

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 043 of 2018

[CRIMINAL JURISDICTION]

STATE

V

JOEL BOWER

Counsel : Mr. E. Samisoni for State
Accused in Person.
Hearing on : 03rd April 2018
Sentenced on : 06th April 2018

SENTENCE

1. Joel Bower, you stand convicted of the offence of aggravated robbery contrary to section 311 (1) of the Crimes Act 2009 upon your plea of guilty. Your charge reads thus;

Statement of Offence

AGGRAVATED ROBBERY: contrary to section 311 (1) (a) of the Crimes Act 2009.

Particulars of Offence

JOEL BOWER on the 1st day of November, 2017 at Nasinu in the Central Division, in the company of another, robbed KRISHNEEL KISHAN DEO of 1 x black ZTE L3 mobile phone valued at \$199.00 the property of KRISHNEEL KISHAN DEO.

2. You have admitted the following facts;

The accused JOEL BOWER is 19 years of age, unemployed of Makoi, Suva.

The complainant KRISHNEEL KISHAN DEO is a 19 years old student of New Town, Suva.

On 1st November, 2017 at around 7pm at Makoi, Nasinu the complainant was exiting a bus and had taken out his black ZTE Blade L3 mobile phone valued at \$199.00 from his pocket to make a phone call when suddenly two men approached him. The accused's accomplice hit the complainant with his forearm at the back of his head which resulted in his mobile phone falling out of his grasp and landing on the road whereby the accused then picked up the mobile phone and ran away together with his accomplice. The complainant then chased after them and managed to tap the ankle of one of the accused's accomplice who fell and a fist fight ensued between them. The accused then went back to help his accomplice and pushed the complainant away allowing them to make their escape.

Police received information about the incident and investigated.

The accused was taken into custody and interviewed under caution. He was then charged with one count of Aggravated Robbery.

The accused made full admissions in his Record of Interview at question and answer 26 onwards.

3. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act 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)]

4. Explaining the aggravating circumstances of the offence of robbery with violence under the now repealed Penal Code Goundar J said in the case of *State V Rokonabete* [2008] FJHC 226 that;

"The dominant factor in assessing seriousness for any types of robbery is the degree of force used or threatened. The degree of injury to the victim or the nature of and duration of threats are also relevant in assessing the seriousness of an offence of robbery with violence."

5. In your written mitigation you have submitted that you are a first offender and you urge this court to give you a second chance. It is stated in your written submission that your mother and sister are living in Levuka, you came to Suva to support your family and now you intend to go back to Levuka to cultivate your land for the welfare of your family. However, when I inquired from you, you said in open court that you were studying in a school at Levuka in form 5 and you came to *Viti Levu* to live with your grandmother after you had an argument with your parents. You said you intend to continue your education and planning to get enrolled in a school in Makoi. There is a clear contradiction between what you have submitted in writing and what you said in court.
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. Despite the contradictions in your submissions, I would still agree with the counsel for the prosecution that you have presented a high likelihood of rehabilitation. However, I cannot ignore the need to deter offenders or other persons from committing offences of the same or similar nature and to signify that the court and the community denounce the commission of such offences. You are before this court at a time where offences against property (under Part 16 of the Crimes Act) are rife and had disturbed the tranquility of our society to a considerable extent. The offence of aggravated robbery which you have committed is the most serious offence against property under Part 16 of the Crimes Act.

8. All in all, I cannot grant your request to impose a non-custodial sentence in this case. I would echo the sentiments of Nawana J in the case of *State v Tilalevu* [2010] FJHC 258; HAC081.2010 (20 July 2010) where His Lordship said that;

"I might add that the imposition of suspended terms on first offenders would infect the society with a situation - which I propose to invent as '*First Offender Syndrome*' - where people would tempt to commit serious offences once in life under the firm belief that they would not get imprisonment in custody as they are first offenders. The resultant position is that the society is pervaded with crimes. Court must unreservedly guard itself against such a phenomenon, which is a near certainty if suspended terms are imposed on first offenders as a rule."

9. I would select 8 years imprisonment as the starting point of your sentence.
10. I would consider the following as aggravating circumstances in order to add 03 years to your sentence;
- a) the nature of force used on the victim by the other person you teamed up with;
 - b) the fact that the offence was committed near a bus stop around 7.00pm in the night; and
 - c) the fact that there was pre-planning between the two of you as stated in your cautioned interview.
11. I consider the following as mitigating factors to deduct 03 years of your sentence;
- a) You are a young first offender;
 - b) You are remorseful; and
 - c) You cooperated with the police.

12. Now your sentence is an imprisonment term of 08 years. You pleaded guilty to the charge on the first day your plea was taken. By pleading guilty at the earliest opportunity, you have saved this court's time. In view of your early guilty plea I would grant you a discount of 02 years and 08 months which is equivalent to one-third of your sentence.
13. Accordingly, I sentence you to an imprisonment term of 05 years and 04 months. I order that you are not eligible to be released on parole until you serve 03 years and 04 months of your sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
14. As I have applied the two-tiered approach to determine your sentence, the above reasoning process that led to your final sentence clearly indicate why your final sentence is below the established tariff. Had you not pleaded guilty your sentence would have been an imprisonment term not less than 08 years, which would be within the tariff.
15. 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."
16. It is submitted that you are in custody in view of this matter since 23/12/17. Accordingly, you have spent a period of 03 months and 13 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 that should be regarded as served is 04 months.

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

Head Sentence - 05 years

Non-parole period - 03 years

18. 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