

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 172 of 2015

STATE

V

- 1. KELEPI SALAUCA**
- 2. VERETI WAQA**
- 3. TUI LESI BULA**

Counsel : Mr. J. Niudamu for the State.
: Accused 1 in person.
: Accused 2 trial in absentia.
: Accused 3 in person.

Dates of Hearing : 31st May, 1, 4,5,8,11,12 June, 2018
Closing Speeches : 13th, 14th June, 2018
Date of Summing Up : 14th June, 2018
Date of Judgment : 15th June, 2018
Sentence Hearing : 9th, 10th July, 2018
Date of Sentence : 10th July, 2018

SENTENCE

1. In a judgment delivered on 15 June, 2018 this court found all the accused persons guilty and convicted them for one count of aggravated robbery as per the following information:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

KELEPI SALAUCA, VERETI WAQA & TUI LESI BULA in the company of another on the 11th October, 2015 at Sigatoka in the Western Division robbed **KAVITESH KIRIT PRASAD** of the following items: Nissan Navara (Registration HA 448) valued at \$60,000.00, \$300.00 cash, Assorted cards namely Westpac, Westpac Debit Card, Australian Master Card, Australian Drivers Licence, Joint FNP/FIRCA, Black SFIDA pair of canvas, Gym Gloves, White iPod, Nokia Lumia Phone, Euphoria Calvin Klein Perfume, Encounter Fresh Calvin Klein perfume, Mangal Sutra valued at \$10, 000.00, Bangles valued at \$6,000.00, Hair set valued at \$9,000.00, Bracelet valued at \$2,000.00, Ear ring valued at \$3,000.00, Bedstone Necklace valued at \$900.00, Wedding Ring (Female) valued at \$2,000.00, Wedding Ring (Male) valued at \$1,200.00, Gold Chain (22 carat) valued at \$1,200.00, Wrist Watch (Fossil-Citizen) valued at \$800.00, Ladies Watch (Pulsar) valued at \$300.00, Black Label (x 15 bottles) valued at \$1,350.00, Bombay Sapphire (x 5 bottles) valued at \$400.00, Galaxy Samsung S5(x2) valued at \$2,400.00, ITB Hardware (x2) valued at \$1,000.00, 1 Flash Drive valued at \$500.00, 1 Toshiba laptop valued at \$1,800.00 and assorted branded BLK Clothing valued at \$80.00 all to the **Total Value of Approximately \$93, 930.00.**

The brief facts were as follows:

2. On 11 October, 2015 the victims (husband and wife) were asleep in their house at Malaqereqere, Sigatoka. At about 2.00am they were awoken by the sound of someone breaking into their bedroom. The three accused persons in the company of each other and another had broken into the house of the victims that early morning.

3. The victims were asked to cooperate so that no one was harmed, blankets were thrown over them, curtains drawn and the lights in the house turned on.

4. The victims were threatened as to the whereabouts of their valuables in the house. The pregnant wife of the complainant was grabbed by her hair and dragged from one room to the other so that she could show them where the valuables were kept in the house.
5. The house was searched for about an hour they fled from the scene having stolen the following properties belonging to the victims namely Nissan Navara vehicle (registration no. HA 448), mobile phone, assorted jewellery, assorted liquor, wallet with cash of \$300.00, credit cards, perfumes, laptops, BLK clothes, shoes, black and white SFIDA canvas, watches etc all to the value of about \$93,000.00.
6. Upon police investigation the accused persons were found to be in possession of most of the items stolen from the complainants. They were arrested and charged.
7. The State Counsel filed written submissions and also made oral submission during the sentence hearing. In a surprise move both the accused persons in utter disrespect to the court in their written mitigation handed over what appeared to be grounds of appeal. Both mentioned to the court that they were innocent despite the fact that they had been found guilty and convicted by the court. Since the accused persons are unrepresented the comments made by both the accused persons shall not be taken against them.
8. The first accused finally presented the following details and mitigation orally in court:
 - a) He was 27 years of age in 2015;
 - b) A graphic designer by profession;
 - c) He is in a defacto relationship having 3 daughters and 3 sons;
 - d) Has been in remand for about 2 years.

9. The second accused Mr. Waqa was absent, however, the following details have been extracted from the court file:
- a) He was 27 years of age at the time of the offending;
 - b) Form six level of education;
 - c) Second youngest in the family;
 - d) Parents are divorced;
 - e) Was employed as a welder by a company in Suva.
10. The third accused finally presented the following details and mitigation:
- a) First offender;
 - b) 42 years of age in 2015;
 - c) Married with 4 children;
 - d) Remand period of more than 1 year.
11. The aggravating features are:
- a). Early morning invasion - The robbery took place during the early hours of the morning when the victims were fast asleep;
 - b). Home invasion - The accused persons had forcefully entered the victims house after it was securely locked;
 - c). Pre Planning - An organized gang robbery. The manner in which the accused persons had forcefully entered and searched the entire house indicates a very careful planning was done before the actual robbery;
 - d). Vulnerability - The victims were frightened and scared the accused persons had taken

advantage of the victims vulnerability particularly within the comfort of their home. The victim's wife was pregnant at the time. Both victims suffered mental anguish, trauma, shock and anxiety as a result of the robbery.

