

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 375 of 2019

STATE

V

LAIASIA STEVEN NAKARAWA

Counsel : Mr. Eoghn Samisoni with Mr. Zenith Zunaid for the State
Mr. Isireli Romanu for the Accused

Sentence Hearing : 1 December 2020

Date of Sentence : 4 December 2020

SENTENCE

[1] As per the Information filed by the Director of Public Prosecutions (DPP), Laisiasa Steven Nakarawa, you were charged with the following offence:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

LAIASIA STEVEN NAKARAWA, with others, on the 16th day of November 2019, at Suva, in the Central Division, in the company of each other, stole 1 x Adidas sports bag, 1 x Thermometer, 1 x Pliers, 1 x Star screw-driver, 1 x Flat screw-driver, 1 x Neon brand tester, 1 x Samsung Galaxy A50 mobile phone with sim and 1 x Samsung Galaxy J1 Prime mobile phone with sim from

ANIKET AKASH CHAND and immediately before stealing from **ANIKET AKASH CHAND**, used force on him.

- [2] The State filed the Information and Disclosures relevant to the case on 21 January 2020.
- [3] Laisiasa, on 29 January 2020, you were ready to take your plea. On that day you pleaded not guilty to the charge. Thereafter, on conclusion of all pre-trial issues this matter was set for trial from 23-27 November 2020.
- [4] On the first day of trial, which was on 23 November 2020, you informed Court through your Counsel that you wish to take a progressive approach in this matter. Accordingly, on the said day, the charge was read to you again. You pleaded guilty to the one count in the Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charge against you and the consequences of your plea.
- [5] On the same day, the Summary of Facts were filed in Court and read out and explained to you. You confirmed that you understood and agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the count of Aggravated Robbery in the Information, and found the charge proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the count as charged.
- [6] I now proceed to pass sentence on you.
- [7] The Summary of Facts filed by the State was as follows:

"Accused [A1]:

A1 in this matter is one, Laisiasa Steven Nakarawa, 19 years old, Labourer, of Ryland Place.

Complainant:

The complainant in this matter is one Aniket Akash Chand, 25 years old, Electrician, of Wailea Street, Vatuwaqa.

Prosecution Witness 2 [PW2]: Arresting Officer

PW2 in this matter is one PC 5466 Apisai Noga, 27 years old, Police Officer, of Laucala Beach.

Prosecution Witness 3 [PW3]: Interviewing Officer

PW3 in this matter is one DC 5605 Gukisuva, 40 years old, Police Officer, of Tacirua.

Prosecution Witness 4 [PW4]: Charging Officer

PW4 in this matter is one WPC 5185 Eleni, 29 years old, Police Officer, of Raiwaqa Police Barracks.

- 1) *On the 16th day of November 2019, at around 9.15 pm, the complainant being an electrician by profession had just finished his work from Viria West and then proceeded to walk along Ryland Place and then towards Daya Street. As the complainant walked past a Chinese shop, he noticed a group of I-Taukei boys standing near the shop. One of the youths from the group asked the complainant for one dollar. The complainant replied that he doesn't have it and this is when one of the youths grabbed his neck from behind.*
- 2) *The complainant turned around and recognized the accused as "Lai" from Wailea Settlement. The complainant told the accused that he knows him very well. This is when the accused stole the complainants Adidas sports bag (worth \$60.00), which contained 1 x thermometer (valued at \$400.00), 1 x pliers (valued at \$20.00), 1 x Star screw-driver (valued at \$10.00), 1 x Flat screw-driver (valued at \$10.00), 1 x Neon brand tester (valued at \$8.00). Further, the accused stole the complainant's 1 x Samsung Galaxy A50 mobile-phone with sim (valued at \$899.00) and 1 x Samsung Galaxy J1 Prime with sim (valued at 199.00) from the complainant's pockets. The estimate total value of the items stolen were \$1,606.00.*
- 3) *During the time of the robbery, the youths all began assaulting the complainant by throwing punches on the complainant's eye and back. Immediately after the robbery, the group then ran away with the complainant's items.*
- 4) *The complainant then quickly made his way to his house and reported the matter to the Nabua Police Station. PW2 who was a Police Officer and was on duty received the report as he was on mobile patrol along Fletcher Road. The Police Officers with PW2 all made their way to Daya Street and went on foot patrol along Wailea Settlement. PW2 noticed a group of youths near the roadside and approached them. PW2 recognized the accused as one "Laisiasa from Ryland" who had a gym bag on his back, PW2 under suspicion touched the bag and felt tools in the bag. PW2 thereafter immediately executed the arrest of the accused as he suspected the bag which contained the tools to be stolen items. PW2 then escorted the accused to Nabua Police Station.*
- 5) *At the Police Station as the accused was taken into custody, the complainant recognized the accused as "Lai", that being the same person who was involved in the robbery. The complainant further positively identified his Adidas bag which contained his pliers, screw drivers and his Samsung J1 Prime mobile-phone. Only the Samsung Galaxy, A50 mobile-phone and thermometer were not recovered.*

