

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 178 of 2010

STATE

v.

RATU MELI BAINIVALU

Counsel: Mr C. Ratakele for State
Accused in person

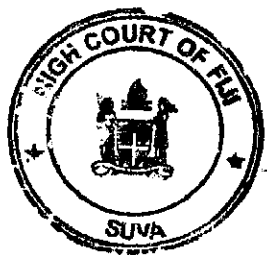
Date of Hearing : Tuesday 28th September, 2010
Date of Sentence : Wednesday 29th September, 2010

SENTENCE

- [1] The accused stands convicted of aggravated robbery on his plea of guilty.
- [2] The victim, Shiu Ram, is an elderly man. He is 62 years old and is married. He resides in Nakasi with his wife, son and a granddaughter aged 12 years. On 16 April 2010 at around 2.30 am, the victim heard smashing glass sound. He woke up and found three masked intruders in his home. The intruders were armed with a knife and a pinch bar. The accused stood outside as a lookout. He threatened the neighbours with stones when they came for the victim's rescue.

- [3] The victim was assaulted on head, chest and eye with a knife. He received cuts and bruises on his head and eyebrow. The cuts received stitches.
- [4] The victim's wife was threatened with a knife to hand over her jewelry. The offence was committed in the view of the victim's granddaughter. Damage was done to the victim's property. The intruders fled with cash and jewelry to a total value of \$640.00.
- [5] The victim gave evidence. He said he moved from Labasa to Suva to live with his younger son five years ago. In Suva he operated a small retail store. In Labasa he was a farmer. He said he has been traumatized by the robbery. He is not able to sleep well. He fears the incident will be repeated. He will not forget the incident and that he cannot forgive the perpetrators.
- [6] The accused apologized to the victim in open Court. He said he will not repeat the incident and that he is willing to compensate him for the loss.
- [7] The accused is 32 years old and married. He comes from a disadvantaged background. His parents could not afford secondary education for him. He left school at class 8.
- [8] The tariff for organized gang robbery is between 8 to 14 years imprisonment.
- [9] Counsel for the State informs the Court that the accused has no criminal record. The accused, quite honestly, admits that he has a previous conviction for house breaking and larceny in 2005. He was sentenced to 10 months imprisonment for that offence.

- [10] I observed the demeanour of the accused in these proceedings. He strikes me to be someone who is genuinely remorseful for his conduct. He confessed to the police, and he entered an early guilty plea. He publically apologized to the victim. He frankly disclosed his previous conviction to the Court.
- [11] Although he was part of a joint enterprise, he did not enter the home of the victim. Nor did he inflict the injuries to the victim. I take these matters into account.
- [12] I pick 8 years imprisonment as a starting point. I take into account the early guilty plea, corporation with the police, remorse, and public apology to the victim, disadvantaged background and remand period as mitigating factors.
- [13] The victim was robbed in the security of his home. The robbery was planned and committed in a gang. Weapons were used. The victim sustained physical injuries. The victim was an elderly person. A child was present during the robbery. Damage was done to the victim's property. Stolen items remain unrecovered. These are the aggravating factors.
- [14] I add 2 years to reflect the aggravating factors and subtract 4 years for the mitigating factors.
- [15] The accused is sentenced to 6 years imprisonment and I fix a non-parole period of 4 years.




Daniel Goundar
JUDGE

At Suva

29th September 2010