

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

Crim. Case No: HAC 288 of 2021

STATE

vs.

ISOA WAQA

Counsel : Ms. N. Ali with Ms. A. Devi for Prosecution
Accused in Person

Date of Judgment: 18 August 2022

Date of Sentence: 22 August 2022

SENTENCE

1. Mr. Isoa Waqa (The offender) was convicted after trial on the following information:

Statement of Offence

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

Particulars of Offence

ISOA WAQA with others on the 11th day of December, 2021 at Davula Road, Nasinu, in the Central Division, in the company of each other stole \$ 80 cash from RUSIATE TURAGABECI and immediately before stealing from RUSIATE TURAGABECI, used force on him.

2. The Judgment of this Court was pronounced on the 18 August 2022 in the absence of the offender as he, after trial, deliberately waived his right to be present in Court.

3. The facts of the case briefly are that on 11th day of December 2021, at around 8:30 pm, the complainant and his wife arrived at the canteen at Duvula to buy some snacks for their children. As they were approaching the canteen, they saw the offender, who was known to the victim, having drinks (alcohol) with a group of men. They called out victim's name and solicited money from the victim. The victim ignored their request and proceeded to the canteen with his wife.
4. The offender, who appeared heavily drunk, followed them into the canteen and punched the victim in his face. The victim fell to the ground. When the victim was still lying down, the group of boys, who were drinking with the offender, arrived at the canteen. They started attacking the victim while his wife was shouting for help. One of the attackers kicked the victim's leg and punched in his stomach. They took \$80/- from the victim's pocket and the attempt to grab the hand bag was thwarted. The gang fled the scene.
5. The complainant and his wife rushed to the police station and lodged a report. A police team, accompanied by the complainant and his wife, rushed to the scene in search of the culprits. They saw the accused covering himself at a short cut about 10 meters away from the canteen. The complainant was taken to the Valelevu Health Centre where he received treatments.
6. According to the medical report, the complainant had a bruising in his right shoulder, approximately 4 cm in size, and an abrasion on the left knee, approximately 1.5 cm. in size.
7. The maximum sentence prescribed by the statute for the offence of Aggravated Robbery is 20 years' imprisonment.

8. The Supreme Court, in the recent decision of *State v Tawake* [2022] FJSC 22; CAV0025.2019 (28 April 2022) set new guidelines for sentencing in robbery offences. Those guidelines are based on the methodology used by the Definitive Guidelines issued by the Sentencing Council in England. The Court however modified the UK Guidelines to suit the needs of Fiji. The Court observed that there is no need to identify different levels of culpability because the level of culpability is subsumed in the nature of the offence, depending on which of the forms of aggravated robbery the offence takes. Accordingly, the sole pointer in selecting the starting point is the level of harm caused to the victim.

9. The Supreme Court identified starting points for three levels of harm-high (serious physical or psychological harm or both to the victim), medium (harm falls between high and low) and low (no or only minimal physical or psychological harm to the victim). Accordingly, the sentencing court is required to use the corresponding starting point to reach a sentence within the appropriate sentencing range in the Table given in the Judgment (reproduced below). The Court emphasized that the starting point will apply to all offenders whether they plead guilty or not and irrespective of previous convictions.

10. In *Tawake*; the Supreme Court identified the starting points and the sentencing ranges for the three categories of “Robbery” as follow;

	ROBBERY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED ROBBERY (OFFENDER <u>EITHER WITH</u> <u>ANOTHER OR</u> WITH A WEAPON	AGGRAVATED (OFFENDER WITH <u>ANOTHER AND</u> WITH A WEAPON
HIGH	Starting point:5 years imprisonment	Starting point:7 years imprisonment	Starting point: 9 years imprisonment

	Sentencing range: 3-7 years imprisonment	Sentencing range: 5-9 years imprisonment	Sentencing range: 6-12 years imprisonment
MEDIUM	Starting point:3 years imprisonment Sentencing range: 1-5 years imprisonment	Starting point:5 years imprisonment Sentencing range: 3-7 years imprisonment	Starting point:7 years imprisonment Sentencing range: 5-9 years imprisonment
LOW	Starting point:18 months imprisonment Sentencing range: 6 months - 3 years imprisonment	Starting point:3 years imprisonment Sentencing range: 1 - 5 years imprisonment	Starting point: 5 years imprisonment Sentencing range: 3 - 7 years imprisonment

