

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 44 OF 2019

STATE

vs.

SUNIT VENKAT RAM & OTHERS

Counsel : Ms. P. Lata for the State.
Ms. K. Vulimainadave for the First Accused.

Date of Submissions : 29 October, 2021

Date of Sentence : 16 November, 2021

SENTENCE

1. The accused Mr. Sunit Venkat Ram is charged with the following offence with three others as per the amended consolidated information filed by the Director of Public Prosecutions dated 13th May, 2019:

Statement of Offence

Aggravated Robbery: Contrary to section 311 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SUNIT VENKAT RAM and Others on the 20th day of February, 2019 at Nadi in the Western Division, in the company of each other robbed **Ratan Devi Chand** of \$10,874.50 cash, \$5,000.00 of cash cheque and \$64,185.95 of dated cheques, all to the total value of \$80,060.45, the property of Yees Cold Storage.

2. On 25th October, 2021 before the voir dire hearing could begin the accused through his counsel informed the court that he wished to change his plea from not guilty to guilty. When the information was put to him, he pleaded guilty to the above count in the presence of his counsel. Thereafter, the accused admitted the summary of facts read to him.
3. The summary of facts is as follows:

On 20th February, 2019, the complainant Ratan Devi Chand left her office at about 2.30 pm for banking at ANZ Bank, Namaka. She was brought to the bank in the company vehicle driven by Rajendra Lal.

The banking was for Yees Cold Storage, where the complainant was working. She was dropped outside ANZ Bank, Namaka and as she was making her way into the bank the accused Sunit Venkat Ram came and grabbed the money bag from her hand and ran to a waiting getaway car. This bag contained cash of \$10,874.50, cash cheque of

\$5,000.00 and dated cheques of \$64,185.95 all to the total value of \$80,060.45.

The complainant saw the accused run to the bus bay and get into the waiting getaway grey hybrid car. The bank security officer and another person tried to catch the accused by giving a chase but were not successful. Before the incident, the accused was seen standing near ANZ Bank, Namaka, and had been in communication with the other co-accused persons via call conferencing.

The matter was reported at the Namaka Police Station, upon investigation the CCTV footage clearly showed the accused crossing and running with the money bag towards the bus bay where he boarded the waiting car.

The accused was arrested and caution interviewed by DC 5103 Josaia wherein he admitted committing the offence of aggravated robbery with others. He informed the police officer that he and others had planned the robbery which was executed by him. During the scene reconstruction the accused had shown the place where he had thrown the stolen cheques which were recovered by the police.

Furthermore, the accused in his charge statement also admitted that he had robbed the complainant in front of the ANZ Bank, Namaka on the day in question.

4. After considering the summary of facts read by the state counsel which was admitted by the accused and upon reading his caution interview and charge statement, this court was satisfied that the accused had entered an unequivocal plea of guilty on his freewill.

5. This court was also satisfied that the accused had understood the nature of the charge and the consequences of pleading guilty. Furthermore, the summary of facts satisfied all the elements of the offence of aggravated robbery which was committed with others.
6. In view of the above, on 25th October, 2021 this court found the accused guilty as charged and he was convicted accordingly. Both counsel filed sentence and mitigation submissions for which this court is grateful.
7. The counsel for the accused presented the following mitigation:
 - (a) The accused was 36 years of age at the time of the offending;
 - (b) He is a Carpenter and a first offender;
 - (c) Is separated from his wife and has two children aged 14 and 11 years;
 - (d) Resides with his elderly parents;
 - (e) Supports his children and elderly parents;
 - (f) Full recovery of all the stolen cheques;
 - (g) Pleaded guilty saving the court's time;
 - (h) Seeks forgiveness from the court;
 - (i) Promises not to re-offend;
 - (j) Cooperated with the police during investigation by assisting in the recovery of the stolen cheques;
 - (k) Regrets what he has done.

REASONS FOR THE OFFENDING

8. Counsel for the accused in her mitigation mentioned that the accused committed the offence because he did not have any money to support his family. He made a wrong decision by getting involved with his friends in committing this offence.

TARIFF

9. The maximum penalty for the offence of aggravated robbery is 20 years imprisonment. The accepted tariff for this offence is from 8 years to 16 years imprisonment (*Wallace Wise-v-The State, CAV0004 of 2015 (24 April, 2015)*). At this point, I would like to mention that the facts in *Wise* case is very different to what happened here. The case of *Wise* was a horrible early morning home invasion with knife and an iron bar by three people whereby the elderly complainant was injured by a knife requiring a stitch under his left eye.
10. I am mindful that this case has a different set of facts compared to the case of *Wallace Wise* therefore strict adherence to the above tariff in my view will result in an excessive sentence. The current sentencing tariff for street mugging is 18 months to 5 years imprisonment (*Raqauqau vs. State, [2008] FJCA 34, AAU 100.2007 (4 August, 2008)*), Home invasion 8 to 16 years, spate of robberies 10 to 16 years imprisonment (*Nawalu vs. State, [2013] FJSC 11, CAV 0012 of 2012 (28 August, 2013)*).
11. I do get some comfort in saying that the final sentence can be higher or lesser than the accepted tariff depending upon the aggravating and mitigating factors, the nature and circumstances of the offending.

AGGRAVATING FACTORS

12. The following aggravating factors are obvious:

(a) Planning

There is a high degree of planning involved, and the accused was an active member of the plan. He was bold and undeterred in what he did in broad daylight.

