

**STATE v KOSENI SASAU AND SEMETI RAVAI (HAC0111 of 2009S)**

HIGH COURT — CRIMINAL JURISDICTION

5 MADIGAN J

22, 23, 27, 28 August 2012

10 **Criminal Law — sentencing — abduction — victim forced into car against his will — appropriate tariff — minimal violence — aggravating features — Crimes Decree — Penal Code s 251.**

The accused were convicted of one offence of abduction contrary to section 251 of the Penal Code, Chapter 17. The accused went to the victim's home and forced him into a car before driving off, ostensibly to their workplace to air a grievance before their employer.

15 **Held –**

(1) As the maximum penalty for this offence is seven years, both under the Penal Code and under the Crimes Decree 2009, an appropriate tariff for the offence would be between 18 months to four years, depending on violence, length of detention, use of weapons and so on.

20 *Sanoko* [2009] FJHC 91, considered.*Sadrugu* HAC116 of 2001, overruled.

25 (2) In the circumstances, especially as the accused sought to take the law in their own hands, the starting point is two years' imprisonment. There are no mitigating features that would permit a discount. The aggravating features are that the victim was taken away from his family on an important day of religious celebration, and that he was overpowered by two large men acting in concert. Those features enhance the sentence by 12 months, making the final sentence to be served by each accused to be three years.

Accused sentenced to three years' imprisonment with 28 month non-parole period.

**Case referred to**30 *R v Spence and Thomas* (1983) 5 Cr App Rep (s) 413, considered.*A. Lomani* for the State.*L. Lagilevu* for both the Accused.35 [1] **Madigan J.** Both of these accused have been convicted after trial of one offence of abduction contrary to s 251 of the Penal Code, Cap 17, Laws of Fiji.

40 [2] The facts of the case revealed at trial were that on the 17th October, 2009 at Nausori, both of these accused ('the accused') drove a company vehicle to the home of a former workmate, Sukul, the victim in this case. There was at the time a dispute within the company where all three worked (that is the accused and the victim) as to the use of \$500 which had been misappropriated. It was the intention of the accused to confront Sukul with the allegation that he had stolen the money and was unfairly implicating the two accused in its use. At his home the accused took the victim downstairs to their vehicle and against his will forced  
45 him into the car before driving off, ostensibly to their workplace to air their grievance before the 'boss.'

[3] At the trial the accused ran a defence of lawful citizens arrest for larceny from servant; a defence neither the assessors nor the Court accepted.

50 [4] The maximum penalty for abduction is seven years' imprisonment. There has been no tariff set in this jurisdiction for the offence. Thurairaja J purported to set the tariff at six months to 18 months in the case of *Sadrugu* HAC116 of 2001,

where the learned Judge said that that tariff has been set in *Sanoko* [2009] FJHC91. This is incorrect. *Sanoko* did not set such a tariff.

5 [5] Sentencing for abduction has been discussed by the English Court of Appeal in *Spence and Thomas* 5 Cr App R(S) 413 where the Court said that a top end of a sentencing range should be reserved for cases where the victim is taken hostage or a ransom has been demanded, and at the maximum if undue violence or firearms are used. The bottom end of the tariff can be appropriate in cases of family disputes or lovers' tiffs.

10 [6] As the maximum penalty for this offence is seven years both under the Penal Code and under the Crimes Decree 2009, an appropriate tariff for the offence would be between 18 months to four years, depending on violence, length of detention, use of weapons, etc.

15 [7] The violence used in the present case was minimal – the victim was taken by way of deceitful excuses and a slap and a push. The aggravating features pertaining to this particular case are that the victim was taken away from his family on an important day of religious celebration (Diwali), and that he being a small Indo-Fijian was overpowered by two large Itaukei men acting in concert.

20 [8] Each of the accused is a married family man supporting children. They both have minor criminal records which afford them no credit for previous good behavior. They have shown no remorse before this Court and were using the abduction in a way to enforce a debt.

25 [9] In the circumstances, especially as they sought to take the law into their own hands, I take a starting point of two years imprisonment. There are no mitigating features that would permit me to discount that starting point, however the aggravating features already alluded to would enhance the sentence by 12 months, making a final sentence to be served by each accused to be one of three years.

30 [10] Each accused will serve a minimum term of 28 months imprisonment before being eligible for parole.

[11] They have 30 days to apply for leave to appeal this sentence.

*Sentence imposed.*

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