

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 173 of 2022

STATE

vs.

- 1. MOSESE SUKABULA VAKACEGU RASOKINI**
- 2. U.B. [JUVENILE]**

Counsel: Ms. P. Mishra for the State
Ms. L. Filipe for the Accused & Juvenile

Submissions on Sentencing: 02nd August 2022

Date of Sentence 08th August 2022

SENTENCE

(The name of the juvenile is suppressed)

1. Your charge reads thus;

COUNT ONE

Statement of Offence

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

Particulars of Offence

MOSESE SUKABULA VAKACEGU RASOKINI & U.B on the 9th day of May, 2022 at Nasinu, in the Central Division, in the company of each other robbed one **ARVIND PRASAD** of 1 x Nokia mobile phone, 1 x USB and loose coins approximately in the sum of \$10,00, the properties of **ARVIND PRASAD** and during the said robbery used force on **ARVIND PRASAD**.

2. You have admitted the following summary of facts;

Complainant (PW1): *The complainant in this matter is one Arvind Prasad, 39 years old at the time of the offence, driver, resides at Lot 7 Vatoa Road, Narere.*

Prosecution Witness 2 (PW2): *The prosecution witness 2 in this matter is one Ratu Peceli Rasokini, 18 years old at the time of the offence, unemployed resides at Qaranivalu Road, Kalabu.*

Accused (A1): *The accused in this matter is one, Mosese Sukabula, 20 years old at the time of the offending, Farmer and resides at Neela Place, Karobo, Makoi.*

Juvenile (J2): *The Juvenile in this matter is one, U.B., 17 years old at the time of the offending, unemployed and resides at Qaranivalu Road, Kalabu.*

1. *On the 9th of May, 2022 at about 10.30pm, the complainant was driving his vehicle registration no. HP 782.*
2. *The complainant picked up a passengers from Laqere Bus Stop to drop them at Qaranivalu Road Junction. After dropping the passengers at Qaranivalu Road junction, the complainant picked up another job from the place.*
3. *The complainant states that the three passengers were 3 I-Taukei youths between the age of 22-23 years old and they wanted to go to Nadera black market (Nadera Liqour Shop) which was located past Nayans Supermarket to buy liquor.*
4. *The complainant states that one of the I-Taukei youth was wearing a white long sleeve-t-shirt inside and a black t-shirt outside with long black jeans with some beard on his cheeks. The complainant described his appearance as fair in complexion, tall and same height as his wearing a canvas.*
5. *The complainant further states that another I-Taukei youth was wearing red t-shirt and a ¾ Lee pants having dark complexion and bit taller than the complainant.*
6. *The third guy was wearing grey t-shirt and ¾ pants and dark in complexion being same built as the complainant and same height as him.*
7. *The complainant states that they were all drunk at the time he picked them up from Qaranivalu Road junction.*
8. *After they reached Nadera, the I-Taukei youth sitting in the front seat knocked at the Nadera Liqour Shop but there was no response, they then went to Dolphins Liqour Shop located at Valelevu.*