(b) Victim was unsuspecting

The victim had no clue, she was unsuspecting and going about her normal work when the accused came and grabbed the money bag from her. A substantial amount of money was stolen.

13. Considering the objective seriousness of the offence committed and the facts in this case being different from the *Wallace Wise* case I select 6 years imprisonment as the starting point of the sentence. For the aggravating factors, I increase the sentence by 3 years. The interim sentence is now 9 years imprisonment.
14. The accused is a first and a young offender (36 years at the time) who has come to court with a clean record hence he receives a discount for good character (character references taken into account as well) and other mitigating factors. The fact that the accused had also assisted in the recovery of the stolen cheques is a positive factor in his favour as well. In this regard the accused receives a discount of 2 years for his good character and mitigation (including assisting the police). The sentence is now 7 years imprisonment.
15. The accused pleaded guilty after more than 2 years of the incident on the day of the voir dire hearing. In *Gordon Aitcheson vs. The State, criminal petition no. CAV 0012 of 2018 (2 November, 2018)* the Supreme Court

offered the following guidance at paragraphs 14 and 15 in regards to the weight of a guilty plea as follows:

16. [14]. In ***Rainima -v- The State*** [2015] FJCA 17; AAU 22 of 2012 (27 February 2015) Madigan JA observed:

“Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the “high water mark” of discount is one third for a plea willingly made at the earliest opportunity. This court now adopts that principle to be valid and to be applied in all future proceeding at first instance.”

In ***Mataunitoga -v- The State*** [2015] FJCA 70; AAU125 of 2013 (28th May 2015) Goundar JA adopted a similar but more flexible approach to this issue:

“In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effect of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment.”

[15]. The principle in ***Rainima*** must be considered with more flexibility as ***Mataunitoga*** indicates. The overall gravity of the offence, and the need for the hardening of hearts for prevalence, may shorten the discount to be given. A careful appraisal of all factors as Goundar J has cautioned is the correct approach. The one third discount approach may apply in less serious cases.

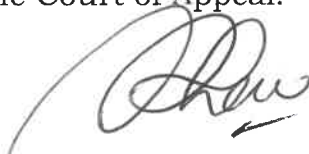
In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.

17. This court accepts that genuine remorse leading to a guilty plea is a substantive mitigating factor in favour of an accused, however, the guilty plea must be entered in the true spirit of remorse since genuine remorse can reduce the harshness in the final sentence (*see Manoj Khera v The State, CAV 0003 of 2016 (1 April, 2016)*).
18. This court does not believe that the accused has shown genuine remorse when he pleaded guilty (on 25th October on the day of the voir dire hearing). The date of allegation is February, 2019, and the accused did not plead guilty until 25th October, 2021.
19. Genuine remorse is about genuinely feeling sorry for what a person has done, accepting guilt because of strong evidence and proof of the offender's deeds and then pleading guilty is not genuine remorse *per se*. In this regard, the sentencing court has a responsibility to assess the guilty plea along with other pertinent factors such as the timing of the plea, the strength of the prosecution case etc. Here there is no doubt the timing of the guilty plea is late and that the prosecution had a strong case against the accused.
20. Nevertheless, by pleading guilty the accused saved the court's time and expenses and also prevented the complainant from reliving the experience in court. Bearing this in mind, the accused ought to receive some reduction for his guilty plea. The offence committed is serious therefore the reduction will be minimum, the sentence will be further reduced by 3 months, the interim sentence is now 6 years and 9 months imprisonment.

21. From the court file it is noted that the accused has been in remand for 1 month and 3 days. In accordance with section 24 of the Sentencing and Penalties Act and in exercise of my discretion I deduct 1 month and 15 days as a period of imprisonment already served. The final sentence is 6 years, 7 months and 15 days imprisonment.
22. Counsel for the accused has urged this court to consider a suspended sentence unfortunately, considering the circumstances and the seriousness of the offence committed including the culpability of the accused a suspended sentence will not meet the ends of justice.
23. Having considered section 4(1) of the Sentencing and Penalties Act and the serious nature of the offence committed compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
24. Under section 18 (1) of the Sentencing and Penalties Act, I impose 5 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and also meet the expectations of the community which is just in all the circumstances of this case.
25. The non-parole period is below the current sentencing trend due to the age of the accused, an out of character offence has been committed, also cooperating and assisting the police in locating the stolen cheques during investigation.
26. Mr. Ram you cannot be forgiven for what you have done there is no short cut to make money you must earn money with your hard work. What you did was a daring daylight robbery in front of a bank after much planning.

Greed for money has taken you away from your family, you should be ready to face the consequences of your misdeeds. The reason given by you that you stole to support your family is unacceptable and absurd you are now blaming your innocent family to save yourself. You should be ashamed of yourself.

27. This court will be failing in its duty if a custodial sentence is not imposed. No amount of regret or repentance will save you from a custodial sentence. Your counsel has urged this court to consider the fact that you have two young children and elderly parents. You should have thought about them before embarking on such an unlawful activity.
28. In summary the accused is sentenced to 6 years, 7 months and 15 days imprisonment for one count of aggravated robbery with a non-parole period of 5 years to be served before he is eligible for parole.
29. 30 days to appeal to the Court of Appeal.


Sunil Sharma
Judge



At Lautoka

16 November, 2021

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.