

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 181 OF 2013

STATE

-v-

1. JOELI BALEILEVUKA
2. WATISONI SAQALAGILAGI
3. ISAIA BOBO
4. ISIMELI NAREZIA
5. SAKIUSA TUKANA

Counsels : Ms. L. Latu for the Prosecution
Ms. A. Lata the 1st Accused
Mr. Anil J. Singh for the 2nd and 4th Accused
Ms. S. Nasedra for the 3rd and 5th Accused

Date of Sentence : 17th April 2015

SENTENCE

1. You were charged as follows:

COUNT 1
Statement of Offence

AGGRAVATED ROBBERY: Contrary to Section 311 (1) (b) of the Crimes Decree 44 of 2009.

Particulars of Offence

JOELI BALEILEVUKA, WATISONI SAQALAGILAGI, ISIMELI NAREZIA and ISAIA BOBO and SAKIUSA TUKANA, in company of each other on the 20th of August, 2013 at Rakiraki in the Western Division, while being armed with an offensive weapons stole cash amounting

\$127,180.00 and 70 whales tooth valued at \$35,000.00 all to the total value of \$162,180.00, the property of **GEORGE SHIU RAJ**.

COUNT 2
Statement of Offence

AGGRAVATED ROBBERY: Contrary to Section 311 (1) (b) of the Crimes Decree 44 of 2009.

Particulars of Offence

JOELI BALEILEVUKA, WATISONI SAQALAGILAGI, ISIMELI NAREZIA and ISAIA BOBO and SAKIUSA TUKANA, in company of each other on the 20th of August, 2013 at Rakiraki in the Western Division, while being armed with an offensive weapon stole 20 big gold coins (mohar) valued at \$12,000.00, 4 bangles (kangans) valued at \$1,200.00, 1 gold chain and mohar valued at \$1,400.00, 1 gold patta worth \$4,000.00, other assorted jewelleries valued at \$2,000.00 all to the total value of \$20,600.00 the property of **PRAVEEN RAJ**.

COUNT 3
Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Decree 44 of 2009.

Particulars of Offence

JOELI BALEILEVUKA, WATISONI SAQALAGILAGI, ISIMELI NAREZIA and ISAIA BOBO and SAKIUSA TUKANA, on the 20th of August, 2013 at Rakiraki in the Western Division, assaulted **GEORGE SHIU RAJ**, thereby causing actual bodily harm.

COUNT 4
Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Decree 44 of 2009.

Particulars of Offence

JOELI BALEILEVUKA, WATISONI SAQALAGILAGI, ISIMELI NAREZIA and ISAIA BOBO and SAKIUSA TUKANA, on the 20th of August, 2013 at Rakiraki in the Western Division, assaulted **PRAVEEN RAJ**, thereby causing actual bodily harm.

COUNT 5
Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Decree 44 of 2009.

Particulars of Offence

JOELI BALEILEVUKA, WATISONI SAQALAGILAGI, ISIMELI NARESIA and ISAIA BOBO and SAKIUSA TUKANA, on the 20th of August, 2013 at Rakiraki in the Western Division, assaulted **PRABHA PRASAD**, thereby causing actual bodily harm.

COUNT 6

Statement of Offence

THEFT OF MOTOR VEHICLE: Contrary to Section 291 (1) of the Crimes Decree 44 of 2009.

Particulars of Offence

JOELI BALEILEVUKA, WATISONI SAQALAGILAGI, ISIMELI NARESIA and ISAIA BOBO and SAKIUSA TUKANA, on the 20th of August, 2013 at Rakiraki in the Western Division, stole a twin cab registration number: **GEORGE**, valued at \$94,000.00, the property of **GEORGE SHIU RAJ**.

2. All five accused pleaded Not Guilty to above charge. After trial three assessors gave a mixed opinion. All three assessors unanimously found 1st and 4th accused Guilty of the two Aggravated Robbery charges. The 2nd assessor also found the 5th Accused Guilty of the two Aggravated Robbery counts. The 3rd assessor found all five accused Guilty of the Aggravated Robbery charges. All assessors found all accused were not guilty of the other charges.
3. This Court over turned their verdict and found all five of you Guilty as charged and convicted you.
4. The all five accused with others have entered the complainant's house in the night and robbed items including \$127,180.00 in cash, 70 Whales tooth valued \$35000.00, Gold and Jewelries to the value of \$20,600.00. They have assaulted the complainant, his wife and sister during the robbery. They have escaped in the complainant's vehicle "GEORGE".
5. All three accused stand convicted for two counts of Aggravated Robbery. Three counts of Assault causing Actual Bodily Harm and one count of Theft of a Motor vehicle.
6. The maximum sentence for Aggravated Robbery is 20 years.
7. The tariff for Aggravated Robbery is well settled now.
8. In **State v Rokonabete** [2008] FJHC 226; HAC 118.2007 (15 September 2008) it was held by Hon. Mr. Justice D. Goundar that:

