

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 362 OF 2017S

STATE

Vs

- 1. ARVIND CHAND**
- 2. JONETANI ROKOTUINASAU**
- 3. LIVAI DRIGITA**

Counsels : **Ms. S. Serukai for State**
Mr. A.K. Singh for Accused No. 1.
Accused No. 2 in Person, but tried in absentia.
Ms. N. Mishra for Accused No. 3

Hearings : **17, 18, 19, 20, 24, 25 and 26 June, 2019.**

Summing Up : **28 June, 2019.**

Judgment : **1 July 2019.**

Sentence : **8 July 2019.**

SENTENCE

1. In a judgment delivered on 1 July 2019, the court found each of you guilty and convicted each of you, on the following counts in the following information:

"First Count

Statement of Offence

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

Particulars of Offence

ARVIND CHAND, JONETANI ROKOTUINASAU AND LIVAI DRIGITA on the 15th day of November, 2017, at Bau Road, Nausori in the Central Division, robbed SURUJ PRASAD of 1 x Nokia mobile phone valued at \$60.00 and cash of \$110.00 all to the total value of \$170.00 the properties of SURUJ PRASAD, and at the same time of such robbery had a pinch bar with them.

Second Count

Statement of Offence

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

Particulars of Offence

ARVIND CHAND, JONETANI ROKOTUINASAU AND LIVAI DRIGITA on the 15th day of November, 2017, at Bau Road, Nausori in the Central Division, robbed UMA KUMARI MISHRA of 1 x silver and gold ring valued at \$1,600.00, 1 x 22 carat gold chain valued at \$2,000.00, 2 x gold wrist watch valued at \$1,000.00, 2 x Alcatel mobile phone valued at \$210.00, 2 x Dell tablet valued at \$1,000.00, 2 x wrist watches valued at \$1,600.00 and assorted imitation jewelries valued at \$50.00, all to the total value of \$7,460.00 the properties of UMA KUMARI MISHRA, and at the time of such a robbery, did use personal violence on the said UMA KUMARI MISHRA.

Third Count

Statement of Offence

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

Particulars of Offence

ARVIND CHAND, JONETANI ROKOTUINASAU AND LIVAI DRIGITA on the 15th day of November, 2017, at Bau Road, Nausori in the Central Division, entered into the house of ROHINI NANDAN as a trespasser with intent to steal.

Fourth Count

Statement of Offence

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

Particulars of Offence

ARVIND CHAND, JONETANI ROKOTUINASAU AND LIVAI DRIGITA on the 15th day of November, 2017, at Bau Road, Nausori in the Central Division, stole 5 x pairs of canvas valued at \$700.00, the property of ROHINI NANDAN".

2. The brief facts were as follows. On the early morning of 15 November 2017, three complainant's houses in Bau Road, Nausori, were raided by the three accuseds and others. Accused No. 2, 3 and another went to the houses of Mr. Suruj Prasad (PW1), Ms. Uma Kumari Mishra (PW2) and Ms. Rohini Nandan's (PW3), broke into the same, and stole

the items mentioned in count no. 1, 2 and 4. PW1 was attacked and his properties stolen between 1.30 am and 2.15 am, on 15 November 2017 (count no. 1). He was attacked with a pinch bar, and had a coffee table thrown at him. He reported the matter to police, by mobile phone, between 2 am and 2.15 am.

3. PW3's house was burgled and her properties stolen between 3 am and 3.30 am on 15 November 2017 (count no. 3 and 4). This was approximately 45 minutes after the crime against PW1. PW3 reported the matter to police at about 3.30 am. PW2 was attacked and robbed between 3.45 am and 4 am on 15 November 2017. She reported the matter to police at 4 am. The police responded and a police vehicle and three police officers were dispatched to the crime scenes. Sgt. 2870 Adrian Choy (PW4) saw Accused No. 1's hybrid motor vehicle, registration number JB 405, speeding along Bau Road with a flat tyre.
4. PW4 later came to the vehicle, saw Accused No. 1 in the same, and arrested him. Accused No. 2 and 3 were also in the vehicle, but fled from the same, when accused no. 1 was arrested. The police found PW1, PW2 and PW3's stolen items in the car. The court found that all the accuseds acted together as a group in committing the crimes in all the counts against PW1, PW2 and PW3. The court found Accused No. 2, 3 and another did the breaking into the complainants' houses, attacking PW1 and PW2, and stealing their properties, while Accused No. 1 was the transport man and getaway driver.
5. "Aggravated Robbery" (count no. 1 and 2), 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 then Hon. Chief Justice A Gates said as follows:

“... it is our duty to make clear these type of offences will be severely disapproved by the courts and be met with appropriately heavy terms of imprisonment. It is a fundamental requirement of a harmonious civilized and secure society that its inhabitants can sleep safely in their beds without fear of armed and violent intruders...”

7. Furthermore, the then Hon. Chief Justice, in the above case, commented 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...”*

8. “Aggravated Burglary” (count no. 3), carried a maximum sentence of 17 years imprisonment.

9. “Theft” (count no. 4), carried a maximum sentence of 10 years imprisonment.

10. The aggravating factors were as follows:

- (i) Cowardly attack and the Invasion of Elderly Persons’ Houses.** Mr. Suruj Prasad (PW1) was sleeping at his home with his wife and daughter at 1.30 am on 15 November 2017, and you as a group violently robbed him. Likewise, Ms. Rohini Nandan (PW3) was sleeping at her home, with her husband and son, and you as a group broke into her storeroom and stole her properties between 3 am and 3.30 am on 15 November 2017. Then you as a group went to Ms. Uma Kumari Mishra’s

(PW2) house and violently robbed her between 3.45 am and 4 am on 15 November 2017. Your modus operandi were similar. You broke into the complainants' houses when they were fast asleep, stole their properties, then fled when confronted. Your attacks on the elderly complainants were cowardly and will not be tolerated by the courts. Thus you should not complain when you are given custodial sentences.

