

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 125 of 2019

[CRIMINAL JURISDICTION]

STATE

V

1. MANASA LALAQILA

2. SEKOVE NAWAVU

Counsel : Mr. Z. Zunaid for the State
Ms. L. Ratidara for the Second Accused

Date of Sentence : 24 March, 2021

SENTENCE

1. Sekove Nawavu you being the second accused in this case, have pleaded guilty to the charges produced below and you were convicted as charged accordingly on 17/02/21;

FIRST COUNT

Statement of Offence

Aggravated Burglary: Contrary to Section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

MANASA LALAQILA AND SEKOVE NAWAVU, between the 23rd day of March, 2019 and 24th of March, 2019 at Main Street, Korovou in the Eastern Division, entered into Nayan's Supermarket, as a trespasser with intent to commit theft.

SECOND COUNT

Statement of Offence

Theft: Contrary to Section 291 (1) of the Crimes Act 2009.

Particulars of Offence

MANASA LALAQILA AND SEKOVE NAWAVU, between the 23rd day of March, 2019 at Main Street, Korovou in the Eastern Division, dishonestly appropriated Cash of \$2,720, 7 x BH 10 gross [Red] - \$1,142.40, 20 x BH 20 [Red] - \$106.40, 7 x BH 20 [Blues - \$106.40, 10 x BH 20 [Green] - \$152.00, 4 x Pall Mall [Red] 10 - \$30.00, 4 x Pall Mall [Red] 20 - \$58.80, 11 x Rothmans [Red] 10 - \$83.60, 8 x Rothmans [Red] 20 - \$119.20, 12 x Ice Bursts - \$89.60, 20 x Ice Bursts - \$324.00, 32 x Zesty Burst (pkt) - \$129.60, 2 x Regal Whisky [1125ml] - \$243.90, 2 x Regal Whisky [750 ml] - \$167.90, 10 x Bounty Rum [100 ml] - \$1,219.50, 1 x Bounty Rum [1000 ml] - \$121.95, 1 x broken shackle / circle [Red] - \$21.95, 1 x broken circle/shackle [White] - \$21.95, 2 x packet gas lighter - \$168.00 the property of **Nayan's Supermarket** with intention of permanently depriving the said **Nayan's Supermarket** of the said properties.

2. You have admitted the following summary of facts;

- 1) *The complainant in this matter is the manager for Nayan's supermarket which is located in Korovou. On the 23rd of March 2019, the complainant recalls operating the business as normal and she recalls locking up for the purposes of closing around 8.00 pm the same day.*
- 2) *On the 24th of March 2019 at around 5.15am, the complainant called PW2 who is the head cashier to open up the supermarket for the commencement of business as on any other normal day. PW2 along with other staff was in-fact sleeping in the store during that time whilst PW4 who is a security officer was on duty outside the shop. As PW2 woke up to open the back door of the shop she saw one of the cashier till box's was missing. PW2 also noticed that a sake containing about \$2,500.00 was also missing. Fearfully, PW2 ran out and informed her colleagues.*
- 3) *As the complainant entered the shop from the back, she saw one of the cashier tills from the liquor area and one from the supermarket, was placed in their bakery section. The complainant saw coins scattered everywhere and she also noticed that there was a forced entry into the supermarket through the roof at the bakery area.*
- 4) *The complainant then accounted for the following items to have been stolen: \$2,720.00 cash, 7 x BH 10 gross [red] cigarettes, 20 x BH 20 [red] cigarettes, 7x BH 20 [blue] cigarettes, 10 x BH 20 [green], 4 x Pall Mall [red] 10 cigarettes, 4 x Pall Mall [red] 20, 11 x Rothmans [red] 10 cigarettes, 8 x Rothmans [red] 20 cigarettes, 12 x Ice Burst 20 cigarettes, 32 x Zesty Burst (packets) cigarettes, 2 x Regal Whisky [1125ml], 2 x Regal Whisky [750 ml], 10 x Bounty Rum [100 ml], 1 x Bounty Rum [1000 ml], 1 x Broken shackle / circle [red], 1 x Broken circle/shackle [white], and 2 x packets gas lighter.*
- 5) *The total value of the stolen cash, assorted cigarettes, assorted liquor and gas*

