

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE No: HAC 72 OF 2024**

**STATE**

**v**

- 1. ESEKI NACEGU**
- 2. JOSEFA NATADRA**

Counsel: Ms R.T.Pai for State  
Ms R. Nair for 1<sup>st</sup> Offender  
Ms L.Taukei for 2<sup>nd</sup> Offender

Date of Sentence Hearing: 09 December 2024

Date of Sentence: 12 December 2024

**SENTENCE**

1. Eseki Nacegu (1<sup>st</sup> Offender) and Josefa Natadra (2<sup>nd</sup> Offender) were arraigned on the following information filed by the Director of Public Prosecutions:

**COUNT ONE**

*Statement of Offence*

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

*Particulars of Offence*

**ESEKI NACEGU & JOSEFA NATADRA** on the 14<sup>th</sup> day of April, 2024 at Lautoka, in the Western Division in the company of each other, stole 1 x Pair of Black NBK brand Canvas and 1 x black and white Cap being the properties of **VATEMO RANITU** and immediately before stealing, used force on the said **VATEMO RANITU**.

**COUNT TWO**

*Statement of Offence*

**COMMON ASSAULT**: Contrary to Section 274 of Crimes Act 2009.

*Particulars of Offence*

**ESEKI NACEGU** on the 14<sup>th</sup> day of April, 2024 at Lautoka, in the Western Division unlawfully assaulted **SIRELI NALOA** by slapping him.

2. They understood the charges and pleaded guilty to each count voluntarily and unequivocally. They were represented by a Counsel of the Legal Aid Commission when the pleas were entered.
3. They admitted the following summary of facts that was read in Court.

**Background**

***Date of Offence: 14<sup>th</sup> of April, 2024***

***Complainant 1: VATE RANITU, 19 years old of Vakabuli village, Lautoka, Logger, herein referred to as PW1.***

***Complainant 2: SIRELI NALOA, 19 years old of Field 40, New Subdivision, Lautoka, unemployed, herein referred to as PW2.***

***Accused 1: ESEKI NACEGU, 20years old of Navutu, Lautoka, Unemployed, herein referred to as A1.***

***Accused 2: JOSEFA NATADRA, 22 years old of Navutu Village, Lautoka, Unemployed, herein referred to as A2.***

***Relationship: There is no relationship between the Accused persons and the Complainants.***

***A1, is charged with 2 counts:***

1. **Count One** is **AGGRAVATED ROBBERY** contrary to section 311(1)(a) of the Crimes Act 2009 and;
2. **Count Two** is **COMMON ASSAULT** contrary to section 274 of the Crimes Act 2009.

A2, is charged with **one count** of **AGGRAVATED ROBBERY** contrary to section 311(1)(a) of the Crimes Act 2009.

### **OFFENCE**

On the 14<sup>th</sup> day of April 2024 at around 9pm, PW1 and PW2 went for a stroll in Ratu Kamisese Mara Road with their friend. They bought food at a nearby shop and walked to the junction of at Ratu Kamisese Mara Road. Whilst heading to the junction, they passed a playground and noticed a group of boys drinking. They continued walking and went and stood at the junction of the road.

Whilst standing, the group of boys walked pass them to take the short cut towards Navutu village. After a while they came back and started having random conversations with PW1 and PW2. While talking, one of the boys asked PW2 if he can exchange his t-shirt for the vest PW2 was wearing. Whilst still asking, 3 other boys started beating PW2. PW2 sustained a slight scratch on his upper lip. One of the boys, then grabbed PW1 and punched him 3 times on his right eyebrow, mouth and face.

On the 16<sup>th</sup> April 2024, only PW1 was medically examined and according to the findings of the doctor the following injuries were noted:

1. Healing Laceration on the right eye region.

Also, under the heading D (14) of the medical report the doctor noted that the injuries appear to have been from a blunt force and is currently in its healing stage.

**(Police Medical Examination form dated 16/04/2024 is attached and annexed "1")**

According to PW1, the two Accused persons stole the following items:

1. Black NBK Canvas
2. Black and white cap, that's worth \$7.00

The matter was immediately reported to the Police and investigation was conducted. Upon investigation, the police arrested two boys from Navutu round about, who witness the robbery and assault. Their statements were taken.

### **CAUTION INTERVIEW & CHARGE**

A1, **Eseki Nacegu** in his interview admits to punching PW1's face once and slapping PW2 on the face. Furthermore, A1 also admits to taking the cap home with him. A1, also admits that he was the one that wanted to exchange his t-shirt with PW2's vest. Furthermore, A1 admits to stealing the cap and keeping it at his house. Furthermore, A1 also agrees that he caused the laceration to PW1's eyebrow. **(Caution Interview of Eseki Nacegu is attached as tab "2")**

A2, **Josefa Natadra**, in his interview admits to taking the canvas from PW1's legs. Furthermore, he also collaborates PW1 & PW2 statement that they has passed and came back. Moreover, he admits to seeing A1 punching one of the Complainants. **(Caution Interview of Josefa Natadra is attached as tab "3")**

Both Accused person was arrested and interviewed. During the formal charge only, A1, had apologized for his actions and promises it won't be repeated.

**RECOVERED**

*During the investigation, the Police were able to recover the NBK Canvas & the black and white cap.*

*(Search list dated 15/04/2024 and 16/04/2024 is attached and annexed "4")*

4. The facts admitted satisfy all the elements of Aggravated Robbery. I find the Accused guilty of Aggravated Robbery as charged and convict them accordingly. *A*
5. This Court adjourned the matter for plea in mitigation and sentencing hearing. The Defence Counsel filed a helpful mitigation submission, and the State Counsel filed a sentencing submission for which I am thankful.
6. In selecting the sentences that are best suited to the offenders, the courts must have regard to the proportionality principle enshrined in the Constitution, the Sentencing principles in the 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.
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. However, young and first offenders who are willing to take responsibility for their wrongdoings should be given an opportunity to rehabilitate.
8. The 1<sup>st</sup> Offender is charged with two offences founded on the same facts. 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 the 1<sup>st</sup> Offender for both offences.

9. 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 regime and the tariff set out in **Eparama Tawake v State**<sup>1</sup> (*Tawake*) by the Supreme Court.
10. In *Tawake*, the Supreme Court identified the starting points and the sentencing ranges for the three categories of "Robbery" as follows;

<b>HIGH</b>	<b>ROBBERY (OFFENDER ALONE AND WITHOUT A WEAPON)</b>	<b>AGGRAVATED ROBBERY (OFFENDER <u>EITHER</u> WITH ANOTHER <u>OR</u> WITH A WEAPON</b>	<b>AGGRAVATED (OFFENDER WITH ANOTHER <u>AND</u> WITH A WEAPON</b>
	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
<b>MEDIUM</b>	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
<b>LOW</b>	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. According to the tariff set out in *Tawake*, *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 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 low (para 25).*

<sup>1</sup> CAV 0025.2019 (28<sup>th</sup> April 2022)

12. *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 (para 26).*
13. No weapon was used in the commission of the offence. The offence appears to be opportunistic. Considering the sentencing guidelines in Tawake, I would put this case in the low category of aggravated robbery, given the less physical and psychological harm caused to the victims. The value of property stolen is negligible. Accordingly, the corresponding sentencing range would be 3 – 7 years imprisonment, and the starting point would be 5 years. The harm caused to the victims was not that serious. I select 5 years as the starting point for each offender.
14. As a result of this robbery, the victims received injuries as stated in the summary of facts. The 1<sup>st</sup> Offender has taken responsibility for causing injuries. Therefore, he was additionally charged with Common Assault, for which the prescribed maximum sentence is 1 year<sup>2</sup>. I would take the Common Assault as an aggravating factor to increase the sentence of the 1<sup>st</sup> Offender rather than taking it as a separate offence.
15. I would identify the mitigating factors concerning each offender separately.

**The sentence for Eseki Nacegu (1<sup>st</sup> Offender)**

16. Nacegu is 21 years of age, young and a first offender. He is married, and his wife is 5 months pregnant. He earned \$280 a week as a delivery boy. He supported his three sisters in school. He admitted responsibility at the caution interview and pleaded guilty to the charge at the first available opportunity. He has cooperated with police and seeks a second chance to rehabilitate. He saved the time and resources of this Court. I accept Nacegu is genuinely remorseful. The stolen items have been fully recovered.

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<sup>2</sup> The sentence is suspended in most cases. See: State v Soliveta [2013] FJHC 394

17. I add one year for the aggravating features to the starting point of 5 years to arrive at 6 years. I deduct 4 years for the early guilty plea, other mitigating factors and the remand period of one month to arrive at an aggregate sentence of 24 months imprisonment for both offences.
18. Nacegu is qualified to be considered for rehabilitation as a young and first offender who has expressed genuine remorse. His suitability for rehabilitation however should be rightly balanced with the need for deterrence, and denunciation. Therefore, a full suspended sentence is not warranted. He deserves only a partially suspended sentence.

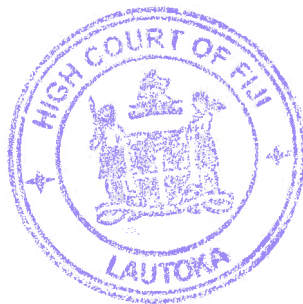
**The sentence for Josefa Natadra (2<sup>nd</sup> offender)**


19. Natadra is 22 years of age young and a first offender. He is married and has a child aged 8 months. He is a labourer at a company and the sole breadwinner of his family. He admitted responsibility at the caution interview and pleaded guilty to the charge at the first available opportunity. He has cooperated with the police and seeks the mercy of the Court. He saved the time and resources of this Court. I accept that Natadra is genuinely remorseful. The stolen items were fully recovered.
20. There are no aggravating features in the offence. I deduct 42 months for the early guilty plea, other mitigating factors and the remand period of one month to arrive at an aggregate sentence of 18 months' imprisonment.
21. Natadra is also qualified to be considered for rehabilitation as a young and first offender who has expressed genuine remorse. His suitability for rehabilitation however should be rightly balanced with the need for deterrence, and denunciation. Therefore, a full suspended sentence is not warranted. He also deserves only a partially suspended sentence.
22. The following Orders are made:

Eseki Nacegu (1<sup>st</sup> Offender) is sentenced to 24 months imprisonment. 18 months of his sentence is suspended for three years. He is to serve only 6 months immediately in the correction facility with effect from today. The remainder (18 months' imprisonment) is suspended for 3 years.

Josefa Natadra (2<sup>nd</sup> offender) is sentenced to 18 months imprisonment. 15 months of his sentence is suspended for three years. He is to serve only 3 months immediately in the correction facility with effect from today. The remainder (12 months' imprisonment) is suspended for 3 years.

23. The consequence of the suspended sentence is explained to the offenders and the juvenile.
24. 30 days to appeal to the Court of Appeal.



  
Aruna Aluthge  
Judge

12 December 2024

At Lautoka

Solicitors:

Office of the Director of Public Prosecution for Prosecution

Legal Aid Commission for Offenders