

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 132 OF 2010**

**STATE**

**-v-**

**Anare Sauvakalia**

**Counsels** : **Mr. F. Lacanivalu for the State**

**Mr. R. Kumar for the accused**

**Date of Sentence** : **9<sup>th</sup> October, 2013**

**SENTENCE**

1. You are charged by the Director of Public Prosecutions as follows:

**COUNT 1**

**Statement of Offence**

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

**Particulars of Offence**

**ANARE SAUVAKALIA, DANIEL THOMAS and APAKUKI COKA,** in company with each other, on the 24<sup>th</sup> day of August, 2010 at Nadi in the Western Division, entered a building, namely the Wishbone and Pizza Restaurant, with intent to commit theft therein.

**COUNT 2**

**Statement of Offence**

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

### Particulars of Offence

**ANARE SAUVAKALIA, DANIEL THOMAS and APAKUKI COKA**, on the 24<sup>th</sup> day of August, 2010 at Nadi in the Western Division, stole one safe valued at \$2,600.00, cash of \$3,066.00, a Sony Ericsson mobile phone valued at \$199.00, one red Lenovo laptop computer valued at \$699.00, a Quest Terminal Register valued at \$6,999.00, a 750 ml bottle of Blue Label whiskey valued at \$300.00, a 1125 ml bottle of Red Label whiskey valued at \$120.00, 7 packets of BH 10's valued at \$31.32, 10 packets of Dunhill 20's valued at \$40.00, 7 packets of Pall Mall 10's valued at \$22.60, 15 packets of Pall Mall 20's valued at \$105.00, 16 packets of Rothmans 10's valued at \$44.16, 12 packets of Rothmans 20's valued at \$65.00 and a cash drawer valued at \$225.00, all to the total value of \$14,516.08, the properties of Frances Foster.

2. When the case was mentioned to take a plea on 30<sup>th</sup> August 2012, you pleaded not guilty to the charge. On 14<sup>th</sup> August 2013 you indicated that you want to change your plea. Accordingly the charge was read over to you on 29<sup>th</sup> August 2013 and you pleaded guilty to the charges.
3. On the 2<sup>nd</sup> September 2013 you admitted the summary of facts served to you.
4. The Summary of Facts submitted by the State Counsel states as follows:

*The Accused in this matter is one Anare Sovakalia of Lot 63 Grey Road in Martintar, Nadi. The Victim is Frances Forster, Manager of Wishbone and Pizza Restaurant located at as well in Martintar, Nadi.*

*On the 23<sup>rd</sup> of August 2010 at about 11pm, Frances Forster closed the Wishbone and Pizza Restaurant after the day's business. The next day on the 24<sup>th</sup> of August 2010, when he came back to open it, he found that the door was open. He became suspicious and after checking the premises noted that the place had been robbed and some items were missing.*

*The matter was reported to the Namaka Police Station where an investigation was done. During the said investigation, the Accused with three others were arrested, interviewed and charged. The Accused was interviewed under caution on the 5<sup>th</sup> of September 2010 where he confirmed that he was a waiter at the Wishbone and Pizza Restaurant. In addition, he admitted that on the 20<sup>th</sup> of August 2010 whilst working, two of his accomplices approached and requested him to rob the said Restaurant. He then agreed and told his accomplices where the safe was and how to enter the Restaurant through the toilet window. He then opened the said window with intent to aid his accomplices. On the 23<sup>rd</sup> of August 2010, the Accused was at home and came to know about the burglary and theft on the next day.*

5. After carefully considering your Plea to be unequivocal, this Court found you guilty for Aggravated Burglary and Theft, accordingly you are convicted under Section 313 (1) (a) and Section 291(1) of the Crimes Decree.
6. Anare Sauvakalia you stand convicted for Aggravated Burglary and Theft.
7. Section 311 (1) (a) prescribes a maximum sentence of 17 years imprisonment for aggravated Burglary.
8. Considering the tariff for the offence of Aggravated Burglary in **Tabeusi 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.
9. Section 291 (1) prescribes a maximum sentence of 10 years for Theft.
10. Tariff for the offence of theft was discussed in several cases. In **Saukilagi v State**, the Court accepted between 2 to 9 months as tariff for simple theft.

*“The tariff for simple larceny on first conviction is 2-9 months (**Ronald Vikash Singh v. 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 v. State** Crim. App. HAA 67 of 2002) and 3 years imprisonment have been upheld by the High Court (**Sevanaia Via Koroi v. State** Crim. App. HAA 031 of 2001S). Much depends on the value of the money stolen, and the nature of the relationship between victim and the defendant. The method of stealing is also relevant.”*

11. Considering the nature of the offence and all other circumstances, I commence your sentence for 1<sup>st</sup> count at 24 months.
12. State had not submitted any aggravating factors.
13. Your mitigating circumstances are:
  - (a) You are 22 years old,
  - (b) You are remorseful,
  - (c) You are from a broken family and had a troubled childhood,
  - (d) You have not taken part in the actual offence but aided and abetted the same,
  - (e) At the time of this offence you are a first offender.
14. Considering above, I reduce 4 months of your sentence, now your sentence is 20 months.
15. I deduct 4 more months for the time period you spend in remand. Now your sentence is 16 months.

16. For your guilty plea I deduct 6 months. Now your sentence is 10 months.
17. Considering the above and nature of the offence, I impose 8 months imprisonment for the offence of Theft.
18. Both the offences stated above were committed in the course of same transaction, therefore I order both sentences to run concurrently.
19. You are pleading the Court that you be given another chance in your life.
20. You have already pleaded guilty for another case HAC 135 of 2012 and serving a sentence of 3 years and 2 months with a non parole period of 2 years. Court is of the view that you are a person who could be rehabilitated. You have shown remorse by pleading guilty to both cases pending in this Court against you. Therefore court orders the sentences in this case to run concurrently with the sentence in HAC 135 of 2012.

**Summary**

21. You are sentenced to 10 months imprisonment for the first count of Aggravated Burglary and 8 months imprisonment for the second count of Theft. Both these sentences to run concurrently from today with the sentence in HAC 135 of 2012.
22. It is recommended to Prison Authorities to send the convict for suitable rehabilitation program.
23. 30 days to appeal

Sudharshana De Silva  
**JUDGE**

**AT LAUTOKA**  
**9<sup>th</sup> October, 2013**

**Solicitors for the State : Office of the Director of Public Prosecution, Lautoka**  
**Solicitors for the Accused: Legal Aid Commission, Lautoka**