IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 156 of 2016
(Magistrate's Court CF 1157 of 2015)

BETWEEN : **TAITO RAWAQA**

Appellant

AND : **THE STATE**

Respondent

Coram : **Chandra RJA**

Counsel : **Ms. S. Ratu for the Appellant**
Mr . S. Vodokisolomone for the Respondent

Date of Hearing : **13 June 2018**

Date of Ruling : **5 July 2018**

RULING

[1] The Appellant was charged with another on one count of Aggravated Robbery contrary to section 311(1) (a) of the Crimes Act 2009.

[2] The Appellant pleaded guilty to the charge and was convicted accordingly in the Magistrate's Court under extended jurisdiction of the High Court.

[3] On 16th September 2016 the Appellant was sentenced to 7 years and 9 months imprisonment with a non parole period of 5 years.

[4] The Appellant filed a timely appeal against sentence on the basis that the sentence was harsh and excessive. Subsequently Counsel for the Appellant filed amended grounds of appeal against both conviction and sentence as follows:

> *"1. That the learned Magistrate erred in law and in fact when he convicted the Appellant for the offence of aggravated robbery when the summary of facts do not substantiate the element of force that pertains to the charge, therefore questioning the equivocality of the plea.*
>
> *2. That the learned Sentencing Magistrate erred in principle when he did not separately deduct the early guilty plea of the Appellant."*

[5] The summary of acts that was admitted was as follows:

> *"On the 12th July 2016 on Stinson Parade Suva at around 06 a.m., Katy Chang (hereinafter PW 1) was in town to attend a church service whilst she was walking towards the minivan car park an unknown i-Taukei man came and grabbed the plastic she was holding onto. He managed to pull the plastic containing the following items and robbed her of the said items:*
>
> - *Reading glass valued at $200.00*
> - *$7.00*
>
> *Total value $207.00"*

[6] The submission on behalf of the Appellant was that he had grabbed and run with the plastic and had not used force on the complainant. On that basis the submission was that since no force was used the charge was defective and that the charge should be one of theft.

[7] It was also submitted that the Appellant was unrepresented in the lower court and that he did not know the legalities pertaining to the charge he was pleading guilty to.

[8] Although it would appear that when an article such as a plastic bag is snatched away no force is exercised on the person who is holding on to such a bag, is a situation where a person is deprived of the article that is being held in the hand by the use of force of by the perpetrator. To my mind it is an exercise of force on the person, even though there has been no physical contact on the body of the person holding on to the article. The bag was taken out of the hand of the victim by using force. The Appellant was with another and both had run away together before they were apprehended by a Police Officer. In such a situation the elements of aggravated robbery, s.311(1)(a) of the Crimes Act, which were the elements of the offence for which the Appellant was charged were satisfied.

[9] The ground of appeal against conviction therefore fails.

[10] The ground of appeal against sentence is that the learned Magistrate had not separately deducted the early guilty plea.

[11] The Appellant had pleaded guilty in the first instance itself. The learned Magistrate in sentencing the Appellant had picked a starting point of 9 years and 6 months having stated that the tariff was 8 to 16 years. Thereafter he considered the mitigating factors as there were no aggravating factors. The factors considered were pleading guilty at the first available opportunity, no previous convictions and that fact the he had asked for forgiveness.

[12] For the mitigating factors a discount of 1 year and 6 months were granted, which brought down the sentence to 8 years. A further deduction was made for the three months he had been in remand resulting in a head sentence of 7 years 9 months.

[13] In an appeal against sentence as set out in **Naisua v State** [2013] FJHSC 14: CAV0010.2013 (20 November 2013) it has been seen whether the Sentencing Judge made one of the following errors:

(1) Acted upon a wrong principle;

(2) Allowed extraneous or irrelevant matters to guide or affect him;

(3) Mistook the facts;

(4) Failed to take into account some relevant considerations.

[14] The learned Magistrate did not give a separate deduction for the early guilty plea.

[15] In **Rainima v State** [2015] FJCA 17; AAU0022.2012 (27 February 2015) it was held that

> *"Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always (though not by authoritative judgment) that the "high water mark" of discount is one third for a plea willingly made at the earliest opportunity. This court now adopts that principle to be valid and to be applied in all future proceedings at first instance."*

[16] The failure on the learned Magistrate to give a separate discount for the early guilty plea would amount to acting on a wrong principle and therefore this ground of appeal against sentence is arguable.

Orders of Court:

(1) Appeal against conviction is refused;

(2) Appeal against sentence is granted.

Hon. Justice S. Chandra
RESIDENT JUSTICE OF APPEAL