

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 075 OF 2022S**

**STATE**

**vs**

- 1. APISAI TAMANIVALU**
- 2. ROHIT DAU CAKAU**

**Counsels : Ms. A. Devi for State**  
**Mr. M. Naivalu for Accused No. 1**  
**Mr. K. Chang for Accused No. 2**

**Hearings : 1, 19 April, 26 May, 21 June and 8 July 2022.**

**Sentence : 23 September, 2022.**

---

**SENTENCE**

---

1. This case first started on 11 March 2022 in the Suva High Court. Mr. M. Naivalu appeared for the first accused, while Mr. T. Varinava, from the Legal Aid Commission, appeared for the second accused. The information and disclosures had not been filed and served by then.
2. Mr. Naivalu, for Accused No. 1, submitted that in this particular case, the alleged stolen properties valued at \$682.50, had been fully recovered by police. The prosecutor confirmed Mr. Naivalu's submission. Mr. Naivalu replied that given the above, they will be taking a progressive approach to the case by pleading guilty to the charges, when the same are filed.

3. On 1 April 2022, the prosecution filed and served the information and disclosures. Both accuseds received their copies. Mr. Naivalu asked that his client take his plea. The following information was then put to him:

**“Count 1**

**Statement of Offence**

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

**Particulars of Offence**

**APISAI TAMANIVALU AND ROHIT DAU CAKAU** between 05<sup>th</sup> to the 06<sup>th</sup> of July, 2021 at Vunisea, Kadavu in the Central Division, in the company of each other, entered into the business premises of **ANDREW LAL** as a trespasser, with intent to commit theft.

**Count 2**

**Statement of Offence**

**THEFT:** *Contrary to section 291 (1) (a) of the Crimes Act 2009.*

**Particulars of Offence**

**APISAI TAMANIVALU AND ROHIT DAU CAKAU** between 05<sup>th</sup> to the 06<sup>th</sup> of July, 2021 at Vunisea, Kadavu in the Central Division, in the company of each other, dishonestly appropriated 1 x Diving mask, 1 x Blue snorkel, ½ Gross BH Cigarette, 15 x Gas Lighter, 1 x surf shorts, 4 x Sunglasses, 1 x Maxton Brand hair clipper, 1 x ¾ Lee Brand shorts, 1 x Men’s Q & Q Brand wrist watch, 1 x Ladies Casio Brand wrist watch, 1 x Round neck T-shirt, 6 x 40HP Sparkplugs, 1 x Memory card, the property of **ANDREW LAL** with the intention of permanently depriving **ANDREW LAL** of the said property.”

4. Accused No. 1 said, he understood the charge and pleaded guilty to the same, out of his own free will. Accused No. 2’s counsel asked for his plea to be deferred to enable him to take instructions. The same was deferred to 19 April 2022. On that date, the information was put to both accuseds, in the presence of

their counsels. They said they understood the charges and they pleaded guilty to both counts, out of their own free will. The prosecution then presented her summary of facts.

5. The facts were briefly as follows. The complainant was Mr. Andrew Lal. He was 46 years old, a business owner of Vunisea General Stores at Vunisea, Kadavu. Accused no. 1 was 22 years old, a farmer of Vunidilo Settlement, Namalata, Tavuki, Kadavu. He reached Form 6 level education at Saint Thomas High School in Lautoka. He is single and living with relatives at Vunidilo Settlement. Accused No. 2 was 34 years old. At the time, he was residing at South Pacific Bible College at Natuba. He reached Form 6 level education at Vashist Muni College. He was, at the time, residing with a “talatala” family. He worked as a part-time watchman at Uro Shop at Vunisea.
6. According to the prosecution, Accused No. 1 had been drinking liquor with friends and relatives at a farm, between 5 pm on 5 July 2021 (Monday) to early morning on 6 July 2021 (Tuesday). At about 1 am on 6 July 2021, Accused No. 1 continued drinking with relatives and friends, at his home in the settlement. When the drinks finished early that morning, Accused No. 1 decided to break into the complainant’s store. He went to the store. He obtained a ladder. He climbed the same to a window, removed some louver blades and entered the store. While in the store, he ransacked the same and stole the complainant’s properties, as itemized in count no. 2 of the information. While ransacking the complainant’s store, Accused No. 2 arrived at the crime scene. He was previously drinking liquor with Accused No. 1 at his house.
7. According to the prosecution, Accused No. 2 noticed that the complainant’s shop had been broken into. He called out to the alleged thief and realized it was Accused No. 1. Accused No. 1 asked Accused No. 2 to act as a lookout outside the shop. It appeared Accused No. 2 agreed. Accused No. 2 assisted Accused

No. 1 take the loot out of the complainant's store. They later shared the spoils and went their separate ways. At 7.45 am on 6 July 2021 (Tuesday) when the complainant opened his store, he discovered the burglary and theft in his store. He immediately reported the matter to the police. An investigation was carried out. Both accuseds were arrested and caution interviewed by police at Kadavu Police Station.

