

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 134 of 2020**

**STATE**

**V**

1. **S.R** } [Juveniles]
2. **I. T** }
3. **SEREVI MUAVOU** [Accused]

**Counsel** : Ms. L. Latu for the State.  
: Ms. G. Henao for both the Juveniles and  
the Accused.  
Mr. M. Tailau for and on behalf of the Social  
Welfare Department.

**Date of Punishment Hearing :** 18 January, 2021  
**Date of Punishment/Sentence:** 02 February, 2021

---

**PUNISHMENT/ SENTENCE**

---

*(The names of the Juveniles are suppressed they will be referred to as "S.R" and "I.T" respectively)*

1. Both the juveniles are charged with the accused by virtue of the following information filed by the Director of Public Prosecutions dated 21<sup>st</sup> October, 2020:

**FIRST COUNT**

***Statement of offence***

**AGGRAVATED BURGLARY:** Contrary to Section 313 (1) (a) of the  
Crimes Act 2009.

***Particulars of Offence***

**S.R, I.T** and **SEREVI MUAVOU** between the 7<sup>th</sup> day of April, 2020 and the 13<sup>th</sup> day of April, 2020 at Vatukoula in the Western Division, entered the VATUKOULA PRIMARY SCHOOL, as a trespasser with the intention to steal from therein.

**SECOND COUNT**  
***Statement of offence***

**THEFT**: Contrary to section 291 (1) of the Crimes Act 2009.

***Particulars of Offence***

**S.R, I.T** and **SEREVI MUAVOU** between the 7<sup>th</sup> day of April, 2020 and the 13<sup>th</sup> day of April, 2020 at Vatukoula in the Western Division, dishonestly appropriated (stole) the following items:

- a) 1 Megaphone Hailer; and
- b) 1 gas cylinder

the properties of VATUKOULA PRIMARY SCHOOL with the intention of permanently depriving the said VATUKOULA PRIMARY SCHOOL of the said properties.

2. On the 24<sup>th</sup> November, 2020 the second juvenile and the accused pleaded guilty to the above two counts in the presence of their counsel. Thereafter on 1<sup>st</sup> December, 2020 the second juvenile and the accused admitted the summary of facts read. On 9<sup>th</sup> December, 2020 the first juvenile pleaded guilty to the above two counts and on 22 December, 2020 he admitted the summary of facts read by the state counsel in the presence of his counsel.

3. The brief facts were as follows:

Between the 7<sup>th</sup> and the 20<sup>th</sup> of April, 2020 hurricane Harold affected the Fiji group. On the 13<sup>th</sup> of April the Head Teacher of Vatukoula Primary School went to the school compound to check whether the hurricane had done any damages to the school premises. When the complainant reached the school he noticed that the office door opened easily which he thought was damaged by the hurricane.

On 14<sup>th</sup> April the complainant received a call from the Admin Officer confirming that someone had broken into the school office and the following items were missing:

- a) 1 x Megaphone Hailer valued at \$295.00; and
  - b) 1 x gas cylinder valued at \$97.05.
4. The matter was reported to the police, an investigation was carried out. The megaphone was recovered from some children in the nearby community which was identified by the complainant.
  5. The two juveniles and the accused were arrested and caution interviewed they admitted breaking into the school and stealing the above two items.
  6. After considering the summary of facts read by the state counsel which was admitted by the accused and both the juveniles and upon reading their caution interviews this court is satisfied that the accused and both the juveniles have entered an unequivocal plea of guilty on their own freewill.
  7. This court is also satisfied that the accused and both the juveniles have fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offence of aggravated burglary and theft which the accused and both the juveniles admitted committing in the company of each other.

8. In view of the above, this court finds the accused guilty and he is convicted as charged. In respect of both the juveniles this court finds them guilty as charged. Both counsel filed sentence and mitigating submissions for which this court is grateful.
  
9. The learned counsel for both the juveniles and the accused presented the following mitigation and personal details.

Juvenile One - S.R

- a) The juvenile is 15 years of age;
- b) First time in conflict with the law;
- c) His father lives in Australia, he is supported by his mother who is a diabetic patient whose both legs have been amputated hence the juvenile assists his mother at home;
- d) He is a student who will be attending year 10 this year;
- e) Co-operated with the police;
- f) Full recovery of stolen items;
- g) Pleaded guilty at the earliest opportunity;
- h) Remorseful and apologizes for his actions;
- i) Seeks the mercy of the court.

