

**IN THE HIGH COURT OF FIJI AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 029 of 2020**

**BETWEEN: THE STATE**

**A N D: JOSAI VUKIVUKI**

**Counsel: Swastika for the State.**  
**: Ms. Taukei for the Accused**

**Date of Submissions: 3rd May, 2024**  
**Date of Sentence: 24<sup>rd</sup> May 2024**

**SENTENCE**

1. The accused person was charged by virtue of the following amended information filed by the Director of Public Prosecutions dated 23<sup>rd</sup> of April 2024:

*Statement of offence*

**ROBBERY** : Contrary to section 310 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

JOSAI VUKUVUKI on the 19<sup>th</sup> day of January, 2020, at Lautoka in the Western Division, stole ASHNEEL SHARMA of 1 x Samsung 50 mobile phone and at the time of such robbery used personal violence on the said ASHNEEL SHARMA

2. On 17<sup>th</sup> May 2024, the accused person in the presence of his counsel had elected that his matter to be tried in the High Court. The information on the

above one count of robbery was put to the accused and he pleaded guilty to the same on his own free will. Thereafter, the accused person admitted the summary of facts read.

3. The summary of facts admitted by the accused persons was as follows:
  - a. On the 19<sup>th</sup> of January 2020 at about 2.00am in early morning the victim was walking along Ajodhya Prasad Road in Lautoka, the accused was observing the victim and was following him.
  - b. The accused caught up with the victim, he grabbed him and snatched the victim's Samsung 850 Galaxy mobile phone.
  - c. The victim's father reported the matter to police and investigation was conducted. Information was provided to police and the accused was arrested.
  - d. The accused gave the Samsung 850 Galaxy mobile phone to his sister namely Rachael Rita. The Samsung A50 Galaxy Mobile phone was voluntarily handed over to police.
  - e. The accused was cautioned interviewed where he admitted committing the robbery alone.
  - f. After considering the summary of facts read by the State Counsel and admitted by the accused and upon reading his caution interview, this Court is satisfied that the accused person have entered an unequivocal plea of guilty on own freewill.
4. This court is also satisfied that the accused person have fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offence committed. The accused person also admitted committing the offence alone.

5. In view of the above, this court finds the accused person guilty as charged and convicted the same accordingly. Both counsel filed sentence and mitigating submissions for which this court is grateful.
6. The learned counsel for the accused presented the following mitigation and personal details:
  - a. The accused is a first offender;
  - b. He is 24 years of age;
  - c. He is employed as a casual labourer of construction sites earning \$180.00 weekly
  - d. Full recovery of all the stolen item.
  - e. Regrets what he has done;
  - g. Resides at Vakatora , Lautoka with relatives
  - h. Co-operated with the police;
  - h. Pleaded guilty at the earliest opportunity.

#### **TARIFF**

7. The maximum penalty of the offence of Robbery is 15 years imprisonment. However, the accepted tariff for the offence of street mugging with no violence is from 6 months to 3 years imprisonment. The Supreme Court in ***The State vs. Eparama Tawake CAV 0025 of 2019 (28 April, 2022)*** has provided guidance in regards to the appropriate sentence for such an offence. The final sentence is dependent on:
  - a) The degree of the offender's culpability; and
  - b) The level of harm suffered by the victim.
8. This is a case where the accused person grabbed the victim and robbed the him stealing the victim's mobile phone. According to the guideline in *Tawake's* case (supra) this case will fall under low level of harm suffered by the victim. The Supreme Court in *Tawake's* case (supra) from paragraphs 23 to 30 made the following pertinent observations:

[23] The State suggests that the best way for the Court to achieve consistency in sentencing for “street muggings” is to adopt the methodology of the Definitive Guideline on Robbery issued by the Sentencing Council in England. That Guideline (as with the case of other definitive guidelines issued by the Sentencing Council) classifies cases of robbery by reference to two important factors: the degree of the offender’s culpability and the level of harm suffered by the offender’s victim. There are three degrees of culpability and three levels of harm. The Guideline identifies a sentencing range for each class of case, and a starting point within that range.

[24] The English guideline covers three different types of robbery : “home invasions”, professionally planned commercial robberies , and street and less sophisticated commercial robberies . Our focus in this case is on the last type. Even then, though, the English framework would require some refinement in Fiji, because in England there is a single offence of robbery , whereas Fiji has two offences of robbery: robbery contrary to section 310 of the Crimes Act and aggravated robbery contrary to section 311 of the Crimes Act. Moreover, as we have seen, the offence of aggravated robbery takes two forms: where the offender “was in company with one or more other persons” at the time of the robbery , and where the offender “has an offensive weapon with him or her” at the time of the robbery . Such guidance as we give has to reflect these differences.

[25] For my part, I think that this framework, suitably adapted to meet the needs of Fiji, should be adopted. There is no need to identify different levels of culpability because the level of culpability is reflected in the nature of the offence, and if the offence is one of aggravated robbery, which of the forms of aggravated robbery the offence took. When it comes to the level of harm suffered by the victim, there should be three different levels. The harm should be characterized as high in those cases where serious physical or psychological harm (or both) has been suffered by the victim. The harm should be characterized as low in those cases where no or only minimal physical or psychological harm was suffered by the victim. The harm should be characterized as medium in those cases in which, in the judge’s opinion, the harm falls between high and low.