9. *As they reached the Dolphins Liquor shop at Valelevu, the I-Taukei youth sitting at the front seat and another sitting at the back wearing red t-shirt got off the vehicle to check the cashier.*
10. *The complainant states that the one seated at the front seat of passenger's side went to the cashier and asked the Rice Wine whilst the other youth kept standing behind his car.*
11. *After few minutes the youth who had went to the cashier came back without buying anything and they both got back into the car to go back to Qaranivalu Road.*
12. *The complainant states that as soon as he reached the junction of Qaranivalu Road, the youth sitting in the front seat asked the complainant to drive a bit further and drop them at the place opposite one Eliki's Canteen.*
13. *As the complainant drove further in, the youth sitting behind him grabbed complainant's neck from both his hands whilst the youth sitting in the front passenger's seat beside him stated punching the complainant on his chest and at the same time trying to pull out the radio of the vehicle.*
14. *However, since the youth was unable to pull out the radio, he pulled out the **USB valued at \$25.00 from the radio and the ash tray containing some loose coins in the sum of approximately \$10.00 and 1 x Nokia button mobile phone valued at \$60.00** which was kept beside the compartment near the hand desk.*
15. *The value of the total items stolen was **\$95.00.***
16. *The complainant states the other youth seated at the back pulled the hand break and started punching him on his chest and face demanding him for money.*
17. *The youth seated in the front seat then got out of the vehicle and tried to pull out the keys from the driver's side. The complainant states then he used his elbow against him to prevent the youth from taking his car keys.*
18. *The complainant then tried to pick up an iron rod and a small kitchen knife which he kept in his car to defend himself when the youth who was trying to pull the keys threw punches on the complainants face after the complainant used his elbow against him.*
19. *While the complainant was reaching for the iron rod and the small kitchen knife, the youths fled the scene.*
20. *(PW2) in this matter was one of the I-Taukei youth who boarded the complainant's vehicle together with the 2 other I-Taukei youths on the above date, time and place of the alleged incident.*
21. *(PW2) states that on the 9th May, 2022 at about 10.30pm he went to Qaranivalu Road junction with (A1) who is his elder brother and (J2) who is his cousin brother.*
22. *(PW2) states that they were waiting for a transport to take them to Valelevu Liquor Shop to buy rice wine.*
23. *(PW2) states that he had given some contribution to buy more drinks as they had been drinking, (J2) had no contributions and he planned to rob a taxi driver.*
24. *(PW2) further states that the stopped a white Probox vehicle and which took them to Nadera.*
25. *(PW2) confirms that (J2) was seated in the front passenger seat beside the complainant and that he was seated at the back with (A1).*
26. *(PW2) states that they went to Nadera Liquor Shop but it was closed, they then went to Dolphins Liquor Shop Valelevu to buy red wine.*

27. Upon reaching the Dolphins Liquor Shop, (J2) got out of the vehicle to buy rice wine from the shop however after few minutes he returned and got into the car stating that the rice wine had finished.
28. (PW2) states that (J2) then asked the complainant to convey them back to Qaranivalu Road.
29. Upon reaching the Qaranivalu Road, (A1) and (J2) got hold of the driver and (J2) started punching the complainant and stole his items.
30. (PW2) states that (A1) had grabbed 1 x Nokia button phone, 1 x USB, and some loose coins.
31. (PW2) also states that after the complainant took out a kitchen knife, they opened their doors and ran away together with (A1) and (J2) and went to his house.
32. (PW2) states that (J2) showed him the black Nokia button phone which had a cracked screen and that (A1) kept the blue stolen USB and the mobile phone with him at his mother's place at Karobo.
33. (PW2) further states that at the alleged date, time and place of the incident, (PW2) was wearing a grey coloured t-shirt and also a red, white and black coloured t-shirt (vest) written number 23. (A1) was wearing a white coloured long sleeve t-shirt and (J2) was wearing a red coloured t-shirt.
34. Matter was reported to the Nasinu Police Station whereby the complainant was sent for medical examination.
35. The Medical Examination Report of the complainant shows that the following injuries were sustained by the complainant;
 - a. Small abrasion noted inside lip. Not actively bleeding.
 - b. Left Maxillae tenderness on palpation.
 - c. Mild tenderness on right cheek.
36. Upon investigations, DC 5037 Farasiko of Nasinu Police Station arrested (A1) and DC 7016 Inosi arrested (J2) on the 20th May, 2022 from their residence.
37. (A1) and (J2) were interviewed under caution whereby they admitted to the allegation.
38. The following admissions were made by (A1) in his Record of Interview;
 - a. (A1) admits that that on the 9th May, 2022 at about 2230hrs (A1) was with (J2) and (PW2) Qaranivalu Road, Kalabu. (Q&A; 31-33).
 - b. (A1) admits that he was drinking with (J2) and (PW2) when they contributed to buy more drinks, but since (J2) did not have any money with him, he planned rob a taxi driver. (Q&A: 35).
 - c. (A1) admits after planning to rob the taxi driver, they stopped a private car at Qaranivalu Road, Kalabu. It was a white Toyota Probox. (Q&A: 27 & 38).
 - d. (A1) admits that they went to New Liquor Shop at Ratu Dovi Road to buy rice wine however since there was no rice wine they got into the car again and went to New Dolphin Liquor Shop at Valelevu to buy rice wine. (Q&A: 39-40).
 - e. (A1) admits that he got in the car again and went inside the liquor shop to buy rice wine, however upon asking the shopkeeper he was told that the rice wine had finished, he then got into the car again and they told the driver to take them to Qaranivalu Road, Kalabu again. (Q&A: 41-42).
 - f. (A1) further admits that upon reaching Qaranivalu Road, Kalabu they stopped at the roadside near to Eliko's shop and they started to rob the driver, his brother (PW2) grabbed the driver's neck from the back seat and he started punching the driver and

