

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**Criminal Case No. HAC158 of 2010**

**BETWEEN:**

**FILIPE DELANA**

**SANAILA TABUAVULA**

**AND:**

**STATE**

**BEFORE THE HON. JUSTICE P. MADIGAN**

Counsel: Mr. M. Vosawale with Ms R. Uce for the State  
Ms E. Leweni for the first accused  
Mr. R. Vananalagi for the second accused.

Dates of trial: 14,15,16 May 2014

Date of mitigation: 19 May 2014

Date of Sentence : 20 May 2014

---

**SENTENCE**  
**ROBBERY**

---

1. The two accused persons have been convicted after trial; both jointly on one count of aggravated robbery and the first solely on one count of theft of a vehicle.

2. The two counts on the information read as follows:

**COUNT ONE**

**Statement of Offence**

**AGGRAVATED ROBBERY:** Contrary to section 311 (1) (b) of the Crimes Decree No. 44 of 2009.

**Particulars of Offence**

**FILIBE DELANA** and **SANAILA TABUAVULA** on the 22<sup>nd</sup> day of July 2010 at Suva, in the Central Division, being armed with armed with an offensive weapon stole a Compac Laptop valued at \$3000.00, assorted perfumes worth \$600.00, Tissot wrist watch valued at \$7000.00, Motorola Mobile Phone valued at \$40.00, cash \$870.00, a gold chain valued at \$4000.00, 3 rings valued at \$1000.00, Citizen wrist watch valued at \$400.00, Alcatel Mobile phone valued at \$199.00, assorted items valued at \$6000.00, ladies gold watch valued at \$500.00, Nokia Mobile phone valued at \$299.99 all to the total value of \$23,908.99 from **AJAY NARAYAN**.

**COUNT TWO**

**Statement of Offence**

**THEFT OF MOTOR VEHICLE:** Contrary to section 291 of the Crimes Decree No. 44 of 2009.

**Particulars of Offence**

**FILIBE DELANA** on the 22<sup>nd</sup> day of July 2010, at Suva, in the Central Division stole vehicle registration number DX110, the property of **PRANIT NARAYAN**.

3. The Narayan family living in Tamavua retired for the night at about 11pm on the 21<sup>st</sup> July 2010. At about 3am the eldest son was awoken by the house boy telling him that they were people on the porch trying to gain entry to the house through the front door. Mr. Narayan Jr. arose and went to the front room hoping to deter the men but three men managed to enter the house and forced him back into his bedroom. They hit him on the head with a bolt cutter and forced him on to his bed. They then rifled through his possessions, taking money, a watch and a lap-top computer. They then proceeded to the parents' bedroom where Mr. Narayan Sr. was trying to contact the Police. They there forced the parents (and the son) to sit on the bed, applying the bolt cutter to Mr. Narayan Sr.'s nose by way of threat. In the parents' room they took rings, chains, jewelry, phones and more money. They even snatched jewelry from the body of Mrs. Narayan. They asked for the key to the car, took the car and drove away from the property.
4. The maximum penalty for aggravated robbery is 20 years' imprisonment and for theft a term of 10 years' imprisonment. The tariff for aggravated robbery was set by Goundar J. in **Manoa** [2010] FJHC 409 as being between 8 to 14 years. Goundar J, also in the case of **Rokonabete** [2008]FJHC listed aggravating features which could be considered in robbery cases.
5. In a written submission of mitigation for the first accused, Counsel submits that he is now 33 years old, married with a 12 year old child. He is unemployed. She tells me that he is remorseful and wants a chance to be able to make a contribution to society. Counsel suggests that a suspended sentence be appropriate, a suggestion that is entirely inappropriate given that he has 41 previous convictions, including many for housebreaking, burglary and robbery. Thirteen of those convictions are current and able to be taken into account in sentence.

