

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 196 of 2021

STATE

vs.

JONA ROKOSUKA

Counsel: Ms. W. Elo for the State
Mr. T. Varinava for Accused

Submissions on sentencing : 14th April 2022 and 6th May 2022

Date of Sentence : 9th May 2022

SENTENCE

1. Your charges in the information reads thus;

COUNT ONE

Statement of Offence

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

Particulars of Offence

JONA ROKOSUKA, MARCELLIN CHAMPAGNAT ATUNAI SA LALABALAVU & MANASA ROKOTUIVEIKAU on the 11th day of September, 2021 at Nasinu, in the Central Division, in the company of each other stole 1 x hand bag containing 1 x purse, \$290.00 cash, 1 x Samsung Galaxy J2 Core Mobile Phone, 2 x Sim Cards, 1 x Perfume, 1 x FNPF Cards, 1 x Driver's License Card, 4 x FIRCA Cards, 3 x Westpac ATM Cards, 2 x COVID-19 Vaccination Cards, 2 x Voter's Identification Cards, 3 x Vodafone e-Transport Bus Cards, 1 x BSP Hospital Card and 4 x Government Issued Medical Cards from **POONAM SARITA** and immediately before stealing from **POONAM SARIKA** used force on her.

COUNT TWO

Statement of Offence

RESISTING ARREST: contrary to Section 277 (b) of the Crimes Act, 2009.

Particulars of Offence

JONA ROKOSUKA, on the 15th day of September, 2021 at Nasinu, in the Central Division, resisted the arrest from **DETECTIVE CONSTABLE 5404 RUSIATE** in the due execution of his duty.

2. On 18th of March 2022, you Jona Rokosuka the 1st Accused being aware and well advised of the legal effects, did plead guilty to both the above counts in the presence of your Counsel. This Court was satisfied that you fully comprehended the legal effects and that your pleas were voluntary and free from influence.

3. The summary of facts read and explained on 14^h of April, 2022 reveals that the offence of 'Aggravated Robbery' and 'Resisting arrest' were committed and you admitted the following summary of facts;

The complainant is Poonam Sarita (“PW1”) 39 years, employed at Joji’s Restaurant and resides at Lot 45 Willow Street, Nakasi. The Accused is Jona Rokosuka aka “Fish” (“A1”) 19 years and unemployed of Reba Circle, Nadera.

On 11/09/21 at about 7:30 p.m., PW1 was coming out of a pharmacy with her medication when all of a sudden, she noticed someone approached her from behind when she looked an i-Taukei man, punched her. PW1 noticed that he was wearing a black jacket before being punched again by the same man which led to her falling on the ground.

As PW1 was on the ground, this i-Taukei man was assisted by others as they dragged PW1 who held onto her bag as they attempted to grab the same. PW1 then noticed another two i-Taukei men had approached them and began jumping on her back and twisting her arm as they continued with their attempt to rob PW1 of her bag.

PW1 having just had a kidney surgery, released her bag and these i-Taukei men ran off with her bag. The contents of her bag included properties which are highlighted in count No. 1 of the Amended Consolidated Information filed on the 18th day of March, 2022.

PW1’s husband namely Nitin Nilesh Prasad (“PW2”) 38 years of Lot 45 Willow Street, looked out of their vehicle and saw his wife being attacked and got off to try and assist her. Also coming to PW1’s aid was the owner of the pharmacy namely Rohit Prakash (“PW3”) who almost managed to apprehend one of the assistants if he wasn’t assisted by his accomplices. PW3 noticed that the one he tried to apprehend was wearing a black hat, a maroon shirt and shorts. PW1, PW2, and PW3 all saw 3 i-Taukei men ran off towards the back of the shopping complex where a Jayden Singh (“PW4”) recognized A1 and called out “Fish” whom he saw was amongst the three men. PW4 further stated that A1 had heard him and had looked back at him before continuing with his escape.

The matter was reported to the Police and an investigation was conducted. PW1 was conveyed to the Valelevu Health Centre where it was noted that she had received bruises, abrasions and tenderness on body parts noted on the diagram (Appendix 1) of her medical.