- also (J2) pulled the handbrake and he also punched the driver. The (A1) admits he started pulling the radio however, it didn't come out, and he still managed to pull the USB. (Q&A: 43).
- g. (A1) admits that he was sitting on the left front passenger seat, Peceli was sitting at the back of the driver back seat, and (J2) was sitting at the back of the passenger's seat in the back seat. (Q&A: 47).
 - h. Upon reconstruction of scene, the stolen items were recovered from Neela Place, Makoi which is (A1)'s grandfathers house. The following items were recovered;
 1. 1 x black Nokia mobile phone with cracked scene (button);
 2. 1 x black USB.
 - i. The recovered items were shown to (A1) whereby he admitted that it was same items that he stole from the driver of the Probox. (Q&A: 58).
39. The following admissions were made by (J2) in his Record of Interview;
- a. (J2) admits that on the 9th of May, 2022 at 10.30pm he was standing at Qaranivalu Road, Kalabu junction with two of his friends namely Mosese (A1) and Peceli (PW2). (Q&A: 26).
 - b. (J2) admits that they stopped one white Probox at the junction and that the driver of the Probox was an Indo-Fijian man. They all boarded the vehicle and went to buy some beer from Dolphins bottle shop at Valelevu and before that they already made out a plan to rob any driver who will pick them. (Q&A: 33).
 - c. (J2) admits that he came up with the idea of robbing any driver that will pick them up from the junction as he did not have money with him. (Q&A: 34).
 - d. (J2) admits that he had planned all this. (Q&A: 35).
 - e. (J2) further admits that (A1) was sitting in front of seat beside driver and (PW2) was sitting behind (A1) at the rear left side which he was sitting behind the driver's seat. (Q&A: 37).
 - f. (J2) admits that he was wearing a red and white basketball vest (Chicago) with one blue round-neck t-shirt and black ¾ trousers. (Q&A: 38).
 - g. (J2) admits that after they boarded the Probox, they went to Valelevu Dolphins Bottle Shop and bought 3 x Chinese Whisky from them and went back to Qaranivalu Road. (Q&A: 39).
 - h. (J2) admits that on their way back to Qaranivalu Raod, Kalabu, they got off at Eliki's store along Qaranivalu Raod, Kalabu. (Q&A: 44).
 - i. (J2) admits that as the vehicle stopped at the driveway, he opened the rear door and stepped outside the vehicle and then (PW2) moved to where he was seated and grabbed and held the neck of the driver from the back. He then ran to the other side of the door where (PW2) was seated before, (A1) was punching the driver. (Q&A: 45).
 - j. (J2) also admits punching the driver as he was sitting at the left rear seat and then (PW1) pulled him in front, then (J2) started punching him. (Q&A: 48).
 - k. (J2) further admits that he forcefully grabbed plastic of suki from his left side pocket and \$3.00 coins from the tilt. (Q&A: 49).
 - l. (J2) admits that after they robbed the driver, him and (PW2) ran back along Qaranivalu Road, towards their house and (A1) ran through the cross-cut and they all met up at the back of their house. (Q&A: 50).

- m. *(J2) further admits that the complainant chased them with an iron rod for about 15 meters and went back. (Q&A: 51).*
- n. *(J2) further states that he took a plastic of suki and \$3.00 coins while (A1) showed them 1 x \$20.00 noted and 1 x zip lock plastic containing 3 bullets of marijuana wrapped in aluminum foil.*
- o. *(J2) further admits that he did not know anything about those items because only (A1) held onto everything that they grabbed from the driver.*

(A1) and J2) in the company of each other robbed the complainant of his items listed in the Information and during the said robbery used force on him.

