

AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 81 OF 2020

STATE

-v-

- 1. REVONI YALAYALA**
- 3. ISAIA BOBO**
- 4. KELEPI RATU**

Counsel: Mr. A. Singh
Offenders in Person.

Date of Judgment : 05 August 2024

Date of Sentence : 16 August 2024

SENTENCE

1. Mr. Revoni Yalayala, Mr. Isaia Bobo and Mr. Kelepi Ratu (hereinafter referred to as 1st, 2nd and 3rd Offender respectively) were arraigned along with Alexsio Moli on the following information filed by the Director of Public Prosecutions:

REVONI YALAYALA, ALEXSIO MOLI, ISAIA BOBO & KELEPI RATU are charged with the following offences:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

REVONI YALAYALA, ALEXSIO MOLI, ISAIA BOBO & KELEPI RATU on the 18th day of April 2020 at Lautoka in the Western Division, robbed **SATISH NARAYAN** of monies amounting to \$17,310.00 (Both foreign and Fiji currency), 150 x assorted liquor bottles, 3 x wrist watches, 1 x Jeans (blue long), Assorted Jewelries, 1 x Camera decoder, 1 x Ford Ranger twin cab registration number "1 BOSS" and at the time of the robbery, did use personal violence on the said **SATISH NARAYAN**.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

REVONI YALAYALA, ALEXSIO MOLI, ISAIA BOBO & KELEPI RATU on the 18th day of April, 2020 at Lautoka in the Western Division robbed **DEO RAJ GOUNDER** of monies amounting to FJD\$70.00 and 1 Nokia phone and at the time of the robbery, did use personal violence on the said **DEO RAJ GOUNDER**.

2. In the presence of his Counsel, Mr. Kelepi Ratu (the 4th offender) pleaded guilty to both counts of his own free will. He understood the consequences of the guilty pleas. The guilty pleas were informed and unequivocal. He agreed with the summary of facts read in Court. The facts satisfied each element of Aggravated Robbery as charged on each count. The charges against the 4th Accused are proved on his admissions. The Court found him guilty and convicted him. He now stands before this Court to receive his sentence.
3. Mr. Revoni Yalayala, Mr. Alexsio Moli and Mr. Isaia Bobo pleaded not guilty to the charges. After the ensuing trial, the Court found Mr. Alexsio Moli not guilty on each count and thus was acquitted. Mr. Revoni Yalayala and Mr. Isaia Bobo were found guilty and convicted. While the Judgment was being read in open Court, Mr Isaia Bobo exited the Courtroom under the guise of going to use the washroom. He never returned whereby a bench warrant was issued. Having been satisfied that Mr. Isaia Bobo has deliberately chosen not to attend, I pass the sentence in his absence. I pronounce the sentences for Mr Revoni Yalayala, Mr. Isaia Bobo and Mr. Kelepi Ratu as follows:

4. This case involves another horrifying nighttime home invasion committed in Western Fiji. The Narayan couple went to bed while their watchman, Mr Deo Goundar, guarded their house in Naikabula. After midnight, the offenders entered the compound and attacked the watchman and disabled him. Ms Narayan suddenly woke up to see a masked man enter their house through a window. Her yell woke her husband up. Mr Narayan tried to grab a knife underneath the bed but was hit with a pinch bar making him unconscious. The house was then ransacked. A brand new vehicle (Ford Ranger), valuable jewelry, a collection of expensive local and foreign liquors, and money were stolen. The robbers fled the scene in Mr. Narayan's Ford Ranger. The total value of property stolen exceeded 100,000 FJD. Some items of the stolen property were recovered.
5. In selecting the sentences that are best suited to the offenders, the Court must have regard to the proportionality principle enshrined in the Constitution, the sentencing principles in the Sentencing and Penalties Act 2009 (SPA), the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Considering the seriousness of the offence and the harm caused to the victims, the final sentence should be determined after making appropriate adjustments for the aggravating and mitigating circumstances.
6. According to Section 17 of the Sentencing and Penalties Act 2009, if an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court has the discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence on each offender for both offences.
7. Property-related offences such as Aggravated Robbery and Burglary are on the rise in Fiji. The courts have emphasised that the increasing prevalence of these offences in our community calls for deterrent punishments. The community must be protected from robbers. This Court must ensure that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such crimes. The offenders must receive condign punishment to mark society's outrage and denunciation against such crimes.