DC Rusiate (“PW5”) of the Valelevu Police Station was detailed to attend to the report made by PW1 was his colleagues where they found A1 at his home in Nadera. PW5 and his colleagues went by his home and A1 ran and tried to escape PW5 and his colleagues. However, PW5 after having ran after A1 managed to catch him and effect his arrest before advising him of the reasons for his arrest.

AI then escorted to the Police station and caution interviewed where the following was admitted to:-

- *Full name is Jona Uluinaceva Rokosuka also known as Fish (“Q/A 17 & 18);*
- *Resides at Reba Circle, Nadera Block 2 Flat 11 (Q / A 21);*
- *On 11/09/21 at about 7:45pm, he was at Nayan’s Supermarket (“Q / A 28);*
- *That he and 2 others had robbed PW1 (Q / A 31);*
- *That he had been walking behind the two accomplices going to Nayan’s Supermarket to purchase some beer and that he followed them towards the pharmacy where PW1 came out off and they then grabbed PW1’s bag before running away towards Duvula Ground with another (Q / A 40 – 44;*
- *Confirms that PW4 had saw him and called him by his alias “Fish” and that they had wanted to fight him for it (Q / A 48 – 49);*
- *Reason for robbing PW1 was that he was looking for money (Q / A 57).*

The total value of these properties is said to be approximately \$638.00. There have been no recoveries as of today. Consequently, AI was later charged with 1 x Count of Aggravated Robbery contrary to section 311(1)(a) of the Crimes Act 2009 and 1 x Count of Resisting Arrest contrary to section 277(b) of the Crimes Act 2009.

AI is a first offender.

4. This Court is satisfied that, you did fully understand the nature of the charges and the consequences of pleading guilty and also the summary of facts covers and satisfies all the elements of the offences of Aggravated Robbery and Resisting Arrest as charged which you admitted as having committed.
5. Accordingly, this Court finds you the 1st Accused guilty of Count 1 for Aggravated Robbery and of Count 2 for Resisting Arrest as charged and convict of you separately for the said offences.
6. The submissions on sentence and mitigation tendered by your Counsel and the State Counsel are comprehensive and certainly helpful.

Applicability of new tariff as determined by **Eparama Tawake v State** (28th April 2022)

7. When this matter was called on 5th May 2022 for the delivery of the ruling on sentencing, the Learned State Counsel Ms. Tivao who informed this court that the tariff applicable to the offence of “street mugging” type Aggravated Robbery had been revisited and new sentencing guidelines have been determined by the Supreme Court in the case of **Eparama Tawake v State** [CAV 0025.2019 (28th April 2022)] and a copy was made available to this court. The State Counsel also submitted that the said tariff should be considered and applied to the 1st accused of the present case too.

8. As the said decision had been pronounced on 28th April 2022, I was not certain in my mind as to the retrospectivity of the new guidelines and if it would apply to this matter. Hence, both parties were called upon to address court on this issue. On the following day the Learned State counsel Ms. Tivao submitted that the offender must be sentenced in accordance with the sentencing regime applicable as at the date of sentence and that Justice Prematilake JA., has determined so in the case of **Davendra Narayan Chand v The State** [AAU 0033 of 2015 (03 October 2019)]. I perused the said judgement and paragraphs 72 and 73 do hold so as follows;

“[72] **R v H (J)** [2012] 1 WLR 1416 provided useful guidance in sentencing and an authority to state that the sentencing judge should apply the legislative provisions, and have regard to any relevant guidelines, applicable as at the date of sentencing, while bearing in mind that the sentence is limited to the maximum sentence available at the time that the offence was committed. The Court of Appeal remarked that

‘In the result therefore in historic cases, provided sentences fall within or do not exceed the maximum sentence which could lawfully have been imposed at the date when the offence was committed, neither the retrospectivity principle nor article 7 of the Convention are contravened.’

[73] Therefore, the correct legal position is that the offender must be sentenced in accordance with the sentencing regime applicable at the date of sentence. The court must therefore have regard to the statutory purposes of sentencing, and to current sentencing practice which includes the tariff set for a particular offence. The sentence that could be passed is limited to the maximum sentence available at the

time of the commission of the offence, unless the maximum had been reduced, when the lower maximum would be applicable.” (emphasis added).

