

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 86 OF 2013

STATE

-v-

MATAIASI NAVUGONA
INOKE GADRE
JOSEFATA TUISOQE

Counsels : **Ms. Semisi for the State**
Accused In person

Date of Sentence : **01 July 2013**

SENTENCE

1. The Director of Public Prosecution preferred following charges against the three accused above named.

COUNT 1

Statement of Offence

AGGRAVATED BURGLARY: Contrary to Section 313 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MATAIASI NAVUGONA, INOKE GADRE and JOSEFATA TUISOQE in the company of each other on the 18th day of April 2013 at Nadi in the Western Division entered into the dwelling house of **SACHIN SHARMA** as trespassers with intent to commit theft therein.

COUNT 2

Statement of Offence

THEFT: Contrary to Section 291(1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MATAIASI NAVUGONA, INOKE GADRE and JOSEFATA TUISOQE in the company of each other on the 18th day of April 2013 at Nadi in the Western Division dishonestly appropriated 1 Sony Laptop valued at \$800, Assorted Jewellery valued at \$7,500, 1 Nokia mobile phone valued at \$60, 1 pair of Nike shoes valued at \$100, 1 handbag valued at \$100 and Cash Monies of \$50, all to the total value of \$8,610, the property of **SACHIN SHARMA**.

2. When the case was mentioned to take a plea all three accused pleaded guilty to both the charges and admitted the Summary of Facts on the next day.
3. The Summary of Facts submitted by the State Counsel states as follows:

On the 18th April 2013, between 12am and 3am at Lot 55 Kennedy Avenue in Nadi, one Mataiasi Navugona [1st accused], aged 22 years old of Lami, one Inoke Gadre [2nd accused], aged 22 years old of Narere and one Josefata Tuisoqe [3rd accused], aged 23 years old of Dratabu Village broke and entered into the dwelling house of Sachin Sharma [the complainant] and stole from therein the following items:-

1. 1 Sony Laptop	-	\$ 800
2. Assorted Jewellery	-	\$7,500
3. 1 Nokia Phone	-	\$ 60
4. 1 pair of Nike Shoes	-	\$ 100
5. 1 handbag	-	\$ 100
6. Cash Monies	-	<u>\$ 50</u>

Total	-	<u>\$8,610</u>
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At around 3am on the 18th April 2013, the Complainant and his wife were asleep when they were awoken by their pet cat. The complainant's wife got up and checked the house and saw the front door grill open. The complainant checked and found the window in the sitting room had been forced open. They checked around their house and discovered the above items stolen.

The accused persons were found at the White House Night Club and taken to the Nadi Police Station. They were searched by police and some of the stolen items were found on the 1st and 2nd accused persons.

The three accused persons were arrested and interviewed under caution wherein they admitted to committing the offences.

They were then charged for the offence of Aggravated Burglary, contrary to Section

313 [1] of the Crimes Decree, No. 44 of 2009 and Theft, contrary to Section 291 [1] of the Crimes Decree No. 44 of 2009.

4. After carefully considering the Plea of each accused to be unequivocal this Court found all three of them guilty for aggravated burglary and theft and accordingly all three of them are convicted under Section 313 (1) (a) and Section 291 (1) (c) of the Crimes Decree respectively.
5. 1st Accused Mataiasi Navugona, 2nd Accused Inoke Gadre and 3rd Accused Josefata Tuisoqe, three of you stand convicted for Aggravated Robbery and Theft.
6. Section 313 (1) prescribes a maximum sentence of 17 years imprisonment for aggravated burglary.
7. Section 291 (1) prescribes maximum sentence of 10 years for the offence of Theft.
8. Considering the tariff for the offence of Aggravated Burglary in **Tabeusi v State** HAC 95-113/2010 and **Mucunabitu v State** HAC 17 of 2010, the Court accepted between 18 months to 3 years as tariff.
9. Tariff for the offence of theft was discussed in several cases. In **Saukilagi v State** [2005] FJHC 13 HAC 0021/2004 (27 January 2005) the Court accepted between 2 to 9 months as tariff for simple theft.
10. The first accused person submits that he is a first offender. The second accused person has two previous convictions for similar four charges. The third accused person has three previous convictions for similar charges.
11. Of the \$8,710 worth items stolen \$6,260 worth items were recovered. The state has also confirmed this position.
12. Considering the nature of the offence and all other circumstances, I commence your sentence for the 1st count at 24 months.
13. State had not submitted any aggravating factors.
14. The mitigating circumstances of the 1st Accused are:
 - (a) You are a first offender.
 - (b) Some of the goods were recovered.
 - (c) You are remorseful.
 - (d) You are 21 years old and student at FNU.

15. Considering the above, I reduce 4 months of your sentence, now your sentence is 20 months.
16. I deduct 2 more months for the time period you spend in remand. Now your sentence is 18 months.
17. For your early guilty plea I deduct 6 months. Now your sentence is 12 months.
18. The mitigating circumstances of the 2nd Accused are:
- (a) Some of the goods were recovered.
 - (b) You are remorseful.
 - (c) You are father of 2 year old daughter.
19. Considering the above I reduce 4 months of your sentence now your sentence is 20 months.
20. I deduct 2 more months for the time period in remand. Now your sentence is 18 months.
21. For your early plea I deduct 6 months. Now your sentence is 12 months.
22. The mitigating circumstances of the 3rd Accused are:
- (a) Some of the goods were recovered.
 - (b) You are remorseful.
 - (c) You are 23 years old and helping your family.
23. Considering the above I reduce 4 months of your sentence now your sentence is 20 months.
24. I deduct 2 more months for the time period in remand. Now your sentence is 18 months.
25. For your early plea I deduct 6 months. Now your sentence is 12 months.
26. Considering the above and nature of the offence, I impose 8 months imprisonment for the offence of theft for each accused.
27. Both the offences stated above were committed in the course of same transaction, therefore, I order both sentences to run concurrently.

28. All three Accused persons are pleading the Court that they be given another chance in their life.

29. All three Accused persons are pleading the Court to impose a non custodial sentence.

30. The 2nd and 3rd accused persons have several previous convictions and have served jail terms as well. Considering the nature of the offence and all the circumstances, I find the sentence imposed on the 2nd and 3rd accused cannot be suspended. But the sentence imposed against 1st accused can be considered under Section 26 (1) of the Sentencing and Penalties Decree.

31. Section 26 (1) of the Sentencing and Penalties Decree states as follows:

On sentencing an offender to a term of imprisonment a Court may make an order suspending, for a period specified by Court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.

32. After considering all circumstances, I act under Section 26 (1) of the Sentencing and Penalties Decree and suspend 1st accused's sentence to a period of 3 years. The nature of the suspended sentence is explained to the 1st accused.

Summary:

33. 1st Accused person – 12 months imprisonment suspended for 3 years
2nd Accused person – 12 months imprisonment
3rd Accused person – 12 months imprisonment

34. 30 days to appeal.

Sudharshana De Silva
JUDGE

AT LAUTOKA
1st July 2013

Solicitors for the State : Office of the Director of Public Prosecution, Lautoka
Solicitors for the Accused: Accused In Person