8. The maximum sentence for Aggravated Robbery is 20 years' imprisonment. It is now settled that offenders of Aggravated Robbery must be sentenced in accordance with the sentencing guidelines and the tariff set out by the Supreme Court in **Eparama Tawake v State**¹ (*Tawake*).
9. In *Tawake*; the Supreme Court identified the starting points and the sentencing ranges for the three categories of "Robbery" found in the Crimes Act as follows:

	ROBBERY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED ROBBERY (OFFENDER <u>EITHER</u> WITH ANOTHER <u>OR</u> WITH A WEAPON	AGGRAVATED (OFFENDER WITH ANOTHER <u>AND</u> WITH A WEAPON
HIGH	Starting point:5 years imprisonment Sentencing range: 3-7 years imprisonment	Starting point:7 years imprisonment Sentencing range: 5-9 years imprisonment	Starting point: 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

According to **Tawake** guidelines, *there is no need to identify different levels of culpability because the level of culpability is reflected in the nature of the offence, and if the offence is one of aggravated robbery, which of the forms of aggravated robbery the offence took. When it comes to the level of harm suffered by the victim, there should be different levels. The harm should be characterised as high in those cases where serious physical or psychological harm (or both) has been suffered by the victim. The harm should be characterized as low in those cases where no or only minimal*

¹ CAV 0025.2019 (28th April 2022)

psychological harm was suffered by the victim. The harm should be characterized as medium in those cases in which, in the judge's opinion, the harm falls between high and low².

Once the level of harm suffered by the victims has been identified, the Court should use the corresponding starting point from the table set out in the judgment to reach a sentence within the appropriate sentencing range.³

10. The sentencing tariff for the offence of Aggravated Robbery (home invasions) that existed before *Tawake* was set by the Supreme Court in Wise v State⁴ where the sentence ranged from eight (8) years to sixteen (16) years imprisonment. The *Tawake* tariff is lenient when compared to that set in Wise in that the former recommends only a maximum of 12 years imprisonment to an offender who has committed even a night-time home invasion with another, with a weapon. However, depending on the circumstances, the sentencing court has the discretion to deviate from the existing tariff when valid reasons are present and recorded.
11. The culpability level of all offenders is almost on an equal footing. This robbery was committed in the company of each other. A weapon (a pinch bar) was used on the complainant, and the level of violence was high. The complainant received minor injuries because of the assault, albeit they were not that serious. The harm should be characterised as high in this case as the psychological harm suffered by the victims was high.
12. A starting point of 9 years and a sentencing range of 6-12 years' imprisonment are reserved by the said *Tawake* guidelines for the aggravated gang robberies committed of this magnitude. I start the sentencing process for each offender with a starting point of 9 years' imprisonment from the bottom end of the tariff.

Aggravating Factors

13. Being guided by *Tawake*, I identified the following common aggravating factors for all offenders.

² paragraph 25

³ paragraph 26

⁴ [2015] FJSC 7 CAV0004.2015 (24 April 2015)

14. There was evidence of pre-planning, attempting to hide and dispose of the stolen money and items. It was a high handed violent frightening night-time invasion, prolonged, and committed in darkness. The movements of the victims were restricted. One victim received minor injuries and all the victims no doubt were subjected to psychological trauma. The value of the property stolen was high. Except for the vehicle, only a few stolen items were recovered. The brand new Ford Ranger, which was yet to be insured, was fully condemned. For these aggravating features, the sentence should be increased by two years to arrive at an aggregate interim sentence of eleven (11) years imprisonment.
15. In addition to these aggravating factors that should be applied equally to all the offenders, the offending of the 1st offender (Mr Yalayala) was further aggravated because of his distinct action of damaging the vehicle by allowing it to be self-driven off a slope. I add 2 months to the sentence of the 1st offender to arrive at an interim sentence of 11 years and 2 months imprisonment.
16. The 3rd Offender (Mr. Bobo)'s conduct in Court was contemptuous. He was present in Court when the judgment was being delivered. He exited the Courtroom without permission when he realized that he would be convicted and remanded. He never returned to Court. The bench warrant issued to arrest him could not be executed despite the efforts made by police to locate him. A report to that effect was filed in Court. I considered the conduct of the 3rd offender in Court as an aggravating factor under Section 4(2)(j) of the Sentencing and Penalties Act to add six months to his sentence to arrive at an interim sentence of 11 years and 6 months imprisonment.

