

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 324 OF 2019

STATE

-v-

1. SERUVATU NIUMATAIWALU
2. TEVITA RAVAI

Counsel: Ms. B. Kantharia for Prosecution
Ms. L. David for 1st Accused
Ms. S. Daunivesi for Defence

Date of Sentence : 27 January 2020

SENTENCE

1. Seruvatu Niumataiwalu and Tevita Ravai, both of you were jointly charged with one count of Aggravated Robbery. The information is as follows.

Statement of Offence

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

Particulars of Offence

SERUVATU NIUMATAIWALU and TEVITA RAVAI on the 4th day of September, 2019, at Nasinu in the Central Division, in the company of each other committed theft of F\$1800.00 cash and 1 x Samsung J2 mobile phone belonging to SANJAY NARAYAN SHARMA and immediately before committing theft, used force on SANJAY NARAYAN SHARMA.

2. When the Information was filed, you voluntarily pleaded guilty. I am satisfied that the guilty pleas are informed and unequivocal. You agreed the following Summary of Facts read in Court.

Summary of Facts

1. The complainant in this matter is **SANJAY NARAYAN SHARMA** hereinafter known as 'PW1', 44 years old, Priest of 9½ miles, Nakasi.
2. The accused's are :
 - (i) Seruvatu Niumataiwalu hereinafter known as 'A1', 18 years old – [DOB – 20/04/2001], unemployed of Lot 22, Wainibuku Road.
 - (ii) Tevita Rakai hereinafter known as 'A2', 23 years old – [DOB – 10/09/1996], unemployed of Lot 22, Wainibuku Road.
3. There is no relationship between the accused's and the complainant.
4. PW1 is a priest at Hanuman Gadi Temple located at 9½ miles, Nakasi.
5. On 4/09/19 at about 2.30 pm, PW1 was awoken by sound inside his house; he went to check and saw two i-Taukei youths inside his house.
6. PW1 got frightened on seeing the two i-Taukei youths who then told PW1 not to shout.
7. The two i-Taukei youths threaten PW1 with a chopper by placing same at the back of his neck and demanded cash.
8. PW1 told the i-Taukei youths not to do anything to him and he will give them the cash.
9. PW1 took them to the sitting room and showed them the drawer where the cash was kept.
10. The i-Taukei youths took the cash amounting to \$1800.00 which was inside the drawer which included loose coins.
11. After taking the cash, the i-Taukei youths then tied PW1 with a piece of cloth and went out of the house through the main door.
12. PW1 then managed to wake up his wife and children sleeping in another room where the incident happened.

13. PW1 checked and found out that the entry into the house was gained through removing the window grill of the kitchen.
 14. PW1 and his wife Rohini Devi checked the house and discovered that \$1,800.00 cash together with Samsung J2 mobile valued at \$300.00 were stolen.
 15. PW1 did not receive any injuries during this ordeal.
 16. On 10/9/19, PW1 positively identified a chopper (knife) and a red money box at the Nakasi Police Station as the same belonging to him. He stated that the chopper was used in the robbery and the red money box is where he used to keep his money.
 17. Both the chopper and the red box were found in PW1's compound by the Police during investigation.
 18. None of the stolen items were recovered by the Police.
3. The Summary of Facts satisfies all the elements of the offence of Aggravated Robbery under Section 311(1) (a) of the Crimes Act. Both of you are convicted as charged accordingly.
 4. According to Section 311 of the Crimes Act, the maximum penalty for Aggravate Robbery is 20 years' imprisonment.
 5. In Wise v State [2015] FJSC 7, the Supreme Court, at paragraph 25, outlined that the sentencing tariff for the offence of Aggravated Robbery is a term of imprisonment ranging from 8 to 16 years.
 6. In assessing the objective seriousness of your offending, I look at the degree of culpability and the harm and the loss caused to the complainant. There is a common basis in selecting the starting points for each one of you. The offence was committed in a joint enterprise therefore the culpability level of each one of you would be the same. You have committed a planned robbery. No injuries have been caused to the complainant. The property stolen is roughly valued at \$ 2000. Having considered all these factors, I would start your sentence with a starting point of 8 years for each one of you.
 7. This is a night time home invasion in which the complainant was woken up under frightening circumstances. The complainant was threatened at the point of a chopper (knife). You have

used force on the complainant although he was not physically injured. The robbery was pre-meditated. These factors aggravate the offending. I increase the sentence for each one of you by 2 years for the aggravating factors to reach 10 years.

8. In light of submissions filed by your Counsel, I would consider the mitigating circumstances for each one of you separately and arrive at a sentence that is just in all the circumstances of this case.

Seruvatu Niumataiwalu (1st accused)

9. **Seruvatu Niumataiwalu**, you are 18 years of age bachelor and a student at the Maritime Academy. You have cooperated with police investigations and pleaded guilty to the charge at the first available opportunity. You have saved time and resources of this court by tendering an early guilty plea. You are remorseful of your actions. You are young. You seek another chance to rehabilitate yourself and forgiveness of this court. You have been in remand for nearly one month. Your remand period is separately discounted. For mitigating factors and the remand period, I discount your sentence by 5 years to arrive at a sentence of 5 years' imprisonment.

Tevita Ravai (2nd Accused)

10. **Tevita Ravai**, you are 22 years of age and a market vendor by profession. You are in a *de-facto* relationship and expecting to have your first baby in four months. You have cooperated with police investigations. You have pleaded guilty to the charge at the first available opportunity. You have saved time and resources of this court by tendering an early guilty plea. You have been remorseful of your actions. You are a first offender. You seek another chance to rehabilitate yourself and you seek forgiveness of this court. You have been in remand for nearly one month. Your remand period will be discounted separately. For mitigating factors and the remand period, I discount your sentence by 5 years to arrive at a sentence of 5 years' imprisonment.
11. Both of you are young and first offenders. Leniency by way of a sentence under tariff is to acknowledge that you are young and you have maintained a clean record thus far. Given your age and the clean record, you have a strong potential for rehabilitation. In view of that, I would

not fix a non-parole period so as to allow you to reap the complete benefit of remission should you earn one during incarceration.

12. In the absence of any exceptional circumstances, a custodial sentence is inevitable in this case. I am mindful that this offence is most prevalent in our society and denunciation, deterrence and community protection should be the main purposes of the sentence.

Summary

13. Seruvatu Niumataiwalu (1st accused), you are sentenced to 5 years' imprisonment. No non-parole period is fixed.

Tevita Ravai (2nd accused), you are sentenced to 5 years' imprisonment. No non-parole period is fixed.

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




Aruna Aluthge
Judge

At Suva

27 January 2020

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