

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 150 OF 2013

STATE

-v-

2. DAVID LOCKINGTON  
3. NACANI TIMO

Counsels : Ms. S. Kiran and Mr. J. B. Niudamu for the prosecution  
Ms. C. Choy for the 2<sup>nd</sup> accused  
Third accused in person

Date of Sentence : 30 June 2014

SENTENCE

1. You are charged as follows:

FIRST COUNT

*Statement of Offence*

**AGGRAVATED ROBBERY:** Contrary to Section 311 (1) (a) of the Crimes Decree, No. 44 of 2009.

*Particulars of Offence*

SUNIA RORAQIO, DAVID LOCKINGTON and NACANI TIMO with another, in company of each other on the 18<sup>th</sup> of July, 2013 at Lautoka in the Western Division, robbed FALVIANO PISONI of assorted mobile phones valued at \$5,900.00, 8 assorted Gold wrist watches valued at \$131,000.00, assorted jewelleries valued at \$8,500.00, 2 assorted bags valued at \$5,500.00, cash \$2,500.00 FJ dollars, \$700.00 US dollars (converted \$1,260.00 FJ), 1000 EURO dollars (converted \$2,215.00 FJD), \$500.00 NZ dollars (converted \$679.00 FJD), \$1,000.00 AUS dollars (converted \$1,779.99 FJD), \$30.00 HK dollars (converted \$6.72 FJD), \$2.00 SINGAPORE dollars (converted \$2.65 FJD), assorted liquors valued at \$140.00 all to the total value of \$159,483.36.

2. On 11<sup>th</sup> June 2014 at the end of 2<sup>nd</sup> day of the trial and after three witnesses including the complainant gave evidence, third accused changed his plea and pleaded Guilty to the charge. He admitted the summary of facts the following day.
3. The Summary of Facts submitted by the State Counsel states as follows:

The complainant in this case is Mr. Flaviano Pisoni, businessman of 2 Savala Place in Lautoka.

On the 18<sup>th</sup> of July 2013, at about 12.30 am, the complainant was sleeping in his bedroom when he heard the alarm on. He came to the door and saw the 4 figures were standing outside of the house. He also told them that there was nothing in the house.

The accused then went towards the back of the house then suddenly threw a stone through the kitchen window causing it to break. The stone hit the complainant on his hand and on his sides. The accused with others then entered the house through the broken window.

One of the persons entering the house then got hold of the complainant's neck and asked him for the money. He gave them his wallet containing cash and cards. The accused took the cash but complainant requested for his passports and cards which were returned to him. The accused ransacked the house and took the items through the same window they came in from.

The complainant then raised alarm and the matter was reported to police by his house girl.

Upon checking the house, he found the following items missing:

- Assorted mobile phones valued \$5,900.00
- 8 wrist watches (Rolex – Original and replica) valued \$131,000.00
- Assorted jewelleries valued \$8,500.00.
- 2 bags valued \$5,500.00
- F\$2,500.00 cash
- US\$700, 1,000 Euro, NZ\$500, AUS\$1,000, HK\$30.00, SGP\$2.00

On the 22<sup>nd</sup> of July 2013, the accused was arrested from his house in Nadonumai where by the following items were recovered from him:

- 1 Nokia phone
- 1 Digicel Blackberry mobile phone
- 1 Rolex wrist watch

He was interviewed under caution at the Lautoka Police Station where he admitted committing the offence with other then going to Suva via Rakiraki with Rupeni Vuli Suguturaga, Susana and another person. He also admitted committing the offence in his charge statement.

He was subsequently charged with one count of aggravated robbery and brought to court.

4. After carefully considering the Plea of the 3<sup>rd</sup> accused to be unequivocal, this Court found 3<sup>rd</sup> accused guilty for one count of Aggravated Robbery contrary to Section 311 (1) (a) of the Crimes Decree.
5. Accused **Nacani Timo** you stand convicted for one count of Aggravated Robbery.
6. The 2<sup>nd</sup> accused pleaded not guilty to above charge. Following trial lasting four days in this Court, you were found guilty on above count against you.
7. After considering the unanimous verdict of Guilty of the assessors and having reviewed the evidence and summing up in this trial, the Court decided to concur with the verdict of the assessors and found 2<sup>nd</sup> accused guilty of the above charge.
8. The maximum sentence for Aggravated Robbery is 20 years.
9. The tariff for Aggravated Robbery is well settled now.
10. In **State v Rokonabete** [2008] FJHC 226; HAC 118.2007 (15 September 2008) it was held by Hon. Mr. Justice D. Goundar that:

*"The dominant factor in assessing seriousness for any types of robbery is the degree of force used or threatened. The degree of injury to the victim or the nature of and duration of threats are also relevant in assessing the seriousness of an offence of robbery with violence. If a weapon is involved in the use or treat of force that will always be an important aggravating feature. Group offending will aggravate an offence because the level of intimidation and fear caused to the victim will be greater. It may also indicate planning and gang activity. Being the ring leader in a group is an aggravating factor. If the victims are vulnerable, such as elderly people and person providing public transport, that will be an*

aggravating factor. Other aggravating factors may include the volume of items taken and the fact that an offence was committed whilst the offender was on bail.

The seriousness of an offence of robbery is mitigated by factors such as a timely guilty plea, clear evidence of remorse, ready co-operation with the police, response to previous sentence, personal circumstances of offender, first offence of violence, voluntary of property taken, a minor part, and lack of planning involved."

