

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 39 OF 2013

STATE

-v-

INOKE ROKOVUKI
KOLINIO NASILOKA

Counsels : **Mr. Semi Babitu for the State**
Accused Inperson

Date of Sentence : **19th July, 2013**

SENTENCE

1. The prosecuting officer preferred following charges against the two accused above named.

COUNT 1

Statement of Offence (a)

AGGRAVATED BURGLARY: Contrary to Sections 313 (1) (a) of the *Crimes Decree No. 44 of 2009*.

Particulars of Offence (b)

Inoke Rokovuki in company with **Kulinio Nasilokia** on the 29th day of May, 2011 at Rokovuaka, Nalawa, Ra in the Western Division broke and entered into **the dwelling house of Setareki Adrole** as trespassers, with intent to commit theft therein.

COUNT 2

Statement of Offence (a)

THEFT: Contrary to sections 291 of the *Crimes Decree No. 44 of 2009*.

Particulars of Offence (b)

Inoke Rokovuki and **Kulinio Nasilokia**, on the 29th day of May, 2011 at Rokovuaka, Nalawa, Ra in the Western Division stole assorted Groceries valued at \$1,097.95, and \$550.00 in Cash all to the total value of \$1,647.95.

2. When the case was mentioned to take a plea before the Resident Magistrate on 31st January 2013 both accused pleaded guilty to both the charges and admitted the Summary of Facts on the same day.
3. The Summary of Facts submitted by the State Counsel states as follows:

FIRST COUNT

On 29/01/11 at about 4.00am at Rokovuaka village, Nalawa, Ra (Accused 1), 22 years, Farmer of Rokovuaka village, Nalawa, Ra and Kulinio Nasilokia (Accused 2), 21 years, Farmer of Nalalawa village, Nalawa, Ra broke and entered into the house of Setareki Adrole (Complainant), 66 years, Unemployed of Rokovuaka village, Nalawa, Ra with the intention of stealing.

On the above mentioned date and time after drinking brew with some friends both Accused came and remove two louver blades from the window of Complainant's house and entered into it. Complainant was away at CWM Hospital and his house was vacant at the time. Both Accused then forcefully broke the wall on Complainant's house which separated his canteen by using a pinch bar.

SECOND COUNT

On 29/01/11 at about 4.00am at Rokovuaka village, Nalawa, Ra Inoke Rokovuki (Accused 1) 22 years, Farmer of Rokovuaka, Nalawa, Ra and Kulinio Nasilokia (Accused 2) 21 years, Farmer of Nalalawa village, Ra stole assorted groceries worth \$1,097.95, and \$550.00 cash, all to the total value of \$1,647.95 from the canteen owned by Setareki Adrole (Complainant), 66 years, unemployed of Rokovuaka village, Nalawa, Ra.

On the above mentioned date and time after breaking into Complainant's house and canteen the two Accused took assorted stock of goods, 4 whales tooth and \$550.00 cash which are securely kept in the canteen. They took these items to a nearby house where they divided the items among themselves. There the Occupants of the house disturbed them and they ran away leaving some of the stolen assorted groceries which were recovered.

Upon Police investigation both Accused were arrested, caution interviewed and charged for the offence of Burglary and Theft. Both produced in custody.

4. The resident Magistrate on 2nd February 2013 referred the matter to the High Court for sentence.
5. After carefully considering the Plea of each accused to be unequivocal this Court found both of them guilty for aggravated burglary and theft and accordingly both of them are convicted under Section 313 (1) (a) and Section 291 (1) (c) of the Crimes Decree respectively.
6. 1st Accused and 2nd Accused, two of you stand convicted for Aggravated Robbery and Theft.
7. Section 313 (1) prescribes a maximum sentence of 17 years imprisonment for aggravated burglary.
8. Section 291 (1) prescribes maximum sentence of 10 years for the offence of Theft.
9. Considering the tariff for the offence of Aggravated Burglary in **Tabekusi v State HAC 95-113/2010** and **Mucunabitu v State HAC 17 of 2010** the Court accepted between 18 months to 3 years as tariff.
10. Tariff for the offence of theft was discussed in several cases. In **Saukilagi v State [2005] FJHC 13 HAC 0021/2004 (27 January 2005)** the Court accepted between 2 to 9 months as tariff for simple theft.
11. The both accused persons submit that they are first offenders.
12. Of the \$1,647.95 worth of items stolen all items were recovered. The state has also confirmed this position.
13. Considering the nature of the offence and all other circumstances I commence your sentence for the 1st count at 24 months.
14. State had not submitted any aggravating factors.
15. The mitigating circumstances of the 1st Accused are:
 - (a) You are a first offender;
 - (b) All goods were recovered;
 - (c) You are remorseful;
 - (d) You are 24 years old;
 - (e) You are the sole bread winner.
16. Considering above I reduce 4 months of your sentence now your sentence is 20 months.

17. I deduct 3 ½ more months for the time period you spend in remand. Now your sentence is 16 ½ months.
18. For your early guilty plea I deduct 5 months. Now your sentence is 11 ½ months.
19. The mitigating circumstances of the 2nd Accused are:
 - (a) You are first offender;
 - (b) All goods were recovered;
 - (c) You are remorseful;
 - (d) You are 23 years old.
20. Considering above I reduce 4 months of your sentence now your sentence is 20 months.
21. I deduct 5 more months for the time period in remand. Now your sentence is 15 months.
22. For your early plea I deduct 5 months. Now your sentence is 10 months.
23. Considering the above and nature of the offence I impose 7 months imprisonment for the offence of theft.
24. Both the offences stated above were committed in the course of same transaction therefore I order both sentences to run concurrently.
25. You are pleading the Court that you be given another chance in your life.
26. You are pleading the Court to impose a non custodial sentence.
27. Section 26 (1) of the Sentencing and Penalties Decree states as follows:
On sentencing an offender to a term of imprisonment a Court may make an order suspending, for a period specified by Court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.
28. After considering all circumstances I act under section 26 (1) of the Sentencing and Penalties Decree and suspend your sentence to a period of 3 years. The nature of the suspended sentence is explained to the accused.

Summary;

29. 1st Accused sentenced to 11 ½ months suspended for 3 years.
2nd Accused sentenced to 10 months suspended for 3 years.

30. 30 days to appeal.

Sudharshana De Silva
JUDGE

AT LAUTOKA
19th July 2013

Solicitors for the State: Office of the Director of Public Prosecution, Lautoka
Solicitors for the Accused: Accused In person