

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 114 of 2018

STATE

V

- 1. SAVENACA KORO**
- 2. SIKELI DROMUNASIGA**
- 3. PENALIA MATANAVUTU**

Counsel : Mr. A. Singh for the State.
: Ms. J. Singh [LAC] for the First and Third
Accused.

Date of Sentence : 27 November, 2018

SENTENCE

- I. The first and third accused persons with another are charged by virtue of the following amended information filed by the Director of Public Prosecutions.

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: contrary to section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SAVENACA KORO, SIKELI DROMUNASIGA & PENALIA MATANAVUTU in the company of each other, between the 16th and the 18th day of June, 2018 at Lautoka in the Western Division, entered as trespassers into the bulk store of **FAKIRBHAI** with intent to commit theft from that property.

SECOND COUNT

Statement of Offence

THEFT: Contrary to section 291 (1) of the Crimes Act 2009.

Particulars of Offence

SAVENACA KORO, ISIKELI DROMUNASIGA & PENAIYA MATANAVUTU in the company of each other, between the 16th and the 18th day of June, 2018 at Lautoka in the Western Division, dishonestly appropriated (stole) 15 x 2 burner gas stove valued at \$1400.00. 8 x solar lights valued at \$792.00, 2 x pain balm valued at \$20.00, 12 x handsome cream for men valued at \$66.00. 18 x Hair Dye valued at \$199.00 all to the total value of \$2,477.00 the said property of **FAKIRBHAI** with the intention of permanently depriving the said **FAKIRBHAI**.

2. On 6 September, 2018 when the matter was called in this court the first and the third accused persons pleaded guilty to the above two counts in the presence of their counsel.
3. On 18 October, 2018 the accused persons after understanding the summary of facts read by the State Counsel admitted the same which is reproduced herewith:

The first accused is Savenaca Koro, 19 years of Buabua, Lautoka. He was employed as a casual labourer at Fakirbhai. The third accused is Penaiya Matanavutu, 20 years, unemployed of Buabua, Lautoka. The complainant is Lallu Bhai, 69 years, Business Director of Fakirbhai V Patel, located at 23 Yasawa Street, Lautoka.

On the 18th day of June, 2018, Lallu Bhai reported at Lautoka Police Station that unknown persons broke into his bulk store on the 3rd floor at 21 Yasawa Street, Lautoka. The bulk store was securely locked on Saturday the 16th of June, 2018, at about 6pm and upon checking on Monday the 18th of June at

about 2pm discovered boxes inside the bulk opened and items stolen. The point of entry was through a window which was forced opened as it had reinforcement timber. Upon checking the bulk it was discovered that the following items had been stolen:

- | | | |
|----|------------------------------------|-----------|
| 1. | 15 x 2 burner gas stove valued | \$1400.00 |
| 2. | 8 x solar lights valued | \$792.00 |
| 3. | 2 x pain balm valued | \$20.00 |
| 4. | 12 x Handsome cream for men valued | \$66.00 |
| 5. | 18 x Hair Dye valued | \$199.00 |

All to the total value of \$2,477.00 the property of Lallu Bhai.

On the above mentioned date, time and place the complainant had securely locked the bulk store after close of business. It was after two days that it was discovered that items had gone missing from the bulk.

Upon receipt of report, W/Cpl 2670 Ranadi was appointed as the investigating officer. During the course of the investigation, D/Sgt 3821 Silio and his fellow colleagues arrested Savenaca Koro, Penaia Matanavutu and another. During the reconstruction of the scene, both accused persons assisted the Police Officers by showing the place where they hid the items. Inside the cane field, 14 cartons of gas stove were discovered. The cartons of gas stove were shown to the complainant. The complainant positively identified the 14 cartons of gas stove belonging to him as he is the sole trader for the BESSE brand and GBES. The complainant also identified the first accused as he was working for his company.

Both accused were interviewed under caution. They admitted to committing the offence in their record of interview. Attached herewith are records of interview for both the accused persons.

4. Both the accused persons were arrested and caution interviewed on 20 June, 2018 and 21 June, 2018 respectively. They admitted committing both

the alleged offences in the company of each other. The accused persons also assisted the police in recovering the stolen items from the cane field where they had hidden the items, only 14 gas stoves valued at \$1,306.67 were recovered.

5. After considering the summary of facts read by the State Counsel which was admitted by both the accused persons in the presence of their counsel and upon reading their caution interviews, this court is satisfied that both accused have entered an unequivocal plea of guilty on their own freewill. This court is also satisfied that both accused persons have fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted by both the accused persons satisfies all the elements of both the offences.
6. In view of the above, this court finds the first and the third accused persons guilty as charged and they are convicted accordingly.
7. The two offences with which both the accused persons have been convicted are founded on the same facts hence it is only proper that an aggregate sentence be imposed.
8. Section 17 of the Sentencing and Penalties Act states:
"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."
9. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the two offences.

The counsel for the first and third accused persons presented the following mitigation and personal details about the two accused persons:

10. FIRST ACCUSED

- a). The accused is a first offender;
- b). He is 20 years of age and unemployed;
- c). Admits making a wrong decision;
- d). Is extremely sorry for what he had done, seeks forgiveness;
- e). Pleaded guilty at the earliest opportunity;
- f). Cooperated with the police during investigations;
- g). He is remorseful of his actions;
- h). Seeks a lenient sentence.
- i). The value of items recovered was \$1,306.67.