- (ii) Your offendings were obviously pre-planned. You, as a group, identified the houses that were to be robbed. You picked up the team from Lami, Nasinu and elsewhere. Accused No. 1 provided the transport with his car. Then you, as a group went to raid the complainants. You will have to be punished for your crimes.
- (iii) Your offendings were committed with frightening circumstances. Mr. Suruj Prasad was attacked with a pinch bar and had his coffee table thrown at him. Ms. Uma Kumari Mishra was shown a cane knife as a warning to her. You each attacked the complainants' in a group of three. You obviously frightened them as a group.
- (iv) You, as a group, attacked vulnerable complainants, that is, husband, wives and children, when they were asleep in their homes.
- (v) By offending against the complainants, you each showed no regard to their rights as human beings, no regard to their right to personal safety and no regard to their property rights.

11. The mitigating factors were follows:

- (i) For Accused No. 1, you had been remanded in custody since 17 November 2017, that is, approximately 1 year 7 months 16 days ago;
- (ii) For Accused No. 2, he had been remanded in custody from 17 November 2017 to 25 February 2019, that is, approximately 1 year 3 months and 8 days;
- (iii) For Accused No. 3, your position is similar to Accused No. 2 above, that is, you had been remanded in custody for approximately 1 year 3 months 8 days plus the 13 days remand from 20 June 2019, making a total of 1 year 3 months 21 days in remand.

- (iv) For Accused No. 1, you co-operated with the court with your 7 June 2019 Agreed Facts.
 - (v) Some of the complainants' stolen properties were recovered.
12. On count no. 1 (aggravated robbery), for each accused, I start with a sentence of 12 years imprisonment. I add 3 years for the aggravating factors, making a total of 15 years imprisonment. For Accused no. 1, I deduct 1 year 8 months as time already served, while remanded in custody, leaving a balance of 13 years 4 months. For co-operating with the court, I deduct another 4 months, leaving a balance of 13 years imprisonment. For the recovery of some of the complainant's properties, I deduct 6 months, leaving a balance of 12 ½ years imprisonment.
 13. For Accused No.2, I deduct 1 year 4 months from the 15 years imprisonment as time already served, while remanded in custody, leaving a balance of 13 years 8 months. For the recovery of some stolen properties, I deduct 6 months, leaving a balance of 13 years 2 months imprisonment.
 14. For Accused No. 3, I deduct 1 year 4 months from the 15 years as time already served, while remanded in custody, leaving a balance of 13 years 8 months. For the recovery of some stolen items, I deduct 6 months, leaving a balance of 13 years 2 months imprisonment.
 15. I repeat the above process and sentence for count no. 2 for each accused.
 16. On count no. 3, I sentence each accused to 6 years imprisonment.
 17. On count no. 4, I sentence each accused to 12 months imprisonment.

18. The summary of your sentences are as follows:

- (i) Count No. 1: Aggravated Robbery: Accused No.1 – 12 ½ years imprisonment
Accused No.2 – 13 years 2 months imprisonment
Accused No.3 – 13 years 2 months imprisonment
- (ii) Count No. 2: Aggravated Robbery: Accused No.1 – 12 ½ years imprisonment
Accused No.2 – 13 years 2 months imprisonment
Accused No.3 – 13 years 2 months imprisonment
- (iii) Count No. 3: Aggravated Burglary: Accused No. 1 – 6 years imprisonment
Accused No. 2 – 6 years imprisonment
Accused No. 3 – 6 years imprisonment
- (iv) Count No. 4: Aggravated Theft: Accused No. 1 – 1 year imprisonment
Accused No. 2 – 1 year imprisonment
Accused No. 3 – 1 year imprisonment

19. Because of the totality principle of sentencing, I direct that all the above sentences be served concurrently, making a final sentence for each accused as follows:

- (i) Accused No. 1 - 12 ½ years imprisonment
- (ii) Accused No. 2 - 13 years 2 months imprisonment
- (iii) Accused No. 3 - 13 years 2 months imprisonment

20. Mr. Arvind Chand (Accused No. 1), Mr. Jonetani Rokotuinasau (Accused No. 2) and Mr. Livai Drigita (Accused No. 3), for the offences you each committed against Mr. Suruj

Prasad (PW1), Ms. Uma Kumari Mishra (PW2) and Ms. Rohini Nandan (PW3) at Bau Road, Nausori on 15 November 2017, I sentence you as follows:

- (i) Accused No. 1 – 12 ½ years imprisonment, with a non-parole period of 10 years imprisonment, effective forthwith;
- (ii) Accused No. 2 – 13 years 2 months imprisonment, with a non-parole period of 10 years imprisonment, to take effect and start from the day you are arrested by police;
- (iii) Accused No. 3 – 13 years 2 months imprisonment, with a non-parole period of 10 years imprisonment, effective forthwith.

21. Pursuant to Section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence are designed to punish you three in a manner that is just in all the circumstances, to protect the community from people like you three, to deter other would be offenders and to signify that the court and the community denounce what you did to Mr. Suruj Prasad (PW1), Ms. Uma Kumari Mishra (PW2) and Ms. Rohini Nandan (PW3) at Bau Road, Nausori on 15 November 2017.

22. You have 30 days to appeal to the Court of Appeal.




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JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Nausori.**
Solicitor for the Accused No. 1: **A.K. Singh, Lawyers & Notary Public, Nausori.**
Solicitor for the Accused No. 2: **In Person, but tried in absentia.**
Solicitor for the Accused No. 3: **Legal Aid Commission, Nausori.**