

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 66 of 2018

BETWEEN :

STATE

AND :

1. ABBU TALHA YASIN
2. MOHAMMED JAFAR HUSSEIN
3. ABDUL MOHID KHAN
5. TAZIM MOHAMMED

Counsel :

Ms. D. Rao for State

:

Mr. A. Sen for the 1st and 2nd Accused

Mr. J. Dinati for the 3rd and 5th Accused

Hearing on :

02nd October 2019

Sentence :

04th October 2019

SENTENCE

1. Mr. Abbu Talha Yasin and Mr. Mohammed Jafar Hussein, you have freely and voluntarily pleaded guilty to the counts of Aggravated Burglary and Theft and Mr. Abdul Mohid Khan and Mr. Tazim Mohammed, you have freely and voluntarily pleaded guilty to the count of Receiving, before the trial at an early opportunity. I am satisfied and convinced that you have pleaded so, unequivocally and having understood the consequences of such a plea.
2. You were charged as follows;

COUNT 1

Statement of Offence

Aggravated Burglary: contrary to section 313(1) (a) of the Crimes Act 2009.

Particulars of Offence

Abbu Talha Yasin and **Mohammed Jafar Hussein** in each other's company, between 11th and 12th of August 2018, at Labasa, in the Northern Division, entered the office of the Macuata Muslim League as trespassers with intent to commit theft from the Macuata Muslim League Office.

COUNT 2

Statement of Offence

Theft: contrary to section 291(1) of the Crimes Act 2009.

Particulars of Offence

Abbu Talha Yasin and **Mohammed Jafar Hussein** in each other's company, between 11 and 12 August 2018, at Labasa, in the Northern Division, dishonestly appropriated \$4200.00 cash, belonging to Macuata Muslim League with the intention of permanently depriving Macuata Muslim League of the said cash.

COUNT 3

Statement of Offence

Receiving: contrary to section 306 (1) and (3) (a) of the Crimes Act 2009.

Particulars of Offence

Abdul Mohid Khan, Shahir Muzammil Mohammed and Tazim Mohammed, between 11th and 12th of August 2018, at Labasa, in the Northern Division, dishonestly received stolen cash in the amount of \$2050 cash from Abbu Talha Yasin and Mohammed Jafar Hussein which belonged to Macuata Muslim League knowing or believing the cash of \$2050 to be stolen by Abbu Talha Yasin and Mohammed Jafar Hussein.

3. State has submitted the following as the Summary of Facts;

SUMMARY OF FACTS AGAINST THE 1ST AND 2ND ACCUSED

i. BACKGROUND

- i.i The complainant is Qiyas Khan, 34 years, Executive Officer at Macuata Muslim League situated at Naseakula Mosque, Naseakula, Labasa.
- i.ii The accused persons are students of the ages of 19 and 21 years, boarding at the Al Jameatul Islamia school for Islamic Studies.
- i.iii On 13 august 2018, after 8am, the complainant, Qiyas Khan, discovered that the bundles of \$100, \$50, \$20, \$10's from the drawer in his office, were missing. The total amount was \$4200.
- i.iv On suspicion, the accused persons were questioned by the Macuata Muslim League's President. They admitted to the offence. The matter was then reported to the Labasa Police.
- i.v On questioning by the league staff, Abbu Talah Yasin revealed that he deposited \$2150 in is BSP account and Mohammed

Jafar Hussein voluntarily returned \$950 to the complainant the next day.

ii. CAUTION INTERVIEW AND CHARGE

ii.i On 15 August 2018, both accused persons were interviewed under caution and made voluntary admissions to the offences.

ii.ii Abbu Talha Yasin and Mohammed Jaffar Hussein said that they planned to enter and steal money from the complainant's office on the night of 11 August 2018.

ii.iii It was after midnight when Mohammed Jaffar and Abu Talha Yasin climbed the roof of the mosque and went towards the office bulk which was connected to the League Office. They climbed down a set of stairs and came to the front of the bulk. From there they entered the bulk through a broken window. Then they removed louver blades of the League Office.

ii.iv Abu Talha Yasin put his hand through the window and opened the tower bolt of the door to the League Office. After this both Abu and Jafar entered the office.

ii.v The two then began looking around the office for money. Jaffar used a knife [which they found on the sink in the office] to open the drawer where the money was kept. Abu took all the bundles of money from the drawer and left the office.

