

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 430 OF 2016S

STATE

vs

1. ASESELA NAUREURE
2. MOAPE ROKORAICEBE

Counsels : Mr. T. Tuenuku for State
Ms. L. Manulevu for Accused No. 1
Ms. L. Manulevu for Accused No. 2

Hearings : 7, 8, 11 and 12 March, 2019.
Summing Up : 13 March 2019.
Judgment : 13 March 2019.
Sentence : 14 March 2019.

SENTENCE

1. In a judgment delivered yesterday, the court found you two guilty and convicted you two on the following counts in the following information:

COUNT 1

Statement of Offence

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

Particulars of Offence

ASESELA NAUREURE AND MOAPE ROKORAICEBE, on the 24th day of November 2016, at Kasavu, Nausori in the Central Division, robbed ANIL KUMAR of his taxi registration Number LT 7127 valued at \$25,000, cash \$160.00 and a black Forme mobile phone valued at \$50.00 all to the total value of \$25,210 and immediately before the robbery used violence on the said ANIL KUMAR.

COUNT 2

Statement of Offence

ABDUCTION: Contrary to section 282 (a) Crimes Act of 2009.

Particulars of Offence

ASESELA NAUREURE AND MOAPE ROKORAICEBE, on the 24th day of November 2016, at Kasavu, Nausori in the Central Division, abducted ANIL KUMAR in order that he may be subjected to grievous harm.

COUNT 3

Statement of Offence

DAMAGING PROPERTY: Contrary to section 369 (1) Crimes Act of 2009.

Particulars of Offence

ASESELA NAUREURE AND MOAPE ROKORAICEBE, on the 24th day of November 2016, at Wairuku, Rakiraki in the Western Division, wilfully and unlawfully damaged the black Fielder Taxi registration number LT 7127 valued at \$25,000.00 the property of ANIL KUMAR.

2. The brief facts of the case were as follows. On 24 November 2016, the complainant, Mr. Anil Kumar (PW1) was aged 59 years old. He was married with three children in their twenties. He earns his living by driving a taxi, registration number LT 7127. He also owned the taxi. While working early morning on 24 November 2016 (Thursday), he picked up Mr. Asesela Naureure (Accused No. 1) at Gordon Street Suva at about 6.30 am. Accused No. 1 asked him to go to Fiji National University (FNU) Tamavua to pick up Mr. Moape Rokoraicebe (Accused No. 2). Mr. Kumar complied, and drove to FNU Tamavua.
3. At FNU Tamavua, Mr. Kumar picked up Moape Rokoraicebe (Accused No. 2). Both accuseds sat in the backseat and requested to be taken to Kasavu Nausori. Mr. Kumar took the two to Kasavu Nausori. At Kasavu, Moape asked Mr. Kumar to take them to Tailevu. Mr. Kumar passed two villages and was asked to stop at a breadfruit tree

thereafter. Moape then pulled Mr. Kumar out of the taxi and took the car key. Asesela then tried to attack Mr. Kumar with a screw driver. Mr. Kumar defended himself, and Asesela repeatedly punched him in the mouth, whereby he lost some teeth. Later, the two accuseds abducted Mr. Kumar to Korovou Town.

4. At Korovou Town, Asesela then took over from Moape, in driving the taxi. Moape drove the same from Tailevu. Asesela drove to Rakiraki. They had an accident at Wairuku Rakiraki, where the taxi was severely damaged. The two accuseds fled the crime scene. Mr. Kumar, who was knocked unconscious, was later taken to Rakiraki Hospital. The matter was reported to police. An investigation was carried out. The two accuseds were later charged for aggravated robbery, abduction and damaging property. They had been tried and convicted of the above offences in the High Court.
5. We will first deal with "aggravated robbery" (count no. 1); then "abduction" (count no. 2), and lastly "damaging property" (count no. 3). "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.
6. In Wallace Wise v The State (supra), the Hon. Chief Justice A Gates said 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 which 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..."*