9. Thus, it is now settled law that offenders must be sentenced in accordance with the sentencing regime applicable as at the date of sentencing. Now I am clear in my mind that new tariff as formulated and set out in **Eparama Tawake v State** CAV 0025.2019 (28th April 2022) will apply retrospectively to all matters and cases that will come up for sentencing henceforth regardless of the date of the offending.

10. That being so, it is now necessary to consider if it is just and lawful to apply the new tariff to the instant case. The 1st Accused pleaded guilty on 18th March 2022, the summary of facts was read on 14th April 2022, the ruling on sentencing was scheduled to be pronounce on the 29th of April 2022 then rescheduled for the 5th of May 2022 and the new tariff was determined by Eparama Tawake’s judgment on the 28th April 2022. Thus, as per the said timeline, technically the sentencing ruling of this matter was due to be pronounced after the new tariff was determined. Then in *Davendra Narayan Chand v The State* (supra) Justice Prematileke J.A., has determined that, “..., *the correct legal position is that the offender must be sentenced in accordance with the sentencing regime applicable at the date of sentence*”. On first blush, it appears that the new tariff should apply to this case.

11. However, in the present case the accused pleaded guilty on the 18th March 2022. As such the sentencing process commenced and was set in motion with the accused so pleading guilty before the new tariff came into operation. *Davendra Narayan Chand v The State* has not considered this scenario and to that extent the facts and circumstances of the present case are different.

12. In the present matter, as the commencement of the sentencing process preceded the date of determination of the new tariff, I am of the view that, the applicable sentencing regime and tariff should be that which prevailed between the date of pleading guilty and the date of

pronouncing the sentence. However, if a new tariff was determined during this interim period the accused is entitled to the benefit of the tariff which is more favourable to him/her. Thus, in my view it is just and lawful that retrospective application of sentencing guideline judgments not be extended to Accused persons who have pleaded guilty prior to such guideline decisions were pronounced as their sentencing was pending as at such date.

13. Accordingly, the 1st Accused has a right and a legitimate expectation to be sentenced under the tariff that which prevailed as at the date he pleaded guilty. Under the new tariff set by Eparama Tawake's judgment (28th April 2022) the starting range applicable to the present case is between 3 and 7 years which is higher than that which prevailed earlier which was 18 months to 5 years [Raqauqau v State (2008) FJCA 34 AAU0100.2007 (4 August 2008)]. Therefore, I will not apply the new tariff as determined in Eparama Tawake v State [CAV 0025.2019 (28th April 2022)], to the instant case. Now let's consider the sentence of the 1st Accused.

Sentencing the 1st Accused

14. In selecting a starting point of your sentence for the 1st Count of Aggravated Robbery, this Courts is required to have regard to the objective seriousness of the offence. The maximum penalty prescribed for aggravated robbery is 20 years imprisonment. As for the tariff determined in *Wallace Wise v State [2015] FJSC 7 CAV0004.2015* (24th April 2015) is a range between 8 to 16 years imprisonment depending on force used or threatened.
15. In *State v Josaia Vatunicoko [2018] FJHC 885; HAC210.2018*(21 September 2018) the tariff determined for various forms of Aggravated Robberies was summarized as follows;
 - a) Street mugging – 18 months to 5 years imprisonment; [Raqauqau v State (2008) FJCA 34 AAU0100.2007 (4 August 2008)]
 - b) Home invasion – 8 years to 16 years imprisonment; [Wallace Wise v State [2015] FJSC 7 CAV0004.2015 (24th April 2015)]
 - c) A spate of robberies – 10 years to 16 years imprisonment [Nawalu v State [2013] FJSC 11; CAV00012.12. (24th August 2013)

16. In *Tawake v State* [2019] FJCA 182; AAU0013.2017 (3 October 2019) the Court of Appeal in determining the tariff for Aggravated robbery opined that;

