a) *Left upper back – superficial abrasions on the thoracic area*
 - b) *Abrasions on the right knee and the right chest*
 - c) *Left posterior head tenderness**
14. *Willie Selo, Rtau Josaia Rayawa and Ratu Jonetani Tavadroka on the 10th day of June, 2020 at Nakasi, in the Eastern Division, in the company of each other stole 1x Samsung Galaxy S7 mobile-phone from Abraar Hussein and immediately before stealing from Abraar Hussein, used force on him.*
15. *Annexed hereto and marked as “Annexure A” is the caution interview of A1.*
16. *Annexed hereto and marked as “Annexure B” is the caution interview of A2.*
17. *Annexed hereto and marked as “Annexure C” is the medical report of the complainant.*

3. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act 2009 (“Crimes Act”) is 20 years imprisonment. Considering the manner in which this offence was committed I would classify this case as ‘street or less sophisticated’ aggravated robbery [see *State v Bulavou* [2019] FJHC 877; HAC28.2018 (10 September 2019)] and accordingly the applicable sentencing tariff should be a term of imprisonment between 05 years and 13 years.
4. However, the prosecutor has insisted that the sentencing tariff that should be applied in this case should be a range between 18 months to 05 years imprisonment. The prosecutor submitted that the discussion in *Bulavou* (supra) is logical, yet he wishes to advocate the above sentencing range in relation to the type of offending in this case.
5. I am conscious of the fact that sentencing is a matter for the court and not for the prosecution. Nevertheless, this submission by the prosecution serves as a plea to be lenient in sentencing the accused. Taking everything into consideration, especially the fact that this assertion in fact works in favour of the accused, I have decided to regard the said assertion as a concession made by the prosecution in this case. I am however mindful of the fact that this sentencing


range advocated by the prosecutor, more particularly the lower end of the range does not facilitate the achieving of the purposes of sentencing stipulated under sections 4(1)(a), 4(1)(b), 4(1)(c) and 4(1)(e) of the Sentencing and Penalties Act 2009. Applying the said sentencing range also requires the maximum penalty prescribed by the Crimes Act to be overlooked when sentencing the accused.

6. Willie Selo in your mitigation it is submitted that you are 24 years old and single. Prior to your arrest for this matter, you had been working as a casual labourer. You have reached Form 5, which is your highest level of education.
7. Ratu Josaia Rayawa, in your mitigation it is submitted that you are 18 years old and you live with your parents. You had left school while you were in Form 6. It is submitted that you committed this offence due to poor decision making on your part.
8. I would select 18 months imprisonment as the starting point of your sentence.
9. I would consider the following as the common aggravating factors in this case;
 - a) The complainant had received injuries as a result of being assaulted by one of the robbers; and
 - b) The offence had been committed by three individuals where the minimum number of individuals required to constitute this offence is two.
10. Having considered the upper limit of the sentencing range that is applied, I would add 02 years to your sentence in view of the above aggravating factors.
11. Now the interim sentence is a term of 03 years and 06 months.
12. Both of you are first offenders. There is full recovery as the stolen phone was surrendered to the police by the second accused and you have cooperated with the police. In view of these mitigating factors I would grant you a discount of 22 months.

13. Now your sentence is an imprisonment term of 20 months.
14. Both of you pleaded not guilty to the offence initially but changed your pleas subsequently. This was well before fixing the trial dates. Therefore, I would consider it appropriate to grant each one of you a discount of one-fourth.
15. Accordingly, I would deduct 05 months of the sentence in view of your guilty plea.
16. Accordingly, I sentence each one of you to a term of 15 months imprisonment. I would not fix a non-parole term in view of the discretion granted under section 18(3) of the Sentencing and Penalties Act.
17. It is pertinent to note that logically the final sentence should fall below the lower end of the relevant sentencing range when the mitigating factors outweighs the aggravating factors in a particular offending as in this case. On the other hand, when an innocent member of the society is robbed by three assailants around 8.00pm while walking towards his house and being assaulted in the same process that had caused actual bodily harm, on the face of it, a term of 15 months imprisonment does not reflect the denunciation of that conduct and would not serve as a deterrence for future offenders.
18. Willie Selo, it is submitted that you have been in custody in view of this matter from 17/06/20. Accordingly, you have spent a period of 08 months and 22 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.
19. In the result, Willie Selo, you are sentenced to an imprisonment term of 15 months. Considering the time spent in custody, the time remaining to be served is 06 months and 08 days.

20. Ratu Josaia Rayawa, it is submitted that you have been in custody in view of this matter from 15/06/20. Accordingly, you have spent a period of 08 months and 24 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.
21. In the result, Ratu Josaia Rayawa, you are sentenced to an imprisonment term of 15 months. Considering the time spent in custody, the time remaining to be served is 06 months and 06 days.
22. Considering the fact that you are first offenders, the remorse you have expressed and the fact that each one of you have spent more than 50% of the final sentence, I consider it appropriate for the above remaining terms of the respective final sentences to be suspended in view of the provisions of section 26 of the Sentencing and Penalties Act. Accordingly, I would suspended each sentence for a period of 03 years and you will be released today in view of this case.
23. The court clerk will explain to you the effects of a suspended sentence.
24. 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 1st & 2nd Accused