

IN THE HIGH COURT OF FIJI AT SUVA

[CRIMINAL JURISDICTION]

CASE NO: HAC. 166 of 2018

BETWEEN : **STATE**

AND : **MATAIYASI NAVUGONA**

Counsel : *Mr. Kumar R. for State*
: *Accused appears in person*

Hearing on : *23rd September – 24th September 2019*

Summing up on : *26th September 2019*

Judgment : *27th September 2019*

Sentence : *22nd October 2019*

SENTENCE

Mr. Mataiyasi Navugona, you stand convicted of the offence of Aggravated Robbery contrary to section 311 (1) (a) of the Crimes Act 2009 after a full trial.

Your charge reads thus;

Statement of Offence

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

Particulars of Offence

Mataiyasi Navugona with another on 21st April 2018 at Nadera in the Central Division, stole 01 Samsung J5 mobile phone, 01 Samsung J2 mobile phone, 01 Samsung A3 mobile phone, 01 Samsung J1 mini mobile phone and 01 Samsung J1 mobile phone from Kamlesh Chand and immediately before stealing from Kamlesh Chand threatened to use force on him.

You pleaded not guilty to the charge and the ensuing trial lasted for 3 days. The PW1 Mr. Kamlesh Chand, PW2 Police Constable Inoke Tuiloaloa and PW3, Detective Constable Taubale Tuimereke, gave evidence for the prosecution while you gave evidence in defense.

At the conclusion of the evidence and after the directions given in the summing up, the assessors unanimously found you guilty to the count of Aggravated Robbery.

Accordingly, this Court by its judgment dated 27th September 2019 convicted you of the alleged count of Aggravated Robbery contrary to section 311(1)(a) of the Crimes Act 2009.

The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years of imprisonment.

The tariff for this offence is an imprisonment term between 8 to 16 years. [**Wallace Wise v The State**, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015)]

Explaining the aggravating circumstances of the offence of robbery with violence under the now repealed Penal Code, Goundar J said in the case of **State v Rokonabete** [2008] FJHC 226 that;

“The dominant factor in assessing seriousness for any types of robbery is the degree of force used or threatened. The degree of injury to the victim or the nature of and duration of threats are also relevant in assessing the seriousness of an offence of robbery with violence.”

The victim was not assaulted. However, a cane knife was kept at his neck and threatened. Therefore, a reasonably high degree of violence is used. Further, the offence is committed invading the home of the complainant and the fact of home invasion too would be considered as an aggravating factor.

When looked into your previous convictions as submitted by the State, firstly, in 2013 you were bound over for 3 years by the Nasinu Magistrates’ Court for Aggravated Robbery. Thereafter, in the same year you were convicted for aggravated Robbery and Theft by the Lautoka High Court and imposed a suspended sentence. Again in 2014, you were convicted by the Suva High Court for two counts of Aggravated Burglary and sentenced for 4 years of imprisonment. As soon as you came out of prison, you have committed another Aggravated Robbery for which you were sentenced by the Suva High Court on 28th May 2019 for a period of 5 years, which you are serving currently. It is apparent that you were given ample opportunities to correct yourself but you have failed to do so. Therefore the main purpose of your sentence would be the protection of the community and to deter you and the other offender from committing such crimes. Furthermore under the circumstances set out above I am inclined to determine you as a habitual offender under section 11 of the Sentencing and Penalties Act of 2009.

In mitigation, you have submitted only your personal circumstances and the case of **State v Nonu** [2011] FJHC 627; HAC136.2010 (29 September 2011) cited by you will hardly have any bearing as the suspended sentence in it was imposed on a first time offender and has many distinguishing factors from the present case.

I would select 09 years imprisonment as the starting point of your sentence. Due to aggravating factors and the determination under section 11 of the Sentencing and Penalties Act, I enhance your sentence by further seven years. Now your sentence is 16 years of imprisonment.

I will deduct one year in consideration of your mitigating factors though they do not warrant any such discount.

Therefore your final sentence is 15 years of imprisonment.

Section 18 of the Sentencing and Penalties Act require the Court to impose a non-parole period. In consideration of the circumstances of the offending, and all the material before me I fix the non-parole period at 10 years. Though you have been in remand for some time that has been taken into account in sentencing you in HAC 114 of 2018, hence will not be reconsidered.

Therefore the period you have to serve would be;

Head sentence- 15 years. You will be eligible for consideration of parole after 10 years.

This sentence would be operative with immediate effect to run concurrently with any other sentence you are serving presently.

You will be given thirty (30) days to appeal to the Court of Appeal if you desire so.



At Suva

22nd day of October 2019

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

Accused appeared in person