- lighters all come to an approximate value of \$8,539.15 (eight thousand five hundred thirty nine dollars and fifteen cents).
- 6) Through police investigations \$1,535.25 (one thousand five hundred thirty five dollars and twenty five cents) of items were recovered. These consisted of assorted cigarettes, gas lighters and one alcohol.
 - 7) PW5 stated on at 3.00 am (24th March 2019) he was driving when A2 had approached him and requested to be transported to his village. PW5 and A2 know each other. PW5 then stated that A2 requested to enter a gravel road leading to Getward park where a new building was being constructed. PW5 stated that he then saw PW6 and A1 emerge from the dark building carrying some things which looked to have been packed into bags or sacks. PW5 stated that they then loaded the stuff into his car and requested to go to PW7's house in Sawakasa village, Tailevu where they then unloaded the bags/sacks.
 - 8) PW7 stated that around 5.00 am – 6.00 am on the 24th of March 2019, he woke up and saw A1, A2 and another youth which he didn't know, were drinking Bounty Rum on the porch of his house. PW7 then joined the drinking party for a while and went back to sleep. PW8 who is the wife of PW7, saw A1 holding a fully packed sack but she did not know what was inside.
 - 9) PW9, PW10, PW11 and PW12 all later also joined the drinking party before police intervened and effected arrest.
 - 10) A2 was later interviewed under caution by the police where he voluntarily admitted to committing the offence with his accomplice. A2 admitted that on the day of the offence (23rd March 2019) at around 7.00 pm, he was drinking alcohol with some boys from Sawakasa village (Q&A 11 -43). A2 admitted that this is when A1 had joined and told him that he knows a place to break into the Nayan's supermarket for the purposes of stealing (Q&A 43-44). A2 stated that he then went alone to see the place and he saw that the corrugated iron was damaged and he also found a gross of cigarettes at the steps. A2 stated that he took a packet and hid the remaining packets in the building. A2 stated that he later returned to the drinking party (Q&A 45). A2 admitted that around 9.00pm he met A1 again at Korovou town where they went to the newly built shop, climbed up the steps to the top floor and reached the roof-top for Nayan's supermarket (Q&A 46-51). A2 stated that A1 pulled the roofing iron and thereafter A2 hung on the wood, stood on top of the bakery door and climbed down the shelves (Q&A 52). A2 admitted that he then took 7 bottles of rum, a lot of cigarettes and passed it to A1 (Q&A 54). A2 admitted that he also took two tills but one opened and all the coins scattered around (Q&A 52). A2 stated that they both took about 8 plastics of coins and about \$120.00 notes in which they shared the money (Q&A 55). A2 admitted then he then made his way out of the supermarket through the roof again and they took the items downstairs and were looking for a vehicle (Q&A 55). A2 admitted that

he then met PW5 where they then drove to Getward park and parked near the building where he and his accomplice then loaded the items into the vehicle (Q&A 67). A2 admitted then they then went to PW7's house and began drinking (Q&A 68-69).

11) The accused in the company of his accomplice, entered into Nayan's supermarket with intent to commit theft and thereafter dishonestly appropriated all the items listed in the Information, with the intention to permanently deprive Nayan's supermarket of the said properties.

12) Annexed herewith is the record of interview for A2 and is marked as "Annexure A".


3. The tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years. [Vide *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017), *State v Naulu* [2018] FJHC 548 (25 June 2018) and *State v Nanovu* [2020] FJHC 985; HAC121.2020 (25 November 2020)]
4. However, the learned State Counsel has insisted that the sentencing tariff that should be applied in this case should be a range between 18 months to 03 years imprisonment.
5. I am conscious of the fact that sentencing is a matter for the court and not for the prosecution. Nevertheless, this submission made by the prosecution in relation to the sentencing range serves as a plea to be lenient in sentencing the accused. Taking everything into consideration, especially the fact that this assertion in fact works in favour of the accused, I have decided to regard the said assertion as a concession made by the prosecution in this case. I am mindful of the fact that this sentencing range advocated by the learned State Counsel does not facilitate the achieving of the purposes of sentencing stipulated under sections 4(1)(a), 4(1)(b), 4(1)(c) and 4(1)(e) of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"). Applying the said sentencing range also requires the maximum penalty prescribed by the Crimes Act for the offence to be overlooked when sentencing the accused.

6. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
7. The two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment on the two offences.
8. You are 21 years old and single. You live with your father and your mother had passed away when you were in the primary school. It is submitted that you earned your living by farming prior to your arrest for this matter.
9. The value of the items that were stolen would be regarded as an aggravating factor in this case.
10. In addition to the fact that you have entered a guilty plea, the other factors that could be regarded as mitigating factors are;
 - a) you are a young first offender;
 - b) there were partial recoveries; and
 - c) you have cooperated with the police.
11. I would select 18 months imprisonment as the starting point of your aggregate sentence.
12. I would add 03 months in view of the aggravating factor. I would deduct 09 months from the sentence in view of the above mitigating factors (except for the guilty plea). Now the sentence is 12 months imprisonment. In view of the guilty plea which was not entered at the earliest opportunity, I would grant you a discount of one-fourth. Accordingly, the final sentence is a term of 09 months imprisonment (after deducting 03 months).

13. It is pertinent to note that the final sentence should fall below the lower end of the relevant sentencing range when the mitigating factors outweighs the aggravating factors in a particular offending as in this case.
14. On the other hand, in relation to the offence of aggravated burglary, in view of the fact that aggravated burglary is a prevalent offence if not the most prevalent offence in Fiji and the apprehension of fear this offence has instilled in the minds of the members of the public, on the face of it, a term of 09 months imprisonment does not reflect the denunciation this offending deserves and would not serve as a deterrent to those who with similar impulses to commit this prevalent offence. However, this is the outcome of granting the concession as pleaded by the prosecution.
15. It is submitted that you were arrested on 25/03/19 and then you were granted bail on 11/06/19. Subsequently, you were remanded again on 03/11/20. Accordingly, you have spent a period of 07 months and 07 days in custody in view of this matter. This period you have been in custody shall be considered as time served by you in terms of section 24 of the Sentencing and Penalties Act.
16. In the result, you are sentenced to a term of 09 months imprisonment. In view of the time spent in custody, time remaining to be served is 01 month and 23 days.
17. You have spent more than 80% of your term of imprisonment. Hence, I consider it appropriate to suspend the remaining term of your sentence for a period of 03 years, in view of the provisions of section 26 of the Sentencing and Penalties Act.
18. The court clerk will explain you the effects of a suspended sentence.
19. Accordingly, you will be released today. You are thoroughly warned and advised to hereinafter abide by the laws of this country and to lead a good life.

20. 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