	ROBBERY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED ROBBERY (OFFENDER <u>EITHER</u> WITH ANOTHER <u>OR</u> WITH A WEAPON)	AGGRAVATED ROBBERY (OFFENDER WITH ANOTHER <u>AND</u> WITH A WEAPON)
HIGH	Starting point: 5 years imprisonment Sentencing range: 3-7 years imprisonment	Starting point: 7 years imprisonment Sentencing range: 5-9 years imprisonment	Starting point: 9 years imprisonment Sentencing range: 6-12 years imprisonment
MEDIUM	Starting point: 3 years imprisonment Sentencing range: 1-5 years imprisonment	Starting point: 5 years imprisonment Sentencing range: 3-7 years imprisonment	Starting point: 7 years imprisonment Sentencing range: 5-9 years imprisonment
LOW	Starting point: 18 months imprisonment Sentencing range: 6 months-3 years imprisonment	Starting point: 3 years imprisonment Sentencing range: 1-5 years imprisonment	Starting point: 5 years imprisonment Sentencing range: 3-7 years imprisonment

[26] Once the court has identified the level of harm suffered by the victim, 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 pleaded guilty or not guilty and irrespective of previous convictions:

[27] Having identified the initial starting point for sentence, the court must then decide where within the sentencing range the sentence should be, adjusting the starting point upwards for aggravating factors and downward for mitigating ones. What follows is not an exhaustive list of aggravating factors, but these may be common ones:

- Significant planning
- Prolonged nature of the robbery
- Offence committed in darkness
- Particularly high value of the goods or sums targeted
- Victim is chosen because of their vulnerability (for example, age, infirmity or disability), or the victim is perceived to be vulnerable
- Offender taking a leading role in the offence where it is committed with others
- Deadly nature of the weapon used where the offender has a weapon
- Restraint, detention or additional degradation of the victim, which is greater than is necessary to succeed in the robbery
- Any steps taken by the offender to prevent the victim from reporting the robbery or assisting in any prosecution

[28] Again, what follows is not an exhaustive list of mitigating factors, but these may be common ones:

- No or only minimal force was used
- The offence was committed on the spur of the moment with little or no planning
- The offender committed or participated in the offence reluctantly as a result of coercion or intimidation (not amounting to duress) or as a result of peer pressure
- No relevant previous convictions
- Genuine remorse evidenced, for example, by voluntary reparation to the victim
- Youth or lack of maturity which affects the offender's culpability
- Any other relevant personal considerations (for example, the offender is the sole or primary carer of dependent relatives, or has a learning disability or a mental disorder which reduces their culpability)

[29] Having decided on the appropriate sentence in this way, the Court should then reduce the sentence by such amount as is appropriate – first for a plea of guilty and then for the time the offender spent in custody on remand awaiting trial and sentence. If judges take these steps in the order I have identified, it is to be hoped that sentences will be more likely to fit the crime, and that undesirable disparities in sentences will be avoided.

[30] This methodology is new to Fiji. In the recent past the higher courts have usually only identified the appropriate sentencing range for offences. They have only infrequently in recent times assisted judges by identifying where in the sentencing range the judge should start. That has caused difficulties identified by the Supreme Court on a number of occasions: see, for example, Seninlokula v The State [2018] FJSC 5 at paras 19 and 20 and Kumar v The State [2018] FJSC 30 at paras 55-58. If this methodology is used, that problem is avoided. Indeed, there is, in my opinion, no reason why this methodology should be limited to “street muggings”, and it may be that thought will be given in the appropriate quarters to find cases to bring to the

*Court of Appeal for this methodology to be considered for sentencing for other offences.*

### **AGGRAVATING FACTORS**

9. The following aggravating factors are obvious in this case:

a) regard to victim's property

The accused person did not have any regard for the property rights of the victim. The offence was committed during the early hours of the morning when the victim was walking along the road. The accused person was bold and undeterred in what he did to the victim.

b. Prevalence of the offending

There has been an increase in such offending that people are reluctant to walk on the streets. The accused person used force to overpower the victim.

c. Planning

From the facts there appears to be degree of planning involved. The accused person saw the street was empty and the victim was alone. He took advantage of the situation.

10. After taking into account the objective seriousness of the offence committed I select 1 year imprisonment (lower range of the tariff) as the starting point of the sentence for the accused person. The sentence is increased by 3 years for the aggravating factors mentioned above, and your sentence is now 4 years and reduced 1 year for your mitigation and good character. Your sentence is now 3 years.

11. The accused is entitled to one third reduction to his early plea of guilty on the amended information. The sentence is further reduced for 1 year for early guilty plea and your sentence is now 2 years imprisonment.

12. It is also noted that the accused person was remanded for *1 year 10 months and 26 days*. Obviously this is time already served hence further reduction is given to the accused.
13. The final sentence for one count of robbery is 1 month and 5 days imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment.
14. In *State vs. Alipate Sorovanalagi and others, Provisional Case No. HAR 006 of 2012 (31 May 2012)*, Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

*"[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:*

*"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."*

15. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment term or a suspended sentence.
16. The accused person is a young offender (24 years of age respectively at the time of the offending), of good character, the stolen property was recovered, have pleaded guilty at the earliest opportunity, are remorseful, and cooperated with police and he takes full responsibility of his actions. He has

already served a substantial period in remand. These special reasons render an immediate imprisonment term inappropriate.

17. I am sure that the accused person have a bright future ahead of him hence an imprisonment term will not augur well for him. In view of the above, this court has taken into account rehabilitation over and above imprisonment. The accused person was remanded in custody for nearly two years which serves as a reminder for the accused person that such activities do not end with a good result.
18. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that a suspended sentence is just in all the circumstances of this case.
19. In summary the accused persons is sentenced to 1 month and 5 days imprisonment for one count of Robbery which is suspended for the next 12 months.
20. The effect of the suspended sentence is explained to the accused person.
21. 30 days to appeal to the Court of Appeal.

  
.....  
**Sekonaia V. Vodokisolomone**  
**Acting Puisne Judge**



**At Lautoka**  
**24<sup>th</sup> Day of May, 2024**