

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 35 of 2018

STATE

V

1. EW

2. ED

Counsel : Ms. Lavinia Bogitini for the State
Ms. Swarvana Prakash for the two Juveniles

Hearing : 10 July 2018

Date of Punishment : 20 July 2018

The names of the two Juveniles have been suppressed. Accordingly, they will be referred to as EW and ED respectively.

PUNISHMENT

[1] EW and ED, in terms of the Information filed by the Director of Public Prosecutions (DPP), the two of you were charged with the following offence:

Statement of Offence (a)

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

Particulars of Offence (b)

EW AND ED, on the 12th day of November 2017, at Vuci Road, Nausori in the Eastern Division, robbed **SALVIN SALENDRA KUMAR** of his Samsung Galaxy J5 mobile phone, valued at \$869.00 and immediately before the robbery, used violence on the said **SALVIN SALENDRA KUMAR**.

- [2] When this matter came up before me, on 10 July 2018, the two of you were ready to take your pleas. You pleaded guilty to the charge in the Information. Court was satisfied that you fully understood the nature of the charge against you and the consequences of your pleas. Court found that you pleaded guilty on your own free will and free from any influence.
- [3] Thereafter, the State filed the Summary of Facts. The Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty pleas to be unequivocal. I found that the facts support all elements of the charge in the Information, and found the charge proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own pleas in respect of the charge.
- [4] I now proceed to impose the punishment against the two of you.
- [5] The Summary of Facts filed by the State was that:

"On the 12th day of November 2017, at 8.45pm, the complainant Salvin Salendra Kumar, 25 years old, Sales person, of Vuci Road, Nausori was on his way home and walking along Vuci Road, Nausori.

As the complainant was walking, the Juveniles EW, 17 years old, student of Naduru, Nausori and ED, 16 years old, student of Nageledamu village, came from behind the complainant where EW pushed the complainant to a nearby drain causing the complainant to fall into the drain.

When the complainant fell into the drain, ED threw a punch at the complainant which landed on the complainant's chest and EW grabbed the complainant's Samsung Galaxy J5 Prime mobile phone.

The Juveniles EW and ED then ran away towards Naduru Road when the complainant started shouting for help.

The matter was reported to Police where due to Police investigations, the Juveniles were arrested.

The Juvenile EW in his Caution Interview admitted the offence in his answers from Question 23 to Question 44. (Caution Interview of EW attached).

The Juvenile ED in his Caution Interview admitted the offence in his answers from Question 29 to Question 52. (Caution Interview of ED attached).

The complainant suffered abrasions on both elbows (Medical Report of Salvin Salendra Kumar attached)."

- [6] EW and ED you have admitted to the above Summary of Facts and taken full responsibility for your actions.
- [7] Section 4 of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the punishment to be imposed on you.
- [8] In terms of Section 311 (1) of the Crimes Act No. 44 of 2009 (Crimes Act), "A person commits an indictable offence (of Aggravated Robbery) if he or she-
- (a) Commits a robbery in company with one or more other persons; or
 - (b)"

The offence of 'Robbery' is defined at Section 310 (1) of the Crimes Act as follows:

"A person commits an indictable offence (which is triable summarily) if he or she commits theft and —

(a) immediately before committing theft, he or she—

(i) uses force on another person; or

(ii) threatens to use force then and there on another person —

with intent to commit theft or to escape from the scene; or

(b) at the time of committing theft, or immediately after committing theft, he or she—

(i) uses force on another person; or

(ii) threatens to use force then and there on another person—

with intent to commit theft or to escape from the scene".

- [9] The offence of Aggravated Robbery in terms of Section 311 (1) of the Crimes Act carries a maximum penalty of 20 years imprisonment.

- [10] The tariff for the offence of Aggravated Robbery is between 8 and 16 years imprisonment. This tariff has been endorsed by the Supreme Court in *Wise v. State* [2015] FJSC 7; CAV 04 of 2015 (24 April 2015); where it was held:

".....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."

