

IN THE MAGISTRATES' COURT OF FIJI  
AT BA  
[CRIMINAL JURISDICTION]

Criminal Case No: 223/25

STATE

v.

TARUN KUMAR

For Prosecution: WPC [5006] PM. Ratucove  
For Accused: Appearing with Mr. Baranisavu  
Plea: 11/11/2025  
Conviction: 18/12/2025  
Sentence: 18/12/2025

SENTENCE

A. Background

1. TARUN KUMAR [hereinafter referred to as 'the Accused'] you are to be sentenced following your plea of Guilty on 11/11/2025 to the offences of **Burglary** (Count 1) pursuant to *Section 312 (1) of the Crimes Act of 2009*, **Damaging Property** (Count 2) pursuant to *Section 369 (1) of the Crimes Act of 2009* and a **Breach of Order Suspending Sentence** (Count 3) pursuant to *Section 28 (1) of the Sentencing and Penalties Act 2009*.
2. The particulars of the offences place you on 4/6/2025 around midnight at Ba Town in the Western Division where you entered as a trespasser into the dwelling building of the Bank of the South Pacific (BSP) with intent to commit theft and while there you willfully and unlawfully damaged 2 x 13.8mm fixed glass window valued at \$6, 160.00 the property of BSP. Consequently, in the committal of the offences under Count 1 and Count 2 you breached an order suspending your sentence in CF 294/20 wherein your suspended term was still operational and for which would meet an imprisonment term.
3. You first appeared before Court on 11/6/2025 and following your rights being put and informed to you, you were then bailed.
4. With the assistance of Counsel on 11/11/2025 your plea to the charge was taken in your preferred language of Hindi to which you pleaded Guilty on your own free will and understanding the

repercussions of your guilty plea. The SOF was then read to you by the Prosecutor, you were explained the SOF in your preferred language – understood it and admitted to the same. The Prosecution as part of their evidence then tendered into Court the following:

- (i) Caution Interview, (ii) Photo Booklet, (iii) Search List, (iv) Quotation of the damages and (v) PCs
5. Your counsel sought time to file your mitigation submission of which a timeframe was provided by the Court and complied with by counsel in its filing on 2/12/2025. The matter was then after adjourned to today for Sentencing.
  6. In the reviewing of the Charge, the Summary of Facts as well as the taking of your plea - I am satisfied with the accused guilty plea to the charged to be unequivocal for Count 1 and Count 2 and his admission to the Summary of Facts in support of the charge for Count 1 and Count 2, I therefore find the accused guilty as charged and I convict him accordingly for Count 1 and Count 2.
  7. Count 3 on the charge however is where the Court reserves the finding of guilt of the accused as well as his conviction for the mere reason that the accused PCs tendered by the Prosecution via the Criminal Records Office reflect the suspended term to stem from a CF 294/20 for a conviction of ACABH of which the accused was sentenced on 2/12/2020 from the Ba Magistrates Court to a term of 8 months imprisonment suspended for a term of 3 years. Therein lies the cause of this Courts reservation, the operational term was for 3 years from 2/12/2020 thus that would have ceased in its operation on 2/12/2023 making it improper to enter a finding of guilt on Count 3 where the offences committed was done so in June 2025 (2 years post completion of the operational period). Therefore, this Court will not accept your plea of guilty for Count 3 on account of the summary of facts not being in support of the charge and thus acquits you of Count 3<sup>1</sup>.
  8. Now to proceed with the accused sentence for Count 1 and Count 2.

**B. Statutory Penalty and Sentencing Tariff**

9. The maximum sentence for **Burglary** is 13 years imprisonment.
10. In **Kumar and Vakatawa, Criminal Appeals No: AAU 33 of 2018 & AAU 117 of 2019**, the full bench of the Court of Appeal clearly set outs the new tariff for Burglary and Aggravated Burglary. The tariff for **Burglary**, the sentence at the lower range will range between 6 months and 3 years imprisonment. The starting point for the lower end will be 1 year. **For the medium range, the sentence will range between 1 year and 5 years imprisonment. The starting point for the medium range will be 3 years imprisonment.** For the *higher end*, the sentence will range between 3 years and 8 years imprisonment. The starting point for the higher end will be 5 years imprisonment.

