

**IN THE HIGH COURT OF FIJI AT SUVA**

**[CRIMINAL JURISDICTION]**

**CASE NO: HAC. 09 of 2019**

**BETWEEN** : **STATE**

**AND** : **MESAKE VILIAME VURE**

*Counsel* : *Ms. Kantharia B. for State*  
: *The accused Appeared in Person*

*Hearing on* : *16<sup>th</sup> July – 18<sup>th</sup> July 2019*

*Summing up on* : *19<sup>th</sup> July 2019*

*Judgment* : *31<sup>st</sup> July 2019*

*Sentence* : *09<sup>th</sup> August 2019*

**SENTENCE**

Mr. Mesake Viliame Vure, you stand convicted of the offences of Aggravated Robbery contrary to section 311 (1) (a) and Assault Causing Actual Bodily Harm contrary to section 275 of the Crimes Act 2009 after a full trial. Your charge reads thus;

**COUNT 1**

***Statement of Offence***

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

***Particulars of Offence***

Mesake Viliame Vure with others on the 04<sup>th</sup> day of January 2019 at Wailea Settlement in Suva in the Central Division, in the company of others, robbed Anushka Singh of her Red Coloured Handbag containing 1xJ2 Samsung Phone, \$13.00 cash, ANZ Card and E-Ticketing Card for the bus, the properties of Amitent Prasad.

**COUNT 2**

***Statement of Offence***

ASSAULT CAUSING ACTUAL BODILY HARM: contrary to section 275 of the Crimes Act 2009.

***Particulars of Offence***

Mesake Viliame Vure with others on the 04<sup>th</sup> day of January 2019 at Wailea Settlement in Suva in the Central Division, unlawfully assaulted Amitent Prasad thereby occasioning him actual bodily harm.

When the information was read over and explained to you, having understood the same, you pleaded guilty to the 2<sup>nd</sup> Count and pleaded not guilty to the 1<sup>st</sup> count. The 1<sup>st</sup> Count was taken up for trial and the ensuing trial lasted for 3 days. The complainant Mr. Amitent Prasad, his wife Ma. Anushka Singh and Mr. Josefa Vulikeni, who witnessed the alleged incident gave evidence for the prosecution while you gave evidence in denial of the charge.

At the conclusion of the evidence and after the directions given in the summing up, the assessors unanimously found you guilty to the 1<sup>st</sup> count of Aggravated Robbery.

Accordingly, this Court by its judgment dated 31<sup>st</sup> of July 2019, convicted you to the alleged counts of Aggravated Robbery and Assault Causing Actual Bodily Harm, contrary to section 311 (1) (a) and section 275 of the Crimes Act 2009, respectively.

The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years 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)]. The maximum sentence for Assault Causing Actual Bodily Harm is 5 years of imprisonment and the applicable tariff is from 3 to 12 months of imprisonment as held in **State v McPherson** [2017] FJHC 890; HAC 42 of 2016 (22 November 2017).

However, explaining the aggravating circumstances of the offence of robbery with violence under the now repealed Penal Code, His Lordship 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.”*

Recently, His Lordship Gounder J. in **State v Josaia Warodo Vatunicoko** [2018] FJHC885; HAC210.2018, summarized that;

“The tariff depends on the nature and circumstances of the robbery. The tariff is as follows:

- |                      |   |  |
|----------------------|---|--|
| Street mugging       | : | 18 months to 5 years’ imprisonment ( <b>Raqauqau v State</b> [2008] FJCA 34; AAU0100.2007 (4 August 2008). |
| Home invasion        | : | 8 – 16 years’ imprisonment ( <b>Wise v State</b> [2015] FJSC 7; CAV0004.2015 (24 April 2015).              |
| A spate of robberies | : | 10 -16 years’ imprisonment ( <b>Nawalu v State</b> [2013] FJSC 11; CAV0012.12 (28 August 2013)”            |

Therefore after the enactment of the Crimes Act of 2009, though it seems that the penal sanctions were changed, the identification of the offence of Street Mugging and the earlier tariff seems to have maintained, throughout.

As for the facts of this case, this would come under the category of street mugging and therefore, the appropriate tariff would be from 18 months to 5 years of imprisonment.

The two offences you have committed are founded on the same facts. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”) states;

*“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the*

*court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”*

In determining the starting point within the said tariff, the Court of Appeal, in **Laisiasa Koroivuki v. State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”*

In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your aggregate sentence at 30 months of imprisonment.

The victim Ms. Anushka was just two weeks after the delivery of her child. This robbery has been attempted at a public place. Further, these types of offences have become much prevalent in this society, and presently demand a stern judicial approach in order to curtail.

Due to the said aggravating factors I enhance your sentence by further two (2) years, and now your sentence is 54 months of imprisonment.

In mitigation, it is submitted that you are a first time offender. Considering the said fact and the rest of the material submitted by you, I deduct 18 months from the above and your final sentence stands at 3 years of imprisonment and set the non-parole period at 2 years.


You have been in remand since 09<sup>th</sup> of January 2019, for 7 months. In lieu of that I order that 7 months to be deducted from your final sentence and the remainder would be 29 months and your non-parole period would be 17 months.

Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act. The accused has already served 7 months in remand. Since the accused is of 27 years and has no record of any previous convictions, it would be nothing but fair for him to be given an opportunity to mend his ways and become a law abiding citizen. In consideration of the fact that he pleaded guilty to the 2<sup>nd</sup> count at the first opportunity and rest of the distinctive circumstances of this case, I would consider it appropriate to suspend the rest of his sentence.

Therefore I suspend the said imprisonment term of 29 months for a period of 5 years, and the 17 month non-parole period would come into effect only in the case of the above 29 month suspended term being made operational.

Consequences of any violation of the suspended term of imprisonment, is explained to the accused.

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

  
Chamath S. Morais  
JUDGE



**Solicitors** : **Office of the Director of Public Prosecutions for the State.**  
**The Accused Appeared in Person.**