

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 48 OF 2012

STATE

-v-

EREMASI TASOVA

Counsels : Mr. S. Babitu for the state
Accused on bench warrant

Date of Sentence : 22.07.2014

SENTENCE

1. The accused was 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

EREMASI TASOVA, LAISENIA VULUMA and JOLAME VUNITURAGA on the 12th day of March, 2012 at Lautoka in the Western Division robbed JACKSON BHAI and SARWAN SINGH of 10 cartons of assorted cigarettes valued at \$29,943.10, \$2,010.60 cash, \$359.80 cheque, Nokia mobile phone valued at \$400.00 all to the total value of \$32,713.50, property of British American Tobacco Company and at the time of robbery did use personal violence on the said JACKSON BHAI and SARWAN SINGH.

SECOND COUNT
Statement of Offence

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

Particulars of Offence

EREMASI TASOVA, LAISENIA VULUMA and JOLAME VUNITURAGA on the 12th day of March, 2012 at Lautoka in the Western Division robbed **JACKSON BHAI** of Nokia mobile phone valued at \$100.00 and cash of \$120.00 all to the total value of \$220.00 and at the time of such robbery did use personal violence on the said **JACKSON BHAI**.

THIRD COUNT
Statement of Offence

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

Particulars of Offence

EREMASI TASOVA, LAISENIA VULUMA and JOLAME VUNITURAGA on the 12th day of March, 2012 at Lautoka in the Western Division, stole a Hyundai H1 motor vehicle registration number: FW 722, valued at \$89,000.00, the property of British American Tobacco Company.

FOURTH COUNT
Statement of Offence

RESISTING ARREST: Contrary to Section 277 (b) of the Crimes Decree, No. 44 of 2009.

Particulars of Offence

EREMASI TASOVA on the 14th day of March, 2012 at Lautoka in the Western Division, resisted **Detective Constable No. 3952 Senitiki Nakatasavu**, a police officer whilst effecting arrest in due execution of his duty.

2. The three assessors unanimously found the accused Guilty after 3 days trial. The Court concurred with their verdict and convicted the accused.
3. After judgment, accused had escaped from custody from Nadi Magistrate Court and police have failed to execute the bench warrant against the accused although all reasonable steps were taken.

4. Following facts were proved in the trial.

On the 12th of March, 2012 at about 10.30 am at Naikabula Road, Lautoka, Jackson Bhai (PW-1) and Sarwan Singh (PW-2), both employees of British American Tobacco Company, were on their normal delivery routine using a Black Hyundai vehicle registration number FW 722, the property of British American Tobacco.

They stopped in Naikabula, Lautoka, at Singh's Shop owned by Sumindra Kaur when three persons approached them. They threatened and assaulted Jackson Bhai and Sarwan Singh. They stole the following items:

10 cartons of assorted cigarettes valued at \$29,943.10

\$2,130.60 cash

\$359.80 cheque

Nokia mobile phone valued at \$400.00

Nokia mobile phone valued at \$100.00

After robbery, then all accused got into the black Hyundai registration number: FW 722 and drove away.

Further accused had resisted arrest on 14th march 2012.

The accused had admitted the offence in his caution interview.

5. Accused **Eremasi Tasova** stand convicted for two counts of Aggravated Robbery, one count of Theft of a Motor Vehicle and one count of resisting arrest.
6. The maximum sentence for Aggravated Robbery is 20 years and Theft of a Motor Vehicle is 10 years. The Maximum sentence for resisting arrest is 5 years.
7. The tariff for Aggravated Robbery is well settled now.
8. In **State v Rokonabete** [2008] FJHC 226 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 aggregate 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."

9. In **State v Manoa** [2010] FJHC 409; HAC 061.2010 (6th 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."

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

11. Aggravating factors;

- (i) Robbery was well planned,
- (ii) High value of the items,
- (iii) Group offending.

12. I add 2 years for above and now your sentence is 12 years.

13. Mitigating circumstances cannot be considered as accused is evading arrest and on a bench warrant after conviction. Accused is not a first offender. Time period in remand for this case is not available.

14. Acting under Section 18 (1) of the Sentencing and Penalties Decree, I fix a non-parole period of 10 years.

15. Considering all, I order sentence of 9 months for the count of Theft of a Motor Vehicle and 6 months imprisonment for the count of resisting arrest.

16. The first to third offences were committed in one transaction. Acting under Section 22 (1) of the Sentencing Penalties Decree, I order all sentences to run concurrently.

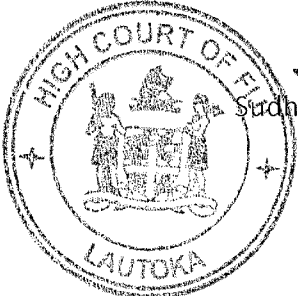

Summary

17. The sentence is as follows:

- (i) 1st count of Aggravated Robbery 12 years imprisonment with non-parole period of 10 years
- (ii) 2nd count of Aggravated Robbery 12 years imprisonment with non-parole period of 10 years
- (iii) 3rd count of Theft of a Motor Vehicle 9 months.
- (iv) 4th count of Resisting Arrest 6 months.

All sentences to run concurrently with one non-parole period of 10 years.

18. 30 days to Appeal to Court of Appeal.

 
Sudharshana De Silva
JUDGE

At Lautoka
22nd July 2014

Solicitors: Office of the Director of Public Prosecution for State