*“34The trend followed recently in the High Court (*State v Matagasau* [2019] FJHC 633; HAC17.2019 (28 June 2019); *State v Ketewai* [2019] FJHC 468; HAC210.2018 (21 May 2019) is to treat cases such as these where the incidents have taken place in the streets unlike in *Wallace Wise* (Supra) differently and adopt the approach in *Raqauqau* (Supra) where the tariff for instances of street mugging was set at 18 months to 5 years. However, it would be necessary to be mindful of the dicta in *Raqauqau* (Supra) that the upper limit of 5 years might not be appropriate ‘if the offences are committed by an offender who has a number of previous convictions and if there is a substantial degree of violence, or if there is a particularly large number of offences committed’ ...”. (emphasis added)*

17. In *State v Taubale* [2019] FJHC 1071; HAC 18.2019 (8 November 2019) Justice Aluthge adopted the tariff of 18 months to 5 years where the complainant was punched and a mobile phone and \$ 70 cash was robbed by the accused with others.
18. If I may consider the culpability and the harm factors of your offending, you with others, punched PW1 who was coming out of a pharmacy with her medication and when she fell on the ground she was dragged and as she held on to her bag to prevent it from been taken, two of you jumping on her back and twisting her arm and had taken her bag. As a result of your violent and virulent attack she sustained bruises, abrasions and tenderness on her body. This is a serious offence against property of the complainant as well as the society. These offences appear to be prevalent and the number of young offenders brought before the courts for committing such offences is alarming and significant. You with others no doubt have put her into fear of immediate and serious harm which certainly would have caused anxiety and trauma to any victim in similar circumstances. This certainly would have been a horrific experience for the victim to be so manhandled and assaulted in public in this manner and the emotional trauma caused will not be forgotten in a hurry.
19. Ms. Varinava, the Solicitor for you the 1st Accused submitted in mitigation that the 1st Accused was 19 years as at the date of offence and that it was due to peer pressure and lack

of good judgement he committed this offence. He was in fact 19 years and 11 months knocking at 20. Further in the bail ruling dated 13 January 2022 in case No, HAM 179 of 2021, Judge Temo refusing bail has observed that there is a similar case pending against the Accused under case No. HAC 45/2021 and offence pending in the present HAC 196/21 was committed whilst on bail in that matter. The said case No. HAC 45/2021 is for a similar offence alleged to have been committed on 1st January 2021. The 1st Accused appears to have been out on bail for that matter when he committed this offence. In these circumstances there is no rational basis to consider peer pressure or the age and to apportion the culpability between you and the two other accused on that premise. You along with two other accused were charged on the basis of 'joint enterprise' based on the legal principle of '*common intention to prosecute an unlawful purpose in conjunction with one another*' as embodied in Section 46 of the Crimes Act of 2009 in view of which '*each of them is deemed to have committed the offence.*'

20. You have been walking behind the two accomplices on the way to Nayan's Supermarket to purchase some beer and that you followed them towards the pharmacy and seeing PW1 came out off and grabbed her bag and runaway. This appears to be an opportunistic street mugging which somewhat premeditated and put in to action on the spur of the moment. However, you have played your individual roles together after forming the common intention of prosecuting the unlawful purpose of robbing this vulnerable victim. Whilst you were almost 20 years and the others were 22 years. In fact, though young in age, your participation was your own decision. This being so, I am unable to accept the submission that your young age or peer pressure were the reasons for you to commit this offence. You with the others accused have carried out this robbery thus have jointly committed the crime with the others and each of you are equally culpable for the offence of 'Aggravated Robbery' and no question of apportionment arises in the circumstances this case.

Sentence for Count No.1

21. Upon considering the gravity and the objective seriousness of the offence of Aggravated Robbery, to my mind it is reasonable and just to look at the upper end of the range and pick

4 years and 6 months' imprisonment as the starting point of the sentences of your sentence for count No.1. However, the final sentence will depend on the mitigating and aggravating factors which I will now proceed to consider.

22. I will start with considering the aggravating factors. I observe the following aggravating circumstances of your offending:
- a) The complainant was a vulnerable person who was after Kidney surgery being mugged by three of you, taking advantage of the said vulnerability,
 - b) carried out with premeditation, or some planning.
 - c) Injuries were caused to the victim which required hospital treatment,
 - d) the items stolen were substantial not recovered.
23. I am inclined to add 2 years to the starting point for the above-mentioned aggravating factors bringing the interim sentence of 6 years and 6 months' imprisonment.