THIRD ACCUSED

- a). The accused is a first offender;
- b). He is 20 years of age and is a cane cutter;
- c). He was influenced by his peers in committing the offence;
- d). He regrets what he has done;
- e). Admits making a wrong decision;
- f). Pleaded guilty at the earliest opportunity;
- g). Cooperated with the police during investigations;
- h). He is remorseful of his actions;
- i). Seeks a lenient sentence.
- j). Is extremely sorry for what he had done, seeks forgiveness;
- k). The value of items recovered was \$1,306.67.

11. On 12 November, 2018 this matter was called in court for sentence. The first accused was not present in court, a bench warrant was issued and the matter was adjourned to 16 November, 2018. On the 16th the first accused appeared in court the reason given by the first accused for his non-appearance was not satisfactory so his bail was revoked.

TARIFF

12. The maximum penalty of the offence of aggravated burglary is 17 years imprisonment.
13. The accepted tariff for this offence is a sentence between 18 months to 3 years imprisonment (see *Leqavuni v. State, Criminal Appeal No. AAU 106 of 2014 (26 February, 2016)*).
14. For the offence of theft the maximum penalty is 10 years imprisonment.
15. The tariff for the offence of theft is settled. In *Mikaele Ratusili v. State, Criminal Appeal no. HAA 011 of 2012 (1 August, 2012)* Madigan J. set out the tariff for theft as follows:
 - (i) For the first offence of simple theft the sentencing range should be between 2 and 9 months.
 - (ii) any subsequent offence should attract a penalty of at least 9 months.
 - (iii) Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.
 - (iv) regard should be had to the nature of the relationship between offender and victim.
 - (v) planned thefts will attract greater sentences than opportunistic thefts."

AGGRAVATING FEATURES

(a) Early morning Invasion

The accused persons entered the complainant's bulk store during the early hours of the morning. They went to the third floor and were bold and undeterred.

(b) Planning

There is a degree of planning and premeditation involved the first accused was the employee of the complainant he knew where the entry and exit points were and how it could be accessed. The first accused breached the trust of his employer by his actions. The third accused was also part of the planning process who participated fully in the unlawful enterprise.

(c) Commercial Entity

The accused persons targeted a bulk store which was part of a commercial entity.

16. The learned state counsel submits that this court should apply the new tariff for aggravated burglary of 6 years to 14 years as suggested by Perera J. in *State vs. Shavneel Prasad*, criminal case no. HAC 254 of 2016 (12 October, 2017). Counsel argues that the current tariff of 18 months to 3 years is not adequate considering the increase in burglary related offences and for the protection of the society there is a need to revisit the existing tariff.
17. This court agrees and fully endorses the sentiments raised by counsel, however, this court is bound by the decision made by the Court of Appeal in *Leqavuni's* case (supra) which maintained the tariff of 18 months to 3 years for the offence of aggravated burglary. Until the Court of Appeal decides to revisit the tariff for aggravated burglary this court is bound by the Court of Appeal decision.
18. Considering the objective seriousness of the offending, I select 20 months imprisonment (lower range of the tariff) as the aggregate sentence for both the offences. For the aggravating factors I increase the sentence by 3 years. The interim sentence of imprisonment now stands at 4 years 8 months imprisonment.

19. For the mitigation I reduce the sentence by 8 months bringing the sentence to 4 years. For the early guilty plea I further reduce the sentence by 10 months bringing the interim sentence to 3 years 2 months. The first accused has been in remand for 2 months 8 days whereas the third accused has been in remand for 1 month and 17 days. In accordance with section 24 of the Sentencing and Penalties Act I exercise my discretion to further reduce the sentence of both the accused persons by 2 months and 10 days as a period of imprisonment already served. The final sentence is 2 years 11 months and 20 days imprisonment.
20. The final aggregate sentence for the two offences is 2 years 11 months 20 days imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment.
21. In *State vs. Alipate Sorovanalagi and others*, Revisional Case No. HAR 006 of 2012 (31 May 2012), Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraphs 22 and 23:

[22] I accept that the Magistrates' Court has discretion to suspend a sentence if the final term imposed is 2 years or less. But that discretion must be exercised judiciously, after identifying special reason to suspend the sentence. The special reason can vary depending on the facts of each case.


[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg CJ laid down guidelines for imposing suspended sentence at p.7:

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

22. The following circumstances or reasons for the offending needs to be weighed in choosing an immediate imprisonment or a suspended sentence.
23. The accused persons are first offenders, both are in their early twenties, pleaded guilty at the earliest opportunity, there has been some recovery of stolen items, and they cooperated with Police. On the other hand the offences committed are serious which was committed after much planning and premeditation on a bulk store during the early hours of the morning. The first accused was an employee who knew about the bulk.
24. In view of the above, I consider there are no special reasons which would convince this court to impose a wholly suspended sentence. The offences committed are very much prevalent nowadays instead of doing something more meaningful in life the accused persons have chosen to take a short cut which is unacceptable and must be denounced in every sense of the word.

25. Although both the accused persons are young offenders this court has to balance rehabilitation with retribution, special and general deterrence. In considering a partial suspended sentence this court has taken into account rehabilitation over and above retribution and deterrence.
26. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that a partial suspended sentence is just in all the circumstances of the offending.
27. In summary both the accused persons are sentenced to 2 years 11 months 20 days imprisonment respectively as an aggregate sentence for both the offences. For the first accused the term of imprisonment is partially suspended after he serves 1 year imprisonment since he was the mastermind behind the offending. For the third accused the term of imprisonment is partially suspended after he serves 10 months imprisonment. The balance term of imprisonment for both the accused person is suspended for 4 years which will become effective from the time they are released from the Corrections Center. The effect of suspended sentence is explained to both the accused.
28. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka
27 November, 2018

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the first and third Accused.