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<sup>1</sup> State v Driti – Sentence [2024] FJHC 711; HAC069.2024

**Determining the offence category**

The court should determine the offence category among 01-03 using inter alia the factors given in the table below:

- Category 1 - Greater harm (High)
- Category 2 - Between greater harm & lesser harm (Medium)
- Category 3 - Lesser harm (Low)

<i>Factors indicating greater harm</i>
Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)
Soiling, ransacking or vandalism of property
Restraint, detention or gratuitous degradation of the victim, which is greater than is necessary to succeed in the burglary. Occupier or victim at home or on the premises (or returns home) while offender present
Significant physical or psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary.
Violence used or threatened against victim, particularly the deadly nature of the weapon
Context of general public disorder
<i>Factors indicating lesser harm</i>
Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal). No physical or psychological injury or other significant trauma to the victim
Limited damage or disturbance to property. No violence used or threatened and a weapon is not produced

11. [76] Once the level of harm has been identified, 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 plead guilty or not guilty and irrespective of previous convictions. A case of particular gravity, reflected by multiple features of harm, could merit upward adjustment from the starting point before further adjustment for level of culpability and aggravating or mitigating features.

LEVEL OF HARM (CATEGORY)	BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED BURGLARY (OFFENDER EITHER WITH ANOTHER OR WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER AND WITH A WEAPON)
HIGH	Starting Point: 05 years Sentencing Range: 03-08 years	Starting Point: 07 years Sentencing Range: 05-10 years	Starting Point: 09 years Sentencing Range: 08-12 years
MEDIUM	Starting Point: 03 years Sentencing Range: 01-05 years	Starting Point: 05 years Sentencing Range: 03-08 years	Starting Point: 07 years Sentencing Range: 05-10 years
LOW	Starting Point: 01 year Sentencing Range: 06 months - 03 years	Starting Point: 03 years Sentencing Range: 01-05 years	Starting Point: 05 years Sentencing Range: 03-08 years

12. The maximum penalty of **Damaging Property** under the Crimes Act 2009 is 2 years imprisonment.

13. The tariff for Damaging Property is between 3-12 months' imprisonment (State v Baleinabodua [2012] FJHC 981; HAC145.2010 (21 March 2012)).

**Aggravating and Mitigating Factors**

14. The aggravating factors are:
- *Frequent prevalence of these offences in our society today*
  - *You trespassed into a premises of a business/a commercial establishment (a leading banking institution) in the early hours of the morning, thereby paying complete disregard to the property rights of the establishment*
  - *I find some degree of pre-planning on account of you committing the offences in the early hours of the morning conveniently after you finished your visit to Mamas Grog Shop located next to BSP (upstairs)*

- *The value of the damage to the Bank front glass is substantial at \$6, 160.00 as per the charge however the quotation provided as evidence by the Prosecution for the total works including hoarding (temporary solid barrier of wood or metal penal) with dismantling and installation is \$6, 885.00 VIP*

15. The mitigating factors are:

- *Remorse*
- *Corporation with the police during the investigation*

16. The accused is not a first offender, he has an adverse record against him from 2020 thus the Court will not consider him to be of good character.

17. The accused has offered an early guilty plea as such the Court will accord the full 1/3 discount to the accused towards his sentence.

### **C. Sentence**

18. In sentencing the Accused, the Court takes into account the factors outlined in Section 4 (1) (2) of the Sentencing and Penalties Act 2009.

19. The Court will impose an aggregate punishment for Count 1 and Count 2 pursuant to Section 17 of the Sentencing and Penalties Act 2009 in light of the offending in each count arising from one transaction.

20. I have considered the Summary of Facts and find that **your offending falls within the medium level of harm category** in light of there being damages/vandalism (breaking of glass) to the property and the use of 2x "Accused fist size" stones as a weapon which are indicators of greater harm but those factors are also counterbalanced with the indicators of lesser harm which are that nothing was stolen and that there was no indication of any physical or psychological injury of other significant trauma to victims.

21. Taking into consideration the objective seriousness of the offence of Burglary because of its maximum sentence, the Court takes a starting point of 3 years imprisonment and adds 2 years for the aggravating factors so the interim sentence comes to 5 years imprisonment. For the mitigating factors the Court deducts 1 years so the interim sentence is 4 years imprisonment. For your early guilty plea, a full 1/3 discount is accorded therefore your sentence is further reduced by 16 months (1 year 4 months) imprisonment – your final aggregate sentence is now at 2 years and 8 months imprisonment.

