

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 287 of 2020

[CRIMINAL JURISDICTION]

STATE

V

1. MALANI TALE

2. RUPENI VEREMO

Counsel : Mr. N. Sharma for the State
Ms. L. Manulevu for the 1st Accused
Ms. S. Daunivesi for the 2nd Accused

Date of Sentence : 25 March, 2021

SENTENCE

1. Malani Tale and Rupeni Veremo you have pleaded guilty to the charges produced below and were convicted as charged accordingly on 09/03/21;

FIRST COUNT

Statement of Offence

Aggravated Burglary: Contrary to Section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

MALANI TALE and RUPENI VEREMO, on the 12th day of September, 2020 at Vatuwaqa in the Central Division, in the company of each other, entered as trespassers into **CLYDE EQUIPMENT (PACIFIC) PTE LTD**, with intent to commit theft.

SECOND COUNT

Statement of Offence

Theft: Contrary to Section 291 (1) of the Crimes Act 2009.

Particulars of Offence

MALANI TALE and RUPENI VEREMO, on the 12th day of September, 2020 at Vatuwaqa in the Central Division, in the company of each other, dishonestly appropriated (stole) 1x blue Puma brand Bag, 1x long tights, 1x blue Fiji t-shirt, 1x skipping rope, 1x pair of Nike brand Canvas and 1x Power Bank (orange and black in color) the properties of **ANGELINE SINGH** with the intention of permanently depriving **ANGELINE SINGH** of the said properties.

2. You have admitted the following summary of facts;
 1. On 12th September 2020, A1 and A2 broke into warehouse and showroom building belonging to Clyde Equipment (Pacific) PTE Ltd located at Lot 31 Viria East Road, Vatuwaqa with an intention to commit theft. A1 and A2 gained entry inside the said building after A1 forcefully opened the kitchen window and forcefully pushed a burglar bar.
 2. At about 8:00 pm. PW1 went to the said office and noticed that the all the telephone lines were not operational, PW1 then checked his laptop and noticed that the entire internet was down and the TV screen for the CCTV footage was completely blank.
 3. PW1 then found out that the power point for the server on the top floor of the building was also switched off. Soon afterwards, PW1 went around the kitchen area and noticed that the window was open and the burglar bar was pulled out. At this point in time, PW1 switched on the power point for the server to check CCTV footage.
 4. Upon viewing the CCTV footage, PW1 noticed that at 3:32 am on 12th September 2020, someone pushed the sliding window and opened it and then pushed out a burglar bar. PW1 also noticed that at about 3:39 am, an iTaukei male entered the kitchen and moved around. The CCTV footage then showed that another iTaukei male entered into the building through the kitchen window. PW1 further noted that at about 3:39 am, the server was switched off.
 5. After PW2, an employee of Clyde Equipment (Pacific) PTE Ltd, found out about the break-in, she then started to look for her bag which she placed in the reception area however she could not find it. PW2 then suspected that her belongings were also stolen at the time of the break-in. The following items belonging to PW2 were missing after the break-in:
 - (a) 1x blue Puma brand Bag;
 - (b) 1x long tights;
 - (c) 1x blue Fiji t-shirt;
 - (d) 1x skipping rope;
 - (e) 1x pair of Nike brand Canvas; and
 - (f) 1x Power Bank (orange and black in color).