Mitigating factors

24. Now I will consider the imitating factors. I observe the following imitating circumstances of your offending. You;
- a) pleaded guilty early and at the outset;
 - b) seek forgiveness,
 - c) co-operated with the police to a certain extent,
 - d) were 19 years and 11 months of age at the time of the offending,
 - e) are a young first-time offender,
 - f) have no previous convictions but a similar pending case.
25. Your counsel also submitted that you were a student at Technical College studying Cookery unmarried and lived with your mother, Further, due to lapse of judgment you joined this offending and you are willing and promise to reform and not to re-offend. You have accepted responsibility of your actions and did save the court's time by pleading guilty at the earliest opportunity.

26. For all these grounds in mitigation, you should receive a considerable discount in the sentence. In this regard, I give you a reduction of 2 years and 2 months for the early guilty plea which is a 1/3rd reduction and another 1 year and 4 months for the other mitigating factors which brings your sentence down to three (3) years' imprisonment.

Sentence for Count No.2

27. As for the 2nd count of Resisting Arrest the tariff as determined by State v Batiratu, [2012] FJHC 864 HAR001.2012 for the offence under Section 277 which includes of Resisting Arrest is 18 months to 3 years and the offence of Resisting Arrest punishable under section 277 (b) of the Crimes Act, 2009 carries a maximum penalty of 5 years imprisonment. As for count No. 2 the offence of Resisting Arrest I sentence you the 1st Accused for 2 years imprisonment.
28. Upon considering the totality principle of sentencing direct and make order that both the above sentences of counts 1 and 2 be served concurrently and the final sentence be imprisonment for 3 years,

Request to Suspend the Sentence

29. Your Counsel submitted that this is a fit matter for this Court to consider acting under section 26(2) of the Sentencing and Penalties Act as you are a young offender and has given a firm undertaking and promise to this court that you will rehabilitate and reform and you will lead a good life and may continue with your education
30. As per Section 26(2) of the Sentencing and Penalties Act, the discretion to suspend a sentence should only be exercised by a High Court where the custodial sentence does not exceed 3 years.

31. In the Sentence Ruling of *State v Aiding Zhang* [2017] HAC 061 it was held that there should be circumstance which are exceptional to suspend a sentence,

32. In **DPP v Jolame Pita** (1974) 20 FLR 5 at p.7:, Grant Actg. CJ., (as he was then) explained what special circumstances that warrant and justify the suspension of a sentence thus;

"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."

33. This is an Aggravated Robbery in the nature of street mugging carried out by you with 2 others resorting to substantial violence and causing physical harm to a hapless lady in the circumstance as afore described. Considering the said circumstances in conjunction with the fact that you have another similar matter pending and this offence appear to have been committed whilst you were on bail for that matter, I am of view that this is not a fit matter to suspend the sentence and neither do I see any special circumstances to justify a suspension.

34. In the passing I must confess that my heart decrees that you being a young offender be given a second chance by suspending your sentence, but alas, the law and the principles of sentencing decrees otherwise which I am compelled to follow.

Non-parole period

35. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand, this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation.
36. Considering the above, I impose 2 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 the circumstances of this case

Head Sentence

37. Accordingly, I sentence you the 1st Accused for a period of 3 years' imprisonment for the offences of Aggravated Robbery and 2 years imprisonment for the offence of Resisting Arrest as charged in the information and direct both the sentences to be served concurrently. However, you are not entitled to parole for 2 years pursuant to Section 18 (1) of the Sentencing and Penalties Act.


Actual Period of the Sentence of the 1st Accused

38. I also observe from the court records and the submissions that the 1st accused has been in remand since 15th September 2021 up to date for 7 months and 5 days. In the exercise of my discretion and in accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced by 07 months upon it being considered as a period of imprisonment already served. In view of the above, the final sentence will be 2 years and 5 months' imprisonment.
39. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed compels me to consider 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.

40. Accordingly, the actual total period of the sentence imposed for both Counts is two (02) years and five (05) months' imprisonment with a non-parole period of one (01) year and five (05) months.
41. You have 30 days to appeal to the Court of Appeal if you so desire.




.....
Justice K.M.G.H.Kulatunga

At Suva

9th May 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused