

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 44 OF 2018

STATE

V.

- 1. MELVIN CHAND**
- 2. RISHNIL RAVI CHAND**

Counsel : Ms. A. Vavadakua for the State
Ms. S. Devi for the Accused

Date of Hearing : 05th September 2018

Date of Sentence : 06th September 2018

SENTENCE

1. Mr. Melvin Chand and Mr. Rishnil Ravi Chand, you have freely and voluntarily pleaded guilty to the counts of aggravated burglary and theft at the first opportunity. I am satisfied and convinced that you have pleaded so, unequivocally having understood the consequences of such a plea.
2. You were charged as follows;

COUNT ONE

Statement of Offence

AGGRAVATED BURGLARY: Contrary to section 313 (1)(a) of the Crimes Act of 2009.

Particulars of Offence

Melvin Chand and Rishnil Ravi Chand on the 02nd day of June 2018 at Labasa in the Northern Division, entered into the dwelling house of Umesh Chand, as trespassers with intention to commit theft therein.

COUNT TWO

Statement of Offence

THEFT: Contrary to section 291(1) of the Crimes Act of 2009.

Particulars of Offence

Melvin Chand and Rishnil Ravi Chand on the 02nd day of June 2018 at Labasa in the Northern Division, dishonestly appropriated cash of approximately \$ 250.00, 1 x ACER brand laptop valued at \$1000.00, 1 x HP brand laptop valued at \$ 800.00, 1 x CCTV Camera screen valued at \$ 500.00 all to the value of approximately \$ 2550.00, the properties of Umesh Chand, with the intention of permanently depriving the said Umesh Chand of the said properties.

3. Summary of Facts were submitted by the State and read over and explained to you. Having understood, you admitted them to be true and correct. Summary of facts state that,
- i) The victim/complainant in this matter is Umesh Chand, 39 year old, Market Vendor at Labasa Market.
 - ii) He went to work at about 7.30 in the morning and his wife joined him at Labasa market at about 11.30 am on the 2nd June 2018.
 - ii) The accused are:
 - a) Melvin Chand, 19 years old, student, of Nakama, Labasa
 - b) Rishnil Ravi Chand, 20 years old, Delivery boy, of Wailevu, Labasa

- iii) 1st accused, Melvin Chand knows the Victim, Umesh Chand and refers to him as "uncle" as he used to work for the victim in 2015, selling grog or kava for him and also painted his house.
- iv) On the 2nd of June 2018, Melvin Chand (1st accused) met his cousin Rishnil Ravi Chand (2nd accused), near courts Fiji store in Labasa and the two discussed about breaking into a house.
- v) Melvin Chand then thought of the victim's house suggesting that it would be empty. The duo then decided to make sure by checking on the Market first as the victim and his wife, were Market Vendors.
- vi) When they reached the Market, they saw both victim and his wife were in the market and then they proceeded to New World Supermarket where they boarded a taxi.
- vii) Melvin Chand paid the taxi fare and he and Rishnil Ravi Chand walked into the victim's home. They saw no one inside. Melvin then went around the victim's bedroom and removed 2 louvre blades. Rishnil was keeping a look out in case someone saw them.
- viii) Then Rishnil helped Melvin to get inside the house by hoisting him through the window, and then Rishnil also broke into the house and entered. As soon as they entered they noticed a camera inside the same room they have entered, so Melvin covered it with a cloth. After this, the two started to search the house for valuables.
- ix) Melvin found two laptops in the sitting room with their chargers, one was Acer brand and the other HP. He packed both in his bag and then removed the screen from the camera inside the toilet.
- x) Whilst they were doing the above, Rishnil saw a taxi entering the victim's compound and both of them ran out of the house with the stolen items, with the intention of permanently depriving the victim of the said items. Those items were;
 - 1) cash of approximately \$ 250.00,
 - 2) 1 x Acer brand laptop valued at \$ 1000.00,
 - 3) 1 x HP brand laptop valued at \$ 800.00,
 - 4) CCTV Camera Screen valued at \$ 500.00.

