

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 118 OF 2013S

STATE

VS

1. PENI VULISOKO

2. MANASA KOROIVERE

Counsels : **Ms. A. Vavadakua and Ms. S. Naidu for State**
Mr. J. Savou for Accused No. 1
Accused No. 2 In Person

Hearings : **7th and 17th June, 2013**

Sentencing : **12th July, 2013**

SENTENCING

1. On 7th May, 2013, both accuseds appeared in court, on the following information:

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: Contrary to Section 313

(1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PENI VULISOKO and **MANASA KOROIVERE** between the 19th and the 20th day of December 2012 at Nasinu, in the Central Division, entered into the dwelling house of **SAEED AHMED KHAN** as a trespasser with intent to steal from therein.

SECOND COUNT

Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PENI VULISOKO and **MANASA KOROIVERE** between the 19th and the 20th day of December, 2012 at Nasinu, in the Central Division, dishonestly appropriated one Toshiba laptop valued at \$1600.00, one Lenovo laptop valued at \$2000.00, one Lorus wrist watch valued at \$350.00, two hard drives valued at \$200.00 and assorted jewelries valued at \$1100.00, a total value of \$5250.00, all properties of **SAEED AHMED KHAN**, with the intention to permanently deprive the said **SAEED AHMED KHAN** of the said properties.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

PENI VULISOKO and **MANASA KOROIVERE** on the 28th day of December 2012 at Nasinu, in the Central Division, entered into the dwelling house of **MAHMOOD HUSSEIN** as a trespasser with intent to steal from therein.

FOURTH COUNT

Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PENI VULISOKO and **MANASA KOROIVERE** on the 28th day of December 2012 at Nasinu, in the Central Division, dishonestly appropriated, assorted jewelries valued at \$2690.00, Australian currency valued at AUD \$250.00, cash monies valued at FJD\$760.00, a total value of approximately FJD \$3911.77, all properties of **MAHMOOD HUSSEIN**, with the intention to permanently deprive the said **MAHMOOD HUSSEIN** of the said properties.

FIFTH COUNT

Statement of Offence

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

Particulars of Offence

PENI VULISOKO and **MANASA KOROIVERE** between the 26th and 27th day of January 2013 at Nasinu, in the Central Division, entered into the dwelling house of **VIJAY LAL** as a trespasser with intent to commit theft therein.

SIXTH COUNT

Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PENI VULISOKO and **MANASA KOROIVERE** between the 26th and 27th day of January 2013 at Nasinu, in the Central Division, dishonestly appropriated a Toshiba laptop valued at \$1200.00, a Titan wrist watch valued at \$245.00, assorted liquor valued at \$450.00, a 22 carat gold ring valued at \$500.00, a 9 carat gold ring valued at \$450.00, 1 Nokia mobile phone valued at \$145.00, a laptop bag, a Titan handbag, a webcam and \$3,773 cash all to the estimated valued of \$6763.00 all the properties of **VIJAY LAL**, with the intention to permanently deprive the said **VIJAY LAL** of the said property.

SEVENTH COUNT

Statement of Offence

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

Particulars of Offence

PENI VULISOKO and **MANASA KOROIVERE** between the 13th and 15th day of February 2013 at Nasinu, in the Central Division, entered into the dwelling house of **ANGELIN RADHIKA PRASAD** as a trespasser with intent to steal from therein.

EIGHTH COUNT
Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PENI VULISOKO and **MANASA KOROIVERE** between the 13th and 15th day of February 2013 at Nasinu, in the Central Division, dishonestly appropriated, one Samsung mobile phone valued at \$400.00, one LG Mobile phone valued at \$400.00, assorted jewelries valued at \$5100.00, one digital camera valued at \$300.00, one handy Cam Camera valued at \$300.00 and \$200.00 cash all to the total value of \$6700.00, all properties of **ANGELIN RADHIKA PRASAD**, with the intention to permanently deprive the said **ANGELIN RADHIKA PRASAD** of the said properties.

