

IN THE HIGH COURT OF FIJI

AT LAUTOKA

IN THE WESTERN DIVISION

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 34 OF 2014

STATE

V

1. PITA NATEKURU

2. LAITIA NALAWA

3. JALE FATIAKI

Counsel: Mr. J. Niudamu for State

Ms. K. Vulimainadave with Ms Manueli for 1st and 3rd Accused

Mr. R. Vananalagi for 2nd Accused

Date of Judgment : 19<sup>th</sup> July, 2018

Date of Sentence : 7<sup>th</sup> August, 2018

## SENTENCE

1. Mr. PITA NATEKURU, Mr. LAITIA NALAWA and Mr. JALE FATIAKI, on the 19<sup>th</sup> day of July 2018, all of you were convicted on the following count:

### FIRST COUNT

#### *Statement of Offence*

**AGGRAVATED ROBBERY:** Contrary to Section 311(1) (a) read with Sections 45 and 46 of the Crimes Act, 2009.

#### *Particulars of Offence*

**PITA NATEKURU, LAITIA NALAWA and JALE FATIAKI**, on the 10th day of March 2014, at Volivoli, Rakiraki, in the Western Division, dishonestly appropriated (stole) 1 x Dell laptop valued at \$900; 1 x Acer Tablet valued at \$600; 1 x Toshiba Laptop valued at \$300; 1 x FUJI camera valued at \$300; 1 x CANON camera valued at \$300; 1 x APPLE I-phone valued at \$500; 1 x Ladies purple bag valued at \$100; 1 x Prada ladies bag valued at \$100; 1 x Gold plated watch valued at \$29; 2 x Sunglasses valued at \$175; 2 x Hats valued at \$30; Car keys with tags valued at \$300; \$260 cash in Fijian currency; \$300 Canadian currency, \$140.00 cash in US Currency, 1 x ALCATEL phone valued at \$800; Assorted cigarettes valued at \$99; 1 x Wi-Fi device valued at \$200; 7 x 350ml Fiji Bitter Stubby valued at \$21; 1 x Phillips DVD deck valued at \$800; and 1 bottle of wine valued at \$15, all to the total value of \$6269.00 and being the property of Marian Lavictoire and William Masek, and prior to stealing the said items **PITA NATEKURU, LAITIA NALAWA and JALE FATIAKI** used force on **MARIAN LAVICTOIRE and WILLIAM MASEK**.

2. Mr. PITA NATEKURU, in addition to the 1<sup>st</sup> count, you were also convicted of the following count:

## SECOND COUNT

### *Statement of Offence*

**RAPE:** Contrary to Section 207(1) and (2)(a) of the Crimes Act, 2009.

### *Particulars of Offence*

**PITA NATEKURU**, on the 10th day of March 2014, at Volivoli, Rakiraki, in the Western Division, had carnal knowledge of **MARIAN LAVICTOIRE** without the said **MARIAN LAVICTOIRE**'s consent.

3. You now come before this court for sentence. All of you were convicted on the 1<sup>st</sup> count of Aggravated Robbery. Marian Lavictoire and William Masek, the victims of this case are Canadian nationals. They had come to spend a holiday in your beautiful islands in expectation of world renowned hospitality and smiles of Fijians. They were leisurely holidaying at Star Fish Villa in Volivoli. You secretly planned to rob them of their belongings. When the victims were watching television, you forced open a window and entered the villa in a horrific night time invasion. You were armed with offensive weapons. You frightened and threatened the tourists in a ruthless manner. You ransacked their belongings to the total value of \$6,269.00. Upon being arrested, you admitted the offence at the interview conducted by police under caution. Some of the stolen properties were recovered when you pointed them out to police. However, you denied the charge in Court only to be found guilty by the assessors and Court.
4. The offence of Aggravated Robbery contrary to S.311 (b) of the Crimes Act 2009 carries a maximum penalty of 20 years' imprisonment.
5. The tariff for Aggravated robbery is now well settled. The Court of Appeal in Maya AAU 0053.2011 (27 February, 2015) set the tariff for Aggravated Robbery in the range of 10 to 15 years. The Supreme Court in Wallace Wise CAV 0004 of

2015, (24th April 2015) confirmed that the tariff for Aggravated Robbery to be between 10 and 16 years imprisonment.

6. The Supreme Court in Wallace Wise (supra) identified factors which should be considered as aggravating. Most of the aggravating features discussed in that case are present in your offending. You committed this offence in a night time home invasion when the victims were leisurely watching television. It was a premeditated attack. You entered the Villa under frightening circumstances, breaking of windows. Some of you were covering the faces. You were armed with offensive weapons. The victims were elderly and vulnerable. You invaded the person and property of your guests who had come to Fiji as tourists, pinning much trust in your hospitality.
  
7. Your offending has no doubt dealt a severe blow to the economy of this country which is much dependent on hospitality industry. As was indicated in the Victim Impact Statement and evidence, the physical and emotional suffering to the victims is likely to be severe for the rest of their lives. I would quote the sentiments expressed by the victims in the Victim Impact Statement filed in Court.