ITEMS RECOVERED

12. Substantial value of items was recovered.

REMAND PERIOD

13. The first accused (Kelepi Salauca) was in remand for this matter for about 2 years 23 days.
14. The second accused (Vereti Waqa) was in remand for this matter for about 2 months 3 days.
15. From the court file the third accused (Tui Lesi Bula) was in remand for this matter from 20th October, 2015 to 22nd December, 2015. Bail was granted by this court on 23rd December, 2015. On 5th December, 2017 his bail was revoked since then he has been in remand till today. The total remand period for this accused is about 9 months 9 days.

PREVIOUS CONVICTIONS

16. The first accused disputes his two previous convictions dated 19 April, 2007 since they are over 10 years old he will be considered as a first offender.
17. The second accused has two previous convictions of burglary and theft dated 9 January, 2012.
18. The third accused has no previous convictions.

LAW AND THE TARIFF

19. The maximum punishment for the offence of aggravated robbery is 20 years imprisonment. The tariff for the offence of aggravated robbery is between 8 years to 16 years imprisonment. In the case of *Wallace Wise vs The State, CAV 0004 of 2015* the Supreme Court whilst confirming the above tariff made the following comments at paragraph 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”

20. In this case the criminality of all the accused persons is obvious so they have to share the responsibility of their actions.
21. Considering the objective seriousness of the offence committed a starting point of 11 years imprisonment (lower range of the tariff) is justified for all the accused persons. For the aggravating factors an addition of four years is made bringing the interim total to 15 years imprisonment.
22. For the mitigating factors for accused one and accused three I allow a discount of 2 years including substantial value of stolen items recovered. The third accused also submitted two character references which have been taken into consideration by this court. For the second accused I allow a reduction of one year for the mitigating factors and the substantial value of items recovered since he does not get a reduction for good character.
23. The interim term of imprisonment for accused one and three is 13 years respectively and for accused two it is 14 years.

24. In accordance with section 24 of the Sentencing and Penalties Act all the accused persons are entitled to a further reduction for the remand period. The first accused was remanded for 2 years 23 days the final sentence for this accused is 10 years 11 months and 7 days imprisonment.
25. The second accused was remanded for 2 months 3 days. The final sentence for this accused is 13 years 9 months and 27 days imprisonment.
26. The third accused was remanded for 9 months 9 days. The final sentence for this accused is 12 years 2 months and 21 days imprisonment.
27. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victims compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
28. The above sentences will serve as a deterrent to others who are thinking of committing such an offence and is also to punish the accused persons for the offence they have committed. This court will be failing in its duty if all the accused persons are not sentenced to immediate long term imprisonment.
29. The court at this point reiterates the observations made by the Supreme Court in the case of *Wallace Wise (supra)* at paragraph 27:

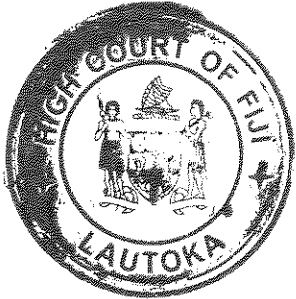
“It is our duty to make clear these type of offences will be severely disapproved by the Courts and be met with appropriately heavy terms of imprisonment. It is a fundamental requirement of a harmonious civilized and secure society that its inhabitants can sleep safely in their beds without fear of armed and violent intruders”.

30. Under section 18(1) of the Sentencing and Penalties Act the following non-parole is ordered before the accused persons are eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused persons and the expectations of the community. For the first accused a non-parole period of 9 years imprisonment is imposed, for the second accused a non-parole period of 12 years imprisonment is imposed, for the third accused a non-parole period of 11 years imprisonment is imposed.
31. All the accused persons have committed a very serious offence as a group. It is noted that all are able bodied persons who could earn a decent living rather than engaging in such unlawful activities. This court denounces the actions of all the accused persons. All of you should learn to work and live off your earnings rather than being a “parasite” robbing others for your personal gains. The victims in the victim impact statement have mentioned of the mental anguish, trauma, shock and anxiety they had suffered as a result of your actions. All of you should be ashamed of yourselves for what you have done.

ORDERS

32. The final sentences are as follows:
- a). The first accused is sentenced to 10 years 11 months and 7 days imprisonment with a non-parole period of 9 years to be served before this accused is eligible for parole;
 - b). The second accused is sentenced to 13 years 9 months and 27 days imprisonment with a non-parole period of 12 years to be served before this accused is eligible for parole. This sentence to commence from the day this accused is apprehended;

- c). The third accused is sentenced to 12 years 2 months and 21 days imprisonment with a non-parole period of 11 years to be served before this accused is eligible for parole.
- d). 30 days to appeal to the Court of Appeal.



At Lautoka

10 July, 2018

Sunil Sharma

Judge

Solicitors

Office of the Director of Public Prosecutions for the State.

Accused one and Accused three in person.

Accused two absent.