

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 93 OF 2023

STATE

.v.

- 1. RAJNESH PRASAD**
- 2. SHAMEEL RAPOOR CHAND**
- 3. DINESH PRASAD**

Counsels: Ms. Ramoala M - for State
In Person - for Accused

Date of Sentence: 29.11.2023

SENTENCE

1. In this matter, **RAJNESH PRASAD** you were jointly charged with another with one count of Aggravated Burglary and with one count of Theft, as below:

COUNT 1

Statement of Offence

AGGRAVATED BURGLARY: Contrary to Section 291(1) of the Crimes Act 2009.

Particulars of Offence

RAJNESH PRASAD and **SHAMEEL KAPOOR CHAND** on the 27th day of February 2023 at Muanikoso, Nasinu in the Central Division, in the company of each other entered into the house of **VICKY BIMAL** as trespassers with intent to commit theft.

COUNT 2

Statement of Offence

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

Particulars of Offence

RAJNESH PRASAD and **SHAMEEL KAPOOR CHAND** on the 27th day of February 2023 at Muanikoso, Nasinu in the Central Division, in the company of each other dishonestly appropriated 1 x Geepas 65 inches flat screen television and 1 x Sony home theatre system, 1 x Promax brush cutter and 1 x Lenovo laptop, the property of **VICKY BIMAL** with the intention of permanently depriving **BIMAL** of the said property.

2. **RAJNESH PRASAD** you pleaded guilty to the counts you're charged with on your own free will when you appeared in person in Court on 27/10/2023. You understood the consequences of the guilty plea for offences you have committed. This Court was satisfied that your guilty plea was informed and unequivocal and entered freely and voluntarily by you.
3. Further, you agreed to the following summary of facts, when they were read to you in Court on 03/11/2023. **Summary of facts** were, as follows:

SUMMARY OF FACTS

Complainant (PW1): Vicky Bimal, 33 years old, Carpenter for Tropic Furniture and Joinery residing at Muanikoso Settlement.

Accused 1 (A1) Rajnesh Prasad, 38 years old, [D.O.B: 27.05.1984], Carpenter, residing at Muanikoso Housing.

Prosecution Witness 2 (PW2) – Sera Lagilagi, 31 years old [D.O.B. unknown] Domestic Duties, residing at Muanikoso Housing.

Prosecution Witness 3 (PW3) – Anita Devi, 43 years old, [D.O.B. unknown] self-employed, residing at Muanikoso Housing.

Prosecution Witness 4 (PW4) – Nishal Ravinesh Chand, 30 years old, [D.O.B. unknown] Taxi driver, Lot 149 Sakoca Road, Tamavua.

Prosecution Witness 5 (PW5) – Shalendra Narayan Gosai, 42 years old, [D.O.B. unknown] Taxi driver, residing at Lot 10 Manuka Street, Nakasi.

Prosecution Witness 6 (PW6) – WPC5569 Alanieta, 33 years old, [D.O.B. unknown] Police officer, residing at Koronivia Road, Nausori (Interviewing officer for Rajnesh Prasad)

- On the 27th February, 2023, PW1's home was burgled whilst he had been away for a funeral in Narere for the past 3 days. Prior to attending the same, he (PW1) had asked PW2 to look after his house by switching on the lights in the sitting room at night and switching them off again in the morning.

- On the 26th of February 2023, PW2 recalled that she had switched on the lights at PW1's house and locked the said house after 5.30pm. PW2 was away until 11.30pm and she did not hear or see any suspicious movements. At about 8.21am of the following day (27.02.23), she looked up at PW1's house and noticed that the main door was open. Upon checking PW2 noticed that the flat screen TV and the theatre system were missing. PW2 then called PW1 to inform him of the same.
- Upon receiving the information from PW2 at about 8.30am PW1 had informed the Nasinu Police Station about the burglary. It was then discovered that the following items were stolen from PW1's house.

