

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 35 OF 2009

STATE

-v-

1. ASESELA ROKODREU

Counsels : **Ms. L. Latu for the Prosecution**
Accused in Person

Date of Sentence : **27 October 2014**

SENTENCE

1. You are charged as follows:

FIRST COUNT

Statement of Offence

ROBBERY WITH VIOLENCE: Contrary to Section 293 (1) (b) of the Penal Code, Cap 17.

Particulars of Offence

Asesela Rokodreu, Amena Dela and Dwayne Hicks on the 19th day of March 2009 at Ba in the Western Division robbed **Azaad Chandra Prakash** f/n Ghirau of one Inkk Mobile phone valued \$49.99, assorted jewelleries valued at \$6,500.00 and cash of \$1,000.00 of Fijian and overseas currencies to the total value of \$7,549.99 and immediately before the said robbery did use personal violence on the said **Azaad Chandra Prakash** f/n Ghirau.

SECOND COUNT

Statement of Offence

ROBBERY WITH VIOLENCE: Contrary to Section 293 (2) of the Penal Code, Cap 17.

Particulars of Offence

Asesela Rokodreu, Amena Dela and Dwayne Hicks on the 19th day of March 2009 at Ba in the Western Division robbed **Alini Prakash** of assorted liquor valued at \$5,000.00, assorted jewelleries valued at \$28,800.00, 12 pairs of canvas valued at \$2,000.00, cash \$3,700.00 of Fijian and overseas currencies and assorted liquor valued at \$5,000.00 all to the total value of \$39,500.00 and immediately before the said robbery did use personal violence on the said **Alini Prakash**.

THIRD COUNT

Statement of Offence

UNLAWFUL USE OF MOTOR VEHICLE: Contrary to Section 292 of the Penal Code, Cap 17.

Particulars of Offence

Asesela Rokodreu, Amena Dela and Dwayne Hicks on the 19th day of March 2009 at Ba in the Western Division unlawfully and without color of right but not so to be guilty of stealing took for their own use motor vehicle registration number DS 983, the property of **Arvind Chandra Prakash** f/n Azaad Chandra Prakash.

2. You pleaded not guilty to above charges. Following trial lasting five days in this Court, you were found guilty on above counts against you.
3. 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 you guilty of the above charges and convicted you.
4. According to the evidence of members of the complainant's family, three persons have forcibly entered their house and taken away the jewelries, liquor, cash, 12 pairs of canvas and mobile phone. They have gone away in a Pajero owned by them. The complainant was assaulted and injured. The accused was arrested by police following day with a bag full of jewelries which were identified as stolen items.
5. The maximum sentence for Robbery with Violence is Imprisonment for life.

6. The tariff for Robbery with Violence is well settled now.
7. 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 threat 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."

8. 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."

9. I take a starting point of 10 years for each count of Robbery with violence.

10. Aggravating factors;

- (i) Robbery was well planned
- (ii) High value of the items (\$47,549.99)
- (iii) The injuries caused to the complainant
- (iv) Group offending

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

12. Mitigating circumstances

- (i) Some items recovered (All jewelry items)

13. The accused is not a first offender.

14. Considering above, I deduct 6 months from your sentence, now your sentence is 13 years and 6 months.

15. You were in remand from 20.3.2009 to 22.4.2009 for a period of one month. Acting under Section 24 (1) of the Sentencing and Penalties Decree, I deduct that period from your sentence. Now your sentence is 13 years and 5 months.

16. You have pleaded that no non-parole period be fixed as the Sentencing and Penalties Decree was not in operation at the time of commission of this offence. However, according to Section 61 (1) of the Sentencing and Penalties Decree

"A Court hearing any proceeding for an offence which was commenced prior to the commencement of this Decree shall apply the provisions of this Decree if no sentence has been imposed on the offender prior to the commencement of this Decree."

17. Therefore acting under Section 18 (1) of the Sentencing and Penalties Decree, I fix a non-parole period of 12 years.

18. Considering all, I order sentence of 4 months for the count of unlawful use of a Motor Vehicle.

19. 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 (2nd 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

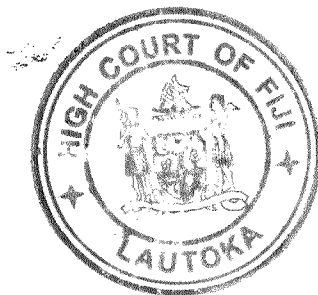
which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. The principle has been stated many times in various forms: 'when a number of offences 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."


20. Considering the totality principle, Court orders that all the sentences to run concurrently.

Summary

21. The accused to serve 13 years 5 months imprisonment with non-parole period of 12 years.

22. 30 days to Appeal to Court of Appeal.




Sudharshana De Silva
JUDGE

At Lautoka
27 October 2014

Solicitors: Office of the Director of Public Prosecution for State
The Accused in person