22. You have always been on bail thus there is no time in remand deduction.

23. Before I proceed to pass sentence, I digress to consider the applications made on your behalf by Counsel.

24. Written mitigation submission provided by your Counsel Ms. B Kumari (LAC) sought at paragraph 6.2 that a wholly suspended term be granted together with the consideration of a fine or compensation being considered also. Counsel Mr. Baranisavu while appearing on 9/12/2025 sought orally that 3 months be allowed for the compensation to be made on account of anticipated construction/carpentry contracts from which you can earn to retribute the said amount. I consider your personal background submitted in your mitigation that you are 35 years of age, separated from your wife with no children of the marriage and being employed as a Carpenter earning \$350.00 per fortnight.
25. The power to fine is stipulated under **Section 31 (1)** of the **Sentencing and Penalties Act 2009** and is one of the sentencing orders granted under **Section 15 (1)** of the Act. However, a fine can be considered as an addition to or instead of any other sentence to which the offender may be liable. **Section 49 (1)** of the Act provides for **Restitution Orders** where goods or property has been stolen and the stolen goods or property is to be restored to its owner. **Section 51** deals with **Compensation Orders** where the offender pays compensation to the person who has suffered any loss, damage or injury as a direct result of the offence for which the offender has been found guilty or convicted.
26. You through Counsel seek a wholly suspended term with a fine and compensation. For a fine to be considered instead of any other sentence or in addition to any other sentence it must be substantiated, for this your Counsel submitted that you are of young age and have a great position to reform. You are not a young offender – you are 35 years of age and well approach the vicinity of being labelled a *middle-aged adult*, your age was the only reason offered by Counsel towards the submission of 'reformation' thus I find it lacking in its upholding the submission that you can reform. It is offered as a reminder also at this juncture that the offences of which you have been convicted carries an imprisonment term of which the law plainly sets out its maximum punishment and judicial precedents have clearly identified its tariff – a fine is not within the legislated proviso and precedented guidance. I find a fine is also not an appropriate sentence given the circumstances of this case.
27. It was submitted that you can compensate the commercial complainant BSP for the damages sustained and the costs attached to it, however you seek 3 months to do so. You only earn \$350 p/f thus cannot be expected to meet the full compensation sum in the 3 months you seek. Your Counsel submitted that you have construction contracts lined up for the next 3 months to allow you to meet the compensation sum. In seeking the 3 months nothing concrete was put before the Court on these anticipated construction contracts that will assuredly source the funds from which you will direct towards the compensation. I find therefore that the oral submission to compensate made only on 9/12/2025 are merely '*honeyed words*' which is an attempt to avoid a custodial sentence and a ploy to buy yourself out of trouble<sup>2</sup>. Genuine intention at compensation is reflected by the very early actions undertaken to materialize that intention, it has been 5 full months (July – November) since your first appearance and there is nothing before the Court to indicate your genuine effort to compensate which fortifies my finding in the lack of genuineness in your application for compensation.

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<sup>2</sup> State v Naidu [2018] FJHC 873; HAC59.2013

28. The application for a wholly suspended sentence is unmerited so too is the application for a fine and compensation – I therefore refuse each.
29. I now proceed to sentence you. The Court denounces your offending. It is clearly reflected in the Summary of Facts that you were well aware of what you did on the early hours of 4/6/2025 indicated by the two times you entered BSP after your break in. You had walked in the direction of Westpac Bank to look for the stones that you were going to use and indeed found stones. You threw the two (2) stones four (4) times before you managed to break the glass of the Bank – you did not stop throwing the stones until the glass broke ensuring your entry into the Bank. The alarm was triggered whilst you were inside to which caused you to exit the Bank however you went towards the Post Office and then returned after the alarm went off and had a second round inside the Bank and exited again for the final time when the alarm was triggered again. BSP is situated on Ganga Singh Street, Ba Town which is part of the central area of Ba Town and also quite exposed – it is also only less than 10minutes away from the Ba Police Station. All these points to this Court not only your audacity in the committal of these offences but also your nefariousness in doing so.
30. You submitted at paragraph 4.1 of your written mitigation that you committed this crime as a result of your financial difficulties – while the Court is mindful that economic factors may be an underlying cause or motivating factor in criminal behaviour – they do not legitimize the actions or remove criminal culpability. Circumstances aren't always within our control however we always have agency in how we respond to them – the power lies of course in our attitude, perspective and the choices we make in the face of such circumstances or adversity. The decision/choice to commit the crime on 4/6/2025 was yours and yours alone and for your audacity and nefarious ways a sentence that will deter is warranted.
31. Your final aggregate sentence is 2 years and 8 months imprisonment. Considering your overall criminality this is not a case where it would be appropriate to suspend your sentence therefore you are sentenced to 2 years and 8 months imprisonment and pursuant to Section 18 (1) of the Sentencing and Penalties Act 2009 you are to serve 1 year and 6 months imprisonment before being eligible for parole.

28 days to appeal to the High Court

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S. Nasedra [Ms.]  
[Resident Magistrate]

Divisional Prosecuting Officer/Western  
Accused – Legal Aid Commission