

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 11 OF 2024

STATE

V

IOWANE RASOATA

Counsel : Mr. J. Nasa for the State.
Ms. A. Sharma and Ms. N. Naikawakawavesi for
the Accused.

Date of Submissions : 27 November, 2024
Date of Sentence : 28 November, 2024

SENTENCE

(The name of the victim is suppressed she will be referred to as "R")

1. The accused is charged by virtue of the following information filed by the office of the Director of Public Prosecutions dated 15th February, 2024:

COUNT ONE

Statement of Offence

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

Particulars of Offence

IOWANE RASOATA, on the 3rd day of January, 2024 at Lautoka, in the Western Division, robbed one "R" of 1 x Samsung Ultra Plus Phone, \$580.00 cash, 1 x ANZ ATM Card and 1 x Yellow Crown Gas Taxi, the property of "R" and at the time of such robbery was armed with a kitchen knife.

COUNT TWO

Statement of Offence

WRONGFUL CONFINEMENT: Contrary to section 286 of the Crimes Act 2009.

Particulars of Offence

IOWANE RASOATA, on the 3rd day of January 2024 at Lautoka, in the Western Division, wrongfully confined "R".

COUNT THREE

Statement of Offence

ATTEMPTED RAPE: Contrary to section 208 of the Crimes Act 2009.

Particulars of Offence

IOWANE RASOATA, on the 3rd day of January 2024 at Lautoka, in the Western Division, attempted to have carnal knowledge of “R”, without her consent.

2. On 4th November, 2024, the accused pleaded guilty to all the above counts in the presence of his counsel. On this day the matter was scheduled for trial proper.
3. The next day (5th November) the accused person in the presence of his counsel admitted the summary of facts read and explained to him in his preferred Itaukei language.
4. The brief summary of facts was as follows:
 - a) On 3rd January, 2024 at around 3.45 pm, the accused boarded the taxi of the victim from Vakabale Taxi Base, Lautoka City. He requested to be taken to the court house and then to Lomolomo.
 - b) Upon reaching the court house, the accused got off and advised the victim to wait. Shortly after, the accused returned and informed her to go to Lomolomo, however, before they reached Lomolomo the accused advised the victim to go to Vuda as his wife and son were there. Upon reaching Vuda, the accused got off the taxi and looked around the seaside.
 - c) After a while, the accused returned and informed the victim that his wife and son were on the other side. The victim drove the accused towards Lomolomo beach. At Lomolomo beach the accused got off the car and walked towards the mangrove swamp. When the

accused returned he told the victim that his wife and son were coming. The victim got off the taxi and was standing outside when the accused approached her with a kitchen knife in his hand.

- d) The accused threatened the victim with the knife and told her to be quiet and not react. The accused then took the car keys from the victim, rolled up the window and turned on the ignition. He then asked the victim for money, out of fear the victim gave what she had. Thereafter, the accused took the victim towards the mangrove swamp and tied her hands, and also covered her mouth with a white bandage.
- e) Thereafter, the accused stripped her clothes and made her lay on it. He then took her hand bag and took her pouch and coin bags which contained all her money. He also took her ANZ bank card. The total amount of money the accused took was \$580.00. While the victim was confined and tied up, the accused forcefully removed her panty and separated her legs. Thereafter the accused removed his pants and underwear, he then tried to penetrate the victim's vagina with his penis but could not, because he was not able to get an erection.
- f) Finally, the accused fled the scene by driving the victim's taxi. He also took with him the victim's belongings which included her Samsung ultra plus phone, cash in the sum of \$580.00 and her ANZ ATM card. After some struggle the victim was able to free herself and seek help, she reported the matter to the police.
- g) The same afternoon after 5.00 pm, the victim's taxi was found abandoned at Korovuto, Nadi. During the police investigation the accused was arrested, caution interviewed and charged for one

count of aggravated robbery, one count of wrongful confinement and one count of attempted rape.

5. After considering the summary of facts read by the state counsel which was admitted by the accused (after it was explained in the Itaukei language) this court was satisfied that the accused had entered an unequivocal plea of guilty on his freewill.
6. This court was also satisfied that the accused had fully understood the nature of the charges and the consequences of pleading guilty. Furthermore, the summary of facts satisfied all the elements of the offences of aggravated robbery, wrongful confinement and attempted rape.
7. In view of the above, this court found the accused guilty as charged and he was convicted accordingly. The state counsel filed sentence submissions, victim impact statement and the defence counsel filed mitigation submissions for which this court is grateful.
8. The counsel for the accused presented the following mitigation:
 - a) The accused is 32 years old;
 - b) Is in a defacto relationship;
 - c) Worked as a delivery boy and was earning \$260.00 per week;
 - d) Takes responsibility for his actions;
 - e) He accepts his wrong doing;
 - f) Pleaded guilty;
 - g) Full recovery of stolen items;
 - h) Is remorseful and seeks forgiveness;
 - i) Seeks leniency of the court;
 - j) Regrets what he has done;

- k) Promises not to reoffend.