ii.vi They relocked the tower bolt through the window and returned to their boarding rooms the same way they entered.

ii.vii The two shared the money between themselves and others:

- | | | | |
|-----|-----------------|---|--------|
| i. | Mohammed Jafar | - | \$950 |
| ii. | Abu Talha Yasin | - | \$2150 |

iii. RECOVERY

iii.i On 13 August 2018, Abu Talha Yasin deposited his share of \$2150 in his BSP account no. 8184159. This is reflected in his account history extracted by police. The account is now frozen.

iii.ii Mohammed Jaffar Hussein kept in the money with him which he voluntarily handed to the complainant the next day.

iv. PREVIOUS CONVICTIONS

iv.i Both accused have a clear record.

SUMMARY OF FACTS AGAINST THE 3RD AND 5TH ACCUSED

i. BACKGROUND

i.i The complainant is Qiyas Khan, 34 years, Executive officer at Macuata Muslim League situated at Naseakula Mosque, Naseakula, Labasa.

i.ii The accused persons were students both aged 18 years, boarding at the Al Jameatul Islamia as students of religion.

i.iii On 13 August 2018, after 8am, the complainant. Qiyas Khan, discovered that the bundles of \$100, \$50, \$20, \$10's from the drawer in his office, were missing. The total amount was \$4200.

ii. OFFENCE

ii.i Between 11 and August 2018, both accused persons, were aware that two other students made a plan and stole money by forcefully gaining entry into the Macuata Muslim League office.

ii.ii The two accused person knowing or believing that money was stolen by the two students received stolen cash from the students who stole it as follows:

- i. Abdul Mohid Khan - \$300
- ii. Tazim Mohammed - \$200

iii. RECOVERY

iii.i On suspicion, the accused persons were questioned by the Macuata Muslim League's president. They admitted to the offence. The matter was then reported to the Labasa Police Station. The accused persons returned the money to the complainant the next day.

iv. CAUTION INTERVIEW AND CHARGE

iv.i On 15 August 2018, both accused persons were interviewed under caution who made voluntary admissions to the offences.

v. PREVIOUS CONVICTIONS

v.i Both accused have a clear record.

4. The said Summary of facts were read over and explained to each of you. You having understood the same agreed them to be true and correct.
5. I find that the summary of facts supports all elements of the charges in the Information, and find the charges proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and I convict each of you of the counts as charged.
6. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.

7. A person who enters a building with one or more other persons as a trespasser, with the intention to steal commits an aggravated burglary punishable by 17 years' imprisonment under section 313(1)(a) of the Crimes Act. Theft is committed if a person dishonestly appropriates property belonging to another with the intention to permanently depriving him of the property. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act. The offence of Receiving carries a maximum sentence of 10 years of imprisonment.
8. The accepted tariff for Aggravated Burglary is 6 to 14 years imprisonment. Though there is some uncertainty in respect of the recommended tariff, as I have reasoned out in **State v Chand** - Sentence [2018] FJHC 830; HAC44.2018 (6 September 2018), I prefer to follow His Lordship Justice Perera in **State v Naulu** - [2018] FJHC 548 (25 June 2018), as it gives effect to the intention of the legislature, best.
9. As for the offence of theft the accepted tariff would range from 2 months to 3 years (**Ratusili v State** [2012] FJHC 1249; HAA011.2012). For the offence of Receiving, the accepted sentencing tariff would be from 1 to 3 years of imprisonment (**State v Rigamoto** [2018] FJHC 513; HAC158.2018(18 June 2018)).
10. The two offences the 1st and 2nd accused 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 them, for the two offences they have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") states;

17. *"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.”

11. The aggravating factors present against the 1st & 2nd accused are that this was a pre-planned invasion and they were students of Al Jameatul Islamia School, which as for the victim impact statement, is funded and maintained by the Macuata Muslim League. Further, these types of offences abundantly prevalent in the society and demands a stern judicial approach to curtail them.

12. Their mitigating factors are;

1st Accused;

- i. Aged 18 years at the time of the offence.
- ii. No previous convictions and a first time offender.
- iii. His share of the money \$2150.00 is safely in his bank account, which is frozen at the moment and prepared to reimburse in full.
- iv. Cooperated with the police.

