

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

**Criminal Case No. HAC 76 of 2008**

**STATE**

**v**

**JOJI KACIVAKAWALU**

Counsel: Ms. L. Latu for the State  
Mr. A. Vakaloloma for the accused.

Dates of hearing: 13, 14, 15 April 2015.  
Date of Sentence: 17 April 2015

**SENTENCE**  
**(Robbery with Violence)**

1. The accused has been convicted by this court after trial of two counts of robbery with violence, contrary to s. 293(1)(b) of the Penal Code Cap17 and one count of unlawful use of a motor vehicle contrary to section 292 of that Code.
2. The facts of this very old case are that in the very early hours of the morning on the 1<sup>st</sup> August 2008 a Mr. Ali's home in Nailaga Ba was invaded by a small group of men carrying a knife a

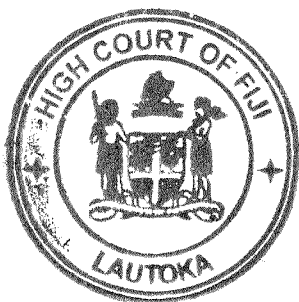
pinch bar and a wooden pole. Two of the men managed to force their way into Mr. Ali's bedroom and they immediately hit him over the head with the wooden pole. Mr. Ali and his wife were attempting to barricade the door but the robbers overpowered them. Once in the room they punched Mr. Ali to subdue him then ransacked the whole room taking jewelry, phones and a large amount of cash which Mr. Ali had put aside for his fish buying business. At the same time another was pulling Mrs. Ali's mother out of her bedroom and making her sit in the sitting room where she was forced to remove the jewelry she was wearing and surrender those pieces to the aggressor.

3. The main thrust of the prosecution case was an inculpatory caution interview which had been found to be voluntarily made and admissible in evidence in separate voir dire proceedings.
4. The accused had told the Police that he was going along with his peers under pressure and that he was merely acting as a lookout and inflicting no violence.
5. Counsel for the accused offered written mitigation in which he submitted that the accused now 32 is a farmer in Nausori, and married. At the time of the offence he was 24, unemployed and single. Counsel claims that he is remorseful, but this court has seen little evidence of that.
6. Counsel for the State tells the Court that in the last 10 years he has had 4 previous convictions, for possession of illicit drugs, assault, escape from custody and forfeiture of bail bond.
7. The maximum penalty for robbery with violence under the Penal Code is life imprisonment and the established tariff is 10 to 15 years as accepted by the Court of Appeal recently in **Maya**

AAU0053.2011 (27 February, 2015). Regard must be had to the degree of violence perpetrated, the effect on the victims, and any degree of planning. An opportunistic enterprise will receive a lesser sentence than a previously planned one.

8. The aggravating features of this case are:
  - Invasion in the dead of night when the occupants were sleeping.
  - A pre-planned robbery
  - Gratuitous violence to subdue the victim (as opposed to the violence inherent in the offence)
  - A threats to an elderly woman visiting the home, threats which she told the court three times made her very very scared
  - A lack of remorse in his evidence to the court. The accused was anything but remorseful).
9. Mitigating features for this accused include his relative youth at the time, and his initial co-operation with the authorities (although he subsequently resiled from that position during trial). His stated "minor role" must give him some discount although there is no way to test it apart from what he says, and even then he must bear the full joint enterprise responsibility for the middle of the night violence.
10. For robbery with violence I take a starting point of 10 years. For the aggravating features already mentioned and for what must have a terrifying experience for these three elder adults I add five years to that total .To acknowledge his limited mitigation of relative youth and cooperation I deduct two years from that total leaving a sentence of 13 years imprisonment.

11. His stated remorse is undetectable and so I do not apply remorse as either a mitigating feature or an aggravating feature. For what might have been a lesser role I deduct a further year meaning the final sentence of this Court is a sentence of 12 years imprisonment.
12. He has spent time in custody awaiting trial but neither his counsel nor the State has bothered to find out exactly how long. When originally allowed on bail he absconded for over a year and then he escaped from custody and was on bench warrant again for another year. To reflect the time he did spend in custody awaiting trial I will allow 12 months discount on the sentence of twelve years.
13. Joji Kacivakawalu, you will spend 11 years in custody for each of the two robbery with violence counts to be served concurrently. Also to be served concurrently is a term of 6 months for the unlawful use of a motor vehicle count
14. You will not be eligible for parole until you have served 9 years of that sentence.
15. All documentary exhibits to remain on file. There are no material exhibits.



**P.K. Madigan  
Judge.**

At Lautoka  
17 April 2015