

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 235 of 2022

BETWEEN: STATE

PROSECUTION

A N D: 1. SUNNY BAHADUR SINGH
2. ZUFIKER DEAN

ACCUSED PERSONS

Counsel : Mr. Z.Zunaid for the State
Mr. K. Prasad for 1st Accused
Ms. N. Ali for 2nd Accused

Date of Sentence : 05th September 2022

SENTENCE

1. Mr. Sunny Bahadur Singh and Mr. Zufiker Dean, both of you pleaded guilty to one count of Aggravated Burglary, contrary to Section 313 (1) (a) of the Crimes Act, which carries a maximum sentence of seventeen years imprisonment, and one count of Theft, contrary to Section 291 (1) of the Crimes Act, which carries a maximum sentence of ten years imprisonment. The particular of offences are:

COUNT 1

Statement of Offence

AGGRAVATED BURGLARY: *Contrary to Section 313 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

SUNNY BAHADUR SINGH and ZUFIKER DEAN, in the company of each other, on the 9th day of July, 2022 at Nakasi in the Eastern Division, entered into the property of **AVIKESH SINGH**, as trespassers with intent to commit theft.

COUNT 2

Statement of Offence

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

Particulars of Offence


SUNNY BAHADUR SINGH and ZUFIKER DEAN, in the company of each other, on the 9th day of July, 2022 at Nakasi in the Eastern Division, dishonestly appropriated 11 x cartons of 300 mm x 600 mm Indian's glossiest tiles & 3 x 20 kg Kingdom tile adhesive glue, the properties of **AVIKESH SINGH** with the intention of permanently depriving **AVIKESH SINGH** on the said properties.

2. Satisfied by the fact that you have fully comprehended the legal effect of your pleas and your pleas were voluntary and free from influence, I now convict both of you to these offences of Aggravated Burglary and Theft.
3. According to the Summary of Facts you admitted in open court, you had gone to the Complainant's house while the Complainant was away. You then stole 11 Cartons of 300mm x 600mm Indian glossiest tiles and 3 x 20 kg kingdom tile adhesive glue. The house was under construction and is almost completed.
4. This is a breaking of a residential property and stealing therein. You broke into this house while the owner was away. The crimes of this nature, targeting the dwelling houses, undoubtedly affect the entire community. You have instilled fear and insecurity among the people by committing this crime. I, accordingly, find this is a severe offence.

5. Having considered the serious nature of these offences, I now proceed to determine an appropriate sentence for you in line with general principles, objectives, and purposes of sentencing under sections 4 (1) and 4 (2) and 15 of the Sentencing and Penalties Act.
6. All of these offences are founded on the same series of offending. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
7. The tariff for the offence of Aggravated Burglary is between 18 months to 3 years. The tariff for the offence of Theft has been stipulated in Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012), where Justice Madigan held that:
 - i) *For a first offence of simple Theft the sentencing range should be between 2 and 9 months.*
 - ii) *Any subsequent offence should attract a penalty of at least 9 months.*
 - iii) *Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.*
 - iv) *Regard should be had to the nature of the relationship between offender and victim.*
 - v) *Planned thefts will attract greater sentences than opportunistic thefts.*
8. Considering the nature of the items, you have stolen and the manner in that you have entered the premises, I find the level of culpability and the harm is high in this offence.
9. Mr. Sunny Bahadur Singh, you are 32 years old and a first offender. Mr. Zufiker Dean, you are 34 years old and a first offender. You are married with three children. Both of you pleaded guilty to these offences at the first available opportunity. Therefore, you are entitled to a substantial discount for your early plea of guilty.

10. Considering the reasons discussed above, Mr. Sunny Bahadur Singh, I sentence you to 20 months imprisonment as an aggregated sentence for these two counts as charged. Your sentence is partially suspended, where you shall serve ten (10) months of your sentence immediately, and the remaining period of ten (10) months is suspended for three years. Considering the time spent in remand custody, the actual period you have to serve is **eight (8)** months imprisonment.
11. Mr. Zufiker Dean, I sentence you to 20 months imprisonment as an aggregated sentence for these counts as charged. Your sentence is partially suspended, where you shall serve ten (10) months of your sentence forthwith, and the remaining period of ten (10) months is suspended for three years. Considering the time spent in remand custody, the actual period you have to serve is **eight (8)** months imprisonment.
12. If you commit any crime during that period of three (3) years and are found guilty by the Court, you are liable to be charged and prosecuted for an offence according to Section 28 of the Sentencing and Penalties Act.
13. Thirty (30) days to appeal to the Fiji Court of Appeal.




.....
Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

05th September 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for 1st Accused.

Office of the Legal Aid Commission for 2nd Accused.