

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

CRIMINAL APPEAL NO. AAU 110 OF 2016
(Magistrates Court at Suva CF No. 639 of 2016)

BETWEEN : **AKEAI RANUKA**

Appellant

AND : **THE STATE**

Respondent

Coram : **Prematilaka, RJA**
Gamalath, JA
Bandara, JA

Counsel : **Appellant in person**
Mr M. Vosawale for the Respondent

Date of Hearing : **08 September, 2022**

Date of Judgment : **29 September, 2022**

JUDGMENT

Prematilaka, JA

[1] I am in agreement with the order proposed by Gamalath, JA.

Gamalath, JA

- [2] The appellant, in his timely notice of leave to appeal, invoked the jurisdiction of this court to canvass the sentence of 7 years and 8 months imposed by the learned Magistrate at Suva, who exercising his extended jurisdiction convicted the appellant on his own guilty plea for having robbed along with another a white Alcatel Mobile Phone, valued at \$144.00, that belonged to one Prashant Lal. The alleged incident had taken place on 1st April 2016.
- [3] Before the Magistrate's Court, the appellant pleaded guilty to the charge and on the sentence that was imposed on 5 August 2016, he had been in prison since then. As can be seen he had already completed his five years of non-parole period and the remaining period to complete the full sentence is only 7 months.
- [4] Against his sentence, the appellant places reliance on the submission that notwithstanding that the facts relating to his crime is a street mugging, the learned Magistrate, acting under a miscomprehension sentenced him in accordance with the guidance laid down in *Wise v. State* [2015] FJSC 7; CAV 0004.2015 (24 April 2015), where the tariff has been placed at a higher level of 8 to 16 years.
- [5] The learned Single Judge, recognizing this error in sentencing had rules that "there is merit in the appellant's contention and therefore the learned Trial Judge could be said to have acted on a wrong principle in sentencing the appellant."
- [6] Moreover, the learned Single Judge had made a pertinent observation on the wrongful counting of aggravating factors when he raised the issue "whether the factors identified by the learned Judge in paragraph 6 of the Sentencing Order, some of which appear to coincide with the very factors of 'street mugging' could be justified as aggravating factors in another question that may have to be addressed by the Full Court."
- [7] Having addressed my mind to that fact, I am in agreement that there had been an error in the counting of the aggravating factors in which the very ingredients of the crime itself had been double counted in arriving at the final sentence.

- [8] The State concedes that there is an error in the sentence and as such it should be rectified.
- [9] Having considered the above and having considered that the appellant has been leading an unblemished life since then the Court is inclined to allow the appeal against the Sentence and to reduce it to be 7 years 1 month and 20 days, in effect it means the appellant should be released from custody on the 1st October, 2022.

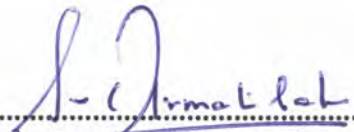
Bandara, JA


- [10] I have read in draft the judgment of Gamalath JA and concur with the reasons and proposed orders therein.

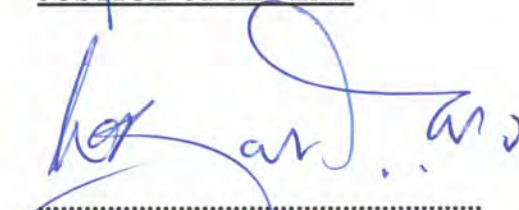
Order of the Court:

Appeal against the sentence is allowed.




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Hon. Justice C. Prematilaka
JUSTICE OF APPEAL


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Hon. Justice S. Gamalath
JUSTICE OF APPEAL


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Hon. Justice W. Bandara
JUSTICE OF APPEAL