6. Again in a written submission, Counsel for the second accused informs the Court that his client is 26 years old and has been educated to Form 2. He lives with his elderly parents and provides for them by subsistence farming. Counsel submits that the 2<sup>nd</sup> accused is remorseful; he asks for leniency from the Court.
7. The second accused has 8 previous convictions, all of which are current. Four of them are for robbery, and two for burglary.
8. Victim Impact Reports filed by the two Narayan gentlemen attest to the fact that they are both now emotionally disturbed by this invasion. Neither can sleep well at night and each is concerned that there might be a recurrence of a robbery again. They have spent a lot of money repairing the house and installing additional security features.
9. It was a seriously aggravating feature of the robbery that the three men invaded the Narayan home at 3am when the occupants were asleep. It must have been an extremely frightening experience for them to be made to sit on the bed and watch strangers, two of who were masked, to go through all their possessions and take items of high value. It is something from which they will never recover. The citizens of our urban communities have a right to feel secure in their own homes without invasion by ruthless young men looking for a quick financial "fix".
10. For the robbery and for both accused I take a starting point of ten years. For the aggravating feature of nighttime invasion I add a further three years. For the stated mitigation of remorse (which the Court has seen very little of), I deduct one year. Neither accused has the advantage of a clear record which would enable a

further reduction for good character. The sentence for each accused is now at twelve years.

11. This is one of the oldest cases in this Court's diary and the two accused have therefore been kept in remand custody awaiting trial. They must have credit for that time. Without allowance for the remand period the sentence for this robbery would be one of twelve years imprisonment which is condign punishment for the terror of group invasion in the middle of the night with threats and assault by a heavy bolt cutter.
12. The first accused has spent 3 years and 3 months in custody and his final sentence for the robbery will therefore be one of 8 years and 9 months.
13. The second accused has spent three years and 10 months in custody and his final sentence for the robbery will therefore be 8 years and 2 months. He has had no remission credited to him for the period on remand and to reflect this the minimum period that he must spend before being eligible for parole will be a generous 5 years and 6 months.
14. The first accused has also been convicted of a second offence, theft of a motor vehicle.
15. Before February 2010, the theft of a motor vehicle in the course of a robbery was always separately charged as "unlawful use of a motor vehicle" contrary to s.292 of the Penal Code Chapter 17, for which the maximum penalty was 6 months' imprisonment.
16. There is no longer such an offence under the Crimes Decree 2009 and for that reason the taking of a vehicle as a part of a robbery is now "theft". That offence has a maximum penalty of 10 years'

imprisonment. Obviously the 6 month "normal" sentence can no longer pertain.

17. The taking of a vehicle from persons after a robbery is the ultimate offensive act and a final blow to add to the terrifying indignities already occasioned to those persons.
18. I am aware that theft *simpliciter* has its own tariff and considerations, but it should be that theft of a vehicle in the course of a robbery should attract a meaningful sentence in the range of 2 to 5 years. The treatment of the vehicle and its eventual fate will determine where in that range the sentence is pitched. The driving away from the scene and abandonment of the car within reasonable vicinity will attract a sentence at the lower end, while damage to the vehicle or acts that prevent its easy recovery will lead to a sentence at the upper end. Of course, it will nearly always be a concurrent sentence to the robbery.
19. For the theft of motor vehicle count, the first accused is sentenced to a term of two years imprisonment to be served concurrently to the 8 years and 9 months for the robbery. He had escaped from custody and was on bench warrant for 7 months. As a result he does not have the benefit of a generous minimum term. He will spend a minimum term of 7 years in custody before being eligible for parole.

**Summary.**

**First accused**

Count 1: (Robbery) 8 years  
9 months.

Count 2: (Theft) 2 years  
Concurrent

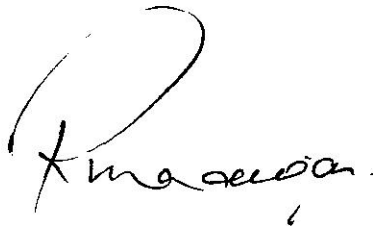
Total term: 8 years 9 months

Minimum term: 7 years

**Second accused**

Count 1: 8 years 2 months

Minimum term: 5 years 6 months.



**P.K. Madigan  
Judge**

At Suva  
20 May 2014.

