

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 039 OF 2022S

STATE

vs

1. SILIO BULIRUARUA

2. TEVITA KALOUGATA

Counsels : Mr. E. Samisoni for State.

Accused No. 1 in Person.

Accused No. 2 in Person.

Hearings : 22 March and 22 April, 2022.

Sentence : 1 December, 2023.

SENTENCE

1. On 25 February 2022, Accused no. 2 waived his right to counsel and said he would represent himself. Accused No. 1 said he would apply for legal aid, but it appeared he had not bothered to do so.
2. On 22 March 2022, the following information was read over and explained to both accuseds:

“Statement of Offence

AGGRAVATED ROBBERY: *Contrary to section 311 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

SILIO BULIRUARUA & TEVITA KALOUGATA on the 16th day of January, 2022 at Nasinu, in the Southern Division, in the company of each other stole 1 x Samsung A20 mobile phone, 1 x pair of SFIDAS branded canvas, 1 x phone charger, 1 x e-ticketing bus card and 1 x driving licence from **ELIA ROKOBULI** and immediately before stealing from **ELIA ROKOBULI**, used force on him.”

3. Both accuseds said they understood the charge and they pleaded guilty to the same. When the court checked with them, they said they pleaded guilty voluntarily to the charge and that no one forced them to plead guilty to the same. They appeared to say that they pleaded guilty to the charge out of their own free will.
4. The prosecution then presented the summary of facts in court. Briefly, they were as follows. On 16 January 2022, Accused No. 1 was 20 years old, unemployed and resided at Qaranivalu Road, Kalabu. Accused No. 2 was 17 ½ years old, unemployed and was also a resident of Qaranivalu Road, Kalabu. At about 8 pm on 16 January 2022, Accused No. 1, Accused No. 2 and four other friends were consuming alcohol along Qaranivalu Road.
5. At about 8.50 pm on 16 January 2022, the complainant, who was 22 years old, got off a bus at Laqere bus stop. The complainant resided at Muanikoso Koro at Nasinu. A few minutes later, Accused No. 1, Accused No. 2 and four friends approached the Laqere bus stop. They saw the complainant there. Accused no. 1 then asked the complainant the time. As a result, the complainant took out his mobile phone to check the time. Accused No. 1 saw the phone and later threw a punch at the complainant. At the same time, Accused no. 2 grabbed the complainant from the back. Accused No. 1 and 2 then jointly punched the complainant repeatedly. Accused No. 1 then stole the complainant’s mobile phone, while Accused No. 2 stole his canvass. They later fled the crime scene.

6. The matter was later reported to the police. An investigation was carried out. Both Accuseds were later arrested by police. When caution interviewed, both accuseds admitted the offence to the police. The complainant's mobile phone and canvass were recovered, and they have been returned to the complainant.
7. Both accuseds admitted the above summary of facts. As a result, the court found both accuseds guilty as charged.
8. "Aggravated robbery," contrary to section 311 (1) (a) of the Crimes Act 2009, carried a maximum sentence of 20 years imprisonment. Parliament regards the offence as a serious one. In State v Tawake, CAV 0025 of 2019, a decision delivered on 28 April 2022, the Supreme Court of Fiji had established a sentencing guideline for "street mugging" type "aggravated robbery" type offences. It classified the sentencing tariff on the degree of harm suffered by the complainant. The alleged harm is classified as "High", "Medium" or "Low". In this case, I would say the degree of harm done on the complainant was "medium", therefore the sentencing tariff is a sentence between 3 to 7 years imprisonment.
9. In this case, there appears to be no aggravating factors. The elements of the offence had been satisfied and it does show the level of harm suffered by the complainant was in the medium range.
10. The mitigating factors were as follows:
 - (i) Although both accuseds pleaded guilty to the offence approximately one month after first call in the High Court, they nevertheless saved the court's time and resources by not going to a full trial;
 - (ii) Both accuseds were first offenders, at the age of 20 years (Accused No. 1) and 17 ½ years (Accused No. 2);
 - (iii) Both accuseds had apologized to the complainant and his family, and this was confirmed in court by the complainant and his family;

- (iv) During the police investigation, both accuseds co-operated with the police by admitting the offence when cautioned interviewed, and returning the stolen property to the complainant.
- (v) Both accuseds reached Form 5 level education at Kalabu Secondary School in 2019 (Accused No. 1) and Lelean Memorial School (Accused No. 2).
- (vi) Their experiences in court ever since they first appeared in January 2022 had obviously taught them a lesson of the futility of breaking the law, because it brings no positive results in their lives.

11. For Accused No. 1, because he's an adult, I start with a sentence of 3 years imprisonment. For all the mitigating factors, I deduct 2 years, leaving a balance of 12 months imprisonment. Because of the strong mitigating factors, I convict him as charged, and sentence him to 12 months imprisonment, suspended for 12 months.

12. As for Accused No. 2, because he is a juvenile, and because of the strong mitigating factors, including the need to rehabilitate him to turn a new leaf in life, I will not record a conviction and order his release, subject to him keeping the peace for the next 18 months; otherwise he will be brought before the court for re-sentencing, pursuant to section 15 (1) (i) of the Sentencing and Penalties Act 2009.

13. Both accuseds 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 : **In Persons.**