11. In State v Manoa [2010] FJHC 409; HAC 061.2010 (6<sup>th</sup> August 2010) it was held by Hon. Mr. Justice Paul Madigan that:

*"The maximum penalty for robbery with violence under Penal Code is life imprisonment, while the maximum penalty for aggravated robbery under the Crimes Decree is 20 years imprisonment. Although the maximum sentence under the Decree has been reduced to 20 years imprisonment, in my judgment, the tariff of 8-14 years imprisonment established under the old law can continue to apply under the new law. I hold this for two reasons. Firstly, the established tariff of 8-14 years under the old law falls below the maximum sentence of 20 years under new law. Secondly, under the new law, aggravated robbery is made an indictable offence, triable only in the High Court, which means the Executive's intention is to continue to treat the offence seriously."*

12. I take a starting point of 10 years for each of you for the count of Aggravated Robbery.

13. Aggravating factors;

- (i) Robbery was well planed
- (ii) High value of the items (\$159,000.00)
- (iii) The age of the victim- 63 years
- (iv) The injuries caused to the complainant
- (v) Group offending
- (vi) Both accused were on bail at the time of offending.

14. I add 4 years for above and now your sentence is 14 years.

15. Mitigating circumstances of David Lockington;

- (i) You are 19 years of age,
- (ii) Some items recovered (a replica of Rolex watch & iPhone)

16. Second accused is not a first offender. At the time of offending he was on bail for a case of Aggravated Burglary and Theft. You pleaded guilty to those charges and now serving a sentence of 19 months ordered by this Court on 13.9.2013.
17. Considering above, I deduct 1 year from your sentence, now your sentence is 13 years.
18. Mitigating circumstances of the 3<sup>rd</sup> accused;
  - (i) You are 26 years of age
  - (ii) Married with one child aged 6 years and sole bread winner
  - (iii) Some items were recovered (a replica Rolex watch and mobiles)
  - (iv) You are remorseful.
19. You are not a first offender. You have 16 previous convictions as admitted by you and one pending case before this Court.
20. Considering above, I deduct 1 year from your sentence, now your sentence is 13 years imprisonment.
21. You pleaded Guilty at the conclusion of the 2<sup>nd</sup> day of the trial. It is evident that you pleaded guilty when you were in no escape situation.
22. In **Basa v State** [2006] FJCA 23; AAU 0024.2005 (24 March 2006) the Court of Appeal held that:

*"The appellant suggests that the reference to the fact the plea of guilty was entered late means he was not given full credit for it. Whenever an accused person admits his guilt by pleading guilty, the court will give some credit for that as a clear demonstration of remorse. However, the amount that will be given is not fixed and will depend on the offence charged and the circumstances of each case. The maximum credit is likely to be given for offences such as rape and personal violence because it saves the victim having to relive the trauma in the witness box. At the other end of the scale, little or no credit may be given if the evidence is so overwhelming that the accused has no real option but to admit it. Where, as here, the accused has admitted the offence and the receipt of his share of the money, the delay in pleading guilty must reduce the value of the plea considerably."*

23. Considering the time of the plea and circumstances under which you pleaded Guilty, this court is of the view no separate discount should be given to that plea.

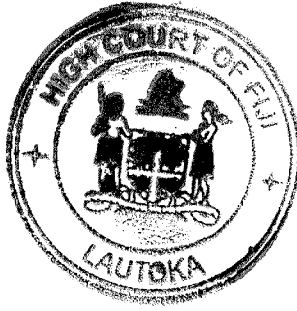
24. You were in remand for 11 months since 25.7.2013. Acting under Section 24 of the Sentencing and Penalties Decree, I deduct that period from your sentence. Now your sentence is 12 years and one month.
25. Acting under Section 18 (1) of the Sentencing and Penalties Decree, I fix a non-parole period of 12 years for David Lockington and non-parole period of 11 years and 6 months for Nacani Timo.
26. There was no non parole period fix for the 2<sup>nd</sup> accused's earlier sentence and he is due to complete serving his sentence in August 2014.
27. The Fiji Court of Appeal in **Vukitoga v State** [2013] FJCA 19; AAU 0049.2008 (13 March 2013) cited with approval the following citation of D.A. Thomas, Principles of Sentencing (2<sup>nd</sup> edition, 1979) p. 56-57 which was cited in High Court of Australia judgment Mill v The Queen [1988] HCA 70:

*"The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. The principle has been stated many times in various forms: 'when a number of offences are being dealt with and specific punishments in respect of them are being totted up to make a total, it is always necessary for the court to take a last look at the total just to see whether it looks wrong'; 'when... cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behavior and ask itself what is the appropriate sentence for all the offences.'"*

28. Considering the totality principle and the age of the 2<sup>nd</sup> accused, Court orders that the balance of the earlier sentence to be served concurrent to the sentence of this case.

### Summary

29. Second accused to serve 13 years imprisonment from today with non-parole period of 12 years. Third accused to serve 12 years and 1 month imprisonment with non-parole period of 11 years and 6 months.
30. 30 days to Appeal to Court of Appeal.



  
Sudharshana De Silva  
JUDGE

At Lautoka  
30<sup>th</sup> June 2014

Solicitors: Office of the Director of Public Prosecution for State  
Office of the Legal Aid Commission for the 2<sup>nd</sup> Accused  
Third Accused in person