



the residential farm house of Lin Ghuan Zhi and his brother Lum Moon Woot at Savutu settlement in Naitasiri.

- [2] Once inside the house they assaulted Lum and stole from him \$360.00 in cash, two packets of cigarettes and a bunch of keys. In the course of this robbery they hit Lum with a fig tree branch and threatened him using a knife and tied him up. They first appeared in the Nausori Magistrates' Court on the 29<sup>th</sup> of November 2004 where they pleaded guilty to the Robbery With Violence charge after the facts had been read and the charge explained and clearly understood by them. The matter was then transferred to the High Court for sentence. There they confirmed their plea of guilty and were convicted.
- [3] The learned Judge stated that the aggravating features of the case include the planning and premeditation of the robbery, the cold-hearted beating they inflicted on Mr Lum and the fact that apparently three of them were involved in this attack on a residential farm house at night. The Judge accepted that they had no previous convictions.
- [4] The learned Judge accurately stated the law when he quoted the Fiji Court of Appeal decision of Sakiusa Basa -v- The State, Criminal Appeal No. AAU0024 of 2005

where the Court made it clear that the tariff of violent robberies in Fiji needed to increase. The learned Judge pointed out, and I agree, that those who plan and execute home invasions, (a euphemism for what used to be called breaking and entering and stealing), using rudimentary weapons such as clubs, cane knives and tree branches must accept a minimum starting point of 8 years imprisonment. The learned Judge saw no need to differentiate between the sentences to be imposed on both Appellants. I agree.

- [5] After fixing a starting point of 8 years imprisonment the Judge then, after taking various factors into account which he had earlier listed including the guilty plea and co-operation with the Police, considered that a total available term of imprisonment of 11 years could have been imposed. However, he allowed a substantial discount for the early guilty plea, co-operation with the Police and general mitigating factors of 4 years reducing the sentence to one of 7 years imprisonment for each Appellant. In my Judgment if anything, the learned Judge was too lenient. A reduction of 3 years on a sentence of 7 years for this offence is in my Judgment being extremely kind to the Appellants. Had I been the trial Judge I would have considered a reduction of only 2 years was appropriate.

[5] Accordingly in my Judgment there is no merit in this application. With some reservations I granted the Appellants' leave to appeal out of time but I am satisfied as I have said that the sentence of Winter J. was correct in law. The application is therefore refused.



A handwritten signature in cursive script, reading "John E. Byrne", written over a horizontal dotted line.

[ John E. Byrne ]  
**JUDGE OF APPEAL**

At Suva

5<sup>th</sup> May 2008