

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 49 of 2019

STATE

V

MK

Counsel : Ms. Unaisi Tamanikaiyaroi for the State
Ms. Talei Kean for the Juvenile

Hearing : 25 March 2019

Date of Punishment : 2 April 2019

The name of the Juvenile has been suppressed. Accordingly, he will be referred to as MK.

PUNISHMENT

[1] MK, in terms of the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offence:

Statement of Offence (a)

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

Particulars of Offence (b)

MK, in the company of others, on the 16th day of January 2019, at Suva in the Central Division, with each other robbed **SALESHNI DEVI** of 1 x hand bag, 2 x mobile phones, 2 x gold chains and \$50.00 cash, the property of **SALESHNI DEVI**.

- [2] When this matter came up before me, on 1 March 2019, the State filed the Information and Disclosures relevant to the case. On the same day, you were ready to take your plea. You pleaded guilty to the charge in the Information. Court was satisfied that you fully understood the nature of the charge against you and the consequences of your plea. Court found that you pleaded guilty on your own free will and free from any influence.
- [3] Thereafter, on 15 March 2019, the State filed the Summary of Facts. The Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the charge in the Information, and found the charge proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea in respect of the charge.
- [4] I now proceed to impose the punishment against you.
- [5] The Summary of Facts filed by the State was that:

"The Juvenile

1. *MK – 17 years of age, Unemployed of Wailea Settlement.*

The Complainant

2. *Saleszni Devi – 40 years of age, Domestic Duties of Wailea Settlement.*
 1. *On 16th January 2019, at around 7.00 pm, the complainant was walking home when suddenly the Juvenile with others came from behind the complainant and grabbed her hand bag containing \$50 cash, 2 x mobile phones, (Vido and Rio brand), assorted cards and 2 x gold chains.*
 2. *The complainant shouted for help and her neighbour namely Aniketh Chand heard the same and ran out to help the complainant when he saw the Juvenile running away from the complaint towards a church.*
 3. *On 18th January 2019, 1 x mobile (Vido brand) was recovered from one Joyce Damudamu who stated that the Juvenile had given her the mobile phone."*

- [6] MK you have admitted to the above Summary of Facts and taken full responsibility for your actions.
- [7] Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the purposes for which sentencing may be imposed by a Court; and sets out the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the punishment to be imposed on you.
- [8] In terms of Section 311 (1) of the Crimes Act No. 44 of 2009 (Crimes Act), *“A person commits an indictable offence (of Aggravated Robbery) if he or she-*
- (a) Commits a robbery in company with one or more other persons; or*
 - (b)”*

The offence of ‘Robbery’ is defined at Section 310 (1) of the Crimes Act as follows:

“A person commits an indictable offence (which is triable summarily) if he or she commits theft and —

(a) immediately before committing theft, he or she—

(i) uses force on another person; or

(ii) threatens to use force then and there on another person —

with intent to commit theft or to escape from the scene; or

(b) at the time of committing theft, or immediately after committing theft, he or she—

(i) uses force on another person; or

(ii) threatens to use force then and there on another person—

with intent to commit theft or to escape from the scene”.

- [9] The offence of Aggravated Robbery in terms of Section 311 (1) of the Crimes Act carries a maximum penalty of 20 years imprisonment.
- [10] The tariff for the offence of Aggravated Robbery is between 8 and 16 years imprisonment. This tariff has been endorsed by the Supreme Court in **Wallace Wise v. State** [2015] FJSC 7; CAV 04 of 2015 (24 April 2015); where it was held:

“.....We believe that offences of this nature should fall within the range of 8-16 years imprisonment. Each case will depend on its own peculiar facts. But this is not simply a case of robbery, but one of aggravated

robbery. The circumstances charged are either that the robbery was committed in company with one or more other persons, sometimes in a gang, or where the robbers carry out their crime when they have a weapon with them."

- [11] However, in **State v. Vatunicoko** [2018] FJHC 885; HAC210.2018 (21 September 2018); His Lordship Justice Goundar held as follows:

"In assessing the objective seriousness of your offending, I am mindful that aggravated robbery in the company of others is punishable by 20 years' imprisonment. The tariff depends on the nature and circumstances of the robbery. The tariff is as follows:

*Street mugging: 18 months to 5 years' imprisonment (**Raqauqau v. State** [2008] FJCA 34; AAU0100.2007 (4 August 2008).*

*Home invasion: 8 – 16 years' imprisonment (**Wise v. State** [2015] FJSC 7; CAV0004.2015 (24 April 2015).*

*A spate of robberies: 10 -16 years' imprisonment (**Nawalu v. State** [2013] FJSC 11; CAV0012.12 (28 August 2013))."*

- [12] Considering the circumstances of the offending, this case would fall under the category of street mugging. Therefore, the applicable tariff would be 18 months to 5 years' imprisonment.

- [13] In terms of the Juveniles Act (as amended) a "juvenile" has been defined to mean a person who has not attained the age of eighteen years, and includes a child and a young person. A "child" means a person who has not attained the age of fourteen years; while a "young person" means a person who has attained the age of fourteen years, but who has not attained the age of eighteen years.

