

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 192 OF 2022**

**STATE**

**vs.**

- 1. PAULA RADOGO**
- 2. MAPA VAKARAU**

**Counsel:**

<b>Mr. Dugan K.</b>	<b>-</b>	<b>for State</b>
<b>Mr. Ravu S.</b>	<b>-</b>	<b>for Accused</b>

**SENTENCE**

1. **MAPA VAKARAU**, you were charged in this Court by the Prosecution for one count of Aggravated Robbery contrary to **Section 311 (1) (a)** of the **Crimes Act 2009**, as follows;

**FIRST COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**PAULA RADOGO and MAPA VAKARAU** on the 8<sup>th</sup> day of June 2023 at Suva in the Central Division in the company of each other, stole 1 x yellow diving torch, 1 x original Samsung Charger, 1 x pair of Ray Ban branded sunglasses and \$65.00 cash

from **MAHENDRA LAL** and immediately before stealing from **MAHENDRA LAL** used force on him.

2. You pleaded guilty to the above count stipulated in the information filed by the Prosecution on 28/03/2023.
3. Summary of facts that were read to you in open court and admitted by you on 31/03/2023, were as follows:

### **SUMMARY OF FACTS**

COMPLAINANT 1 (PW1) - Mahendra Lal, 69 years, Taxi Driver of Lot 7, Kitu Road, Davuilevu Housing.

Sheeraz Shameel Mohammed (PW2), 47 years, Manager Fiji Football Association of Taramati Street, Vatuwaqa.

ACCUSED (A2) - Mapa Vakarau, unemployed of Gaji Road, Raiwaqa.

#### **Facts:**

- On the 8<sup>th</sup> June 2022 at around 4pm, Mahendra Lal, 69 years, Taxi Driver of Lot 7 Kitu Rd, Davuilevu Housing was robbed by 3 i-taukei youths at Taramati Road, Karsanji Street, Vatuwaqa and the following items were stolen from him:
  - a) 1 x Yellow diving torch valued at \$150.00;
  - b) 1 x original Samsung charger valued at \$20;
  - c) 1 x pair of Ray Ban sunglasses valued at \$30;
  - d) FJD\$65 cash.

The total value of the stolen items were \$265.00.

- On the above mentioned date, time and place, the Victim was driving his taxi registration number LT6307 which was a 1.5 Toyota Prius, Silver grey in colour along Nailuva Road, when he was stopped by three i-taukei youths who then hired his taxi to take them to the Fiji Football Association Headquarters.
- Upon reaching the front gate of Fiji Football Association, the victim then parked his taxi and then he was told by one of the passenger sitting in front to drive a bit further and park at the back gate.

- The victim then drove further and as soon as he parked at the back gate of Fiji Football Association one of the passengers then started punching him on the face and on his chest.
- One of the passengers was Mapa Vakarau who admitted that he was sitting behind the passenger seat. He stated that one of his accomplices tried to pull the key from the driver while the other one was trying to take things out from the taxi driver. Some of the coins fell to the back seat where was seated and he admitted he took the coins with him.
- The complainant shouted for help and pressed the horn of the vehicle to alert the bystanders.
- Mapa Vakarau then got off the taxi when the complainant started shouting and he ran towards the short cut along the China railway.
- One of the bystanders, Sheeraz Shameel Mohammed (PW2) was standing at the back gate of the Fiji Football Association heard the complainant shouting for help and ran after the suspects, he managed to apprehend one of the suspects.
- Mapa Vakarau was arrested on the 10<sup>th</sup> of June 2022 and was caution interviewed on the same day by PC 5634 Jone Rakale where he made some admissions to the allegations.
- Admissions by Mapa Vakarau as per his Record of Interview.
  - Mapa Vakarau admitted that the reason they went to Fiji Football Academy was that they have planned to robe the taxi driver.
  - Mapa Vakarau admitted that when they reached the Fiji Football Academy, one of his accomplices got off and went to the driver's side and tried to pull the car keys while another accomplice got hold of the driver's hand and started to take things from the taxi.
  - Mapa Vakarau further admitted that when his accomplice was trying to take the things out from his taxi, some money fell to the back where he was sitting, and he took those coins with him. He admitted that he used the coins for buying cigarette rolls.
  - There were no recoveries made to this case.

4. In comprehending with the gravity of the offence you have committed, I am mindful that the maximum sentence prescribed by law for Aggravated Robbery is 20 years' imprisonment.
5. However, the tariff depends on the nature and circumstances of the robbery at issue. In the case of **The State v EPARAMA TAWAKE**<sup>1</sup>, the **Supreme Court of Fiji** has updated the applicable tariff for Aggravated Robbery, by the below pronouncement:

*“Once the court has identified the level of harm suffered by the victim, the court should use the corresponding starting point in the following table to reach a sentence within the appropriate sentencing range. The starting point will apply to all offenders whether they pleaded guilty or not guilty and irrespective of previous convictions.”*