- 6) *On the 17th day of November 2019, the accused was interviewed under caution by PW3. The accused admitted that on the day and place of the offence, he was with two other friends of his (Q & A 19-23). The accused further admitted to holding the complainant's neck from behind and stealing his bag which contained tools and a mobile phone (Q & A 25-26). The accused denies stealing the complainant's Samsung Galaxy A50 mobile-phone, but admitted to stealing the complainant's Samsung J1 mobile-phone (Q & A 27-28). The accused was shown the recovered items to which he admitted to stealing the same from the complainant (Q & A 28-29). The accused admitted to knowing the complainant for two years as they live in the same area (Q & A 33-35).*
- 7) *The complainant was medically examined where the specific findings of the medical report showed that the complainant received a small laceration on the right lower eye-lid.*
- 8) *Annexed hereto and marked as "Annexure A" is the medical report of the complainant.*
- 9) *Annexed hereto and marked as "Annexure B" is the caution interview of the accused.*
- 10) *The accused person in the company of others robbed the complainant of the said items listed in the Information and before committing theft, used force on the complainant."*
- [8] Lalsiasa you have admitted to the above Summary of Facts and taken full responsibility for your actions.
- [9] Section 4 (1) 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. The factors are as follows:
- 4. — (1) The only purposes for which sentencing may be imposed by a court are —*
- (a) to punish offenders to an extent and in a manner which is just in all the circumstances;*
- (b) to protect the community from offenders;*
- (c) to deter offenders or other persons from committing offences of the same or similar nature;*

(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;

(e) to signify that the court and the community denounce the commission of such offences; or

(f) any combination of these purposes.

[10] I have duly considered the above factors in determining the sentence to be imposed on you.

[11] In terms of Section 311 (1) of the Crimes Act No. 44 of 2009 (Crimes Act), "A person commits an indictable offence (of Aggravated Robbery) if he or she-

(a) Commits a robbery in company with one or more other persons; or

(b)"

The offence of 'Robbery' is defined at Section 310 (1) of the Crimes Act as follows:

"A person commits an indictable offence (which is triable summarily) if he or she commits theft and —

(a) immediately before committing theft, he or she—

(i) uses force on another person; or

(ii) threatens to use force then and there on another person —

with intent to commit theft or to escape from the scene; or

(b) at the time of committing theft, or immediately after committing theft, he or she—

(i) uses force on another person; or

(ii) threatens to use force then and there on another person—

with intent to commit theft or to escape from the scene".

[12] The offence of Aggravated Robbery in terms of Section 311 (1) of the Crimes Act carries a maximum penalty of 20 years imprisonment.

[13] The tariff for the offence of Aggravated Robbery is between 8 and 16 years imprisonment. This tariff has been endorsed by the Supreme Court in **Wallace Wise v. State** [2015] FJSC 7; CAV 04 of 2015 (24 April 2015); where it was held:

".....We believe that offences of this nature should fall within the range of 8-16 years imprisonment. Each case will depend on its own peculiar

facts. But this is not simply a case of robbery, but one of aggravated robbery. The circumstances charged are either that the robbery was committed in company with one or more other persons, sometimes in a gang, or where the robbers carry out their crime when they have a weapon with them."

- [14] However, in *State v. Josai Warodo Vatunicoko* [2018] FJHC 885; HAC210.2018 (21 September 2018); His Lordship Justice Goundar summarised the various tariffs for the offence of Aggravated Robbery depending on the nature and circumstances of the robbery in the following manner:

"In assessing the objective seriousness of your offending, I am mindful that aggravated robbery in the company of others is punishable by 20 years' imprisonment. The tariff depends on the nature and circumstances of the robbery. The tariff is 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)."