Item	Quantity	Value
Geepas Flat Screen TV (65 inches)	1	\$1,899.00
Sony Home theatre System	1	\$499.00
Promax brush cutter	1	\$295.00
Lenovo laptop	1	\$1,219.00
TOTAL		\$3,912.00

- Upon enquiry by the Police, PW3 had stated that she saw one of the other accused persons namely Shameel (A2) also known as 'Bila' and Rajnesh (A1) enter PW1's house at around 3.40am on the 27th February 2023. Then at around 4.50am PW3 saw that they had arrange for a white Probox vehicle. At about 5.10am, PW3 had seen them (Rajnesh and Shameel) taking out a TV and a carton from PW1's house but he had not seen the contents of the carton as it was dark.
- PW5 had stated that on 27.02.23 at about 3.40am, he saw his friend namely Pilla (A2) calling his mobile phone. Shameel (A2/Pilla) had asked him to go to Muanikoso, but he had not obliged.
- Later, a white Probox had approached PW5's compound and parked outside PW5's house. When PW5 approached the said vehicle, he had seen the driver, his friends namely Pilla (A2) and Dinesh (A3) inside the vehicle along with a black flat screen TV in the boot of the car. PW5 had then got into the vehicle and all had gone to Sakoca to sell the home theatre system to a canteen owner (PW4) and then returned to PW5's home. PW5 had then taken the said TV and kept it at his house until the police came to take the same to the Station.
- PW4 confirmed that Dinesh (A3) had called him around 7am on 27.2.23 and asked him (PW4) if he would like to buy his TV. A1's accomplice had arrived at PW4's home after about 30 minutes where he (A3) then had taken out the home theatre system and given it to PW4A1's admissions to the elements in the Caution Interview
- Recovered items.

Out of the 4 items that were stolen only 2 were recovered from PW4 and PW5 ON THE 2ND of March 2023 and then exhibited at Nasinu Police Station. They were:

Item	Quantity	Value
Geepas Flat Screen TV (65 inches)	1	\$1,899.00
Sony Home theatre System	1	\$499.00

On the 28th February 2023 A1 was arrested by PW6 and then interviewed under caution on that same date by PW7 where he made full admissions.

4. At the very outset, this Court was convinced that the summary of facts agreed by you satisfy all the elements of each offence you are charged with. Therefore, this Court convicts you for the offences charged with by the information in this matter. On considering the submission made by the prosecution in aggravation and you in mitigation, now this matter is pending for sentencing.
5. In comprehending with the gravity of the offences you have committed, I am mindful that the maximum punishment for the offence of Aggravated Burglary under **Section 313 (1) (a)** of the **Crimes Act of 2009** is an imprisonment term of 17 years and the maximum punishment for Theft under **Section 291** of the **Crimes Act 2009** is an imprisonment term of 10 years.
6. The accepted tariff for counts 1 and 2 depend on the nature and circumstances under which Aggravated Burglary and Theft were committed, and the consequences entailing the commission of the offences to the victims and the society at large. This Court also recognizes that to address the alarming rapidity of the increase of Burglaries and Robberies in our community, any punishment imposed by Court should have a reprehensible deterrent effect that could also send a profoundly strong signal to the community.
7. In imposing the appropriate punishment for your admitted guilt, the Prosecution brings to the attention of this Court the updated tariff regime pronounces for Aggravated Burglary by the Court of Appeal of Fiji in the case of **State v Avishkar Rohinesh Kumar Sirino Aakatawa**¹, where it was stated, as below:

“Once the level of harm has been identified, the court should use the corresponding starting point in the following table to reach a sentence within the appropriate sentencing range. The starting point will apply to all offenders whether they plead guilty irrespective of previous convictions. A case of particular gravity,

¹ [2022] FJCA (24th November 2022); AAU 33.18 & AAU 117.19 548 925 June 2018),

reflected by multiple features of harm, could merit upward adjustment from the starting point before further adjustment for level of culpability and aggravating or mitigating features.

LEVEL OF HARM CATEGORY	BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED BURGLARY (OFFENDER EITHER WITH ANOTHER OR WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER AND WITH A WEAPON)
HIGH	Starting Point: 05 years Sentencing Range: 03 – 08 years	Starting point 07 years Sentencing Range: 08 – 12 years	Starting Point – 09 years Sentencing Range: 08 - 12 years
MEDIUM	Starting Point 03 years Sentencing Range : 01 – 05 years	Starting Point: 05 years. Sentencing Range 03 – 08 years	Starting Point : 07 years Sentencing Range: 05 – 10 years
LOW	Starting Point: 01 year Sentencing Range: 06 months – 03 years	Starting Point: 05 years Sentencing Range: 01 – 05 years	Starting point : 05 years Sentencing Range: 03 – 08 years.