TARIFF

9. The maximum penalty for the offence of aggravated robbery is 20 years imprisonment. The acceptable tariff for the offence of aggravated robbery against public service providers such as taxi, bus and van drivers is from 4 years to 10 years imprisonment (*see Usa vs. State, Criminal Appeal AAU 81 of 2016 (15 May, 2020)*).
10. This court also takes cognizance of the Court of Appeal decision in *Peni Matairavula vs. The State, [2023] FJCA 192, AAU 054 of 2018 (28 September, 2023)* which has provided guidance in regards to the appropriate sentence in aggravated robbery offences on public service providers based on:
 - a) The degree of the offender's culpability; and
 - b) The level of harm suffered by the victim.
11. In *Matairavula's* case (*supra*) the Court of Appeal formulated a table which outlined the three different categories of sentencing into high, medium and low. This court is guided by the observations made by the Court of Appeal at paragraph 17 as follows:

*[17] As suggested by the Supreme Court in **Tawake** if one were to replicate sentencing methodology therein mutatis mutandis to offences of aggravated robbery against providers of services of public nature, the recalibrated sentencing table maintaining the relative differences in sentencing between the three categories (high, medium and low) while adjusting the starting points within the range of 04 to 10 years may be seen as follows.*

<i>Culpability</i> <i>Harm</i>	<i>ROBBERY (OFFENDER ALONE AND WITHOUT A WEAPON)</i>	<i>AGGRAVATED ROBBERY (OFFENDER <u>EITHER</u> WITH ANOTHER <u>OR</u> WITH A WEAPON)</i>	<i>AGGRAVATED ROBBERY (OFFENDER WITH ANOTHER <u>AND</u> WITH A WEAPON)</i>
<i>HIGH (CATEGORY 1)</i>	<i>Starting Point: 06 years Sentencing Range: 04–08 years</i>	<i>Starting Point: 08 years Sentencing Range: 06–10 years</i>	<i>Starting Point: 10 years Sentencing Range: 08–14 years</i>
<i>MEDIUM (CATEGORY 2)</i>	<i>Starting Point: 04 years Sentencing Range: 02–06 years</i>	<i>Starting Point: 06 years Sentencing Range: 04–08 years</i>	<i>Starting Point: 08 years Sentencing Range: 06–10 years</i>
<i>LOW (CATEGORY 3)</i>	<i>Starting Point: 02 years Sentencing Range: 01year – 03 years</i>	<i>Starting Point: 04 years Sentencing Range: 02–06 years</i>	<i>Starting Point: 06 years Sentencing Range: 04–08 years</i>

12. Taking into consideration the accused culpability and the level of harm caused to the victim, the offending in this case should come within medium harm category which is a sentence between 4 to 8 years imprisonment.
13. The maximum penalty for the offence of wrongful confinement is an imprisonment term of 5 years or a fine of \$1,000.00 or both. The maximum penalty for the offence of attempted rape is 10 years imprisonment.

AGGRAVATING FACTORS

14. The following aggravating factors are obvious:

(a) Planning

There is a high degree of planning involved the accused was lying to the victim that he was a looking for his wife and son taking the victim from one place to another until he was sure that the victim was in a secluded place.

(b) Victim was unsuspecting and vulnerable

The victim was lured into believing that she was hired to undertake a genuine public service work. The accused was bold, daring and undeterred in what he did. The accused knew the victim was defenceless, vulnerable and unsuspecting, he took advantage of the situation.

(c) Breach of Trust

The victim was carrying on her usual public service duty in driving the accused from Lautoka City to the court house and then to Vuda and Lomolomo as requested. The accused grossly breached the trust of the victim by his actions.

(d) Prevalence of the offence

This type of offending has become very prevalent nowadays offenders are preying on innocent public service providers for easy money. Moreover, the accused left the victim (naked) in an isolated surrounding without any regard for her life and safety.

(e) Victim Impact Statement

According to the victim impact statement the victim has suffered psychological and emotional harm as follows:

- a) After the incidents the victim could not concentrate in her work as a public service provider;
- b) Had many sleepless nights;
- c) Her life changed after the incidents;
- d) Still carries the trauma of what the accused had done;
- e) Has lost trust in male passengers.

DETERMINATION

15. Section 17 of the Sentencing and Penalties Act states:

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

16. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence for all the three counts.
17. Considering the objective seriousness of the offences committed I select 4 years imprisonment (lower range of the tariff) as the starting point of the aggregate sentence. The sentence is increased for the aggravating factors by 4 years. The interim sentence is now 8 years imprisonment. The sentence is reduced for mitigation and good character of the accused by 1 ½ years which is now 6 ½ years imprisonment.

GUILTY PLEA

18. The accused pleaded guilty on the day of the trial. In *Gordon Aitcheson vs. The State*, criminal petition no. CAV 0012 of 2018 (2 November, 2018) the Supreme Court offered the following guidance at paragraphs 14 and 15 in regards to the weight of a guilty plea as follows:

[14]. In ***Rainima -v- The State*** [2015] FJCA 17; AAU 22 of 2012 (27 February 2015) Madigan JA observed:

“Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the “high water mark” of discount is one third for a plea willingly made at the earliest opportunity. This court now adopts that principle to be valid and to be applied in all future proceeding at first instance.”

