



- [1.0] On the 3<sup>rd</sup> of December 2009 the Applicant was convicted in the High Court on one count of robbery with violence for which he was sentenced to 6 years imprisonment; one count of unlawful use of a motor vehicle for which he was sentenced to 3 years in prison; one count of larceny for which he was sentenced to one year in prison. The sentences on the second and third charges were made concurrent.
- [2.0] Initially in the High Court on the 14<sup>th</sup> of November, 2008 the applicant pleaded not guilty to the offences.
- [3.0] On the 30<sup>th</sup> of November 2009, the matter proceeded to trial. There was a "trial within a trial", during which four prosecution witnesses gave evidence and the applicant gave sworn evidence on which he was cross-examined by the prosecutor. The matter was then adjourned to the 1<sup>st</sup> December 2009 at which date the applicant indicated through his counsel that he wished to plead guilty to the charges. The learned judge accepted the plea and when the hearing resumed later in the morning of that day the prosecutor read her summary of facts to the Court. She said that the complainant Ravinesh Ram was driving a 7-seater van owned by Ashnil Chandra on the 15<sup>th</sup> of May 2008 after 8 pm, for hire. About this time the applicant and two others hired the van from opposite Hanson's Supermarket, Makoi and asked Mr. Ram to take them to Lami. At Lami Ravinesh was told to drive into Omi Street and to stop which he did. The applicant, who was sitting at the back of Ravinesh, put a knife to his neck and warned him not to resist.
- [4.0] Later Ravinesh was tied up and put into the back of the van. Somehow he freed himself and fled. The applicant and his friends then drove the van to Sawani where they abandoned it. They stole \$20 in cash from Ravinesh and, his Alcatel mobile phone worth \$49.99. They also stole the van's stereo and amplifier worth a total of \$1,799.00. These properties were later recovered by police from a pawn shop in Nausori.
- [5.0] The applicant told the learned judge that he agreed with the prosecution's summary of facts and as a result the court found him guilty as charged on all counts.

- [6.0] The applicant admitted 5 previous convictions, one, for robbery with violence and two for larceny type offences. The applicant told me today that he had been sentenced to 3 years imprisonment for the robbery with violence offence.
- [7.0] The learned trial judge noted that the applicant was 25 years old, and married with a pregnant wife. I interpolate here that the applicant told me today that subsequently his wife gave birth to a son.
- [8.0] He told the judge that he lived with his parents and was supporting them. He also supported a brother and sister who are attending High School. He reached Form Six level education and obtained a Certificate in Carpentry from TPAF. He also told the Judge that at the time of trial he was working for a builder in Toorak and earned \$120.00 per week. The Judge accepted that he was the sole bread winner in his family. He also noted that the stereo and amplifier had been recovered from a pawn shop in Nausori. The Judge also noted that he had joined a church and appeared to have reformed himself.

### **SENTENCE**

- [9.0] The maximum penalty for robbery with violence is life imprisonment. The tariff for this offence committed on taxi drivers is between 4 to 7 years imprisonment. The learned judge cited 3 cases on this: **Aminio Rokotuivuna Mafuna v. State**, Criminal Appeal No. HAA 153 of 2005, High Court, Suva; **Simione Raura v. State**, Criminal Appeal No. HAA 068 of 2004, High Court, Suva and **Inoke Ratubuli and Netani Raliti v. State**, Criminal Appeal No. HAA 154 of 2005, High Court, Suva.
- [10] "Larceny" carries a maximum sentence of 5 years imprisonment. The learned Judge stated, and this was not disputed before me today, that the tariff for simple larceny on first conviction is 2 to 9 months in prison; on the second conviction, a sentence in excess of 9 months in prison. In cases of a large amount of money, sentences between 1 ½ years to 3 years have been accepted by the High Court.

- [11] The learned judge listed the aggravating factors in this case as follows:
- (i) by robbing Ravinesh Ram, the applicant showed total disregard to his right to earn his money peacefully;
  - (ii) by putting a knife to Mr. Ram's neck he showed total disregard of his personality safety and his personal dignity;
  - (iii) when he stole the mobile phone and \$20, he showed total disregard to his right to enjoy his property;
  - (iv) although he had been punished for robbery with violence and larceny offences previously he had not shown a willingness to become a law abiding citizen.
- [12] Against these aggravating factors, the Judge mentioned the following mitigating factors:
- (i) he pleaded guilty to the offences, and therefore save the court's time although this was 14 months after the first call;
  - (ii) Ravinesh did not suffer any life threatening injuries during the offending;
  - (iii) he was a family man looking after his parents, wife, a brother and sister;
  - (iv) the stolen stereo and amplifier were recovered.
- [13] On the robbery with violence charge the judge started with a sentence of 5 years imprisonment to which he added 7 years for the aggravating factors, making a total of 12 years imprisonment. For the mitigating factors, he then deducted 6 years from the 12 years, leaving a balance of 6 years imprisonment.
- [14] On the larceny charge the judge began with one year to which he added 2 years for the aggravating factors making a total of 3 years. He then deducted 2 years for the mitigating factors leaving a 1 year balance.

- [15] Counsel for the respondent handed up a written submission which I found helpful. She gave this to Mr. Singh who appeared this morning for the applicant, and in his usual practical way, stated that to a large extent he agreed with it and the case law that was cited by the respondent.
- [16] His only ground in objecting to the sentence passed by the High Court was that the learned judge erred in adding 7 years to the possible sentence for robbery with violence as an aggravating factor.
- [17] Counsel for the respondent, also very practically, agreed, that this could be said to be too high but then, "in the next breath" so to speak, the learned judge deducted 6 years from the 12 years, leaving a balance of 6 years imprisonment.
- [18] Mr. Singh stated that the learned judge could have mentioned a lower aggravating factor of 6 years which, on his reasoning would have reduced the sentence to 5 years imprisonment.

**COMMENT**

- [19] Sentencing is always a difficult task even to Judges and Magistrates who have much experience in the Criminal Courts. It is a matter of discretion for the judge or magistrate and this Court will only interfere if it considers that for various reasons, such as taking into account irrelevant matters or failing to take into account relevant matters, the court below did not exercise its discretion judicially. Having considered the judge's remarks on the sentence and the submissions I have taken from both the appellant and the respondent I am not satisfied that the High Court Judge committed any error in the exercise of his discretion.
- [20] For these reasons I grant the applicant leave to appeal out of time but decline his application for leave to appeal to the Full Court.

Dated at Suva this 17<sup>th</sup> day of February 2010.



A handwritten signature in black ink, which appears to read "John E. Byrne". The signature is written over a horizontal dotted line.

**JOHN E. BYRNE**

Acting President, Fiji Court of Appeal