

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

**CRIMINAL CASE NO.: HAC 235 OF 2019**

STATE

-v-

SISILIA MAILE

Counsel : Mr. S.I. Shah for Prosecution  
Ms. L. David for Defence

Date of Sentence : 29 August 2019

**SENTENCE**

1. Sisilia Maile, you stand convicted of one count of Robbery. You were charged on the following Information:

*Statement of Offence*

**ROBBERY** : Contrary to Section 310 (a) (1) of the Crimes Act 2009.

### *Particulars of Offence*

**SISILIA MAILE** on the 8<sup>th</sup> day of April 2015, at Suva in the Central Division, stole x 1 Phone 5S, Emporio Armani reading glasses, Gabbana sunglasses, wedding ring, Men's Oakley sunglasses, Alcatel phone the property of **LOSALINI BOLENAIVALU** and immediately before stealing used force on the said **LOSALINI BOLENAIVALU**.

2. You have freely and voluntarily pleaded guilty to the above mentioned charge. You understood the consequence of the guilty plea and the sentencing tariff for offence you have committed. I am satisfied that the guilty plea is informed, unequivocal and entered freely and voluntarily.
3. You agreed the following summary of facts. The facts agreed satisfy all the elements of the offence you are charged with. You are found guilty and convicted as charged.
4. The facts you agreed are that:

The victim in this case is Losalini Bulanaivalu.

The accused is Sisilia Maile.

On the 8<sup>th</sup> of April 2015, the victim was drinking with a few friends at Birdland nightclub where she met the accused. After the nightclub closed at 5am the victim with her friends then went bought more beer from Toorak road and proceeded to Oceanview hotel to continue drinking. However, not being comfortable with the atmosphere at Oceanview, they then left for Flagstaff in a taxi driven by Indian men.

The victim and her friends arrived at Flagstaff and were drinking near an empty 40 foot container. Later on there was an argument between the accused and the victim. The accused punched the victim. The accused then stole her bag containing an iPhone 5S, Emporio Armani reading glasses, Gabbana Sunglasses, wedding ring, men's Oakley sunglasses, Alcatel phone, these items the property of the victim. The accused then ran away from the alleged crime scene.

The victim was helped by an unknown man to get into a cab, she then came to Totogo police station and reported the matter. The accused sustained injuries from the assault (annexed hereto and marked as A1 is the medical report).

The [Accused] was arrested and caution interviewed where she admitted the offence (annexed hereto and marked as A2 is the caution interview) charged for Robbery contrary to Section 310(1)(a) (i) of the Crimes Act No. 44 of 2009.

The accused is a first offender (annexed hereto and marked as A3 is the Previous Conviction).


5. The maximum punishment for Robbery is an imprisonment term of 15 years.
6. The tariff for the offence of Robbery ranges from 2 years to 14 years. In *Rarawa v State* [2015] FJHC 324; HAA05.2015 (30 April 2015) Madigan J at [25] set a new tariff for Robbery as follows:
  1. Aggravated robbery: 10 – 16 years.
  2. Robbery (but with concomitant violence): 8 – 14 years.
  3. Robbery without violence: 2 – 7 years.
7. However the term “violence” found in the aforementioned tariff is not found in the provisions under Section 310 of the Crimes Act. Therefore it can be argued that this tariff is not in conformity with the Supreme Court decision in *Vakalabure v State* [2006] FJSC 8;CAV0003U.2004S (15 June 2006). In my view, using violence is something cruel than use of force.
8. In this case, you were drinking alcohol with the victim for a considerable time and you had committed this offence after an argument under influence of alcohol. The culpability of your offence is somewhere lower end of the scale. According to the medical report, the victim has not suffered serious injuries. Having considered the the objective seriousness of your offending and the harm and the loss caused to the victim, I prefer the tariff between 2-7 years above and would pick a starting point of 3 years’ imprisonment.
9. There are no aggravating features in your offending.
10. In mitigation, your Counsel has informed me that you have entered an early guilty and that you have been extremely remorseful of your actions. When you committed this offence you were a first offender. However, after committing this offence you have been convicted for an offence

of similar nature for which you are now serving a prison term. Therefore, for the purpose of sentencing, your previous conviction has prevented me from giving a discount on account of previous good character.

11. I am surprised to learn that this matter had been pending in the magistracy for nearly 3 years before being remitted to this court. It appears from the Record that the Prosecution was not ready to proceed on the trial date as the complainant, who is an Australian national had left the country. Having known all these facts, you have pleaded guilty to the charge, once the information is filed in this court.
12. You were 28 year old young offender. You earned your living as a beauty therapist in a private entity. You are a single mother of 4 children. All of your children are still schooling. A long term incarceration will no doubt have a negative impact on your children and eventually, they will be a burden to the society. You have promised not to re-offend and you beg for a chance to rehabilitate yourself. You have cooperated with police and helped to recover some of the stolen items. You seek mercy of this court. I consider your early guilty plea as evidence of genuine remorse. You have also saved court time and resources by pleading guilty to the charge at a very early stage of the proceedings.
13. I will give a full third discount for the early guilty plea and, for all other mitigation, a discount of one year is allowed to arrive at a sentence of 2 years' imprisonment.
14. The courts have a duty to denounce and deter this kind of anti-social behaviour. The primary purposes of this punishment are deterrence and community protection. An immediate custodial sentence is inevitable in this case to achieve these purposes.
15. I have taken into consideration your potential for rehabilitation in view of your youth and the plight of your children. Having considered all these factors, I suspend 12 months of your sentence for a period of 3 years.
16. Accordingly, you are sentenced to an imprisonment term of 2 years. You are to serve only 12 months in the correction center and the balance 12 months of the imprisonment term is suspended for a period of 3 years. This sentence is to run concurrent to the existing prison term.

17. 30 days to Appeal to the Court of Appeal.



  
**Aruna Aluthge**  
**Judge**

**At Suva**

**29 August 2019**

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