8. In the above pronouncement of the Court of Appeal, Court has further identified the factors indicating the degree of harm, as below:

Factors indicating greater harm
Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)
Soiling, ransacking or vandalism of property
Restraint, detention or gratuitous degradation of the victim, which is greater than is, necessary to succeed in the burglary. Occupier or victim at home or on the premises (or returns home) while offender present.
Significant physical or psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary
Violence used or threatened against victim, particularly the deadly nature of the weapon
Content of general public disorder
Factors indicating lesser harm
Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal). No physical or psychological injury or other significant trauma to the victim.

9. In relation to the offence of Theft, this Court intends to follow the tariffs pronounced by **Midigan J** in the case of **Ratusili v State**², where he stated:

“From the cases then, the following sentencing principles are established:

- (i) for a first offence of simple theft the sentencing range should be between 2 and 9 months.*
- (ii) any subsequent offence should attract a penalty of at least 9 months.*
- (iii) theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.*
- (iv) regard should be had to the nature of the relationship between offender and victim.*
- (v) planned thefts will attract greater sentences than opportunistic thefts.”*

In this matter, considering the value of the items you had stolen and that it was stolen from a dwelling premises, this cannot be regarded as simple theft.

10. Considering the circumstances of this case, I see that this is an appropriate case where an aggregate sentence could be imposed in terms of **Section 17** of the **Sentencing and Penalties Act 2009** in view that **RAJNESH PRASAD** was convicted on each count based on the same facts. Hence, I would impose an aggregate sentence against **RAJNESH PRASAD** for Count 1 and 2.
11. In assessing the objective seriousness of offending of you in this matter, I considered the maximum sentence prescribed for the offences, the degree of culpability, the manner in which you committed the offence and the harm caused to the complainant. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. This is a Burglary that happened in a residential premise of a fellow citizen. I am very mindful that offences

² [2012] FJHC 1249; HAA011.2012 (1st August 20120

of this nature disturb the peace and tranquility of minds of residents of our community and threaten safety of our community. In this regard, the Courts have a bounden duty to discourage and deter this kind of anti-social behavior that makes living in our society unpleasant and risky. Having considered all these factors, I would pick a starting point of 5 years imprisonment against **RAJNESH PRASAD** placing your offence in the medium level of harm category in relation to the tariff available for Aggravated Burglary committed with another.

12. In aggravation, Prosecution brings to my attention that you had unheeding disregard to the property rights of the victim in this matter and you had stolen items of very high monetary value. In considering these circumstances, I increase your sentence by one (01) year.
13. In mitigation, you have informed the Court that you are the single parent of two daughters, and you provide assistance for your elderly mother. In this matter, you have entered an early guilty plea and had been supportive to the police during investigations after your arrest. In considering this, I reduce your sentence by 01 year. Further, by pleading guilty to the charge you have saved the court's time and resources at a very early stage of the court proceedings. For this ground in mitigation, you should receive a discount in the sentence. In this regard, I give you a reduction of one third in your sentence. Further, you have informed this Court that currently you are serving a 19-year sentence in relation to another matter and prayed this Court to impose a concurrent sentence.
14. Still further, Prosecuting counsel brings to my attention that **RAJNESH PRASAD** had been in custody for 62 days in relation to this matter, which period has to be reduced from the final sentence.
15. **RAJNESH PRASAD**, consequent to your conviction, I impose on you 38 months imprisonment forthwith with an applicable non-parole period of 32 months under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009** as the sentence for the counts you are charged with. Further, acting under **Section 22 (1)** of the **Sentencing**

and Penalties Act of 2009, this Court orders you to serve this term of imprisonment concurrently with any other uncompleted sentence you are serving at present.

16. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in blue ink, appearing to read "Thushara Kumarage", is written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

At Suva
This 29th day of November 2023

cc: Director of Public Prosecution