

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 5 OF 2015

BETWEEN : SAKIUSA RARAWA

AND : STATE

Counsel : Mr. Z. Lateef (L.A.C.) for the appellant
Mr. R. Kumar for the State

Date of Hearing : 17 February and 2 April 2015

Date of Judgment: 30 April 2015

JUDGMENT

(A new tariff for robbery)

- [1] The appellant was convicted on his own plea of guilty to one count of Robbery in the Magistrates' Court at Suva, on the 16th January 2015, the count being contrary to section 310(1)(b) of the Crimes Decree 2009.
- [2] He was sentenced to a term of imprisonment of 3 years with a non-parole period of 2 years.
- [3] The appellant appeals against the sentence timeously on the following grounds:

1. That the learned Magistrate erred in law and in fact when he took into account as aggravating features:
 - Disregard of the property rights of others
 - Fear instilled in the victim.
 2. The learned Magistrate erred in law and in fact when he failed to take into consideration the fact that the accused was a first offender and that he had pleaded guilty before the trial;
 3. The learned Magistrate erred in law by choosing a high starting point for sentence when there is no tariff for the offence of robbery and he failed to justify this starting point.
- [4] The appellant has by his counsel filed detailed submissions which have been responded to by counsel for the State. Both spoke to their submissions before me on the 2 April 2015.
- [5] The facts of the case were that on the 17th December 2015 at about 9.00 pm in Mead Road, Nabua, the accused (now this appellant) assaulted a lawyer coming out of a convenience store. He punched him on the jaw felling the lawyer to the pavement. He took his wallet containing \$500 cash and a \$15 phone recharge card that the lawyer had just bought. The appellant was drunk at the time. The matter was reported to the Police and the appellant arrested and interviewed. He confessed the crime to the Police in the interview.
- [6] The appellant entered a plea of guilty to the charge not at first opportunity but 12 months after he was first called upon to plead.
- [7] In his sentence the learned Magistrate took a starting point of three years for the offence and added two years for aggravating features which he identified to be
- the victim was 61 years old and a vulnerable person
 - there was disregard to the property of the victim
 - there was fear instilled in the victim and he suffered injuries

He deducted three years for the mitigating features which he found to be

- accused is 36 years old
- remorse and seeks forgiveness
- an 8 month old daughter
- a first offender.

He then allowed a reduction of one year for the plea of guilty arriving at a total sentence of three years (fixing a minimum term of 2 years).

The Law

- [8] The maximum penalty for robbery is 15 years imprisonment and the maximum penalty for aggravated robbery is 20 years imprisonment.
- [9] Up until 1st February 2010, the Penal Code being the then operative criminal law prescription, robbery could be robbery simpliciter (s.293(2)) with a maximum penalty of 14 years or aggravated robbery being armed with offensive weapons or robbery with violence (ss.293(1)(a) and 293(1)(b) respectively). Both of these aggravated offences attracted a maximum penalty of life imprisonment.
- [10] This latter offence of robbery with violence has not been translated into the Crimes Decree as a separate offence. There is no longer an offence of robbery with violence and it is not part of the offence of aggravated robbery which is predicated on either plurality of offenders and/or the possession of offensive weapons. Violence is not mentioned. A robbery with violence is now then subsumed in the offence of robbery.
- [11] Sentencing for crimes of robbery is in a confused state. There is no doubt that the tariff for aggravated robbery is a term of 10 to 15 years as recently confirmed by the Court of Appeal in Maya AAU 0053.2011 (27 February, 2015). However this cannot be said to be the tariff for robbery with violence for 2 reasons. First there is no separate offence of robbery with violence and secondly robbery with violence is not aggravated robbery.
- [12] There is a need therefore to identify entirely separate tariffs for robbery.

