

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CASE NO.: HAC 17 OF 2019

STATE

V

RATU KANITO MATAGASAU

Counsel: Ms. U. Tamanikaiyaroi for State

Ms. T. Kean with L. Naikawakawavesi for Defence

Date of Judgment : 27 June 2019

Date of Sentence : 28 June 2019

SENTENCE

1. **RATU KANITO MATAGASAU**, hereinafter referred to as the ‘offender’ was charged on following information with one count of Aggravated Robbery:

Statement of Offence

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

Particulars of Offence

RATU KANITO MATAGASAU on the 31st day of December, 2018, at Suva in the Central Division, armed with a weapon namely a silver blade robbed SANJANA LATA of 1x Samsung S6 mobile phone, the property of said SANJANA LATA.

2. After the closing addresses of the counsel, the court was adjourned till 3 pm for the Summing Up. The offender chose not to attend court in the afternoon. A bench warrant was issued. The trial proceeded thereafter in the absence of the offender. The Defence Counsel was present right-throughout the trial. After the Summing-Up, the assessors opined unanimously that the offender is guilty of Aggravated Robbery as charged. The offender was convicted accordingly.
3. The Defence Counsel was given an opportunity to file mitigation. Both Counsel filed written submissions and made oral submissions. Having considered the mitigation and the Sentencing submissions, I now proceed to sentence the offender in his absence.
4. The facts of the case are that on the 31st December, 2018, at around 130 am., the complainant, a young girl in her twenties, was walking towards the main road from her home. She was on her Samsung S6 mobile phone, talking to her husband. The offender came from behind and snatched the phone which was in her left hand. After snatching the phone, offender pushed her to the ground and put a silver blade on her neck as she was trying to get up, asking for help. As her husband approached the scene the offender ran away with the phone. Valelevu Police Station was promptly informed. The offender was arrested by a police officer from a nearby place. The stolen phone and the silver blade were recovered from the possession of the offender. At the trial, the offender admitted snatching the phone from the complainant but denied using a silver blade.

5. The maximum sentence prescribed for Aggravated Robbery is 20 years' imprisonment.

6. The tariff depends on the nature and circumstances of the robbery. The tariffs are 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)

Robbery of a taxi driver : 4-10 years (*State v Tamani* [2011] FJHC 725);

7. The offence committed by the offender should be regarded as a street mugging. Therefore the appropriate tariff should range from 18 months to 5 years' imprisonment.

8. In assessing the objective seriousness of the offending, I considered the maximum sentence prescribed for offence, the degree of culpability and the harm caused to the complainant. This is a night time armed robbery committed on a lone vulnerable girl. Although the complainant was not seriously injured she was pushed to the ground and threatened with a silver blade, apparently to prevent her from crying out for help. Having considered the objective seriousness of the offending, I start the sentence with a starting point of 4 years, in the upper range of the tariff.

9. There is an aggravating feature in this offending. The circumstances of the robbery suggest that there is degree of preplanning. The offender robbed the complainant on a December 31 night when people come out in a party mood. Offender had an offensive weapon in his possession. I increase the sentence by 1 year to reflect the aggravating feature.

10. In mitigation, the Defence Counsel has informed the court that the offender is 20 year old 2nd year student at Fiji National University, studying Food and Beverage. However there is no document tendered to substantiate this claim.
11. I concede that the offender admitted stealing the phone upon his arrest. However, this admission cannot be considered as a mark of genuine remorse. He was caught red handed with the stolen property. His admission is rather a damage control exercise came at a time when he had no option but to admit to stealing. Furthermore, the offender denied using a weapon even after a weapon was found in his possession. Therefore very little value is attached to the partial admission as a mitigating factor.
12. The offender is a first and young offender. He has maintained a good character in the past. The offender should receive a considerable discount on that account. The offender did not resist arrest and he cooperated with police. However, he failed to appear in court to face a full trial. He has not fully cooperated with the system. The stolen phone was recovered. I have considered these mitigating features in discounting the sentence.
13. The offender was in remand for nearly 5 months. I have separately discounted the remand period. The total deduction for mitigation and remand period would be 2 years.
14. Street mugging is omnipresent in our streets nowadays. Innocent people come out to street in fear and anxiety that they would be mugged by a robber at any time. The courts have a duty to denounce and deter these kind of anti-social acts aimed at innocent people. These kinds of offences will undoubtedly cause panic and will eventually affect the general public. A clear message should be send to potential offenders. The primary purpose of this punishment is for deterrence, both special and general.

15. The offender is a young and first offender. His rehabilitation chances are high. Therefore, his rehabilitation potential should be balanced with deterrence and community protection.
16. Taking all these factors into account, I sentence the offender to 3 years' imprisonment with a non-parole period of 1 year.

Summary

17. The offender is sentenced to 3 years' imprisonment with a non-parole period of 1 year. The bench warrant will be in force. The sentence will come into effect upon the arrest of the offender.
18. 30 days to appeal to the Court of Appeal.

A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge
Judge

**AT Suva
On 28th June 2019**

**Counsel: Office of the Director of Public Prosecution for Prosecution
 Office of the Legal Aid Commission for Offender**