

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

**CASE NO: HAC. 105 of 2020**

**[CRIMINAL JURISDICTION]**

**STATE**

**V**

**JONE ROSERU TAMANIVALU**

**Counsel** : Mr. E. Samisoni for the State  
Ms. S. Hazelman for the Accused

**Date of Sentence** : 24 August, 2020

**SENTENCE**

1. Jone Roseru Tamanivalu, you stand convicted of the offence of aggravated robbery contrary to section 311(1) of the Crimes Act 2009 upon you pleading guilty to the relevant charge. Your charge reads thus;

*Statement of Offence*

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

*Particulars of Offence*

**JONE ROSERU TAMANIVALU** with others on the 15<sup>th</sup> day of March, 2020 at Raiwaqa, Suva in the Central Division, in the company of each other stole 1 x Samsung J2 Pro mobile phone and \$20.00 cash from **RANA** and immediately before committing theft, used force on **RANA, MOCHIN SARDAR** and **MAMUN MIA**.

2. You have admitted the following facts;

**Accused (A1):** Jone Roseru Tamanivalu, 19 years old, security guard of Lagilagi Housing, Raiwaqa.

**Complainant (PW1):** Rana, 43 years old, Site Co-ordinator of Auto City Road, Raiwaqa, (Bangladeshi national).

**(PW2):** Mochin Sardar, 34 years old, Welder of Auto City Road, Raiwaqa. (Bangladeshi national).

**(PW3):** Mamun Mia, 32 years old, Installer of Auto City Road, Raiwaqa. (Bangladeshi national).

**(PW4):** DC 5053 Aceni Toga of Raiwaqa Police Station.

1. On 15<sup>th</sup> March 2020 at around 6.45pm at Auto City, Raiwaqa, PW1 was returning from the shops at Grantham Plaza with PW2 and PW3 when they were robbed by 5 iTaukei youths including A1. A1 and his four accomplices had followed PW1, PW2 and PW3 before surrounding them, assaulting them and making off with PW1's Samsung J2 Pro mobile phone valued at \$149.00 and \$20.00 cash. PW1, PW2 and PW3 were kicked and punched. PW1 said that the 5 youths ran away into the Jittu Estate squatter settlement. PW1 then reported the matter to the Police.

2. On the 16 March, PW4 went to GDNV Hardware shop in Raiwaqa and uplifted CCTV footage from their security cameras which captured the robbery on video. After watching the footage several times, PW4 said he was able to recognize A1. PW4 said he had known A1 in his capacity as a police officer and he also knew A1's father. PW4 further stated that he clearly recognized A1 in the CCTV footage due to the lights from the neighbouring shops in the video.

3. *After investigations were completed A1 was arrested on 18 March, 2020 and interviewed under caution on 19 March, 2020. A1 made full admissions in his Record of Interview from Q&A 16 – 39 where he admitted to meeting up with four of his friends along Grantham Road when he saw PW1, PW2 and PW3 crossing the road on their way to Auto City. A1 then followed PW1, PW2 and PW3 and the signaled to his four friends to follow the three men as well. A1 explained that he was desperate for money and that when he saw PW1, PW2 and PW3 he knew he could overpower them as they were small built. A1 further admitted to holding PW1 who he saw with a mobile phone and A1 punched PW1 until he fell on the footpath. A1 then quickly grabbed PW1's mobile phone and \$20.00 cash from his pocket. Whilst this was happening, A1's four friends were assaulting PW2 and PW3. Afterwards, A1 and his four friends fled the scene and ran into Jittu Estate. A1 also admitted to using the \$20.00 to buy milk, cookies and other snacks and that he had given PW1's mobile phone to one of his friends who helped him rob PW1 on the night of the incident. **The Record of Interview of A1 is attached as PE1.***
  4. *PW1's mobile phone was not recovered.*
  5. *PW1 was medically examined and sustained swelling on his left upper eye and abrasions on his elbow as well as active bleeding. **PW1's Medical Report is attached as PE2.***
  6. *On 1<sup>st</sup> July, 2020, A1 pleaded guilty as charged to one count of Aggravated Robbery in the presence of his counsel.*
3. Your counsel has submitted that you are 19 years old; you live with your father, stepmother and your mentally challenged brother; and that you have studied up to Form 5. It is submitted that it was your poor decision making that led you to commit this crime.

4. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years imprisonment.
5. Considering the manner in which this offence was committed I would classify this case as 'street or less sophisticated' aggravated robbery [see *State v Bulavou* [2019] FJHC 877; HAC28.2018 (10 September 2019)] and accordingly the applicable sentencing tariff should be a term of imprisonment between 05 years and 13 years.
6. I would select 05 years imprisonment as the starting point of your sentence.
7. I would consider the following as aggravating circumstances and add 03 year to your sentence on account of same;
  - a) The fact that the offence was committed by a group of five individuals;
  - b) There was preplanning and you were the instigator;
  - c) You assaulted PW1 until he fell down on the ground; and
  - d) Two other individuals (PW2 and PW3) who were with PW1 were assaulted by your accomplices.
8. I consider the following as mitigating factors and would deduct 03 years and 06 months of your sentence in view of same;
  - a) You are a young first offender; and
  - b) You have cooperated with the police.
9. In determining your sentence I have decided to give significant weight to the fact that you are a young first offender.
10. Now your sentence is a term of 04 years and 06 months imprisonment. You have pleaded guilty on the first opportunity before this court. On account of

your early guilty plea, you will receive a one-third reduction which is 18 months.

11. Accordingly, I hereby sentence you to a term of 03 years imprisonment. I order that you are not eligible to be released on parole until you serve 02 years of your sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
12. Should this court suspend your sentence? The fact that you are a young first offender, the fact that the value of the items stolen is not substantial and that you have entered an early guilty plea can of course be considered in favour of a suspended sentence. However, I am also mindful of the fact that the stolen mobile phone was not recovered in this case and that a considerable amount of violence has been exerted whilst committing this offence by you and the other four accomplices who are not apprehended by the police. All five of you are from Jittu Estate Squatter Settlement. Given these circumstances and the prevalence of the offence of robbery, I find that there is a strong need to send a message to others with similar impulses especially the four accomplices of yours through your sentence.
13. All in all, I am inclined to form the view that your sentence should not be suspended.
14. It is submitted that you have been in custody in view of this matter since 18/03/20. Accordingly, you have spent a period of 05 months and 06 days in custody. The period you were in custody in relation to this case shall be regarded as a period of imprisonment already served by you in view of the provisions of section 24 of the Sentencing and Penalties Act.

15. In the result, you are sentenced to a term of 03 years imprisonment with a non-parole period of 02 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence – 02 years; 06 months; and 24 days

Non-parole period – 01 year; 06 months; and 24 days

16. Thirty (30) days to appeal to the Court of Appeal.



  
Vinsent S. Perera  
JUDGE

**Solicitors;**

**Office of the Director of Public Prosecutions for the State  
Legal Aid Commission for the Accused**