

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 325 of 2015

[CRIMINAL JURISDICTION]

STATE

V

JIMILAI TAWAKEDRAU DROSE

Counsel : Mr. R. Kumar and Mr. E. Samisoni for State
Mr. R. Vananalagi for Accused
Dates of Hearing : 07th – 16th February 2017
Date of Summing up: 17th February 2017
Date of Judgment : 24th February 2017
Date of Sentence : 28th February 2017

SENTENCE

1. After trial, the accused was convicted of one count of aggravated robbery, one count of aggravated burglary and one count of theft contrary to section 311(1)(a), section 313(1)(a) and section 291(1) of the Crimes Decree 2009 (“Crimes Decree”) respectively. The trial was held in the absence of the accused.
2. The evidence revealed that;
 - a) the accused and three others committed the offence of aggravated robbery at the first witness’ residence on 07th October 2015 where force was used on the said witness who was an elderly lady;
 - b) the accused and three others committed the offences of aggravated burglary and theft at the Pacific Energy Service Station at Walu Bay on 07th October 2015.

3. The prosecution informed the court during the hearing on mitigation and sentencing that they are not relying on the value of the items stolen as an aggravating factor.
4. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Decree is 20 years imprisonment. The tariff for this offence is an imprisonment term between 8 to 16 years. [*Wallace Wise v The State*, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015)]
5. The offence of aggravated burglary contrary to section 313(1) of the Crimes Decree is 17 years imprisonment. Based on the case of *Leqavuni v State* [AAU 106 of 2014] the prosecution submits that the tariff for the offence of aggravated burglary is 18 months to 3 years.
6. The offence of theft contrary to section 219 of the Crimes Decree carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
7. For the first count I take 8 years imprisonment as the starting point of the sentence.
8. The four offenders selected a vulnerable elderly lady to be their victim and the offence was committed around 3.00am in the morning. The said elderly lady was pushed to the ground. Though using of force is an element of the offence of aggravated robbery, the degree and the nature of force used can be taken into account as an aggravating factor. Considering the said circumstances, I increase the sentence to 10 years imprisonment.
9. Counsel for the accused and the counsel for the prosecution submitted that the accused is a first offender. It was also highlighted by the prosecution that the


accused had cooperated with the police. I consider these as mitigating factors. The sentence is reduced by 2 years in view of the said factors.

10. Accordingly, the sentence for the first count is an imprisonment term of 8 years.
11. The two offences charged on the second and third counts are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Decree 2009 ("Sentencing and Penalties Decree"), I consider it appropriate to impose an aggregate sentence of imprisonment for the second and the third counts.
12. Section 17 of the Sentencing and Penalties Decree, reads thus;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."
13. The offences charged on the second and third counts were committed at a place which provides a service to the general public. Considering all the circumstances including the mitigating factors outlined at paragraph 9 above, I sentence the accused for an aggregate sentence of 3 years imprisonment in respect of the second and third counts.
14. I order that the accused serve the two sentences concurrently. Accordingly, the final sentence is 08 years imprisonment.
15. Further, I order that the accused is not eligible to be released on parole until he serves 07 years of the sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Decree.

16. Section 24 of the Sentencing and the Penalties Decree reads thus;
- “If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”*
17. I note that the accused had spent around 46 days in custody in relation to this case. The period he was in custody shall be regarded as a period of imprisonment already served by him in view of the provisions of section 24 of the Sentencing and Penalties Decree. I hold that the period that should be regarded as served is two months.
18. In the result, the accused is sentenced to 08 years imprisonment with a non-parole period of 07 years. Considering the time spent in custody, the time remaining to be served is as follows;
- Head Sentence - 07 years and 10 months
Non-parole period - 06 years and 10 months
19. This sentence should commence from the date the accused is apprehended by the law enforcement authorities. An open warrant is issued against the accused.
20. 30 days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : R. Vananalagi & Associates.