- [11] In terms of the Juveniles Act (as amended) a "juvenile" has been defined to mean a person who has not attained the age of eighteen years, and includes a child and a young person. A "child" means a person who has not attained the age of fourteen years; while a "young person" means a person who has attained the age of fourteen years, but who has not attained the age of eighteen years.

- [12] Section 30 of the Juveniles Act imposes certain restrictions on the punishments which Courts could order against juvenile offenders. The Section provides that:

"(1) No child shall be ordered to be imprisoned for any offence.

(2) No young person shall be ordered to be imprisoned for an offence, or to be committed to prison in default of payment of a fine, damages or costs, unless the court certifies that he is of so unruly a character that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained.

(3) A young person shall not be ordered to be imprisoned for more than two years for any offence."

Emphasis is mine.

- [13] EW and ED what you have committed is a very serious offence. Thefts, burglaries and robberies are now frequently prevalent in our society today. The facts of the case prove that there was some degree of pre-meditation by the two of you in committing this offence. Furthermore, the offence was committed in the night (around 8:45 p.m.) and injuries were caused to the complainant.

- [14] In mitigation you have submitted as follows:

- (i) That you are first offenders and that there have been no previous findings of guilt recorded against you to date. The State too confirms this position.

- (ii) That you fully cooperated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
 - (iii) You have sought forgiveness from this Court and have assured that you will not re-offend. You have submitted that you are truly remorseful of your actions.
 - (iv) The stolen property has been recovered.
 - (v) That you entered a guilty plea at a very early stage in these proceedings.
- [15] Considering all the aforementioned factors, and the restrictions placed on this Court in terms of the provisions of Section 30(3) of the Juveniles Act, I impose on each of you a punishment of 2 years imprisonment.
- [16] The next issue for consideration is whether your punishments should be suspended.
- [17] Section 26 of the Sentencing and Penalties Act provides as follows:
- (1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*
 - (2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*
 - (a) *does not exceed 3 years in the case of the High Court; or*
 - (b) *does not exceed 2 years in the case of the Magistrate’s Court.*
- [18] EW, you are 17 years of age (DOB: 3 October 2000). You are said to be a Year 11 student at Vunimono High School. You are said to be residing with your parents and 5 siblings at Naduru Road in Nausori.
- [19] ED, you are 16 years of age (DOB: 7 September 2001). You are said to be a Form 5 student at Sila Central High School. You are said to be residing with your mother, sister and 2 brothers at Nausori.
- [20] The two of you you have admitted that what you did was wrong, and taken full responsibility for your actions. You have also admitted that the offence was committed due to lack of good judgment on your part. You have also promised that you would lead a crime free life if you are granted a non-custodial punishment.

[21] In *Singh & Others v. State* [2000] FJHC 115; HAA 79J of 2000S (26 October 2000); Her Ladyship Madam Justice Shameem held:

"...However as a general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse...."

[22] Her Ladyship Madam Justice Shameem also held In *Nariva v. The State* [2006] FJHC 6; HAA 148J.2005S (9 February 2006);

"The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment."

[23] I have considered the following circumstances:

- Both of you are young offenders;
- You have been of previous good character;
- You have fully cooperated with the Police;
- You have accepted responsibility for your conduct;
- You submit that you are truly remorseful of your actions and have sought forgiveness from this Court;
- You have assured Court that you will not re-offend.
- You entered guilty pleas at a very early stage in these proceedings;

Accordingly, it is my opinion that the chances for your rehabilitation is high. Therefore, I deem it appropriate to suspend your punishments. However, to deter the two of you and other persons of your age from committing offences of the same or similar nature, and also to protect the community, I suspend your punishments for a period of 5 years. Both juveniles are advised of the effect of breaching a suspended punishment.

[24] In the result, your final punishments would be 2 years imprisonment, which term of imprisonment is suspended for a period of 5 years.

[25] You have 30 days to appeal to the Court of Appeal if you so wish.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 20th Day of July 2018

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Juveniles : Office of the Legal Aid Commission, Suva.