NINTH COUNT
Statement of Offence

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

Particulars of Offence

PENI VULISOKO and **MANASA KOROIVERE** on the 22nd day of February 2013 at Nasinu, in the Central Division, entered into the dwelling house of **IQBAL KHAN** as a trespasser with intent to steal from therein.

TENTH COUNT
Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PENI VULISOKO and **MANASA KOROIVERE** on the 22nd day of February 2013 at Nasinu, in the Central Division, dishonestly appropriated, one Compaq laptop valued at \$400.00, one DVD player valued at \$200.00, one Panasonic DVD Player valued at \$150.00, one LG Mobile phone valued at \$600.00 and one Samsung mobile phone valued at \$200.00, a total value of \$1550.00, all properties of **IQBAL KHAN** with the intention to permanently deprive the said **IQBAL KHAN** of the said properties.

2. Mr. Peni Vulisoko was represented by Legal Aid Commission's counsel, Mr. M. Sharma. Mr. Manasa Koroivere's right to counsel was put to him, and he choose to waive his right to counsel and said, he would represent himself. The matter was adjourned to 7th June 2013, for the defence to consider the information, and to take a plea.

3. On 7th June, 2013, the information was read over and explained to both accuseds. They said, they understood the same. Mr Vulisoko's counsel was present. Both accuseds pleaded guilty to the 10 counts. The prosecution then presented her summary of facts. They were briefly as follows. On counts nos. 1 and 2, the complainant and his family left their home on 19th December 2012, at about 8.05pm, to visit their family. They securely locked the house before they left. On 20th December 2012, at about 1 pm, they returned home to find their house ransacked. Their items as mentioned in count no. 2 were stolen. Some items were later recovered.

4. In count nos. 3 and 4, the complainant and his family left their home on 28th December 2012, at 8.30 pm to attend a family function. They securely locked their house before they left. They returned at 10.30 pm, and their son's room was ransacked. The items mentioned in count no. 4 were stolen. None of the items were recovered. In count nos. 5 and 6, the complainant and his family were not at their house after 11 am on 26th January 2013. They securely locked their house before they left. They returned at 3 am on 27th January 2013. Their house was broken into, ransacked and the items mentioned in count no. 6 stolen. Only 3 items were recovered.
5. In count nos. 7 and 8, the complainant left her home on 13th February 2013, at 3.30 pm. Her grandparents were at home, but she securely locked the house. On 15th February 2013, her house was broken into and the items mentioned in count no. 8 were stolen. Only a mobile phone and camera were recovered. In counts nos. 9 and 10, the complainant and his family left their house on 22nd February, 2013 at 8.10 pm to attend a wedding and evening prayers. At 9.30 pm, the complainant returned to his house to find it broken into, ransacked and the items mentioned in count no. 10 stolen. A laptop and 2 DVD players were recovered.
6. The court then checked with Mr. Vulisoko's counsel, and Mr. Koroivere, to see whether or not they admitted the prosecution's summary of facts. Mr. Vulisoko's counsel, on his behalf, said that Mr. Vulisoko admitted the particulars of offence for the 10 counts in the information, and he also admitted the prosecution's summary of facts, and that he fully admitted the 10 offences in the information. Mr. Koroivere on his behalf, admitted the particulars of offence for the 10 counts in the information, admitted the prosecution's summary of facts, and admitted the 10 counts in the information. On the basis of the above, the court found both accuseds guilty as charged on all count and convicted them accordingly.
7. "Aggravated burglary" carried a maximum sentence of 17 years imprisonment (section 313 (1) of the Crimes Decree 2009). In the repealed Penal Code, Chapter 17, "burglary" carried a maximum sentence of life imprisonment (section 299 of Penal Code). In **Vilame Gukisuva v The State**, Criminal Appeal No. HAA 117 of 2007, High Court, Suva, Her Ladyship Madam Justice N. Shameem, held that the tariff for burglary was a sentence between 2 to 3 years imprisonment.