*“Our comfort zone for travelling has changed. Our fear for safety is primary and we have great difficulty planning any vacation. We look at people differently and our care free relaxed attitude has gone. I would like these three men to know that we are not rich people like many others. We had to save to make this trip, a trip I have wanted to take for 40 years. I also would like to think I would be able to one day return to Fiji. Safety while travelling is now a thing of the past. Travel has been reduced to immediate vicinity of our home. I feel we will never be able to afford a travel trip of the scale that Fiji meant for us. A lifetime of dreams diminished by three individuals”*

8. These atrocious crimes are prevalent in Fiji and the offenders must be punished to denounce and to send a clear message to the community that no such actions

will be tolerated by our society and Courts. Not only the offender but potential offenders must be deterred. Apart from deterrence, the purpose of this sentence is the protection of the community. The offender must be severely punished to ensure safety and security of all innocent people.

9. You committed the robbery in the course of a joint enterprise and therefore, common sentences will be passed taking into consideration the seriousness of the offence and the harm caused to the victims. Then necessary adjustments to those sentences will be made in respect of each of you taking into account peculiar mitigating circumstances.
10. In assessing objective seriousness of the offence, I take into consideration the degree of force used, fear instilled, the nature and degree of threats during the invasion and the weapons used to commit the offence. The victims were vulnerable. According to Victim Impact Statement, victims have suffered mentally and physically.
11. For the offence of Aggravated Robbery, I take a starting point of 10 years and add 2 years for the aggravating features discussed above. The interim sentence for the Aggravated Robbery count for each accused is a term of imprisonment of 12 years.
12. Mr. Pita Natekuru your case is different and more serious. Therefore, I have considered your sentence on a different footing. Although all of you had planned to rob the tourists, you suddenly decided to deviate from the initial plan to exploit the situation in satisfying your lustful demands. You threatened the lady victim and dragged her to the bathroom. Then you inserted your penis into her vagina and had sexual intercourse forcibly.

13. The maximum penalty for Rape is life imprisonment.
14. The starting point is seven years' imprisonment *Kasim v The State* (Crim App. No. AAU0021 of 1993S) and the tariff is set between 7 and 15 years' imprisonment (*State v Marawa* [2004] FJHC 338).
15. You used force and exploited the vulnerability of the victim. I pick a starting point of 8 years for the 2<sup>nd</sup> count of Rape. I add 2 years for aggravating circumstances to reach an interim sentence of 10 years' imprisonment for the 2<sup>nd</sup> count of Rape.
16. I now look at mitigating circumstances submitted by your counsel for each of you.
17. **Mr. Natekuru**: You are 24 years old, married and have a child who is 1 year old. You are a farmer and the sole breadwinner of your family. You had been in remand approximately for 1 ½ years. You have two active previous convictions of similar nature. Therefore, you will not get any discount for previous good character.
18. For mitigating circumstances I deduct 1 for each offence. Now your sentence for 1<sup>st</sup> count (Aggravated Robbery) is 11 years' imprisonment. To reflect the remand period, I further deduct 1 ½ years. Now your sentence for Aggravated Robbery is 9 ½ years. For the 2<sup>nd</sup> count (Rape), I give the same deduction in mitigation to reach a sentence of 8 ½ years' imprisonment.
19. You committed the rape in the same transaction as the robbery and the two offences are founded on the same facts. Therefore, having considered the totality

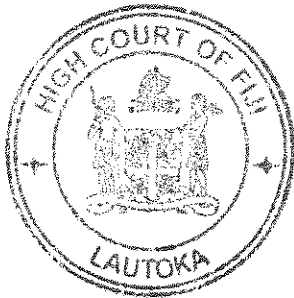
principle, I have decided to impose an aggregate sentence in terms of Section 17 of Sentencing and Penalties Act to reflect your offending. Mr. Natekuru, you are accordingly sentenced to an aggregate sentence 15 years' imprisonment. Having considered your youth, I fix a non- parole period at 12 years'. You are eligible for parole only after serving 12 years in prison.


20. **Mr. Nalawa:** You are 34 years old, married and have 2 children. Having learnt a lesson from the past, you seek mercy of this Court. You have 2 previous convictions of similar nature. Therefore, no discount is given for your good character. You spent approximately 1 ½ years in remand. I give a deduction of 1 year for mitigation and a further discount of 1½ years to reflect the remand period. Now your final sentence is 9 ½ years' imprisonment. Mr. Nalawa you are sentenced to 9 ½ years' imprisonment. Having considered your youth, I fix a non- parole period at 8 years. You are currently serving a prison term. Therefore, I order the sentence imposed in this case to be served concurrently to the existing prison term.
21. **Mr. Fataki:** You are 35 years old. You are married and have one child. You are a farmer and the sole breadwinner of the family. You promise not to re-offend and seek mercy of this Court. You do not have active previous convictions. Therefore, I consider you to be a first offender. You have spent nearly 1½ years in remand. I give a deduction of 1½ years for mitigation and a further discount of 1 ½ years to reflect the remand period. Now your final sentence is 9 years' imprisonment. Having considered your age and rehabilitation potential, I fix a non-parole period at 7 years.
22. **Summary**  
  
Mr. Pita Natekuru is sentenced to 15 years' imprisonment with a non-parole period of 12 years.

Mr. Laitia Nalawa is sentenced to 9 years and 6 months imprisonment with a non-parole period of 8 years.

Mr. Jale Fatiaki is sentenced to 9 years imprisonment with a non-parole period of 7 years.

23. 30 days to appeal the Fiji Court of Appeal.



  
Aruna Aluthge  
Judge

At Lautoka

7<sup>th</sup> August, 2018

Solicitors: The Office of the Director of Public Prosecutions for State.

Legal Aid Commission for 1st & 3rd Accused.

Vananalagi Lawyers for 2<sup>nd</sup> Accused.