8. Both accuseds admitted the burglary and theft to the police. All the stolen items were recovered from them. The accuseds were later charged with "aggravated burglary" contrary to section 313 (1) (a) of the Crimes Act 2009, and "theft" contrary to section 291 (1) (a) of the Crimes Act 2009.
9. The court then checked with both accuseds and counsels on whether or not they admitted the above summary of facts. They said, they did. On that basis, both accuseds were found guilty as charged on both counts and convicted accordingly on those counts. It was noted by the prosecution that both accuseds were first offenders. Time was given to the defence to prepare their plea in mitigation and sentence submission. The State was also invited to submit a sentence submission. Defence counsels had submitted well written plea in mitigations and sentence submissions. Likewise, the State had submitted well prepared sentence submission. All the papers had been carefully considered by the court.
10. "Aggravated burglary" is an indictable offence, and viewed seriously by the Parliament of Fiji. It carried a maximum sentence of 17 years imprisonment (see section 313 (1) (a) of the Crimes Act 2009). The tariff is now a sentence between 6 to 14 years imprisonment: **State v Shavneel Prasad**, Criminal Case No. 254 of 2016S, High Court, Suva and **State v John Vonu & Others**, Criminal Case No. HAC 148 of 2017S, High Court, Suva. Of course, the final sentence will depend on the aggravating and mitigating factors.

11. The maximum penalty for “theft”, contrary to section 291 (1) of the Crimes Act 2009, is a sentence of 10 years imprisonment.
12. On the facts of this case, there appears to be no aggravating factors. The elements of the offences had been proven beyond a reasonable doubt, as a result of the accuseds’ guilty pleas.
13. The mitigating factors appear to be many. For Accused No. 1, he intimated an intention to plead guilty early on first call in the High Court on 11 March 2022, and did so on 1 April 2022 (2<sup>nd</sup> call) and 19 April 2022 (3<sup>rd</sup> call). Accused no. 2, after consulting his counsel, pleaded guilty to the charges on 19 April 2022 (3<sup>rd</sup> call). By pleading guilty early, both accuseds saved the court a lot of time and impede the wasting of scarce resources. Furthermore, both accuseds co-operated with the police investigation. They fully admitted their crimes to the police when caution interviewed. The court had carefully read their caution interviews, and it did show an intention to come clean with the law. They frankly told the police what they did when they committed the crime. Their acts were the result of their inability to control their behaviour when intoxicated with alcohol. However, being drunk at the time is no excuse to commit a crime. As for Accused No. 1, being the main instigator in this crime, he had apologised to the complainants, who had accepted their apologies. This was confirmed to the court by the prosecution. Accused No. 2 appeared reluctant to commit the crime, when invited by Accused No. 1. Furthermore, both accuseds were first offenders. This case was their first appearances before the courts.
14. The facts of this case, the surrounding circumstances, including the strong mitigating factors calls for a sentence that will promote rehabilitation, not forgetting a small measure of deterrence.

15. Both accuseds had been found guilty as charged and convicted of count no. 1 and 2 of the information on 19 April 2022. Pursuant to section 15 (1) (g) of the Sentencing and Penalties Act 2009, the court:
- (i) Had previously on 19 April 2022 recorded a conviction against both accused, on both counts no. 1 and 2 of the information.
  - (ii) Order the release of the accuseds on the adjournment of the hearing; and
  - (iii) Accused No. 1, being the main instigator of this offending, and having apologized to the complainant, which had been accepted, is to do \$1,000 worth of work for the complainant, under his supervision and direction within 4 weeks; and
  - (iv) Once the complainant is satisfied, a written report, signed by the complainant, the station officer at Kadavu Police Station and Accused No. 1, to be sent to the Suva High Court, as soon as possible;
  - (v) Once the report is received, then this file will be formally closed. If the work is not done, Accused No. 1 will be summoned before the court to show course why he should not be proceeded with for "Contempt of Court".
  - (vi) As for Accused No. 2, I find no need to punish you. You were unnecessarily dragged into this offending. If anything, continue with your bible study. You are discharged.
16. You two have 30 days to appeal to the Court of Appeal.



  
Salesi Temo  
JUDGE

**Solicitor for State** : **Office of the Director of Public Prosecution, Suva**  
**Solicitor for Accused No. 1** : **Law Naivalu, Barristers & Solicitors, Lautoka.**  
**Solicitor for Accused No. 2** : **Legal Aid Commission, Suva.**