

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. HAC 17 of 2020

STATE

V

SIMELI BIAU

Counsels : Ms. Swastika for the State
: Mr. Singh of LAC for the Accused

Date of Submissions : 27th June, 2025
Date of Sentence : 30th June, 2025

SENTENCE

BACKGROUND

1. The accused person was charged with others by virtue of the following amended information filed by the Director of Public Prosecutions dated 23rd of April 2025.

Statement of offence

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

Particulars of Offence

SIMELI BIAU and others on the 05th day of January 2020, at Lautoka in the Western Division, stole 3x 22ct gold chain, 3x pair 22ct gold earring, 1x 22ct baby bangle, 1x 22ct single gold bangle, 2x 9ct gold ring, 2x 22ct cross locket,

1x laptop, 1x black amazon fire tablet with magnetic case, 1x rip curl watch, 1x car key and assorted cards property of being the property of FERROZA BI AHMED.

2. The information on the above one count of aggravated robbery was put to the accused and he pleaded not guilty to the same on his own free will. Thereafter, the matter against accused proceeded for pre-trial conference and finally a trial date was fixed. The trial commenced of the trial date, later the accused was found guilty at end of the trial and both counsels confirmed relying on the court record.
3. The following facts proven during the trial of this case:
 - a. That the accused with others broke and entered into the house of the complainant and stole assorted gold jewelries, laptop and other items.
 - b. The accused with others entered through the house by forcefully opening the window grills and removing louvre blades.
 - c. The accused with others entered into the bedroom of the complainant and told her not to move but continue to face the wall.
 - d. The accused with others search the inside of the house and in the process opened a drawer of the wardrobe belonging to the complainant and found the tray of jewelries.
 - e. All the jewelries and a laptop were removed and taken away by the accused and others.
 - f. The accused with others than shared the stolen items between the other two accused and the accused.
 - g. The matter was reported to Lautoka Police Station. The accused and others were identified and the accused was caution interviewed by police which he has admitted to the offending.

Mitigation

4. The learned counsel for the accused presented the following mitigation and personal details:
 - a. The accused is a known offender.
 - b. He is 52 years of age and a widower.

- c. He is employed as a Packer/loader at Fiji Sugar Cooperation earning \$150.00 weekly.
- d. He is currently looking after his youngest daughter aged 16 years.
- e. He seeks forgiveness of the court and promises not to reoffend.
- f. He is remorseful of his actions and is willing to rehabilitate himself.
- g. He promises not to reoffend.

TARIFF

- 5. The maximum penalty of the offence of Aggravated Robbery is 20 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;
 - a) The degree of the offender's culpability; and
 - b) The level of harm suffered by the victim.
- 6. I am mindful that this case has a different set of facts compared to the case of *Tawake* (supra) and for this reason I am unable to strictly follow the tariff in *Tawake's* case. The facts in *Tawake's* case was of street mugging and this is a case of home invasion for which the tariff in *Wise* case (supra) applies (8-16 years).
- 7. I do get some comfort in saying that the final sentence can be higher or lesser than the accepted tariff depending upon the aggravating and mitigating factors, the nature and circumstances of the offending. I note in this case there were no weapons used and there was no violence on the victims.

AGGRAVATING FACTORS

- 8. After assessing the objective seriousness of the offences committed I take 8 years imprisonment (lower end of the scale) as the starting point of the sentence. The sentence is increased for the aggravating factors, however, it is reduced for mitigation.

9. The accused is a known offender who has similar previous conviction hence he pleaded not guilty which has led the court to proceed to trial in this matter.
10. I also note from the court file that the accused was remanded for 2 years and 1 month, in accordance with section 24 of the Sentencing and Penalties Act and in exercise of my discretion the sentence is reduced by 2 years and 1 month as a period of imprisonment already served.
11. The accused counsel is asking for a partial suspended sentence unfortunately home invasion is a very serious crime. The high tariff for such an offending warrants a custodial sentence. The courts in this country cannot turn a blind eye to such an offending. People should enjoy peace and harmony within the confines of their homes hence this is the reason why a high tariff has been set for such an offending. The final sentence is 5 years and 11 months imprisonment.
12. The final sentence is below the tariff because the accused had cooperated with the police by admitting to the offence in his caution statement, none of the victims were hurt and the accused was not in possession of any weapons.
13. In my considered view after weighing the above factors favor the accused and the fact that he is a known with numerous similar previous conviction a custodial term is inevitable.
14. Having considered section 4(1) of the Sentencing and Penalties Act and the serious nature of the offences committed 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.

15. Under section 18 (1) of the Sentencing and Penalties Act (as amended 27) 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.
16. 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.

17. 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 incentivizing good behavior 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.

18. Considering the above, I impose 4 years 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.
19. Mr. Biau you cannot be forgiven for what you have done there is no short cut you must earn with your hard work. What you did was a daring night time robbery after much planning. Greed for money has taken you away from your family, you should be ready to face the consequences of your deeds. You should be ashamed of yourself.
20. This court will be failing in its duty if a custodial sentence is not imposed. No amount of regret or repentance will save you from a custodial sentence.

Conclusion

21. In summary I impose a sentence of 5 years and 11 months imprisonment for one count of aggravated robbery with a non-parole period of 4 years to be served before the accused is eligible for parole.
22. 30 days to appeal to the Court of Appeal.

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Sekonaia V. Vodokisolomone
Acting Judge



At Lautoka
23 May, 2025

Solicitors

For the State: Office of the Director of Public Prosecutions

For the Accused: Office of Legal Aid Commission