Juvenile Two - I.T

- a) The juvenile is 17 years of age;
- b) Vocational student;
- c) First time in conflict with the law;
- d) Co-operated with the police;
- e) Full recovery of the stolen items;
- f) Pleaded guilty at the earliest opportunity;
- g) Remorseful and apologizes for his actions;
- h) Seeks the mercy of the court.

### Accused – Serevi Muavou

- a) The accused was 18 years at the time of the offending;
- b) Vocational student;
- c) First offender;
- d) Co-operated with the police;
- e) Full recovery of the stolen items
- f) Pleaded guilty at the earliest opportunity;
- g) Remorseful and apologizes for his actions;
- h) Seek the mercy of the court.

### **REASONS FOR THE OFFENDING**

Both the juveniles and the accused understand the seriousness of the offending they have through their counsel informed the court that it was peer group influence that led to the commission of the offences and poor judgment on their part.

### **TARIFF**

- 10. The maximum penalty of the offence of aggravated burglary is 17 years imprisonment.
- 11. The accepted tariff for this offence is a sentence between 18 months to 3 years imprisonment (*see Leqavuni v. State, Criminal Appeal No. AAU 106 of 2014 (26 February, 2016)*).
- 12. For the offence of theft the maximum penalty is 10 years imprisonment.
- 13. The tariff for the offence of theft is settled. In *Mikaele Ratusili v. State, Criminal Appeal no. HAA 011 of 2012 (1 August, 2012)* Madigan J. set out the tariff for theft as follows:
  - “(i) For the first offence of simple theft the sentencing range should be between 2 and 9 months.
  - (ii) any subsequent offence should attract a penalty of at least 9 months.

- (iii) *Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.*
- (iv) *regard should be had to the nature of the relationship between offender and victim.*
- (v) *planned thefts will attract greater sentences than opportunistic thefts.”*

14. **AGGRAVATING FACTORS**

The following aggravating factors are obvious:

a) Property Invasion

The juveniles and the accused did not have any regard for the property rights of the owner. They entered the property without any second thoughts.

b) Planning

There is a degree of planning involved the juveniles and the accused knew what they were doing. They were bold and undeterred.

15. Both the juveniles fall under special categorization than adults when it comes to punishment under section 30(3) of the Juveniles Act as young persons which prescribes the maximum punishment for young persons at 2 years imprisonment.
16. For this case two different sentencing and punishment regime applies hence the punishment for the juveniles will be considered separately from the accused.

**PUNISHMENT – BOTH JUVENILES**

**SOCIAL WELFARE REPORTS**

17. As per the order of this court the Social Welfare Department prepared a pre-punishment report for both the juveniles. According to the Social Welfare

Officer who had interviewed both the juveniles and their parents and other family members who are living with the juveniles the officer is of the view that both the juveniles should be given a second chance and be allowed to complete their education.

### **PARENTAL VIEW/SUPPORT**

18. The sister of first juvenile and the mother of the second juvenile were present in court. They take responsibility and are sorry for what has happened they are going to make sure the juveniles are properly supervised and do not repeat what has happened. The sister and the mother of the juveniles are willing to sign a bond of \$200.00 each on behalf of the juveniles and are also willing to compensate the complainant by paying \$30.00 for each juvenile.
19. All the juveniles expressed remorse in court and were genuinely apologetic for what they had done. I am sure this experience was an eye opener for all of them. The first juvenile has been in detention for 3 weeks which is appropriate punishment already. The juveniles had to face their family and friends which has also contributed to a learning experience which has taught them to keep away from conflict with the law.

