

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 252 of 2018

[CRIMINAL JURISDICTION]

STATE

V

1. SOKOWASA BULAVOU
2. MANUELI NABOU

Counsel : Ms. M. Chowdhury for State  
Accused in Person

Hearing on : 16 November 2018

Sentenced on : 03 December 2018

SENTENCE

1. Manuelli Nabou, you stand convicted of two counts of the offence of aggravated robbery contrary to section 311 (1) of the Crimes Act 2009 and one count of resisting arrest contrary to section 277 (b) of the Crimes Act of 2009 upon you pleading guilty to the relevant charges. Your charges reads thus;

**COUNT ONE**

*Statement of Offence*

**Aggravated Robbery:** contrary to section 311 (1)(a) of the Crimes Act of 2009.

*Particulars of Offence*

**SOKOWASA BULAVOU** and **MANUELI NABOU** on the 17<sup>th</sup> day June 2018, at Raiwaqa in the Central Division, in the company of each other robbed Gerald Brown of a jacket valued at \$50.00.

**COUNT TWO**

*Statement of Offence*

**Aggravated Robbery:** contrary to section 311 (1)(a) of the Crimes Act of 2009.

*Particulars of Offence*

**SOKOWASA BULAVOU** and **MANUELI NABOU** on the 17<sup>th</sup> day June 2018, at Raiwaqa in the Central Division, in the company of each other robbed Shernal Mar of a bag containing assorted items all to the total value of \$255.00.

**COUNT FOUR**

*Statement of Offence*

**Resisting Arrest:** contrary to section 277 (b) of the Crimes Act of 2009.

*Particulars of Offence*

**MANUELI NABOU** on the 17<sup>th</sup> day June 2018, at Raiwaqa in the Central Division resisted arrest to Police Constable 2776 Asenaca in the due execution of her duty.

2. You have admitted the following facts;

**Complainant 1:** *Gerald Brown (age 17) (hereafter PW1), Student, 58 Ono Street, Samabula*

**Complainant 2:** *Sharnel Mar (age 17), Student, Grantham Road, (hereafter PW2).*

**Complainant 3:** *Police Special Constable 2776 Asenaca, (hereafter PW4).*

**Accused:** *Manueli Nabou (age 38) (hereafter "the accused")*

**Location of offence:** *DHL Yard, Grantham Road, Suva.*

1. *On 17<sup>th</sup> June, 2018 between 10am and 11am, PW1 and his girlfriend PW2 met inside the old Fiji National Provident Fund located at the DHL Yard at Grantham Road, Suva.*
2. *While they were sitting down at the said location and talking, the accused together with his accomplice approached them.*

3. *When they approached PW1 and PW2, the accomplice grabbed PW1's \$50.00 jacket and passed it to the accused.*
4. *At the said time, PW1 was also holding onto PW2's bag containing assorted items valued at \$255.00. The accomplice, grabbed PW1 by his collar, pulled this bag from PW1 and passed it onto the accused, who was in the meantime holding onto PW2.*
5. *PW1 managed to free himself from the accomplice and run to the Grantham Police Post which was nearby to seek help.*
6. *PW1 reported the matter to PC Prasil Shelvin Chand (hereafter PW3) in the presence Police Special Constable 2776 Asenaca (hereafter PW4).*
7. *PW3 accompanied PW1 out of the police post where he saw both accused and accomplice but before he could approach them, they started walking quickly in different directions.*
8. *PW3, followed the accused who was carrying a bag, but as the accused started running PW3 lost sight of him.*
9. *In the meantime, PW4 who was looking outside the Grantham Police Post window saw the accused run past. She went outside and was approached by PW2 who told her the accused which direction the accused went in.*
10. *PW4 ran in the said direction as indicated by PW2.*
11. *PW4 grabbed the accused who was running by his waist to arrest him.*
12. *However, the accused resisted arrest, by shoving PW4 away at which point she lost her grip on him and he escaped.*

*The accused was later arrested and caution interviewed on 18<sup>th</sup> June, 2018.*

*The accused in his caution interview question and answers 35 to 43, admitted that he and his accomplice saw PW1 and PW2 talking inside the old Fiji National Provident Fund Building located at the DHL Yard, Grantham Road, Suva. The accused admitted that he planned with his accomplice to rob PW1 and PW2. The accused admitted that he walked towards PW1 and PW2 and picked up PW2's bag with the intention of stealing money. In question and answer number 49 to 56 and*



75, the accused admitted that he came out from the gate at the back of the Grantham Community Post where he encountered PW4. He admitted that the PW4 pulled his t-shirt but he managed to run away from her. The accused also admitted that he checked the bag robbed and later threw it away as he only found a spray and some pieces of clothes inside it.

The accused was later arrested and charged with these offences.

On 4<sup>th</sup> October 2018 the accused voluntarily pleaded guilty in court to the charges against him.

3. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years imprisonment.
4. In the case of *Wallace Wise v The State*, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015) Gates CJ held thus;

[24] *The penalty for aggravated robbery set by law is 20 years [section 311(1) Crimes Decree]. Having arrived at a sentence of imprisonment within the range for such offences the sentencing court must fix a non-parole period – section 18(1) of the Sentencing and Penalties Decree. The exercise of the discretion here was unremarkable.*

[25] *The matter does not end there. We believe that offences of this nature should fall within the range of 8-16 years imprisonment. Each case will depend on its own peculiar facts. But this is not simply a case of robbery, but one of aggravated robbery. The circumstances charged are either that the robbery was committed in company with one or more other persons, sometimes in a gang, or where the robbers carry out their crime when they have a weapon with them.*

[26] *Sentences will be enhanced where additional aggravating factors are also present. Examples would be:*

- (i) *offence committed during a home invasion.*
- (ii) *in the middle of the night when victims might be at home asleep.*
- (iii) *carried out with premeditation, or some planning.*
- (iv) *committed with frightening circumstances, such as the smashing of windows, damage to the house or property, or the robbers being masked.*

- (v) *the weapons in their possession were used and inflicted injuries to the occupants or anyone else in their way.*
- (vi) *injuries were caused which required hospital treatment, stitching and the like, or which come close to being serious as here where the knife entered the skin very close to the eye.*
- (vii) *the victims frightened were elderly or vulnerable persons such as small children.*

5. Accordingly, the Supreme Court had clearly pronounced that the tariff for the offence of aggravated robbery is an imprisonment term between 8 to 16 years. If the offence is committed during a home invasion, the said fact should be considered as an aggravating factor.
6. Section 4(1) of the Sentencing and Penalties Act outlines the following as the purposes of which a sentence should be imposed;
- (a) to punish offenders to an extent and in a manner which is just in all the circumstances;
  - (b) to protect the community from offenders;
  - (c) to deter offenders or other persons from committing offences of the same or similar nature;
  - (d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;
  - (e) to signify that the court and the community denounce the commission of such offences; or
  - (f) any combination of these purposes.
7. You are before this court at a time where offences against property (under Part 16 of the Crimes Act) are rife. Therefore, it is necessary for your sentence to reflect the denunciation of your conduct by this court and of the society and it should serve as a deterrence.



8. The maximum penalty for the offence of resisting arrest contrary to section 277 (b) of the Crimes Act of 2009 is an imprisonment term of 5 years. The prosecution submits that the tariff for this offence is an imprisonment term between 6 months and 12 months relying on the case *Hicks v State* [2011] FJHC 455; HAA018.2011 (19 August 2011).
9. The first and the second counts are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment against you for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") 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."*

10. I would select 8 years imprisonment as the starting point of your aggregate sentence for the first two counts.
11. The vulnerability of the victim is considered as an aggravating factor to enhance the sentence. The victims were two students who were each 17 years old. You have admitted that you planned with your accomplice to rob the victims. Considering these circumstances, I would add 1 year to your sentence. Now your sentence is an imprisonment term of 9 years.
12. You are 36 years old. In your mitigation you have submitted that you are married with two children and your children are schooling. You have made submissions

regarding the difficulties faced by your family, and the situation they may have to face in the event you are incarcerated. Unfortunately, those personal circumstances cannot be considered as mitigating factors to reduce your sentence. You should have thought about your family before you decided to commit the offences you are now being convicted of. Being the father of two children, you have robbed from two young students who were below the age of 18 years.

13. You are not a first offender. There are 9 convictions listed in your previous convictions report and 4 of them have been entered within the last 10 years. Your last conviction is dated 01/02/2012 for the offence of robbery. Therefore, you will not receive any discount for your good character.
14. The only mitigating factor that I could consider in your favour apart from your guilty plea is the fact that you have cooperated with the police after you were arrested. I would deduct 1 year of your sentence in view of the said factor. Now your sentence is an imprisonment term of 8 years.
15. You in fact pleaded not guilty on the first occasion your plea was taken which was on 23/08/18. However, on 04/10/18, you changed your plea. However, given that you have accepted the responsibility for your actions at an early stage and have saved this court's time I would still give you a discount of one-third. Accordingly, your sentence for the first count and the second count is an imprisonment term of 5 years and 4 months.
16. For the fourth count of resisting arrest, I would sentence you to a term of 07 months imprisonment, given all the circumstances.



17. You shall serve the two sentences concurrently. Therefore, your final sentence is an imprisonment term of 5 years and 4 months. Considering the fact that you have accepted the responsibility of your actions and to promote rehabilitation I would fix your non-parole period at 3 years.

18. The non-parole period fixed in this case should not prevent you from being released after serving two-thirds of your head sentence subject to any other relevant provision of Prisons and Corrections Act.

19. Section 24 of the Sentencing and the Penalties Act 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."*

20. It is submitted that you have been in custody for this matter since 17 June 2018. Accordingly, you have spent a period of approximately 05 months and 15 days in custody. The period you were in custody in relation to this case shall be regarded as a period of imprisonment already served by you in view of the provisions of section 24 of the Sentencing and Penalties Act. I hold that the period to be regarded as served should be 06 months.

21. In the result, you are sentenced to an imprisonment term of 05 years and 04 months with a non-parole period of 03 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 04 years and 10 months

Non-parole period - 02 years and 06 months



22. Thirty (30) days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera

JUDGE

**Solicitors:**

Office of the Director of Public Prosecutions for the State.