The total value of the stolen items and cash amounts to \$2550.00

4. I find that the admitted facts support all elements of the charges in the Information, and find the charges proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and I convict you for the offences of Aggravated Burglary and Theft as charged.
5. A person who enters a building with one or more other persons as a trespasser, with the intention to steal commits an aggravated burglary punishable by 17 years' imprisonment under section 313(1)(a) of the Crimes Act. Theft is committed if a person dishonestly appropriates property belonging to another with the intention to permanently depriving him of the property. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act.
6. It is submitted on behalf of the accused that the tariff for Aggravated Burglary is 18 months to 3 years and that tariff has been approved by the Court of Appeal in **Leqavuni v State** [2016] FJCA 31: AAU 106.2014 (26 February 2016), and many other cases.
7. Having considered this submission carefully, It is in fact questionable whether the said tariff has been well considered and/or approved by the Court of Appeal in the said case. As per Hon. Justice Perera, in **State v Naulu** - [2018] FJHC 548 (25 June 2018)
*"In my view the judgment in the case of **Leqavuni v State** [2016] FJCA 31; AAU0106.2014 (26 February 2016) does not preclude the High Court from revisiting the tariff for the offence of aggravated burglary for the reason that the appropriateness of the tariff for the offence of aggravated burglary was not an issue before Court of Appeal in that case and therefore that issue was not considered by the Court of Appeal."*
8. On careful consideration of the provisions of the Crimes Act 2009, it is apparent that the legislature intended to consider Aggravated Burglary as a very serious crime and

maximum penalty wise placed it in between the offences of Robbery and Aggravated Robbery. Therefore, it is quite obvious that the offence of Aggravated Burglary should carry a higher tariff than the offence of Robbery. It is well established that the tariff for Robbery is 2 to 7 years. As opined with sound reasoning, by Hon. Justice Perera, in **State v Naulu** [2018] FJHC 548 (25 June 2018) the tariff for Aggravated Burglary is said to be from 6 to 14 years.

9. I am inclined to agree with Hon. Justice Perera's reasoning and hold that the tariff for Aggravated Burglary should be 6 to 14 years.
10. As for the offence of theft the accepted tariff would range from 2 months to 3 years (**Ratusili v State** [2012] FJHC 1249; HAA 011.2012).
11. The two offences you have committed are founded on the same facts. Therefore, as for section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") reads thus;
"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."
12. Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in **Brewster** 1998 1 Cr App R 220 observed at 225:
"Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the

receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organization, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism."

13. In this case, many of the aggravating factors outlined in Brewster's case are not present. There was no significant damage done to the property except that the house was ransacked. Intrusion occurred when the owner was not at the house. No prior planning was involved.
14. The mitigating factors are your, expression of remorse, cooperating with the police to the maximum and the recovery of almost all the stolen items.
15. I would select 6 years as the starting point of your aggregate sentence. I would deduct 2 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 4 years. In view of your early guilty plea through which you

have saved this court's time and resources, you will be given a discount of one-third. Accordingly, your final aggregate sentence is an imprisonment term of 32 months. You all have spent nearly 16 days in remand. In lieu of that I deduct 1 month from each of your final sentences. The remainder you'll have to serve would be 31 months. Considering all the circumstances of this case, the non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 20 months.

16. Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act.
17. Melvin Chand and Rishnil Ravi Chand, both of you have no previous convictions or pending cases. On the other hand, these kind of offences in this society has drastically increased due to leniency they are dealt with. However, In consideration of the submissions made on your behalf, I am of the view the majority of your term should be suspended. Therefore, each of you should serve three months from the sentence which is imposed above and the remainder of 28 months is suspended for a period of 5 years.
18. Therefore, all of your non-parole period would be relevant only in the event you are to serve the above suspended terms.
19. You have 30 days to Appeal to the Court of Appeal if you desire so.



Chamath S. Morais

JUDGE



At Labasa

06th September 2018

**Solicitors : Office of the Director of Public Prosecutions for the State
Legal Aid Commission, Labasa for the Accused**