Mitigating Factors

Mitigation and sentence for Mr Revoni Yalayala (1st Offender)

17. Mr. Yalayala was not present in Court when the judgment was delivered. A copy of the Judgment and the Ruling on *voir dire* hearing was dispatched to him through an officer at the remand centre, to allow him to file his mitigation. The delivery of the copies was

confirmed by the officer. Mr Yalayala appeared in Court on 12 August 2024 and was given another week to file his mitigation.

18. Mr Yalayala is 34 years of age, separated and a single father of two children. He receives no discount for his good character as he has two previous convictions which he admits for Escaping from Lawful Custody and Aggravated Burglary. He had been in remand for this matter for approximately 22 months. I deduct one year for mitigation and twenty-two (22) months for the remand period to arrive at an aggregate sentence of eight (8) years imprisonment for both offences. His potential for rehabilitation is not that promising given his previous convictions. To balance his chances of rehabilitation with the concerns for community protection, I fix a non-parole period of seven (7) years.

Mitigation and sentence for Mr. Isaia Bobo (3rd Offender)

19. Mr Bobo waived his right to file mitigation.
20. According to the bail application Mr. Bobo had filed, he is 48 years of age, a fisherman, and a father of four children. He had twenty-odd previous convictions of a similar nature but two of them were quashed in appeal. He deserves no discount for his good character. He had been in remand for this matter for approximately 24 months. I deduct six months for personal mitigation and two years for the remand period to arrive at an aggregate sentence of nine (9) years imprisonment for both offences. His potential for rehabilitation is not that promising given his previous convictions. To balance his chances of rehabilitation with the concerns for community protection, I fix a non-parole period of eight (8) years.

Mitigation and sentence for Mr Kelepi Ratu (4th Offender)

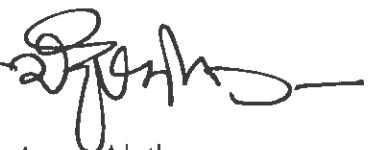
21. Mr Kelepi Ratu filed his mitigation through his counsel. Kelepi is 47 years of age, a caretaker, and married with two daughters. He pleaded guilty to the charges albeit not at the first available opportunity. However, he admitted the offence at the caution interview and was cooperating with police investigators to recover some of the stolen items. He receives

no discount for his good character as he has more than thirty (30) previous convictions most of them were of a similar nature, though they are not active. He had been in remand in this matter approximately for two years. I deduct two years for personal mitigation and guilty plea and two years for the remand period to arrive at an aggregate sentence of seven (7) years imprisonment for both offences. His potential for rehabilitation is not that promising given his previous convictions. To balance his chances of rehabilitation with the concerns for community protection, I fix a non-parole period of six (6) years.

22. The State submits that Mr. Kelepi Ratu be declared a habitual offender. Given Kelepi's past criminal record, I considered if he should be declared a habitual offender in terms of Sections 10, 11 and 12 of the SPA. Section 11(1) of the SPA lays down two prerequisites for the 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 offence of Aggravated Robbery is covered under this section. The second is that the sentencing court having regard to the offender's previous convictions for offences of a similar nature must be satisfied that the offender constitutes a threat to the community.
23. The State has filed a record of previous convictions (RPC) issued by the Criminal Records Office (CRO). Mr Kelepi Ratu has been adversely recorded with more than 30 previous convictions for offences of a similar nature. Having considered the previous convictions and the way the offences in this case have been committed, I am satisfied that he constitutes a threat to the community. Therefore, I regard Mr. Kelepi Ratu to be a suitable candidate to be declared a habitual offender.
24. **Summary**
 - i. **Mr. Revoni Yalayala** is sentenced to an aggregate sentence of eight (8) years imprisonment with a non-parole period of seven (7) years.

- ii. **Mr. Isaia Bobo** is sentenced to an aggregate sentence of Nine (9) years imprisonment with a non-parole period of eight (8) years. This sentence will be effective from the date of his arrest.
- iii. **Mr. Kelepi Ratu** is sentenced to an aggregate sentence of seven (7) years imprisonment with a non-parole period of six (6) years. He is declared to be a habitual offender.
25. All the stolen items recovered by the police are ordered to be released to the complainant (PW1) forthwith.
26. 30 days to appeal to the Court of Appeal if the offenders so desire.




Aruna Aluthge
Judge

16 August 2024

At Lautoka

Solicitors:

Office of the Director of Public Prosecution for State

1st and 3rd Offenders in Person

Legal Aid Commission for 4th Offender