2nd Accused;

- i. Aged 21 years at the time of the offence.
- ii. No previous convictions, a first time offender.
- iii. Full restitution of his share of \$950.00 was made on the following day to the incident.
- iv. Cooperated with the police.

3rd Accused;

- i. Aged 18 years at the time of the offence.
- ii. No previous convictions, a first time offender.
- iii. Full restitution of his share of \$300.00 was made.
- iv. Cooperated with the police.

5th Accused;

- i. Aged 18 years at the time of the offence.

- ii. No previous convictions, a first time offender.
 - iii. Full restitution of his share of \$200.00 was made.
 - iv. Cooperated with the police.
13. i) I would select 6 years as the starting point of 1st and 2nd accused's aggregate sentence. I would enhance 12 months due to aggravating factors mentioned above and deduct 30 months in consideration of the mitigating factors. Now your sentence is an imprisonment term of 54 months.
- ii) Both of you have pleaded guilty at the very first opportunity and I will award the maximum discount of 1/3 for that. Therefore your final sentence is 3 years of imprisonment. In consideration of all the material before me, I fix the non-parole period at 2 years.
14. i) I would select 12 months as the starting point of the sentence of 3rd and 5th accused. Though there is certain doubt of a more serious involvement of the 3rd accused, he is neither charged nor submitted in the summary of facts. Therefore I do not see any aggravating factors for the enhancement of the sentence. I will deduct 3 months for the mitigating factors.
- ii) Both of you have pleaded guilty at the very first opportunity and I will award the maximum discount of 1/3 for that. Therefore your final sentence is 6 months of imprisonment.
15. All of you have been in remand for two days. I have given the due consideration to that in determining the final sentence hence no separate reduction will be given to that.
16. Accordingly, each your final sentences would be:
1st accused; 3 years of imprisonment with a non-parole period of 2 years.

2nd accused; 3 years of imprisonment with a non-parole period of 2 years.

3rd accused; 6 months of imprisonment

5th accused; 6 months of imprisonment

17. Since all of you are first time offenders, for the purpose of promoting rehabilitation, I would suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act, for a period of 5 years. Therefore, the non-parole period fixed against the 1st and 2nd accused would be relevant only in the event that they are to serve the suspended term.

18. Therefore;

1st Accused, Mr. Abbu Talah Yasin,

your sentence of three years of imprisonment with a non-parole period of 2 years will be suspended for a period of 5 years.

2nd Accused, Mr. Mohammed Jafar Hussein,

your sentence of three years of imprisonment with a non-parole period of 2 years will be suspended for a period of 5 years.

3rd Accused, Mr. Abdul Mohid Khan,

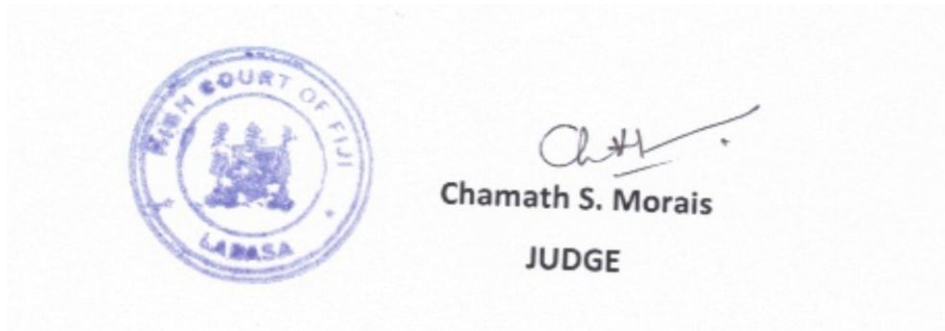
your sentence of six months of imprisonment will be suspended for a period of 5 years.

5th Accused, Mr. Tazim Mohammed,

your sentence of six months of imprisonment will be suspended for a period of 5 years.

19. The consequences of a committal of another offence within the operational period of the said suspended term will be explained to you by the clerks.

20. The amount of \$2150.00 frozen from the BSP Bank account of the 1st accused is to be released to the complainant.
21. You have 30 days to appeal to the Court of Appeal if you so desire.



At Labasa

04th October 2019

Solicitors for the State : Office of the Director of Public Prosecutions, Labasa.

Solicitors for the 1st & 2nd Accused : Ms. Maqbool & Co., Labasa

Solicitors for the 3rd & 5th Accused : R Vananalagi & Associates, Nabua