

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 114 of 2020

STATE

vs.

- 1. KARIM BEGG**
- 2. RONIL RAVINESH CHAND**

Counsel: Ms. P. Mishra for the State
Mr. J. Reddy & Mr. Y. Kumar for both the Accused

Date of Hearing: 31st October – 04th November 2022

Date of Closing Submission: 15th November 2022

Date of Judgment: 25th November 2022

Date of Sentence/Mitigation Submission: 30th November, 2022

Date of Sentence: 06th December, 2022

SENTENCE

Introduction

1. Both of you Mr. Karim Begg the 1st Accused and Mr. Ronil Ravinesh Chand the 2nd Accused were found guilty and convicted after trial on the 25th November 2022 for the offence of Aggravated Robbery Contrary to Section 311(1) (a) of the Crimes Act, 2009 by this Court. Both of you appear today to be sentenced for the said offence.

2. If I may recap the facts, the Complainant Jin Chao is a Chinese national who arrived in Fiji just a few months before the incident and was residing at Nadi on a 3-year visa. On the 24th he ventured out to see the country side and was somewhat lost along Valley Road off Sigatoka. Both of you were members of the Fiji Police Force and a Corporal and a Police constable respectively. On the night of the 24th March 2020 whilst on duty and in uniform you observed Jin Chao's car parked along a lonely stretch of road on Valley Road between Sigatoka and Keiyasi.
3. Upon searching and questioning Jin Chao you found nothing offensive or unlawful but a \$1050 with him in his wallet. Then you Mr. Ronil demand that \$600. However, Jin Chao was reluctant. At this juncture you Mr. Karim made a threatening gesture indicating an imminent arrest or detention. Jin Chao faced with this threat, succumbs and hands over \$500 to Mr. Ronil, which both of you did share amongst yourselves.
4. Putting it simply, both of you acting in concert did effectively convey to Mr. Jin Chao that you with your police powers will arrest or detain him, if he does not give you the money. You Mr. Ronil directly demanded money in plain words and you Mr. Karim by virtue of the physical gesture coupled with the utterance "*you want this, you want this*", effectively conveyed to Mr. Jin Chao the threat of imminent arrest if he does not comply. The essence of robbery is that violence is done or threatened to the person of the owner or custodian who stands between the offender and the property stolen, in order to overcome that person's resistance and so to oblige him to part with the property. In other words, the victim must be compelled by force or fear to submit to the theft: (Smith v Desmond [1965] AC 960). This is what you did and it was proved so. As I have already emphasised, you used your position as police officers to commit this crime.
5. If I may consider the culpability and the harm factors of your offending, you searched the vehicle in performing your duty and then seeing the money appropriated the same by taking advantage of the circumstances and inflicting fear and shock to the foreigner who was lost. The offences of robbery, burglary and theft appear to be prevalent and the number of offenders brought before the courts for committing such offences is alarming and significant. You have threatened Jin Chao and put him into fear of immediate arrest or incarceration and deprived of this property 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 treated by the two of you in this manner.

6. In selecting a starting point of your sentences, 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, State v Tawake [2022] FJSC 22.; CAV0025.2019 (Judgment 28 April 2022) has determined that sentences for Aggravated robbery of street mugging type in these circumstances is a range between 1 to 5 years imprisonment with a starting point of 3 years. Thus, I will pick 3 years as the starting point of both of your sentences.

Aggravated Factors

7. First, I will consider the aggravating factors. I observe the following aggravating circumstances of your offending common to both of you:
 - a. The offence was committed around 11.00 p.m. at a lonely and an isolated location along Valley Road,
 - b. both of you were police officers on active duty and in uniform,
 - c. you acted in a manner which constitutes a complete abdication of your responsibilities and a betrayal of the trust placed in you qua police officers,
 - d. your conduct brings the whole Police Force into disrepute and makes it difficult for honest officers to perform their functions,
 - e. there was some planning in this offending,
 - f. the complainant was a vulnerable person due to the isolated nature of the location and he being a foreigner,
 - g. both of you manipulatively took advantage of the said vulnerability, and
 - h. acted in total disregard of the property rights of the complainant,
8. I am inclined to add a modest 2 years to the starting point for the above-mentioned aggravating factors bringing the interim sentence to 5 years imprisonment.

Mitigating factors

9. Now, I will consider the mitigating factors. I observe the following mitigating circumstances of your offending common to both of you:

- a. You Mr. Ronil is 32 years and unmarried and said to be closely associated with the Temple and religious activities and your younger brother is living with you and you are the sole breadwinner. As for you Mr. Karim you are 46 years and married with 3 children and two of them are in secondary school. You appear to have some financial commitments of your family to meet. You are closely associated with the mosque and religious matters. However the personal circumstances and family background of the accused persons have little mitigatory value,
 - b. both of you are first offenders and in the normal course will be considered as persons of previous good character. However, if you were of good character, you would not have abused your office and use your office to unlawfully appropriate a person's money whom you are required to protect. Thus, in the context of a police officer been found guilty of a crime of this nature, evidence of good character does not carry much weight in mitigation,
 - c. \$400 of the stolen money was recovered, and
 - d. some degree of co-operation was seen during the investigation.
10. Your mitigating factors are not that great, but I am inclined to deduct 1 year from the sentence bringing both of your sentences down to 4 years imprisonment.
11. This is an offence of Aggravated robbery no doubt, but what is significant and critical is that you were both police officers (other ranks) who were entrusted with the duty to prevent crimes which is a position of trust. Hence, when a crime is committed by a police officer, such offender must be severely punished whenever detected and is proved. It is more so if it is committed for unlawful gain or profit. This is so, as the police are in constant contact with members of the public and the opportunity and temptation is always great. Those circumstances themselves mean that the element of general deterrence is always is the paramount consideration which a sentencing judge should bear in mind when a police officer is charged with an offence of this nature. It is important to deter other police officers who may be inclined to engage in similar conduct. Thus, deterrence is the primary consideration of this sentence.

12. I am mindful that imprisonment will inevitably impose significant hardship and despair on the immediate families of the Accused persons. Unfortunately, this is an all too common and frequent consequence of sentencing. However, such hardship or despair cannot be an overriding mitigating factor in cases where the objective gravity of the offences and the presence of aggravating factors call for a custodial sentence as in the present offending.

Non-parole period

13. 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.
14. Considering the above, I impose 3 years as a non-parole period to be served before the accused are 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

15. Accordingly, I hereby sentence both of you the 1st Accused Mr. Karim Begg and the 2nd Accused Mr. Ronil Ravinesh Chand separately for periods of 4 years' imprisonment each for the offence of Aggravated Robbery. However, you are not entitled to parole for 3 years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

16. I also observe from the court records and the submissions that both the Accused were in remand from 25th March 2020 to 8th May 2020 for 44 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 1½ months upon it being considered as a period of imprisonment already served. In view of the above, the final sentence will be 3 years 10 months and 2 weeks' imprisonment.
17. 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.

18. Accordingly, the actual total period of the sentence imposed for both Accused will be 3 years 10 months and 2 weeks' imprisonment with a non-parole period of 2 years 10 months and 2 weeks.
19. You have 30 days to appeal to the Court of Appeal if you so desire.



At Suva

06th December, 2022

Solicitors

Office of the Director of Public Prosecutions for the State.
Jiten Reddy Lawyers for both the Accused.