

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 061 OF 2022S

STATE

VS

1. SHAHIL SOHIL NATHAN

2. RAHIL AVISHEK NATHAN

Counsels : Mr. E. Samisoni for State.
Ms. L. Ratidara for Accused no. 1
Ms. T. Kean for Accused No. 2
Hearings : 1 April and 4 May, 2022.
Sentence : 5 May, 2023.

SENTENCE

1. On 1 April 2022, in the presence of your counsels, the following information was read over and explained to yourselves:

"First Count

Statement of Offence

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

Particulars of Offence

***SHAHIL SOHIL NATHAN & RAHIL AVISHEK NATHAN** between November to December, 2021 at Lot 65 Verrier Road, Namadi, in the Cenral Division, in the company of each other entered into the*

dwelling house of **ARUN PRASAD SINGH** as trespassers with intent to commit theft.

Second Count

Statement of Offence

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

Particulars of Offence

SHAHIL SOHIL NATHAN & RAHIL AVISHEK NATHAN between November to December, 2021 at Lot 65 Verrier Road, Namadi, in the Cenral Division, dishonestly appropriated 3 x non-stick pots with lids, 1 x electric cake mixer, 1 x rug, 3 x plastic containers and assorted Indian sarees, properties belonging to **ARUN PRASAD SINGH** with intent to permanently deprive **ARUN PRASAD SINGH** of the property.”

2. Both of you said you understood the charges and pleaded guilty to both counts. The court checked with you on whether or not you were pleading guilty voluntarily to the charges and that no one forced you to do the same. You both admitted to the court that you were pleading guilty voluntarily and you were doing so out of your own free will. The matter was then adjourned to 4th May 2022, to enable the prosecution to present their summary of facts.
3. Briefly, the summary of facts were as follows. Between November and December 2021, the complainant, Mr. Arun Prasad Singh, aged 70 years old, was the caretaker at Lot 65 Verrier Road, Namadi Heights. The house was a double storey concrete house, and it belonged to Mr. Singh’s son-in-law. At the time, Accused No. 1 and 2 were doing renovation work at the house. They kept their working tools in the bottom flat, and the same also contained household items. The complainant said he gave the bottom flat keys to the two accuseds.
4. According to the prosecution, the compainnat terminated the two accuseds’ renovation work at Lot 65 Verrier Road in November 2021. Sometimes

between November and December 2021, Accused No. 1 and 2, in the company of each other, broke into Lot 65 Verrier Road property with intent to commit theft. They forced opened the bottom flat front door and entered the flat, with intent to steal. They later ransacked the flat and stole the properties itemized in count no. 2. On 14 January 2022, at about 12 pm, the complainant went to the bottom flat. He saw the front door broken into, and the flat ransacked. He reported the matter to police.

5. An investigation was carried out. Both accuseds were later arrested by police and caution interviewed. They both admitted the offences to police. Most of the stolen properties were later recovered by the police.
6. The court checked with defence counsels on whether or not the accuseds admitted the above summary of facts. Defence counsel said both accuseds admitted the above summary of facts, including the particulars of the offences in the two counts in the information. As a result of the above admissions, the court found both accuseds guilty as charged and convicted them accordingly on both counts.
7. Both accuseds were first offenders. They made their plea in mitigation. The parties then made their sentence submissions.
8. “Aggravated burglary” is an indictable offence, and viewed seriously by the Parliament of Fiji. It carried a maximum penalty of 17 years imprisonment (section 313 (1) (a) of Crimes Act 2009). The tariff for the offence is a sentence between 6 to 14 years imprisonment: see **State v Shavneel Prasad**, Criminal Case No. HAC 254 of 2016, High Court, Suva. Of course, the final sentence will depend on the aggravating and mitigating factors.
9. “Theft”, contrary to section 291 (1) of the Crimes Act 2009 carried a maximum penalty of 10 years imprisonment.

10. It appears there was no aggravating factor in this case.
11. The mitigating factors were as follows:
- (i) Both accuseds are first offenders and are young offenders, aged 18 and 21 years old;
 - (ii) They pleaded guilty 2 months after first call in the High Court, thereby saving the Court's time and resources;
 - (iii) Most of the properties they stole were recovered by the police;
 - (iv) They co-operated with the police during their investigation, and they fully admitted the offences when they were caution interviewed by the police;
 - (v) They had been remanded in custody for 39 days.
12. The court had carefully examined the factual circumstances of this case. Obviously the two accuseds, young as they are, were naïve in breaking into the complainant's house, ransacking the same, and stealing the properties itemized in count no. 2. Ever since their offending, they had been processed through Fiji's criminal justice system, that is, coming to court, been remanded in custody for 39 days and fronting the court every now and then. It must be a learning experience for them. I hope it had taught them not to come before the court ever again. Because they are first offenders and the strong mitigating factors, I will discharge them, and warn them not to come before the court again, pursuant to section 15 (1) (h) of the Sentencing and Penalties Act 2009.
13. You have 30 days to appeal to the Court of Appeal.



Salesi Temo

Acting Chief Justice

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accuseds : **Legal Aid Commission, Suva.**