- [15] The Court of Appeal in *Donu v. State* [2020] FJCA 204; AAU0147.2017 (22 October 2020) further discussed the sentencing tariff applicable for street mugging. His Lordship Justice Prematilaka held as follows:

".....[38] In Raqauqau v State [2008] FJCA 34; AAU0100.2007 (4 August 2008) the complainant, aged 18 years, after finishing off work was walking on a back road, when he was approached by the two accused. One of them had grabbed the complainant from the back and held his hands, while the other punched him. They stole \$71.00 in cash from the complainant and fled. The Court of Appeal remarked

'[11] Robbery with violence is considered a serious offence because the maximum penalty prescribed for this offence is life imprisonment. The offence of robbery is so prevalent in the community that in Basa v The State Criminal Appeal No.AAU0024 of 2005 (24 March 2006) the Court pointed out that the levels of sentences in robbery cases should be based on English authorities rather than those of New Zealand, as had been the previous practice, because the sentence provided in Penal Code is similar to that in English legislation. In England the sentencing range depends on the forms or categories of robbery.

[12] The leading English authority on the sentencing principles and starting points in cases of street robbery or mugging is the case of Attorney General's References (Nos. 4 and 7 of 2002) (Lobhan, Sawyers and James) (the so-

called 'mobile phones' judgment). The particular offences dealt in the judgment were characterized by serious threats of violence and by the use of weapons to intimidate; it was the element of violence in the course of robbery, rather than the simple theft of mobile telephones, that justified the severity of the sentences. The court said that, irrespective of the offender's age and previous record, a custodial sentence would be the court's only option for this type of offence unless there were exceptional circumstances, and further where the maximum penalty was life imprisonment:

- The sentencing bracket was 18 months or 5 years, but the upper limit of 5 years might not be appropriate 'if the offences are committed by an offender who has a number of previous convictions and if there is a substantial degree of violence, or if there is a particularly large number of offences committed'.
- An offence would be more serious if the victim was vulnerable because of age (whether elderly or young), or if it had been carried out by a group of offenders.
- The fact that offences of this nature were prevalent was also to be treated as an aggravating feature.

[39] The sentencing tariff for street mugging was once again discussed in Tawake v State [2019] FJCA 182; AAU0013.2017 (3 October 2019) where the complainant was going home at about 4.30 p.m. when the appellant with another person had called him and asked for money and when told that he had no money, the appellant had hit him with a knife and the other had assaulted him with an iron rod. After assaulting the complainant the appellant had taken \$20 from him and run away. The Court of Appeal having discussed Raqauqau and other decisions said as follows.

'[35] The adoption of the tariff in Wise (Supra) does not seem to be appropriate to the present case as it does not come within the nature of a home invasion category of aggravated robbery and is a situation which would come within the type of street mugging cases. Considering the objective seriousness of the offending and the degree of culpability, the harm and loss caused to the complainant it would be appropriate to follow the sentencing pattern suggested for instances of street mugging

[40] Again the Court of Appeal in Qalivere v State [2020] FJCA 1; AAU71.2017 (27 February 2020) dealt with a case of street mugging in the following terms.

'[15] The learned single Justice of Appeal, in giving leave to appeal, distinguished facts in Wallace Wise (supra), which involved a home invasion as opposed to the facts in Raqauqau v State [2008] FJCA 34; AAU0100.2007 (04 August 2008), where aggravated robbery was committed on a person on the street by two accused using low-level physical violence.

[16] Low threshold robbery, with or without less physical violence, is sometimes referred to as street-mugging informally in common parlance. The

range of sentence for that type of offence was set at eighteen months to five years by the Fiji Court of Appeal in **Ragauqau's case (supra)**.

'[19] Upon a consideration of the matters, as set-out above, I am of the view that the learned Magistrate had acted a upon wrong principle when he applied the tariff set for an entirely different category of cases to the facts of this case, which involved a low-threshold robbery committed on a street with no physical violence or weapons. When the learned Magistrate chose the wrong sentencing range, then errors are bound to get into every other aspect of the sentencing, including the selection of the starting point; consideration of the aggravating and mitigating factors and so forth, resulting in an eventual unlawful sentence.

- [16] The facts of this case clearly depicts that this is a case of street mugging. Therefore, in my opinion the appropriate tariff in the instant case should be between 18 months to 5 years imprisonment.
- [17] In determining the starting point within a 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."

