

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 210 - 2019

STATE

-v-

JALE TAGI

JITENDRA PRASAD

Before : RM Fotofili L.
For The Prosecution : Inspector Lenaitasi S. [Police Prosecution]
For The Defendants : Ms Tavaiqia L. [Legal Aid Commission]
Date of Sentence : 17th December 2019

SENTENCE

1. **JALE TAGI** and **JITENDRA PRASAD**, both of you have pleaded guilty to the following charge :

Statement of Offence

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

Particulars of Offence

JALE TAGI and **JITENDRA PRASAD** on the 27th day of August 2019 at Lubulubu, Tavua in the Western Division dishonestly appropriated (stole) two billy goats valued at \$800, one Nanny goat valued at \$400 and two kids valued \$300 all to the total value of \$1,500 the property of **SUMAN LATA** with the intention of permanently depriving the said **SUMAN LATA** of her property.

2. Both your plea and admission in court and the evidence tendered, supports your guilty pleas. I am satisfied that both of you understand the consequence of your plea.

3. I find both of you guilty and convict both of you of the charge.
4. Both of you are related and are brother in laws. The goats were tied and were gated inside the victim's land. Both of you came in a rental vehicle. Without informing and without the consent of the owner, both of you loaded the goats into the vehicle. You took the goats to Nasinu where you slaughtered 2 Billy goats and the Nanny goat. You sold all the meat. You both later sold the two kid goats at Viria, Nausori.
5. The theft was not isolated and police received several complaints in this jurisdiction or division about theft of farm animals. During the course of police investigation, both of you were arrested and interviewed under caution.
6. Jale Tagi, in your interview with police, you voluntarily admitted that you have been cutting cane at Lubulubu, Tavua since 2016. You took the 5 goats from Lubulubu and they belong to your boss who you cut cane for. You descried that you went with another in a rental vehicle. The other person paid for the rental. You knew that the purpose was to steal a goat. You stopped about 50 meters away from the owner's house. You and the other went to the back of the house where the goats were. The goats were inside a fence. You brought 5 goats from there and loaded them in the car. 3 of the 5 goats were slaughtered. After the goats were sold, you received \$200.
7. Jitendra Prasad, in your interview with police, you voluntarily admitted that you went to Lubulubu with another. You both went in a rental vehicle. You were the driver. You said that your wife was waiting in the vehicle. You stole 5 goats. 3 have been slaughtered and the meat sold. You received \$450 as a result of selling the meat. 2 goats have been recovered by police but before that you had sold the 2 goats for \$100 each.
8. I have already ordered for the return of the 2 goats to the owner Suman Lata pursuant to section 155 (1) (c) of the **Criminal Procedure Act 2009** and that was done on the 13th of September 2019.
9. Although the order has been given for the goats to be returned to Suman Lata, this does not prevent any bonafide 3rd party buyer from pursuing any civil action against the defendants.
10. The 1st defendant Jale Tagi is not a first offender. Notably he has 2 previous convictions for theft in 2012, 2 previous convictions for burglary in 2012, 1 conviction for theft or larceny in 2011 and another for burglary in that same year and another larceny conviction in 2009.
11. I do not consider any of these previous conviction as spent and I will not treat the 1st defendant as a first offender.

12. The 2nd defendant Jitendra Prasad is a first offender.
13. The defendants have been in remand since they appeared before me for the first time on the 13th of September 2019.
14. I calculate that they would have spent 3 months and 4 days in remand so far.
15. I denied them bail as I was satisfied that the prosecution had a strong case against the defendants and that there was a series of similar offending not only in Tavua but in Ba and in Rakiraki which the defendants will have to be processed for.
16. I will not consider any time spent in remand by the defendants as time served. They had to be remanded.
17. The 1st defendant Jale Tagi is 32 years old. He is married with 2 children both of whom are under 11 years old. He is the sole breadwinner. He apologizes for what he has done and he explains that he needed money.
18. The 2nd defendant Jitendra Prasad is 43 years old. He has 2 children both of whom are under 11 years old. He says that he is a single parent. He is remorseful and promises not to reoffend. His time in remand has allowed him to reflect a lot on what he has done. He aims to be a better role model. He was financially desperate at the time of committing the offence.

MAXIMUM SENTENCE

19. The maximum punishment for theft is up to 10 years imprisonment.

SENTENCING RANGE or SENTENCING TARIFF

20. The sentencing tariff for theft is as follows [Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012)] :

(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.

STARTING POINT

21. Based on the objective seriousness of the offence, I select a starting point of 6 months imprisonment for both of you.

AGGRAVATING FEATURES

22. I am unsure who was leading this enterprise. The evidence suggests that both of the defendants were equally culpable. None of the defendants will have their sentence increased for being the principal offender.
23. However, for the 1st defendant Jale Tagi, he stole from his boss. This was a breach of trust. I am sure that his knowledge of the area and his boss was crucial to the offence being carried out.
24. The 2nd defendant is the entrepreneurial one of the two. He sold the meat and the goats. He arranged for the rental vehicle.
25. The theft was planned.
26. It was committed by the two of you.
27. The meat and goats were sold.
28. In agricultural communities such as Tavua, farmers, their farms, farm equipment and farm animals are particularly vulnerable to sabotage and theft. Farms are usually unfenced and farm animals are usually in the open and not in farm houses, barns or stables. The goats in this case were of no exception.
29. I increase both your sentence to 15 months imprisonment.

MITIGATION

30. Both of you have cooperated with police which I have no doubt, resulted in at least 2 kid goats being recovered.
31. I accept that both of you are remorseful.
32. You both have family to support.
33. The 2nd defendant is a first offender.
34. I reduce the 1st defendant Jale Tagi's sentence to 10 months imprisonment.
35. I reduce the 2nd defendant Jitendra Prasad's sentence to 9 months imprisonment.

GUILTY PLEA

36. Both of you have pleaded guilty early.
37. The 1st defendant Jale Tagi's sentence is reduced to 6 months and 14 days imprisonment.
38. The 2nd defendant Jitendra Prasad's sentence is reduced to 6 months imprisonment.

FINAL SENTENCE

39. Both your sentence is aimed at deterrence and is to punish you adequately.
40. As I have explained, I will not consider any time spent in remand as time served and so no further reduction will be made to your sentences.

1st Defendant Jale Tagi

41. The 1st defendant Jale Tagi is sentenced to 6 months and 14 days imprisonment.
42. I refuse to suspend your sentence either in part or in whole.
43. You will serve your sentence immediately.

2nd Defendant Jitendra Prasad

44. The 2nd defendant Jitendra Prasad is sentenced to 6 months imprisonment.
45. Although you are a first offender, the circumstance of the offence certainly calls for a deterrent sentence. I am also not inclined to suspend your sentence whether in part or in whole.
46. You will serve your 6 months imprisonment term immediately.
47. 28 days to appeal to the High Court if there is any dissatisfaction with the sentence.



A handwritten signature in blue ink, appearing to read 'Lisiate T.V. Fotofili', is written above a dotted line.

Lisiate T.V. Fotofili

Resident Magistrate

Dated at TAVUA this 17th day of December, 2019