6. After the investigations were completed and upon inquiry by the operation team, PW3 viewed the CCTV footage obtained from PW1 and thereafter positively identified both A1 and A2 since all of them reside in Veidogo Settlement at Vatuwaqa. As a result, PW4 arrested A1 at his residence on 15th September 2020 whilst PW5 arrested A2 on the same day.
7. A1 was interviewed under caution by PW6 where he made full admissions at **Q&A 29 – 84**. During scene reconstruction, A1 also voluntarily handed over **1x Power Bank (orange and black in color)** which he had stolen from the said building and had kept inside his house (annexed hereto is the **typed and handwritten Caution Interview of A1** dated 15th September 2020 marked as “**Annexure A**”). Briefly, A1 has admitting to the following:
 - (a) That he climbed over the fence and went to the rooftop of Clyde Equipment (Pacific) PTE Ltd located whilst A2 waited outside;
 - (b) That he opened the sliding window and managed to break one of the grills by kicking;
 - (c) That he then entered the said building through the said window;
 - (d) That he saw a camera and the boardroom and thereafter switched it off;
 - (e) That he used the camera from his mobile phone to navigate;
 - (f) That according to him, A2 followed him inside the said building after he had managed to gain entry;
 - (g) That there was a bag placed next to a table;
 - (h) That it was a blue Puma brand bag;
 - (i) That there was 1x long tights, 1x blue Fiji t-shirt, 1x skipping rope and 1x pair of Nike brand Canvas inside the said Puma bag;
 - (j) That they also took 1x Power Bank (orange and black in color) which was placed on a table;
 - (k) That he showed the police how he entered the said building together with A2 during scene reconstruction;
 - (l) That the said Power Bank (orange and black in color) was recovered from inside his bedroom at his residence during scene reconstruction and that he was one who had placed the said Power Bank in his bedroom; and
 - (m) That upon viewing the CCTV Footage, he confirmed that it was him and A2 in the said footage.
8. A2 was interviewed under caution by PW7 where he made full admissions at **Q&A 37 – 76** (annexed hereto is the **typed Caution Interview of A2** dated 15th September 2020 marked as “**Annexure B**”), A2 has admitting to the following:
 - (a) That he went with A1 to Clyde Equipment (Pacific) PTE Ltd at Viria East;
 - (b) That initially he was a look out to ensure that no one sees them in the said building;
 - (c) That after a few minutes, he followed A1 inside the said building by climbing over the fence, then climbing on top of the said building and thereafter entered the said building through a window;
 - (d) That he was looking around to steal something but since the alarm went off and given that the said building mostly had heavy machinery items, both him and A1 decided to leave;
 - (e) That according to him, A1 took 1x Puma brand bag from inside the said

- building before leaving;*
- (f) Then he left the said building first and went straight to the roundabout of Viria East and waited for A1 to return;*
 - (g) That when A1 returned, he had a blue bag which he opened and showed to him;*
 - (h) That the said blue bag contained a pair of canvas among other things but he could only see the canvas;*
 - (i) That he confirms that the said blue bag was taken from Clyde Equipment (Pacific) PTE Ltd;*
 - (j) That he showed the police how he entered the said building together with A1 during scene reconstruction;*
 - (k) That he voluntarily handed over 1x black pullover/hoodie which he admitted that he was wearing at the time of the offence which is the same pullover/hoodie captured in the CCTV Footage;*
 - (l) That according to him, A1 had taken the said blue bag with a pair of canvas; and*
 - (m) That upon viewing the CCTV Footage, he confirmed that it was him and A1 in the said footage because he could identify their faces and clothes.*
- 9. On 15th September 2020, PW2 positively identified the Power Bank (orange and black in color) which was recovered from A1's house as the very same Power Bank belonging to her which was stolen from her desk. Apart from this, there were no other recoveries made.*
 - 10. Both A1 and A2 had unequivocally pleaded guilty to both counts of Aggravated Burglary and Theft before this Honourable Court in the presence of their respective counsels.*
3. The tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years. [Vide *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017), *State v Naulu* [2018] FJHC 548 (25 June 2018) and *State v Nanovu* [2020] FJHC 985; HAC121.2020 (25 November 2020)]
 4. However, the learned State Counsel has insisted that the sentencing tariff that should be applied in this case should be a range between 18 months to 03 years imprisonment.
 5. I am conscious of the fact that sentencing is a matter for the court and not for the prosecution. Nevertheless, this submission made by the prosecution in relation to the sentencing range 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 mindful of the fact that this sentencing range advocated by the learned State Counsel 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 (“Sentencing and Penalties Act”). Applying the said sentencing range also requires the maximum penalty prescribed by the Crimes Act for the offence to be overlooked when sentencing the accused.

6. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
7. The two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment on the two offences.
8. Neither the particulars of the offence nor the summary of facts reflect the value of the items stolen. I am unable to identify any aggravating factors.