11. The offender had not used a weapon but committed the crime in the company of others. The victim had received injuries and lost \$80 in cash. There had been an unsuccessful attempt to rob the victim's bag. The victim received treatments from a medical centre. Having considered the harm caused to the victim, I would identify the sentence of the offender within the medium range in the Table given above. Accordingly, I should pitch the starting point at 5 years' imprisonment and the final sentence should be placed in the range of 3-7 years.
12. I would identify the aggravating features drawing light from the Supreme Court Judgment in *Tawake*. There had been some degree of pre-planning in the offending. The

offender played the leading role when he initiated the attack by punching. The victim had been overpowered and pinned to the ground. The restraint used was greater than was necessary to accomplish the robbery. The offence was committed in night in a shocking manner in the full view of complainant's wife who would have suffered a lasting psychological effect. All these factors aggravate the offence.

13. In view of his willful absence, the offender should be deemed to have waived his right to file mitigation. However, I should take into consideration his evidence in which he said that he is a father of two kids now into farming in Rewa to maintain a good family life. He is 38 years of age. He said that he has now become a good man, having maintained a clear record for the past ten years. He seeks mercy of this Court in the name of his family and his kids.
14. In quite contrast to what he said in his evidence, the past criminal record filed by the State reveals that the offender has 34 previous convictions, 6 of which had been committed during the past decade. He has not maintained a clear record at all.
15. The offender had been in remand for approximately two months and that period shall be deducted in reaching the final sentence.
16. There are no compelling mitigating circumstances in this case. While appreciating the offender's personal circumstances, I must not lose sight of the plight of the innocent victim who is also a father whose money the offender robbed when the victim went to buy the snacks for his kids. Fathers are fathers everywhere. But it is the obligation of the Court to protect the innocent people and their hard earned property. The partial admission of the offence cannot be viewed as a mark of genuine remorse as the same was put forward as a defence to the serious offence of Robbery. This offence is very much prevalent in our society and a clear message must be sent to the offender and the like-minded people that the courts will come down harsh on anyone who commits robberies.

17. I start the sentence at 5 years' imprisonment and add 2 years for the aggravating features. I deduct 1 year for the mitigation to arrive at a sentence of 6 years' imprisonment. I deduct further 2 months for the remand period to arrive at a sentence of 5 years and 10 months' imprisonment.
18. In view of the past criminal record and the age the chances of the offender rehabilitation is minimal. The community protection is uppermost in my mind in fixing a non-parole period. The offender should not be eligible for parole until he has served 4 years in the correction facility.
19. The State has made an application that the offender be declared a habitual offender in terms of Sections 10, 11 and 12 of the Sentencing and Penalties Act (SPA). Under Section 11(1) of the SPA, there are two prerequisites for an exercise of discretion to declare an offender a habitual offender. The first is that the offender should have been convicted of an offence in the nature prescribed under Section 10. The second is that the sentencing court, having regard to the offender's previous convictions for offences of similar nature, must be satisfied that the offender constitutes a threat to the community. *Suguturaga v State* [2014] FJCA (5 December 2014).
20. In the present case, the offender has been convicted for an offence involving violence and also robbery. Therefore, he is qualified in terms of Sections 11(1) (a), 10 (b) and 10(c) of the SPA. Most of the offences he has been convicted of in the past involve violence or were of similar nature. Having regard to the offender's previous convictions for offences of similar nature, I am satisfied that the offender constitutes a threat to the community. Therefore, the offender is qualified to be declared a habitual offender.
21. The State has also submitted that the offender, on account of his previous convictions, should be handed down a sentence that is longer than that which is proportionate to the gravity of the offence in terms of Section 12 of the SPA. However, I am inclined to maintain my view expressed in *State v Koroi Junior* [2020] FJHC 613 (30 July 2020) where I declined to apply Section 12 of the SPA in violation of the

proportionality principle (in sentencing) entrenched in Section 11(1) of the Constitution and that engrained in our criminal justice system that an offender is not be sentenced for an offence he has committed in the past for which he has already been punished [See *Vakalalabure v State* [2006]FJSC 8 (15 June 2006)].

22. Following Orders are made:

- I. The offender Mr. Isoa Waqa is sentenced to an imprisonment term of 5 years and 10 months from the date of his arrest or surrender to custody.
- II. The offender should not be eligible for parole until he has served 4 years in the correction facility.
- III. The offender is declared a habitual offender.



Aruna Aluthge

Judge

22 August 2022

At Suva

Counsel:

- Office of the Director of Public Prosecution for State