8. “Theft” carried a maximum sentence of 10 years imprisonment [section 291 (1) of Crimes Decree 2009]. In the repealed Penal Code, Chapter 17, “simple theft” carried a maximum penalty of 5 years imprisonment; however, if the person had been previously convicted of a felony, the maximum penalty was 10 years imprisonment (section 259 (1) and 262 of the Penal Code). In **Navitalai Seru vs The State**, Criminal Appeal No. HAA 84 and 85 of 2002S, Her Ladyship Madam Justice Shameem said as follows:

“...the maximum sentence for simple larceny is (on a second conviction) 10 years imprisonment. The tariff, on a first conviction under section 259 and 262 of the Penal Code, is two months to nine months imprisonment (**Paula Bale vs The State**, Criminal Appeal No. 27 of 1998, **Pauliasi Nadali vs The State**, Criminal Appeal No. 29 of 1998, **Iowane Wainiqolo vs The State**, Criminal Appeal No. 44, 45 of 1998, **Ronald Vikash Singh** Criminal Appeal No. HAA 035 of 2002). It is logical, that on a second conviction the tariff is doubled to four months to 18 months imprisonment, because the statutory maximum increases from five to ten years. I accept this as a tariff in cases of second convictions for larceny...”

In **State vs Jona Saukilagi**, Criminal Case No. HAC 21 of 2004S, Her Ladyship further said as follows:

“...Stealing from the bank is a serious matter. The tariff for simple larceny on first conviction is 2 – 9 months (**Ronald Vikash vs State**, HAA 035 of 2002) and on second conviction a sentence in excess of 9 months. In cases of the larceny of large amounts of money sentences of 1 ½ years imprisonment (**Isoa Codrokadroka vs State** Criminal Appeal No. 67 of 2002) and 3 years imprisonment have been upheld by the High Court (**Sevanaia Via Koro** vs **The State**, Criminal Appeal No. HAA 031 of 2001S). Much depends on the value of the money stolen, and the nature of the relationship between victim and defendant. The method of stealing is also relevant...”

One could see from the above authorities that the accepted tariff for “theft” is a sentence between 2 months to 3 years, depending on the circumstances and facts of the case. However, the actual sentence in the case will depend on the aggravating and mitigating factors.

9. In this case, the mitigating factors, were as follows:

(A) Peni Vulisoko:

- (i) You are 20 years old, single and a student at the Fiji National University. I cannot treat you as a first offender, because you have 2 previous convictions, although the offences were part of the chain of offences, committed with the present offences;
- (ii) You pleaded guilty to the offences, thus saving the court’s time, and the complainant’s ordeal in re-living the offences in the courtroom, when giving evidence;
- (iii) You co-operated with the police investigation, and thus some of the stolen properties were recovered;
- (iv) The complainants’ did not suffer any injuries in your offendings;
- (v) You have been remanded in custody since 15th March, 2013, that is, approximately 4 months ago.

(B) Manasa Koroivere:

- (i) You are 19 years old, single and a labourer by profession;
- (ii) You reached Form 3 level education in 2007;
- (iii) From 2008 to 2011, you did farming at Koro Island;
- (iv) In 2012 to 2013, you worked as a labourer earning \$60 per week;
- (v) You pleaded guilty to the offence, and I repeat what I said for Vulisoko in paragraph 9 (A) (ii) above;
- (vi) You are a first offender;
- (vii) You co-operated with police investigation, leading to the recovery of some properties.

10. The aggravating factors for both of you, were as follows:

- (i) Between the 19th December 2012 and 22nd February 2013, the two of you terrorize home owners and families in the Nasinu area. This was a time when families relaxed in their

homes and enjoy their time with their close relatives and friends in the festive seasons and the new year. It was normally a time for celebrating Christmas and New Year. However, because of your criminal activities, you robbed these home owners and families their peace of mind they were expecting during these time. You had no regard to their privacy in their own house. You had no regard to their property rights, when you stole their properties. People in Fiji worked hard to build a house, live in the same, and equip it with various items, to make life comfortable for them. Their home is their castle. However, you two had no regard to their sweat and toil. You deliberately broke into their houses, when they were out, and stole their properties. These were cowardly acts, and you two must accept that you will have to forfeit your liberties for a long time, as payment for the miseries you've caused these families.