7. "Abduction", contrary to section 282 of the Crimes Act 2009 carried a maximum sentence of 10 years imprisonment.
8. "Damaging Property", contrary to section 369 (1) of the Crimes Act 2009 carried a maximum penalty of 2 years imprisonment.
9. The aggravating factors, in this case, were as follows:
 - (i) **A cowardly attack on a vulnerable and elderly member of the community.** Mr. Kumar was 59 years old at the time, and was earning his living the honest way, by driving his taxi. He was married with three children, who were in their twenties, like you two. You both hired his taxi on 24 November 2016. You took advantage of his vulnerability, when you saw he was elderly. You two cowardly decided to attack and robbed him of his properties, as itemized in count no. 1. You two showed no mercy on him when you jointly attacked him and stole his properties. You two will need to learn a lesson, that is, you can't go around in the community bullying elderly working people. You two will have to forfeit your liberties, as a lesson to you two and others, who want to follow your path. The court will not tolerate this kind of behaviour, and long prison sentence will have to be given to you two, as a warning to others.
 - (ii) **You two caused injuries to the complainant.** As a result of your offending on Mr. Kumar, he spent one week in Rakiraki Hospital and one week in CWM Hospital. His mouth was severely injured when you two jointly attacked him. He lost most of his teeth, as a result of Mr. Asesela repeatedly punching him. Moape, you stood there, and did nothing. You two must jointly pay for the crimes you did against Mr. Kumar. You two must not complain of the same.
 - (iii) By offending against Mr. Kumar, you two showed no regard to his right to personal safety, no regard to his right as a human being and no regard to his

right to live a peaceful and happy life. You also had no regard to his property rights.

10. The mitigating factors were, follows:

- (i) Accused No, 1, after checking the court record, it was found that you had been remanded in custody for 11 months; whereas Accused No. 2, it was found that you had been remanded in custody for 4 months.
- (ii) Accused No. 2, the prosecution did not produce any previous conviction for you, thus I will treat you as a first offender.

11. On count no. 1 (aggravated robbery), for each accuseds, I start at 12 years imprisonment. For the aggravating factors, I add another 2 years, making a total of 14 years imprisonment. For time already served while remanded in custody, for Accused No. 1, I deduct 12 months, leaving a balance of 13 years imprisonment. For Accused No. 2, for time already served while remanded in custody, I deduct 5 months, leaving a balance of 13 years 7 months. For being a first offender, I deduct another 1 year 7 months, leaving a balance of 12 years imprisonment.

12. On count no. 2 (abduction), I sentence each of you to 5 years imprisonment each.

13. On count no. 3 (damaging property), I sentence each of you to 18 months imprisonment each.

14. The summary of your sentences are as follows:

Count No. 1: Aggravated Robbery:	Accused No. 1 – 13 years imprisonment
	Accused No. 2 – 12 years imprisonment

Count No. 2: Abduction:	Accused No. 1 – 5 years imprisonment
	Accused No. 2 – 5 years imprisonment

Count No. 3: Damaging:	Accused No. 1 – 18 months imprisonment
Property	Accused No. 2 – 18 months imprisonment

15. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, that is, for Accused No. 1, the final total sentence is 13 years imprisonment; whereas Accused No. 2, the final total sentence is 12 years imprisonment.
16. Mr. Asesela Naureure (Accused No. 1) and Mr. Moape Rokoraicebe (Accused No. 2), for committing aggravated robbery (count no. 1); abduction (count no. 2) and damaging property (count no. 3) against Mr. Anil Kumar on 24 November 2016, I sentence you Accused No. 1 to 13 years imprisonment, with a non-parole period of 10 years imprisonment, effective forthwith; and Accused No. 2, I sentence you to 12 years imprisonment, with a non-parole period of 10 years imprisonment, to start on the date you are arrested by police. I note Accused No. 2 that you had been evading the court since 9 February 2018.
17. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the above sentences are designed to punish you two in a manner that is just in all the circumstances, to protect the community, to deter other would-be offenders and to signify that the court and the community denounce what you two did to the complainant on 24 November 2016, at Nausori and Rakiraki in the Central and Western Division.
18. You two 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 : **Legal Aid Commission, Nausori.**
Solicitor for Accused No. 2 : **Legal Aid Commission, Nausori.**