Sentence of Malani Tale

9. Malani Tale, you are 21 years old and you live with your parents. It is submitted that you have reached Form 4 and you earned your living by being a labourer prior to your arrest for this matter. You were 20 years old when you committed the two offences. You have taken steps to pay \$100 to the complainant as half of the value of the unrecovered stolen items. Rupeni Veremo also has taken steps to pay another \$100 to the complainant.
10. In addition to the fact that you have entered a guilty plea, the other factors that could be regarded as mitigating factors are;
 - a) you are a young first offender;

- b) there is partial recovery and full restitution for the unrecovered items;
and
 - c) you have cooperated with the police.
11. I would select 18 months imprisonment as the starting point of your aggregate sentence.
 12. I would deduct 09 months from the sentence in view of the above mitigating factors (except for the guilty plea). Now the sentence is 09 months imprisonment. In view of the guilty plea which was not entered at the earliest opportunity, I would grant you a discount of one-fourth. Accordingly, the final sentence is a term of 06 months and 22 days imprisonment (after deducting 02 months and 08 days).
 13. It is submitted that you were arrested on 15/09/20 and you are in remand since then. Accordingly, you have spent a period of 06 months and 10 days in custody in view of this matter. The period you have been in custody shall be regarded as time already served by you in terms of section 24 of the Sentencing and Penalties Act. I would order that the time to be regarded as served in this case should be 06 months and 22 days.
 14. In the result, you are sentenced to a term of 06 months and 22 days imprisonment. However, given the time spent in custody, you are deemed to have served this sentence and you shall be released today. You are thoroughly warned and advised to hereinafter abide by the laws of this country and to lead a good life.

Sentence of Rupeni Veremo

15. Rupeni Veremo, you are 21 years old and single. You live with your mother and it is submitted that you have been assisting your mother to look after your younger siblings. You were 20 years old when you committed the two offences. You have taken steps to pay \$100 to the complainant as half of the value of the unrecovered stolen items.

16. In addition to the fact that you have entered a guilty plea, the other factors that could be regarded as mitigating factors are;
 - a) You are a young offender;
 - b) there is partial recovery and full restitution for the unrecovered items;
and
 - c) you have cooperated with the police.

17. You have two previous convictions for the offences of aggravated burglary and theft where a partial suspended sentence was imposed on you on 04/12/19. You have committed the two offences in this case during the operational period of the said suspended sentence. Therefore, you are not a first offender and the fact that you are a young offender would not carry much weight in this case.

18. I would select 18 months imprisonment as the starting point of your aggregate sentence for the two counts.

19. I would deduct 03 months from the sentence in view of the above mitigating factors (except for the guilty plea). Now the sentence is 15 months imprisonment. In view of the guilty plea which was not entered at the earliest opportunity, I would grant you, a discount of one-fourth. Accordingly, the final aggregate sentence is a term of 11 months and 07 days imprisonment (after deducting 03 months and 23 days).

20. It is submitted that you were arrested on 15/09/20 and you are in remand since then. Accordingly, you have spent a period of 06 months and 10 days in custody in view of this matter. The said period you have been in custody shall be regarded as time already served by you in terms of section 24 of the Sentencing and Penalties Act.

21. In the result, you are sentenced to a term of 11 months and 07 days imprisonment. In view of the time spent in custody, time remaining to be served is 04 months and 27 days.

22. Now the question is whether your sentence should be partially suspended. Given the fact that you are not a first offender and the fact that you have committed the two offences during the operational period of a previous suspended sentence, you should not be eligible for your sentence to be suspended. On the other hand, if the State takes necessary steps (in fact the State should) to activate the remaining sentence imposed in the case of HAC331/19 which was suspended for a period of 03 years, you would have to spend a term of 08 months in prison in view of the said case. Therefore, there is no purpose in partially suspending your sentence in this case. You should be content with the fact that you have received a lenient punishment in this case.
23. This court heard that your mother is willing to support you financially to pursue further studies. I hope that you would listen to your mother and take steps to lead a better life after serving the remaining term of your short sentence.

Conclusion

24. It is pertinent to note that 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.
25. On the other hand, in relation to the offence of aggravated burglary, in view of the fact that aggravated burglary is a prevalent offence if not the most prevalent offence in Fiji and the apprehension of fear this offence has instilled in the minds of the members of the public, on the face of it, the final terms of imprisonment arrived at in this case do not reflect the denunciation this offending deserves and would not serve as a deterrent to those who with similar impulses to commit this prevalent offence. However, this is the outcome of granting the concession as pleaded by the prosecution.


26. In the result, the final sentences imposed in this case are as follows;

Malani Tale - a term of 06 months and 22 days imprisonment. It is deemed that this term is already served in view of the time spent in custody to date.

Rupeni Veremo - a term of 11 months and 07 days imprisonment. Time remaining to be served is 04 months and 27 days.

27. 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 both the Accused