- [13] In the very recent Supreme Court decision (24th April 2015) of Wallace Wise CAV 0004 of 2015, the court confirmed the tariff for aggravated robbery to be between 10 and 16 years (para 3). The Court went further by listing factors which could be considered as aggravating. They were :
- i. offence committed during a home invasion.
 - ii. in the middle of the night when victims asleep.
 - iii. premeditation or some planning.
 - iv. frightening circumstances, such as breaking of windows, damage to the home or robbers being masked.
 - v. weapons used to inflict violence or injury.
 - vi. injuries caused needing hospital treatment.
 - vii. victims elderly or vulnerable including the frightening of small children.
- [14] Gates P. in delivering the judgment of the Court said: *“it is a fundamental requirement of a harmonious civilised and secure society that its inhabitants can sleep safely in their beds without fear of armed and violent intruders.”*
- [15] While the tariff for aggravated robbery is now well settled, the tariff for robbery simpliciter is not. It has been informally accepted to be between 4 and 8 years imprisonment but it is quite apparent that such a range is totally inadequate for robberies that are carried out accompanied by violence. The use of violence in robberies should still attract the stiff penalties that they did under the Penal Code regime whilst robberies with little or no violence could be visited with a sentence of 3 or 4 years depending on the circumstances.
- [16] To facilitate sentencing for robbery simpliciter, it would be appropriate to apply two tariffs one for robberies accompanied by violent force should be in the range of 8 to 14 years (in recognition of the lower maximum penalty applied to robbery by the legislature as opposed to the penalty for aggravated robbery). The general tariff for robbery, not accompanied by violence, can then be visited with sentences in the range of two to seven years.

- [17] To exemplify the difference an offender who steals from a victim while throttling him almost to the point of suffocation but without an offensive weapon should receive a far greater sentence than an offender who just threatens a slap if the victim does not succumb. Both however, are in law robberies simpliciter.
- [18] Examples of robbery with little violence could be the snatching of a necklace from a victim's body, pushing a victim against a wall before taking a mobile phone and wallet, the showing of a fist without contact etc., it will therefore be at the discretion of the Court to decide where to start the sentence in accordance with the degree of violence.
- [19] In casting his sentence under the old tariff of 4 to 8 years the Magistrate quite properly took a starting point of 5 years towards the lower point of the range. However he unfortunately fell into error by identifying and applying erroneous aggravating factors and by perhaps not giving enough credit for relevant mitigating factors.
- [20] The victim cannot be said to be vulnerable because he was 61 years of age; perhaps being a lawyer may be so, but there is nothing that can be said about the victim that should enhance the sentence. Deprivation of property is a factor inherent in the offence as is fear instilled in the victim: neither can be aggravating. The only aggravating factor that could be applied in this case is that the accused was drunk. One should be able to go into a store and make a purchase without being bothered by a drunken passer-by on the street.
- [21] The mitigating factors applied by the learned Magistrate were for the main part justifiable. The accused did have a clear record and he did co-operate with the authorities in his obvious remorse. The discount of 12 months from the Magistrate's interim term of 4 years was in the circumstances correct.

[22] Pursuant to Section 256 (2) (a) of the Criminal Procedure Decree 2009, the Court now sets aside the sentence passed below and would sentence the appellant afresh.

[23] An appropriate starting point for a street robbery with minimal violence would be 3 years – that is the starting point adopted here. I add a further year to the sentence for the indignity to the victim of being attacked by a drunk as he was going about his lawful business. I deduct a year from that interim total to acknowledge the clean record, his remorse and the short time he had spent in custody (10 days) before sentence and finally I deduct twelve months for the guilty plea made 12 months after first being called upon to plea.

[24] The new sentence for the appellant is one of 2 years. He will serve a minimum of 18 months before being eligible for parole. This new sentence is in lieu of the original sentence and will run from 16 January 2015.

[25] In summary the tariffs for robbery should be

1. Aggravated robbery: 10 – 16 years.
2. Robbery (but with concomitant violence): 8 – 14 years.
3. Robbery without violence: 2 – 7 years.

[26] The appeal succeeds to that extent.



At Suva
30th April 2015

Paul K. Madigan
Judge