	<b>ROBBERY</b> <i>(Offender alone and without a weapon)</i>	<b>AGGRAVATED ROBBERY</b> <i>(Offender either with another or with a weapon)</i>	<b>AGGRAVATED ROBBERY</b> <i>(Offender with another and with a weapon)</i>
<b>HIGH</b>	<i>Starting point: 5 years imprisonment Sentencing Range: 3 – 7 years</i>	<i>Starting Point: 7 years imprisonment Sentencing Range: 5 – 9 years</i>	<i>Starting Point: 9 years imprisonment Sentencing Range: 6 – 12 years imprisonment</i>
<b>MEDIUM</b>	<i>Starting point: 3 years imprisonment Sentencing Range: 1 – 5 years</i>	<i>Starting Point: 5 years imprisonment Sentencing Range: 3 – 7 years imprisonment</i>	<i>Starting point: 7 years imprisonment Sentencing Range: 5 – 9 years imprisonment</i>
<b>LOW</b>	<i>Starting Point: 18 months imprisonment Sentencing Range: 6 months – 3 years.</i>	<i>Starting Point: 3 years imprisonment Sentencing Range: 1 – 5 years imprisonment</i>	<i>Starting point: 5 years imprisonment. Sentencing Range: 3 – 7 years imprisonment.</i>

6. In this matter, you have committed this offence with the assistance of several other individuals. Therefore, in assessing the objective seriousness of offending in this matter, I considered the maximum sentence prescribed for the offence, the degree of culpability, the manner in which you committed the offence and the harm caused to

<sup>1</sup> CAV 0025 of 2019 [Court of Appeal No. AAU 0013 of 2017]

the complainant. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. In the present matter, you have committed this offence on a taxi driver when he was proceeding with his usual duties. Considering the circumstances of this case, **MAPA VAKARAU**, I start your sentence with a starting point of 5 years imprisonment, i.e. in the medium-range of the applicable tariff.

7. On promulgating the above mentioned table for tariff for the offence of Robbery in the case of **The State v EPARAMA TAWAKE**<sup>2</sup>, the Supreme Court has also ventured to identify aggravating and mitigating factors, as below:

*“Having identified the initial starting point for sentence, the court must then decide where within the sentencing range the sentence should be, adjusting the starting point upwards for aggravating factors and downward for mitigating ones. What follows is not an exhaustive list of aggravating factors, but these may be common ones:*

- *Significant planning*
- *Prolonged nature of the robbery*
- *Offence committed in darkness*
- *Particularly high value of the goods or sums targeted*
- *Victim is chosen because of their vulnerability (for example age, infirmity or disability) or the victim is perceived to be vulnerable*
- *Offender taking a leading role in the offence where it is committed with others*
- *Deadly nature of the weapon used where the offender has a weapon*
- *Restraint, detention or additional degradation of the victim, which is greater than is necessary to succeed in the robbery.*
- *Any steps taken by the offender to prevent the victim from reporting the robbery or assisting in any prosecution.*

*Again, what follows is not an exhaustive list of mitigating factors, but these may be common ones:*

- *No or only minimal force was used*
- *The offence was committed on the spur of the moment with little or no planning*
- *The offender committed or participated in the offence reluctantly as a result of coercion or intimidation (not amounting to duress) or as a result of peer pressure*

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<sup>2</sup> Ibid

- *No relevant previous conviction*
- *Genuine remorse evidenced, for example by voluntary reparation of to the victim”*

8. In this matter, the robbery that was committed concentrated on a taxi driver. The operators of taxis provide an invaluable service to our country in many ways. In this regard, on one hand they provide a valuable day to day mode of transportation to the citizens of our country and on the other hand they provide the inextricable support service the tourist industry of our country, an industry that is the apical contributor to the economy of Fiji. In relation to robbery of taxi drivers, it is pertinent to highlight the observations made by **His Lordship Justice Gerard Winter** in the case of **Vilikesa Koroivuata v State**<sup>3</sup>, as below:

*“Violent and armed robberies of taxi drivers are all too frequent. The taxi industry serves this country well. It provides a cheap vital link in short and medium haul transport. Taxi drivers are particularly exposed to the risk of robbery. They are defenseless victims. The risk of personal harm they take every day by simply going about their business can only be ameliorated by harsh deterrent sentences that might instill in perspective muggers the knowledge that if they hurt or harm a taxi driver, they will receive a lengthy term of imprisonment.”*

9. Adding on, Prosecution informs this Court that you have pre-planned the commission of this robbery of this taxi driver with several others. For this end you have hired this taxi on the pretext of requiring services of the victim driver for a personal reason. In view of this pre-planning noticed in the commission of this robbery and committing this offense on a taxi driver carrying out his usual business, I increase your sentence by one (1) year.

10. In mitigation, the Defense counsel has informed Court that you were just over 20 years of age at the time of commission of this offence. In consideration of your age, I notice that your rehabilitation chances are high. Therefore, I intend to consider your rehabilitation potential, which should be balanced with deterrence and community protection. For this end, I reduce your sentence by one (01) year.

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<sup>3</sup> HAA 064 of 2004

11. 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. Still further, Court recognizes that by pleading guilty to the charge you have saved court's time and resources at a very early stage of the Court proceedings. For all these grounds in mitigation, you should receive a considerable discount in the sentence. In this regard, I give you a reduction of one third in your sentence.
12. The, prosecution brings to the attention of this Court that you have been in custody since your arrest on 10/06/2022 till 31/03/2023, amounting to 9 months and 20 days, which period should be deducted from your sentence separately.
13. Taking all these factors into consideration, **MAPA VAKARAU**, I impose on you 30 months imprisonment forthwith with an applicable non-parole period of 24 months under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009** as the sentence for the count you are charged with.
14. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read "Thushara Kumarage".

Hon. Justice Dr. Thushara Kumarage

At Suva  
This 13<sup>th</sup> day of June 2023

cc: *Office of Director of Public Prosecutions*  
*Office of Legal Aid Commission*