In ***Mataunitoga -v- The State*** [2015] FJCA 70; AAU125 of 2013 (28th May 2015) Goundar JA adopted a similar but more flexible approach to this issue:

“In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effect of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment.”

[15]. The principle in ***Rainima*** must be considered with more flexibility as ***Mataunitoga*** indicates. The overall gravity of the offence, and the

need for the hardening of hearts for prevalence, may shorten the discount to be given. A careful appraisal of all factors as Goundar J has cautioned is the correct approach. The one third discount approach may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.

19. This court accepts that genuine remorse leading to a guilty plea is a substantive mitigating factor in favour of an accused, however, the guilty plea must be entered in the true spirit of remorse since genuine remorse can reduce the harshness in the final sentence (*see Manoj Khera v The State, CAV 0003 of 2016 (1 April, 2016)*).
20. This court does not accept that the accused has shown genuine remorse when he pleaded guilty. My observation is that the accused only pleaded guilty after he knew the prosecution was ready with its witnesses. Nevertheless, by pleading guilty the accused prevented the victim from reliving her experience in court which is a factor to the credit of the accused.
21. Genuine remorse is about genuinely feeling sorry for what a person has done, accepting guilt because of strong evidence and proof of the offender's deeds and then pleading guilty is not genuine remorse (*see Gordon Aitcheson's case supra*). In this regard, the sentencing court has a responsibility to assess the guilty plea along with other pertinent factors such as the timing of the plea, the strength of the prosecution case etc. There is no doubt the timing of the guilty plea is not at the earliest opportunity. In my considered judgment the accused by pleading guilty has shown some remorse as opposed to genuine remorse in view of the strong prosecution case against them.

22. In this respect the sentence is further reduced by 6 months. The head sentence for the accused is now 6 years imprisonment.
23. From the court file it is noted that the accused has been in remand for 10 months and 18 days which is deducted as a term of imprisonment already served. The final aggregate sentence for the accused is now 5 years, 1 month and 12 days imprisonment.
24. This court is satisfied that the term of 5 years, 1 month and 12 days imprisonment does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each offence.
25. The offences committed are serious which shows blatant disregard for public service providers. The accused had carefully planned a scheme to lure the victim into thinking that it was a genuine service to drop the accused at his destination. The accused lied to the victim and got her to drive her taxi to a secluded place where he committed the offences on a defenceless and vulnerable person. A long term imprisonment is therefore inevitable.
26. Mr. Rasoata you are a heartless person who has no regard for anyone. You have committed these offences in broad day light leaving the victim in the middle of nowhere. Public service providers play an important role in the transport sector for all those who do not have their own transport. It is people like you who give a bad name to the genuine and unpretentious commuters in need of such a service. You had carefully planned what you wanted to do to the extent that you had hidden a kitchen knife which you later used to instill fear on the victim.

27. 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. A non-parole period too close to the final sentence will not be justified for this reason.

28. In this regard I have taken into consideration the principle stated by the Court of Appeal in *Paula Tora v The State* AAU0063.2011 (27 February 2015) at paragraph 2 Calanchini P (as he was) said:

[2] The purpose of fixing the non-parole term is to fix the minimum term that the Appellant is required to serve before being eligible for any early release. Although there is no indication in section 18 of the Sentencing and Penalties Decree 2009 as to what matters should be considered when fixing the non-parole period, it is my view that the purposes of sentencing set out in section 4(1) should be considered with particular reference to re-habilitation on the one hand and deterrence on the other. As a result the non-parole term should not be so close to the head sentence as to deny or discourage the possibility of re-habilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent. It must also be recalled that the current practice of the Corrections Department, in the absence of a parole board, is to calculate the one third remission that a prisoner may be entitled to under section 27 (2) of the Corrections Service Act 2006 on the balance of the head sentence after the non-parole term has been served.

29. The Supreme Court in accepting the above principle in *Akuila Navuda v The State* [2023] FJSC 45; CAV0013.2022 (26 October 2023)] stated the following:

Neither the legislature nor the courts have said otherwise since then despite the scrutiny to which the non-parole period has been subjected. The principle that the gap between the non-parole period and the head sentence must be a meaningful one is obviously right. Otherwise there will be little incentive for prisoners to behave themselves in prison, and the advantages of incentivising good behaviour in prison by the granting of remission will be lost. The difference of only one year in this case was insufficient. I would increase the difference to two years. I would therefore reduce the non-parole period in this case to 12 years.

30. Considering the above, I impose 4 years and 1 month imprisonment as a non-parole period to be served before the accused is 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.
31. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim compels me to state that 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.
32. In summary this court imposes an aggregate sentence of 5 years, 1 month and 12 days imprisonment with a non-parole period 4 years and 1 month to be served before the accused is eligible for parole.

33. 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge



At Lautoka

28 November, 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.