### **DETERMINATION**

20. Section 17 of the Sentencing and Penalties Act states:

*“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”*

21. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate punishment for the two offences.
22. Considering the objective seriousness of the offences committed I select 18 months imprisonment (lower range of the tariff) as the aggregate punishment of both the offences. For the aggravating factors I increase the punishment by 2 ½ years. The interim punishment now stands at 4 years imprisonment. For the early guilty plea, mitigation, police custody and/or detention period the interim punishment is reduced by 2 years and 2 months.
23. The final aggregate punishment for the two offences is 1 year and 10 months imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final punishment since it does not exceed 3 years imprisonment.
24. In *State vs. Alipate Sorovanalagi and others*, Revisional Case No. HAR 006 of 2012 (31 May 2012), Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

*"[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:*

*"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a*



*moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."*

25. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing immediate imprisonment or a suspended punishment.
26. The juveniles are young persons as per the Juveniles Act, they are of good character, isolated offences were committed by them, they were 15 and 17 years of age at the time of the offending, pleaded guilty at the earliest opportunity, are genuinely remorseful, cooperated with police and they take full responsibility of their actions. These special reasons render immediate imprisonment inappropriate.
27. I am sure both the juveniles with parental and family guidance, supervision and support have a bright future ahead of them hence an imprisonment term will not augur well for their future, the juveniles have been in police custody and/ or at the Fiji Juvenile and Rehabilitation Centre which is in itself an adequate and appropriate punishment, an experience that will remind them to keep away from conflict with the law. This court has taken into account rehabilitation over and above deterrence.

28. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that this punishment is just in all the circumstances of the case.
29. Let me remind both the juveniles that leading a life within the boundaries of criminal activities do not assist it only takes a person deeper and deeper into a world of uncertainty and misery. The society does not condone such activities and this court also denounces such behaviour.
30. This is an opportunity for both the juveniles to stop entering the world of uncertainty and lead a happy life with their parents, family members and siblings.
31. In summary both the juveniles are given a punishment of 1 year and 10 months imprisonment as an aggregate punishment respectively for both the offences which is suspended for 3 years. The effect of suspended sentence is explained. The following orders are to take effect immediately.

### **ORDERS**

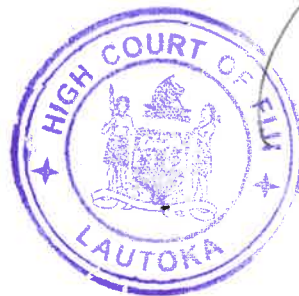
- a) Both the juveniles are given a punishment of 1 year and 10 months imprisonment respectively as an aggregate punishment for the two counts mentioned in the information which is suspended for 3 years with immediate effect;
- b) The sister and the mother of the juveniles are to sign a good behaviour bond on behalf of the juveniles in the sum of \$200.00 each. Furthermore, the sister and the mother of the juveniles are to pay the sum of \$30.00 for each juvenile as compensation to the victim within 21 days from today payable at the Magistrate's Court nearest to them;

- c) The Social Welfare Department is to immediately arrange for the counselling of both the juveniles in the presence of their parents and next of kin with the view of assisting them in keeping out of peer group influence and to engage in education and training;
- d) The Social Welfare Department is also at liberty to work out any programs or plans which will be in the interest of both the juveniles;
- e) It is the responsibility of the parents and sister of both the juveniles to ensure that the juveniles obey any directions given by the Social Welfare Department;
- f) A copy of this punishment is to be served on the Officer in Charge of the Social Welfare Department;

#### **SENTENCE – ACCUSED**

- 32. Considering the objective seriousness of the offending, I select 18 months imprisonment (lower range of the tariff) as the aggregate sentence for both the offences. For the aggravating factors I increase the sentence by 3 years. The interim sentence of imprisonment now stands at 4 ½ years imprisonment. For the early guilty plea, mitigation, the interim sentence is reduced by 2 years. I note from the court file that the accused has not been in remand.
- 33. The final aggregate sentence for the two offences is 2 ½ years imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment.
- 34. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment or a suspended sentence.

35. The accused person is a first offender of comparatively good character, isolated offences committed, he is in his early twenties, pleaded guilty at the earliest opportunity, is remorseful, cooperated with police and takes full responsibility of his actions. I consider these special reasons as rendering immediate imprisonment inappropriate.
36. The accused is a young offender, with a bright future ahead of them, an imprisonment term will not augur well for his future. This court has taken into account rehabilitation over and above retribution.
37. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that the punishment is just in all the circumstances of the case.
38. In summary the accused is sentenced to 2½ years imprisonment as an aggregate sentence for both the offences which is suspended for 3 years. The effect of suspended sentence is explained to the accused.
39. 30 days to appeal to the Court of Appeal.



  
**Sunil Sharma**  
**Judge**

**At Lautoka**

02 February, 2021

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for both the Juveniles and the Accused.**