11. On count no. 1, I start with a sentence of 2 years imprisonment. I increase it by 3 years for the aggravating factors, making a total of 5 years imprisonment. I decrease the same by 3 years for the mitigating factors, leaving a balance of 2 years imprisonment. On count no. 1, I sentence both of you two to 2 years imprisonment each.
12. For the other "aggravated burglary" charges (ie. counts nos. 3, 5, 7 and 9), I repeat the above process and sentence.
13. On count no. 2, I start with a sentence of 2 years imprisonment. I add 3 years for the aggravating factors, making a total of 5 years imprisonment. I deduct 3 years for the mitigating factors, leaving a balance of 2 years imprisonment. On count no. 2, I sentence both of you two to 2 years imprisonment each.
14. For the other "theft" charges (ie. counts nos. 4, 6, 8 and 10), I repeat the above process and sentence.
15. In summary, your sentences are as follows:
 - (i) Count No. 1 : Aggravated Burglary : Accused No. 1 : 2 years imprisonment

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| | | Accused No. 2 : | 2 years imprisonment |
| (ii) | Count No. 2 : | Theft | : Accused No. 1 : 2 years imprisonment |
| | | | Accused No. 2 : 2 years imprisonment |
| (iii) | Count No. 3 : | Aggravated Burglary | : Accused No. 1 : 2 years imprisonment |
| | | | Accused No. 2 : 2 years imprisonment |
| (iv) | Count No. 4 : | Theft | : Accused No. 1 : 2 years imprisonment |
| | | | Accused No. 2 : 2 years imprisonment |
| (v) | Count No. 5 : | Aggravated Burglary | : Accused No. 1 : 2 years imprisonment |
| | | | Accused No. 2 : 2 years imprisonment |
| (vi) | Count No. 6 : | Theft | : Accused No. 1 : 2 years imprisonment |
| | | | Accused No. 2 : 2 years imprisonment |
| (vii) | Count No. 7 : | Aggravated Burglary | : Accused No. 1 : 2 years imprisonment |
| | | | Accused No. 2 : 2 years imprisonment |
| (viii) | Count No. 8 : | Theft | : Accused No. 1 : 2 years imprisonment |
| | | | Accused No. 2 : 2 years imprisonment |
| (ix) | Count No. 9 : | Aggravated Burglary | : Accused No. 1 : 2 years imprisonment |
| | | | Accused No. 2 : 2 years imprisonment |
| (x) | Count No. 10: | Theft | : Accused No. 1 : 2 years imprisonment |
| | | | Accused No. 2 : 2 years imprisonment |

16. I will consider the totality principle of sentencing and Part III of the Sentencing and Penalties Decree 2009 together. Part III deals with Habitual Offenders. The two accuseds' offendings involved offences of "housebreaking", and thus come within the ambit of Section 10(c) of the Sentencing and Penalties Decree 2009. In my view, on the facts of this case, the two accuseds are threats to the community. They have chosen to live outside the law, invaded peoples' homes on numerous occasions, and steal their properties. In my view, they are habitual offenders, given the facts of this case.

17. I bear in mind the totality principle of sentencing, but in sentencing the two accuseds, I consider the protection of the community as the principal purpose of my sentences (Section 12 of the Sentencing and Penalties Decree 2009). On each of the accuseds, I make the following orders:

- (i) The sentences in counts nos. 1 to 5, are made consecutive to each other, making a total sentence of 10 years imprisonment;

- (ii) The sentences in counts nos. 6 to 10, are made concurrent to each other, making a total sentence of 2 years imprisonment;
- (iii) The total sentence in paragraph 17(i) above, are made concurrent to the sentence in paragraph 17(ii) above, making a total sentences of 10 years imprisonment for each accused, effective forthwith.

18. In summary, I sentence each accused to 10 years imprisonment each, effective forthwith. Each accused are to serve a non-parole period of 8 years imprisonment.

Salesi Temo
JUDGE

Solicitor for the State : Office of the Director of Public Prosecutions, Suva.
Solicitor for Accused No. 1 : Legal Aid Commission, Suva.
Solicitor for Accused No. 2 : In Person