

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 128 OF 2011S

STATE

vs

1. VALAME TURAGANIKELI
2. NACANIELI VUKILECA

Counsels : Mr. Y. Prasad for State
Accused No. 1 In Person
Accused No. 2 In Person, but tried in Absentia

Hearings : 1 and 28 August, 2017

Ruling : 2 February, 2018

Sentence : 9 February, 2018

SENTENCE

1. On 22 November 2010, both of you accuseds appeared in the Nausori Magistrate Court, on the following charge:

Statement of Offence

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

Particulars of Offence:

VALAME TURAGANIKELI, NACANIELI VUKILECA and others, on the 15th day of November, 2010 at Nausori in the Central Division, robbed **JAG RAM** of cash \$200.00, three wrist watches valued at \$190.00, two mobile phones valued at \$314.00, one school bag valued at \$20.00, one gold bracelet valued at \$100.00 and one Adidas Canvass valued at \$85.00, all to the value of \$1049.00, and immediately before such robbery, used personal violence on the said **JAG RAM** with cane knives, pinch bars and stones.

2. Between 22 November 2010 and 7 January 2013, the matter went through various mentions and pre-trial conferences for various reasons. On 7 January 2013, both of you were present in Nausori Magistrate Court. You both waived your rights to counsels. The above charge was read and explained to both of you two. Both of you said you understood the same. Both of you then entered not guilty pleas to the charge.
3. The matter did not proceed to a hearing until 25 April 2017. The reasons were explained in paragraphs 1, 2, 3 and 4 of my 2 February 2018 Ruling. In any event, after a 2 days trial, the Nausori Magistrate delivered a written 5 page judgment on 4 May 2017. It found both of you two guilty as charged. It then convicted you two of the charge. On 17 May 2017, the prosecution made an application to the Nausori Magistrate Court to transfer the case to the High Court for sentencing, given that the complainant and his son were seriously injured during the offence. Accused No. 1, you had nothing to say and Accused No. 2 was deemed to have chosen to remain silent, by his non-attendance.
4. The Learned Magistrate granted the prosecution's application, and transferred the matter to the High Court for sentencing, pursuant to section 190 of the Criminal Procedures Act 2009. The preliminary issue of whether or not the High Court had the power to sentence in this matter, had been answered in my ruling of 2 February 2018, when I said that Parliament had given the High Court the power to do so, within the terms of section 190 abovementioned.
5. Before proceeding to sentence both accuseds, it is prudent to give a summary of the case. On 15 November 2010, at about 3 am, Mr Jag Ram and his wife were fast asleep in their family home at Waita Feeder Road, Nausori. They were asleep in their bedroom. In the next bedroom, was their son, Mr Jason Shagnil, and his grandfather. They were also fast asleep. Unbeknown to them, Accused No. 1 and 2, with two others, had already planned to rob them early that morning. In fact, they had broken a window and crawled through the same into the house. When in the house, the group woke Mr Shagnil by force and demanded money. Mr Ram awoke from his bedroom. The accuseds and their friends were armed with pinch bars, and cane knives.
6. The accuseds and their friends confronted Mr Ram and his son with the pinch bars and cane knives. They fought each other. Mr Ram managed to cut a robber in the head with a cane

knife in self-defence. His son managed to knock one of the robbers down with a piece of timber. However, Mr Ram and his son were later knocked unconscious by the robbers. Mr Ram was cut on the right side of his head with a cane knife. The accuseds and their friends later ransacked the house and stole the items mentioned in the count. They later fled the crime scene on foot. The matter was later reported to the police. An investigation was carried out. Both accuseds were arrested at Lautoka and were caution interviewed by police on 19 November, 2010 – 4 days after the alleged incident. They both admitted the offence to police.

7. “Aggravated Robbery”, as a criminal offence, is viewed seriously by the law-makers of this country, and it carried a maximum sentence of 20 years imprisonment. For a spate of robberies, the tariff is a sentence between 10 to 16 years imprisonment: see Livai Nawalu v The State, Criminal Appeal No. CAV 0012 of 2012, Supreme Court of Fiji. With a single case of aggravated robbery, the tariff is now a sentence between 8 to 16 years imprisonment: see Wallace Wise v The State, Criminal Appeal No. CAV 0004 of 2015, Supreme Court of Fiji. The actual sentence will depend on the aggravating and mitigating factors.

8. In Wallace Wise v The State (supra), the Hon. Chief Justice A Gates said as follows,

“... 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 violence intruders...”

9. Furthermore, the Hon. Chief Justice, in the above case, commented as follows:

“...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 with 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 eyes.*
- (vii) *The victims frightened were elderly or vulnerable persons such as small children..."*

10. The aggravating factors in this case were as follows:

- (i) The offence was a home invasion offence. The complainant, his wife, his son and father-in-law were fast asleep in their house early that morning on 15 November 2010. It was 3 am in the morning.
- (ii) The offence was carried after careful pre-planning by the accuseds and their friends. They robbed the complainant because he was a businessman.
- (iii) The offence was carried out in frightening circumstances, that is, they broke open a window, climbed through the same, with mask and attacked the complainant and his family with cane knives, pinch bars and other weapons.
- (iv) The complainant was cut on the top right side of the head with a cane knife, and he was injured thereby severely. His son was also attacked and knocked unconscious with a cane knife. They were also repeatedly punched and kicked by the robbers.
- (v) The complainant, his wife and father-in-law were elderly
- (vi) By stealing the items mentioned in the charge, the accuseds had no regard to the complainant's property rights.
- (vii) By offending against the complainants' family, they had no regard to their right to safety, no regard to their right as human beings and no regard to their right to a happy and peaceful life.

11. The mitigating factors were:

- (i) For Accused No. 1, I can only find one mitigating factor, that is, you had been remanded in custody for a total of 3 years 8 months;
- (ii) As for Accused No. 2, since you had chosen not to attend trial, and thereby tried in absentia, I can find no mitigating factor for you.

12. I start with a sentence of 11 years imprisonment. I add 3 years for the aggravating factors, making a total of 14 years imprisonment. For Accused No. 1, I deduct 3 years 8 months for

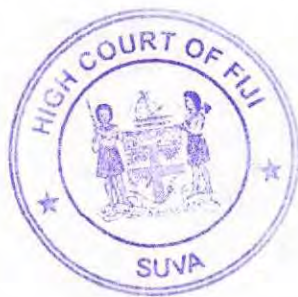
time already served while remanded in custody, leaving a balance of 10 years 4 months. For Accused No. 2, your sentence stands at 14 years imprisonment.

13. Mr Valame Turaganikeli (Accused No. 1) and Mr Nacanieli Vukileca (Accused No. 2), for the aggravated robbery you two did against Mr Jag Ram and his family on 15 November 2010, at Nausori in the Central Division, I sentence you:

- (i) ***Accused No. 1 to 10 years 4 months imprisonment, with a non-parole period of 9 years imprisonment, effective forthwith;***
- (ii) ***Accused No. 2 to 14 years imprisonment with a non-parole period of 10 years imprisonment, and this sentence is to take effect once you are arrested by the police.***

14. Pursuant to section 4(1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner that is just in the circumstances, to protect the community, to deter other would-be offenders and to signify that the court and the community denounce what you did to the complainant and his family on 15 November 2010.

15. You have 30 days to appeal to the Court of Appeal.




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JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Nausori.
Solicitor for Accused No. 1 : Accused No. 1 in Person
Solicitor for Accused No. 2 : Accused No. 2 in Person, but tried in Absentia.