- 1. *Annexed hereto is the Record of Interview of the accused 1 marked as "Annexure A".*
- 2. *Annexed hereto is the Record of Interview of the juvenile 2 marked as "Annexure B".*

- 3. That you the Accused and the Juvenile were accordingly charged and both of you pleaded guilty to the count of Aggravated Robbery contrary to section 311 (1) (a) of the Crimes Act, 2009.
- 4. Upon duly considering the summary of facts read by the State Counsel which was understood and admitted by both of you and also upon perusing the caution interviews this court is satisfied that you the Accused and the Juvenile did enter unequivocal pleas of guilt on your own freewill.
- 5. This Court is also satisfied that you the Accused and the Juvenile did fully understand the nature of the charges and the consequences of so pleading guilty. The summary of facts read and admitted covers and satisfies all the elements of the offences of Aggravated Robbery which both of you admitted as having committed.
- 6. In view of the aforesaid, this Court finds the 1st Accused and the Juvenile separately and individually guilty of and convicts the 1st Accused in respect of the said count as charged.
- 7. Both your Counsel and the State Counsel filed comprehensive submissions on sentence/punishment and mitigation which this court is grateful.

8. The tariff as determined by State v Tawake [2022] FJSC 22.; CAV0025.2019 for the offence of Aggravated Burglary of street mugging nature of offences is laid down in a schedule form based on the level of harm to pick the starting point in the spectrum. As there is force used causing a minor aberration to the lip and tenderness and the value of the items stolen is less than \$100 the level of harm is low level and the starting point of 3 years with a range of 1-5 the range is picked as the offence was committed in the company of another. This offence carries a maximum sentence of 20 years imprisonment.
9. If I may consider the culpability and the harm factors of your offending, both of you entered the vehicle on the pretext of hiring the car of the Complainant, pretended to take him to a shop and on the return at a lonely location grabbed the complainant's neck tightly from behind and punched him took his cash in the ashtray, the USB a and a button phone. You infect tried to remove the radio but failed and then took the USB. You acted in utter disregard of his safety. You have acted in callous disregard of the fact that vehicle hire drivers provide a service to the public. This is a serious offence against property of the complainant as well as the society. These offences appear to be prevalent and the number of young offenders brought before the courts for committing such offences is alarming and significant. You have hoodwinked an unsuspecting driver, put him into fear of immediate serious harm which certainly would have caused anxiety and trauma to any victim in similar circumstances. This certainly would have been a horrific experience for the victim to be so manhandled by the two of you and another in this manner and the emotional trauma caused will not be forgotten in a hurry.
10. In selecting a starting point of your sentence, this Courts is required to have regard to the objective seriousness of the offence. The maximum penalty prescribed for aggravated robbery is 20 years imprisonment. As for the tariff, State v Tawake [2022] FJSC 22.; CAV0025.2019 has determined that sentences for Aggravated robbery of street mugging type in these circumstances range between 1 to 5 years imprisonment with a starting point of 3 years based on the level of harm and force used or threatened. Thus I will pick 3 years as the starting point.

11. First, I will consider the aggravating factors. I observe the following aggravating circumstances of your offending common to both of you the Accused and the Juvenile:
 - a. Around 10.30 p.m. both of you with another got into the complainant's car and you were bold, undeterred and cunning in pretending to be hiring the car innocently when in fact it was the first step in executing your cruel criminal plan,
 - b. This is a preplanned and pre-determined offending.
 - c. The complainant was a vulnerable person due to the nature of the work
 - d. he renders and you manipulatively took advantage of the said vulnerability,
 - e. The complainant sustained injuries
12. I am inclined to add 1 year to the starting point for the above-mentioned aggravating factors bringing the interim sentence to 4 years' imprisonment
13. As the mitigating factors and the sentencing regimes and considerations applicable to Juveniles are different, from this point onwards I will proceed to craft the sentence and punishment of both of you separately. First let's consider the punishment of you **U.B** the Juvenile and then the sentence of the Accused.

Punishment of U.B, the Juvenile

14. Section 30 (2) and (3) of the **Juvenile Act** restricts and places an upper cap of a maximum term of two years imprisonment for a juvenile offender. Therefore, the court in crafting the punishment of a juvenile offenders for crimes of this nature is required to consider the seriousness of the offence/s and also be mindful of the said two-year limitation of imposed by the legislature.
15. I will consider the following circumstances as mitigating factors submitted on behalf of the Juvenile, that you;
 - a. are truly remorseful and seeks forgiveness,
 - b. co-operated with the police,
 - c. were 17 years of age at the time of the offending,
 - d. are a first offender,
 - e. pleaded guilty at the outset on the first opportunity,