- [18] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, including the maximum sentence prescribed for the offence, the nature and gravity of the offence and the degree of culpability, Laisiasa, I commence your sentence at 18 months imprisonment for the offence of Aggravated Robbery.
- [19] The aggravating factors are as follows:
- (i) The frequent prevalence of these offences in our society today. This has created a sense of fear amongst the community.
 - (ii) You and your accomplices paid scant regard to the safety and security of the complainant, who was returning home after his employment.
 - (iii) You and your accomplices committed this offence in the late hours of the night.

- (iv) I find that there was some amount of pre-planning or pre-meditation on you and your accomplice's part in committing this offence.
- (v) The complainant had sustained injuries during the incident. The Medical Examination Report confirms that the complainant had suffered a small laceration on his right lower eye lid.

[20] Laisiasa, in mitigation, you have submitted as follows:

- (i) That you are a first offender and that you have no previous convictions to date. The State too confirms that there are no previous convictions recorded against you.
- (ii) You have fully cooperated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (iii) Most of the stolen property was recovered with your assistance. Only the complainant's Samsung Galaxy A50 mobile phone and thermometer were not recovered.
- (iv) You have submitted that you are truly remorseful of your actions and you have assured Court that you will not re-offend.
- (v) You have apologized to the complainant who confirmed that he accepts your apology.
- (vi) You have paid compensation in the sum of \$200.00 to the complainant.
- (vii) That you have entered a guilty plea prior to the commencement of the trial.

[21] Considering the aforementioned aggravating factors, Laisiasa, I increase your sentence by a further 5 years. Now your sentence for the offence would be 6 years and 6 months imprisonment.

[22] Laisiasa, I accept that you are a person of previous good character and that you have fully co-operated with the Police in this matter and also the fact that most of the stolen property was recovered with your assistance. I also accept your remorse as genuine and the fact that you have apologized to the complainant and also paid compensation to him. Accordingly, considering these mitigating factors, I deduct 4 years and 6 months from your sentence. Now your sentence would be 2 year's imprisonment.

[23] Laisiasa, I accept that you entered a guilty plea during the course of these proceedings. However, it must be noted that the said plea was entered on the first date on which this matter was fixed for trial. Nevertheless, in doing so, you saved precious time and

resources of this Court. For your guilty plea I grant you a further discount of 12 months.

[24] Accordingly, Laisiasa I sentence you to a term of 1 year's imprisonment.

[25] The next issue for consideration is whether your sentences should be suspended.

[26] Section 26 of the Sentencing and Penalties Act provides as follows:

(1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*

(2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*

(a) does not exceed 3 years in the case of the High Court; or

(b) does not exceed 2 years in the case of the Magistrate's Court.

[27] Laisiasa, I am aware that you are only 21 years of age [Date of Birth 31 August 1999] and as such a young offender. You are said to be in a de-facto relationship and your de-facto partner is only 19 years of age.

[28] Your father Iliesa Nakarawa is employed as a Chief Mate on passenger ships registered under South Island Shipping Services. A letter has been tendered to Court by the Director of the said Company stating that the company is willing to employ you on board one of their vessels upon the finalization of this case. It is also stated in the letter that the Company will undertake to look after your welfare and to ensure that you stay away from your peers, who happen to be a bad influence on you.

[29] However, Laisiasa, I have already granted you substantial discounts for the mitigating factors as stated above. Therefore, considering the nature and gravity of the offence and the degree of culpability, I am of the opinion that your sentence should not be suspended any further.

[30] Section 24 of the Sentencing and Penalties Act reads thus:

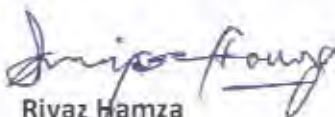
"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

[31] Laisiasa, you were arrested for this case since your arrest on 16 November 2019 and granted bail on 19 February 2020. Thereafter, I remanded you into custody on 23 November 2020. You had been in custody until today. The time you have been in custody is a total period of approximately 3½ months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that the period of 3½ months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[32] In the result, Laisiasa, you are sentenced to a term of 1 year's imprisonment. Considering the time you have spent in remand, the time remaining to be served by you would be 8½ months imprisonment.

[33] You have 30 days to appeal to the Court of Appeal if you so wish.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 4th Day of December 2020

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused : MIQ Lawyers, Barristers and Solicitors, Suva.