

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 380 of 2019

BETWEEN : THE STATE

AND : TAITO SOSOWALE

Counsel : Ms. Naidu, M with Mr. Samisoni, E for the State
: Ms Singh, M with Ms. Manulevu, L. for the Accused

Date of Trial : 22 June 2022

Judgment : 5 July 2022

Date of Sentence : 8 July 2022

SENTENCE

1. Around midday of 18th November 2019, the offender and two others hired the Complainant's cab from RB Centre Point to Kula Street, Samabula. When the cab stopped at their indication, the offender who was sitting in the front passenger's seat put his hand into his pocket as if to get out their cab fare. The other two who were sitting in the rear seat got off and tried to force open the Complainant's door. While the Complainant was thus distracted by the passengers outside, the Accused took the silver container with \$30 inside it, and \$20 from the console box beside the gear. Unable to open the driver's door, the two outside made a grab for the driver's mobile phone and all took off.
2. The matter was reported to the Police and the Accused was arrested in the course of investigations. He was interviewed under caution and on information obtained during the

interview, the driver's mobile phone was recovered. He admitted the offence and was charged. He pleaded not guilty and was tried for the offence of aggravated robbery. He claimed the Police had fabricated the answers incriminating him in the offence.

3. At trial, he did not give evidence in his defence, choosing to exercise his right to remain silent. No adverse inference was drawn from his decision to do so and after an assessment of the Prosecution evidence, the Court was satisfied beyond reasonable doubt of his guilt.

Maximum penalty and tariff

4. The offence of aggravated robbery carries a maximum penalty of 20 years imprisonment. The offence can take many forms, and varies in gravity. The tariff therefore depends on the nature and gravity of the offending.
5. The aggravated robbery in this case was on a taxi driver, a public transport service provider. The aggravation in the charge is that the offence had been committed together with and in the company of others.
6. I quote substantially from *State v Ragici* Criminal Case No: HAC 366 of 2011, Decision of 15 May 2012, paras [11]-[15] where Goundar J set out a summary of sentences for aggravated robbery against taxi drivers as follows:

[11] In *State v Susu* [2010] FJHC 226, a young and a first time offender who pleaded guilty to robbing a taxi driver was sentenced to 3 years imprisonment.

[12] In *State v Tamani* [2011] FJHC 725, this Court stated that the sentences for robbery of taxi drivers range from 4 to 10 years imprisonment depending on force used or threatened, after citing *Joji Seseu v State* [2003] HAM043S/03S and *Peniasi Lee v State* [1993] AAU 3/92 (apf HAC 16/91).

[13] In *State v Kotobalavu & Ors Cr Case No HAC43/1(Ltk)*, three young offenders were sentenced to 6 years imprisonment, after they pleaded guilty to aggravated robbery. Madigan J, after citing *Tagicaki & Another* HAA 019.2010 (Lautoka), *Vilikesa* HAA 64/04 and *Manoa* HAC 061.2010, said at p6:

"Violent robberies of transport providers (be they taxi, bus or van drivers) are not crimes that should result in non-custodial sentences, despite the youth or good prospects of the perpetrators...."

[14] Similar pronouncement was made in *Vilikesa* (supra) by Gates J (as he then was):

"violent and armed robberies of taxi drivers are all too frequent. The taxi industry serves this country well. It provides a cheap vital link in short and medium haul transport.... The risk of personal harm they take every day by simply going about their business can only be ameliorated by harsh deterrent sentences that might instill in prospective muggers the knowledge that if they hurt or harm a taxi driver, they will receive a lengthy term of imprisonment."

[15] More recently, in *State v Coka* [2012] FJHC 992 (28 March 2012), the High Court in Lautoka sentenced two offenders to 3 years imprisonment suspended for 7 years and fined \$950.00 for robbery of a taxi driver. It appears that the means test was not done before the fine was imposed. Apart from a comment that the offenders deserved a second chance, no reasons were given for suspending the sentence. The suspended sentence appears to be inconsistent with the guideline cases on robbery of public transport drivers. In an event I am not persuaded the case provides any guideline for future sentencing for aggravated robbery.

7. In *Usa v State* Criminal Appeal No. AAU 81 of 2016 (15 May 2020), the Court Stated at [18]:

Therefore, it appears that the settled range of sentencing tariff for offences of aggravated robbery against providers of services of public nature including taxi, bus and van drivers is 04 years to 10 years of imprisonment subject to aggravating and mitigating circumstances and relevant sentencing laws and practices.

8. In all of the above cases, the Court noted the invaluable service provided by taxi drivers to the public, their vulnerability owing to the nature of their work, and the need for stiff deterrent sentences for their protection.

9. The offender is now 23 years old. He lives with his parents and four siblings. He is a construction worker and earns \$100 per week. He says he helps support his family with his income.

Mitigating factors

10. In the course of Police investigations, the offender had admitted the offence. The information he provided led to the recovery of the Complainant's mobile phone. Very minimal force was used, with neither violence nor physical harm to the Complainant. At the time of this offending, he was 20 years old and had a clean record.

Aggravating factors

11. The aggravation of committing this offence with and in the company of others points to some element of planning, though by no means significant. The offence was against a victim made vulnerable by the very nature of his work. The availability of cash from the day's collection and the defenceless position of the victim made him an easy target for the offender and his accomplices.

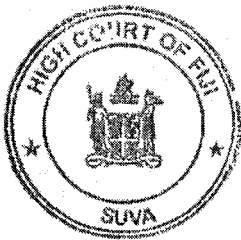
Remand period

12. The offender has spent a total of 10 months 3 weeks in remand. This period is taken as part of sentence served.

Purpose of sentence

13. I give priority to the principle of special and general deterrence in sentencing the offender. The risk taxi drivers bear in providing an essential service to the community is immense and the message must be clear that robbing or hurting a taxi driver or a public transport provider will be met with severe consequences.
14. I take 4 years as my starting point. For the aggravating features, I add 2 years. I deduct 3 years for the mitigating factors and period in remand, leaving a sentence of 3 years.
15. I have considered suspension. The offender is a person of previous good character. This salutary brush with the law will have brought home to him the message that crime does not pay. While I consider that a wholly suspended sentence is not appropriate in this case, in view of the circumstances of the offending, a partially suspended sentence will give the offender the opportunity to rehabilitate and mend his ways.

16. He is sentenced to 3 years imprisonment, one year of which is to be served in custody, with the remaining 2 years to be suspended for 3 years.
17. The recovered mobile phone exhibited at trial is to be returned to the Complainant.
18. 30 days to appeal to the Fiji Court of Appeal.




Siainiu F. Bull
Acting Judge

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused