

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

**CRIMINAL CASE NO. HAC 90 OF 2023**

**STATE**

**-v-**

**1. RONEEL KUMAR**

**2. GASTON KEAN**

Counsel : Ms M. Lomaloma for Prosecution

: Offenders in Person

Date of Judgment : 29 November 2024

Date of Sentence : 12 December 2024

**SENTENCE**

1. Mr Roneel Kumar (1<sup>st</sup> Offender) and Mr Gaston Kean (2<sup>nd</sup> Offender) were convicted after trial of one count of Aggravated Burglary and one count of Theft on the following information filed by the Director of Public Prosecutions:

Count One

*Statement of Offence*

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

*Particulars of Offence*

RONEEL KUMAR AND GASTON KEAN on the 27<sup>th</sup> of May 2023, at Lautoka in the Western Division, entered the dwelling house of DIANA ALI NAND with intention to commit theft.

COUNT TWO

*Statement of Offence*

THEFT: Contrary to Section 291(1) and 45 (1) of the Crimes Act 2009.

*Particulars of Offence*

RONEEL KUMAR AND GASTON KEAN on the 27<sup>th</sup> of May 2023, at Lautoka in the Western Division, dishonestly appropriated 1x mini Dell Laptop, \$5750.00 cash, 1x Rip Curl gold watch, 2 x gold bangles, 1x 22 carat gold chain and 1x gold coin, the properties of DIANA ALI NAND with the intention of permanently depriving DIANA ALI NAND of the said properties.

2. The offenders now stand before this Court to receive their sentences.
3. The facts of the case could be summarised as follows: The victim is the General Manager at her husband's law firm. In 2023, she was residing at Pickering Place with her husband and daughter. On 27 May 2023, they left home for dinner at a friend's place at around 7.15 p.m. and returned at around 10 p.m. Upon arrival, they noticed that the kitchen grilled door was cut open. She screamed and asked her husband to move out because she suspected that someone might be inside the house. Her 5-year-old daughter started crying. She was three months pregnant at that time. The police arrived in 10 to 15 minutes. She was shocked to see that the entire house was in a mess. Her bangles, gold chain with a gold coin worth \$ 5000, laptop, cash of around \$5,700 and duty-free liquor were found missing. Nothing has been recovered to date. After the incident, they decided relocate and moved to Simla.
4. The maximum penalty for the offence of aggravated burglary is 17 years imprisonment. The Court of Appeal in *Avishkar Rohinesh Kumar and Another v The State*<sup>1</sup> established a new tariff for the offence of Aggravated Burglary. Accordingly, as the first step, the court should determine harm caused or intended by reference to the level of harm in the offending to decide whether it falls into the High, Medium or Low category. The Court should determine the harm category using the factors given in the table below:

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<sup>1</sup> [2022] FJCA 164; AAU 117 of 2019 (24 November 2022)

- *Category 1 - Greater harm (High)*
- *Category 2 - Between greater harm and lesser harm (Medium)*
- *Category 3 - Lesser harm (Low)*

<b><i>Factors indicating greater harm</i></b>
<i>Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)</i>
<i>Soiling, ransacking or vandalism of property</i>
<i>Restraint, detention or gratuitous degradation of the victim, which is greater than is necessary to succeed in the burglary. Occupier or victim at home or on the premises (or returns home) while offender present</i>
<i>Significant physical or psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary.</i>
<i>Violence used or threatened against victim, particularly the deadly nature of the weapon</i>
<i>Context of general public disorder</i>
<b><i>Factors indicating lesser harm</i></b>
<i>Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal). No physical or psychological injury or other significant trauma to the victim</i>
<i>Limited damage or disturbance to property. No violence used or threatened and a weapon is not produced</i>

5. The offenders had entered the house by cutting the grilled gate of the kitchen. They vandalised the house. The theft involved valuables, causing a significant economic and sentimental loss to the victim. Significant psychological trauma was caused to the complainant who was pregnant and her small daughter. After this offence, the victim's family felt insecure to occupy the burgled house and moved to Simla. The offence was committed in a highly residential area. In the context of general public disorder, I would put this burglary into the greater harm category.
6. Having identified the level of harm, I select a starting point using the following table to reach a sentence within the appropriate sentencing range. Considering the particular gravity, reflected by multiple features of harm, upward adjustment from the starting point should be made considering the level of culpability before further adjustment are made for aggravating or mitigating features.

LEVEL OF HARM (CATEGORY)	BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED BURGLARY (OFFENDER EITHER WITH ANOTHER OR WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER AND WITH A WEAPON)
HIGH	Starting Point: 05 years Sentencing Range: 03–08 years	Starting Point: 07 years Sentencing Range: 05–10 years	Starting Point: 09 years Sentencing Range: 08–12 years
MEDIUM	Starting Point: 03 years Sentencing Range: 01–05 years	Starting Point: 05 years Sentencing Range: 03–08 years	Starting Point: 07 years Sentencing Range: 05–10 years
LOW	Starting Point: 01 year Sentencing Range: 06 months – 03 years	Starting Point: 03 years Sentencing Range: 01–05 years	Starting Point: 05 years Sentencing Range: 03–08 years

7. It is desirable to identify the level of culpability by referring to the table given in the said guideline judgment.

<b>Factors indicating higher culpability</b>
<i>Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation) or victim compelled to leave their home (in particular victims of domestic violence). Child or the elderly, the sick or disabled at home (or return home) when offence committed</i>
<i>A significant degree of planning, or organization or execution. Offence committed at night.</i>
<i>Prolonged nature of the burglary. Repeated incursions. Offender taking a leading role.</i>
<i>Equipped for burglary (for example, implements carried and/or use of vehicle)</i>
<i>Member of a group or gang</i>
<b>Factors indicating lower culpability</b>
<i>Offence committed on impulse, with limited intrusion into property or little or no planning</i>
<i>Offender exploited by others or 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</i>
<i>Mental disorder or learning disability, where linked to the commission of the offence</i>

8. The culpability level is high in this case, given the degree of planning and sophistication involved in the offence. The offenders had entered the house at night with prior knowledge that the house was not occupied. They were equipped with a pinch bar, which they used to force open the grilled gate.
9. The maximum sentence for Theft is 10 years' imprisonment. The tariff ranges from 4 months to 3 years imprisonment (*Waqa v State* [2015] FJHC 72 (5 October 2015)).
10. The two offences were 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 each offender for both offences.
11. Having considered the harm factor and the culpability factor as discussed above, I would select a starting point of seven years imprisonment from the bottom end of the tariff reserved for high harm and culpability level Aggravated Burglary, which is the principal offence.
12. Property-related offences such as Burglary and Theft 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 and their hard-earned property must be protected from burglars. This Court must ensure that the sentences operate as a powerful deterrent factor to prevent the commission of such crimes in the future. The offenders must receive condign punishment to mark society's outrage and denounce such crimes.

Sentence for the 1<sup>st</sup> Offender Mr Roneel Kumar

13. According to the record of previous convictions, the 1<sup>st</sup> Offender (Roneel) has 15 previous convictions of a similar nature. However, for the past 10 years, there is only one active previous conviction. He has committed these offences, having exited prison on 7 March 2019. There are no significant aggravating factors other than the ones already identified

when fixing the starting point. I would not consider those factors to increase the sentence at level two to avoid double counting.

14. Roneel, a painter by profession, is 42 years of age and has been in a *de-facto* relationship for the past 5 years. It is submitted that his son and mother are still dependent on him. He is concerned that in his absence, his son could be exploited and addicted to drugs and other illegal activities. His son from his previous relationship is now 21 years old and a mature adult. He is also worried that his housing rent and other payments will fall into arrears. Roneel's partner is earning as a nail technician, and I do not see much mitigatory value in his personal circumstances. He is also concerned about the condition of the correction facility. Being a person who served in prison earlier, he could have avoided another prison term if he committed no offence again. He must blame himself for his wrongdoing.
15. Roneel claims that he recently developed a medical condition with abdominal pain for which he urgently required an operation. He pleaded that the medical report he filed for his bail application be considered for leniency. However, the medical report doesn't indicate that he needed urgent surgery. I am sure the hospital facilities will be provided by the correction authorities in case of medical emergency. Having considered every aspect, I deduct one year for mitigation to arrive at a sentence of six years.
16. Roneel had been in remand for approximately eight months. I consider the remand period as part of his sentence already served and is deducted from his sentence to arrive at a sentence of 5 years and 4 months imprisonment.

#### Sentence for the 2<sup>nd</sup> Offender Mr Gaston Kean

17. There are no significant aggravating factors for Gaston other than those considered to select the starting point. He is a caretaker and landscaper. He has 11 previous convictions of a similar nature, but none of them are active. After his last conviction in 2016, he has maintained a clear record. He is married with four children, whom he says are dependent on him. There is nothing much in his so-called mitigation submission. His application for arresting judgment is misconceived and has nothing to do with mitigation. I deduct one year

for mitigation to arrive at a sentence of 6 years imprisonment. He has been in remand for approximately one and a half years. I consider the remand period as part of his sentence already served and is deducted from his sentence to arrive at a sentence of 4 years and 6 months imprisonment.

18. A non-parole period should be fixed having considered the rehabilitation potential of the offenders and the need to protect the community and their property.

19. Summary

Mr Roneel Kumar is sentenced to 5 years and 4 months imprisonment. I fix a non-parole period of 4 years.

Mr Gaston Kean is sentenced to 4 years and 6 months imprisonment with a non-parole period of 4 years.

20. 30 days to appeal to the Court of Appeal if the offenders so desire.



Aruna Aluthge  
Judge

12 December 2024

At Lautoka

Solicitors:

Office of the Director of Public Prosecution for State