

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

Criminal Appeal No.: HAA 073 of 2017

KOLIACI SARAVI

vs.

STATE

Counsel : Appellant in person
Mr. J. Niudamu for the State

Dates of Hearing : 17 February 2017

Date of Judgment : 20 February 2017

JUDGMENT

- 1] On the 22nd September 2016 in the Magistrates Court at Lautoka the appellant was convicted on his own plea of one count of theft contrary to section 291(1) of the Crimes Decree 2009.
- 2] He was sentenced on the 27th October 2016 to a term of imprisonment of 17 months with a minimum term of 12 months.
- 3] He now appeals that sentence on the grounds that it was harsh and excessive and that it was in denial of his rights to rehabilitation and to reformation.

- 4] The facts of the case were that on the 17th September 2016 a young fisherman from Ba was waiting for transport at the Viti minibus stand. The appellant came from behind and using force took a mobile phone from him along with \$40 in cash. A policeman on patrol nearby gave chase and the appellant threw the phone away. He was stopped and arrested.
- 5] In mitigation the appellant told the Court that he was 31 years old and a casual worker. He was the sole bread winner for his mother with whom he lived. He promised not to re-offend.
- 6] The maximum penalty for theft is 10 years imprisonment.
- 7] The tariff for the offence was set in **Ratusili** HAA 011.2012 to be 2 to 9 months for a first offence and a penalty of at least 9 months for any subsequent offence.
- 8] Penalties can and have ranged up to 2 years or more for this offence and it is now time to extend the tariff for offences that put victims in fear, short of robbery.
- 9] This Appellant was fortunate not to have been charged with robbery, an offence which carries far stronger penalties, but the facts do reveal a special category of theft where the theft is made directly from another.
- 10] Most thefts are the misappropriation of property in the absence of the rightful owner and the **Ratusili** (*supra*) guidelines are appropriate for such crimes. However thefts with force from a person's body or clothing, whether he or she is in a vulnerable situation or not, should attract a sentence of at least 18 months.
- 11] In this case the victim was waiting for a bus and had no expectation

that he would be subjected to a physical act of aggression leading to the theft of his phone and money. There is no suggestion that there was any provocation on the part of the victim.

- 12] The Appellant has 7 previous convictions which are "alive". Four of those are for theft. Because of those convictions he cannot expect to be treated leniently by the Court. He prays in his grounds to be accorded the rights of rehabilitation and the chance to reform. However he has had 6 chances in the past to reform. It is remarkable that each sentence in the past has been suspended or a bind over. Despite that he is still committing violent theft.
- 13] The Magistrate had allowed discounts in his sentence for the plea of guilty and for the time spent in custody before arriving at the final sentence of 17 months.
- 14] This Court does not regard that sentence as harsh and excessive and the appeal is dismissed.



A handwritten signature in blue ink, appearing to read "P. Madigan".

**P. Madigan
JUDGE**

**At Lautoka
20th February 2017**