- f. You have no previous convictions.
16. I think it to be just to deduct 2 year for the said mitigating factors and the punishment will be 2 years imprisonment. Thus, now the punishment has come within the limitation prescribed by section 30 (2) and (3) of the **Juvenile Act**.
17. U.B, your counsel submitted that you hope to resume studies and you were 17 years of age at the time of the offending. Further, that you are a first offender and due to a lapse of judgment you committed this offence with the 1st Accused and another. It is submitted that now you sincerely regret your actions and you are willing and promise to reform and not to re-offend. You have accepted responsibility to your actions and did save the court's time by pleading guilty at the earliest opportunity. That you have cooperated with the police too.

Suspending the punishment

18. Your Counsel submitted that this is a fit matter for this Court to consider acting under section 26(2) of the Sentencing and Penalties. Act especially as you are a juvenile offender. The prosecution had no objection to this submission. I am of the view that the firm undertaking and promise made to this court that you will rehabilitate and reform and you will lead a good life and to continue with your education, that there are sufficient rounds to consider suspending your punishment in terms of the provisions of section 26(1) of the Sentencing and Penalties Act.
19. As per Section 26(2) of the Sentencing and Penalties Act, the discretion to suspend a sentence/punishment should only be exercised by a High Court where the custodial sentence/punishment does not exceed 3 years and as opined in the Sentence Ruling in State v Aiding Zhang [2017] HAC 061 if there be circumstance which are exceptional.
20. In **DPP v Jolame Pita** (1974) 20 FLR 5 at p.7:, Grant Acting CJ (as he was then) explained what special circumstances that warrant and justify the suspension of a sentence thus;

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

21. In the circumstances of this case especially considering *the extreme youth or age of the offender* who is a first-time offender with no other pending similar matters, I am of view that this is a fit case for a suspended the punishment of the Juvenile as the final punishment does not exceed 3 years.
22. Thus, upon duly considering the material before me, I impose a punishment of 2 years imprisonment and suspend the same for a period of 5 years.

The sentence of the 1st Accused

23. As determined above taking 3 years imprisonment as the starting point of the sentence and adding 1 year for the aggravating factors as aforesaid brought the interim sentence to 4 years' imprisonment.

Mitigating factors

24. The personal circumstances and family background of the accused has little mitigatory value. However, I note that the accused has no previous convictions and is a young offender.

25. Further, your counsel has informed the court that you have entered an early guilty plea and that you regret your action on the day in question. You have also been cooperating with the police during investigations after your arrest. The Court is mindful of the early admission of guilt by you as a mark of genuine remorse. You by pleading guilty to the charge you have saved court time and resources at a very early stage of the court proceedings. The stolen items other than the change money were recovered. You are a person of previous good character. A young first offender. For all these grounds in mitigation, you should receive a considerable discount in the sentence. In this regard, I give you a reduction of 2 year from your sentence brings your sentence down to Two (2) years' imprisonment.
26. As per the submissions and the Antecedent Report there are no previous convictions or pending matters against the 1st Accused. I have acting under section 26(2) of the Sentencing and Penalties Act suspended the punishment of the Juvenile. Should I act in the same manner in respect of you the 1st Accused? As the special circumstances considered in respect of the Juvenile namely the extreme youth or age of the offender and first-time offender with no other pending similar matters is there in the somewhat of a similar manner to in respect the 1st Accused too. But you were 20 years. Though you were 20 years at the time of the offending the summary of facts show that in fact it is the Juvenile who planned and executed this robbery and he was instrumental in getting others to participate. As I have decided to suspend the sentence of the Juvenile in keeping with the parity of sentence to my mind it is necessary to grant you the 1st Accused the same benefit of the suspension of the sentence in the circumstances of this case.
27. Thus, upon duly considering the material before me, especially your youth and previous good character I will offer you a chance to get back to a good life of industry and impose a punishment of 2 years imprisonment and suspend the same for a period of 7 years.
28. Orders;
- a. The 1st Accused is sentenced to two (02) years' imprisonment is suspended for 7 years, and
 - b. The Juvenile is punished with two (2) years' imprisonment which is suspended for 5 years.
29. The effect and the consequences of any violation of a suspended term are explained to the juvenile.

30. You have 30 days to appeal to the Court of Appeal if you so desire.



At Suva

08th August 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused & Juvenile