- [14] Furthermore, Section 20 of the Juveniles Act stipulates that *"The words "conviction" and "sentence" shall not be used in relation to juveniles and any reference in any written law to a person convicted, a conviction or a sentence shall, in the case of juvenile persons, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding, as the case may be."*

- [15] Section 30 of the Juveniles Act imposes certain restrictions on the punishments which Courts could order against juvenile offenders. The Section provides that:

"(1) No child shall be ordered to be imprisoned for any offence.

(2) No young person shall be ordered to be imprisoned for an offence, or to be committed to prison in default of payment of a fine, damages or costs, unless the court certifies that he is of so unruly a character

that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained.

(3) A young person shall not be ordered to be imprisoned for more than two years for any offence."

Emphasis is mine.

[16] MK what you have committed is a very serious offence. Thefts, burglaries and robberies are now frequently prevalent in our society today. Furthermore, the offence was committed in the early part of the night (around 7:00 p.m.).

[17] The facts of the case does not establish that there was any degree of pre-meditation on your part in committing this offence. It seems that this was more a crime of opportunity. The State submits that no weapon was used and no physical injuries were caused to the complainant.

[18] In mitigation you have submitted as follows:

- (i) That you are a first offender and that there have been no previous findings of guilt recorded against you to date. The State too confirms this position.
- (ii) That you fully cooperated with the Police when you were taken in for questioning and subsequently charged, instead of trying to circumvent the course of justice.
- (iii) You have submitted that you are truly remorseful of your actions and have admitted that the offence was committed due to a lapse of judgment on your part.
- (iv) You have sought forgiveness from this Court and have assured that you will not re-offend.
- (v) The Vido Brand mobile phone that was stolen by you was subsequently recovered.
- (vi) That you entered a guilty plea at a very early stage in these proceedings.

[19] Considering all the aforementioned factors, and the restrictions placed on this Court in terms of the provisions of Section 30(3) of the Juveniles Act, I impose on you a punishment of 2 years imprisonment.

[20] The next issue for consideration is whether your punishment should be suspended.

[21] Section 26 of the Sentencing and Penalties Act provides as follows:

(1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*

(2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*

(a) does not exceed 3 years in the case of the High Court; or

(b) does not exceed 2 years in the case of the Magistrate’s Court.

[22] MK, you are 17 years of age (DOB: 1 January 2002). You are said to be residing with your grandfather and aunt at 42, Wailea Street. You are said to have studied at Gospel High School and last attended school in the first term of 2018. You submit that you intend to attend Nabua Technical College to obtain a proper education.

[23] You have admitted that what you did was wrong and taken full responsibility for your actions. You have also admitted that the offence was committed due to lack of good judgment on your part. You have also promised that you would lead a crime free life if you are granted a non-custodial punishment.

[24] The State submits that you have been in custody for this case since your arrest on 18 January 2019. You have been detained at the Juvenile Boys Rehabilitation Centre since 23 January 2019. Accordingly, you have been in custody for this matter for nearly 75 days.

[25] In ***Singh & Others v. State*** [2000] FJHC 115; HAA 79J of 2000S (26 October 2000); Her Ladyship Madam Justice Shameem held:

“...However as a general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse. If these factors are present then the offender is usually given a non-custodial sentence.”

[26] Her Ladyship Madam Justice Shameem also held In ***Nariva v. The State*** [2006] FJHC 6; HAA 148J.2005S (9 February 2006);

“The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment.”

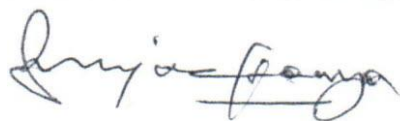
[27] I have considered the following circumstances:

- You are a young offender;
- You have been of previous good character;
- You have fully cooperated with the Police;
- You have accepted responsibility for your conduct;
- You submit that you are truly remorseful of your actions and have sought forgiveness from this Court;
- You have assured Court that you will not re-offend;
- You entered a guilty plea at a very early stage in these proceedings;
- You have been detained for this case for nearly 75 days.

Accordingly, it is my opinion that the chances for your rehabilitation is high. Therefore, I deem it appropriate to suspend your punishment. However, to deter you and other persons of your age from committing offences of the same or similar nature, and also to protect the community, I suspend your punishment for a period of 3 years. The Juvenile is advised of the effect of breaching a suspended punishment.

[28] In the result, your final punishment would be 2 years imprisonment, which term of imprisonment is suspended for a period of 3 years.

[29] You have 30 days to appeal to the Court of Appeal if you so wish.



Riyaz Hamza
JUDGE
HIGH COURT OF FIJI



AT SUVA

Dated this 2nd Day of April 2019

Solicitors for the State : **Office of the Director of Public Prosecutions, Suva.**
Solicitors for the Juvenile : **Office of the Legal Aid Commission, Suva.**