"The dominant factor in assessing seriousness for any types of robbery is the degree of force used or threatened. The degree of injury to the victim or the nature of and duration of threats are also relevant in assessing the seriousness of an offence of robbery with violence. If a weapon is involved in the use or treat of force that will always be an important aggravating feature. Group offending will aggravate an offence because the level of intimidation and fear caused to the victim will be greater. It may also indicate planning and gang activity. Being the ring leader in a group is an aggravating factor. If the victims are vulnerable, such as elderly people and person providing public transport, that will be an aggravating factor. Other aggravating factors may include the volume of items taken and the fact that an offence was committed whilst the offender was on bail.

The seriousness of an offence of robbery is mitigated by factors such as a timely guilty plea, clear evidence of remorse, ready co-operation with the police, response to previous sentence, personal circumstances of offender, first offence of violence, voluntary of property taken, a minor part, and lack of planning involved."

9. In **State v Manoa** [2010] FJHC 409; HAC 061.2010 (6th August 2010) it was held by Hon. Mr. Justice Paul Madigan that:

"The maximum penalty for robbery with violence under Penal Code is life imprisonment, while the maximum penalty for aggravated robbery under the Crimes Decree is 20 years imprisonment. Although the maximum sentence under the Decree has been reduced to 20 years imprisonment, in my judgment, the tariff of 8-14 years imprisonment established under the old law can continue to apply under the new law. I hold this for two reasons. Firstly, the established tariff of 8-14 years under the old law falls below the maximum sentence of 20 years under new law. Secondly, under the new law, aggravated robbery is made an indictable offence, triable only in the High Court, which means the Executive's intention is to continue to treat the offence seriously."

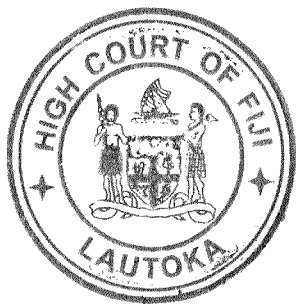
10. I take a starting point of 10 years for each of you for the each count of Aggravated Robbery.
11. Aggravating factors;
- (i) Planned robbery

- (ii) High value of the items robbed
 - (iii) Use of weapons during the robbery
12. I add 4 years for above and now your sentence is 14 years.
 13. Mitigating circumstances of Joeli Baleilevuka,
 - (i) Forty nine years old, father of 4 children and sole bread winner
 14. Considering above I deduct one year. Now your sentence is 13 years.
 15. You were in remand from 20.8.2013 up to date for a period of 1 year 8 months. Acting under Section 24 (1) of the Sentencing and Penalties Decree I deduct that period from the sentence. Now your sentence is 11 years 4 months.
 16. Mitigating circumstances of the Watisoni Saqalagilagi
 - (i) At the age of 47 years you don't have a conviction for last 10 years and could be considered as a first offender
 - (ii) Sole bread winner of the family
 17. Considering above I deduct 1 year. Now your sentence is 13 years.
 18. You were in remand from 20.8.2013 up to date for a period of 1 year and 8 months. Acting under Section 24 (1) of the Sentencing and Penalties Decree I deduct that period from the sentence. Now your sentence is 11 years 4 months.
 19. Mitigating circumstances of the Isaia Bobo
 - (i) Thirty nine years old and father of 4 children and main bread winner
 20. Considering above I deduct 1 year. Now your sentence is 13 years.
 21. You were in remand from 11. 11. 2013 up to the date of the conviction for a period of 1 year and 5 months. However, you have got a deduction of 8 months for the same period in Suva High Court case No. HAC 215/2011. Therefore, I deduct 9 months from your sentence. Now your sentence is 12 years 3 months.
 22. Mitigating circumstances of the Isimeli Naresia
 - (i) Fifty two years old and father of 7 children and main bread winner.
 23. Considering above I deduct one year. Now your sentence is 13 years.
 24. You were granted bail on the first day.

25. Mitigating circumstances of the Sakiusa Tukana
 - (i) Forty two years and father of 3 children and main bread winner
 - (ii) You don't have a conviction for the last ten years and there for could be considered as a first offender.
26. Considering above I deduct one year. Now your sentence is 13 years.
27. You were in remand from for a period of 1 month and 17 days and again 1 year and 11 days. Acting under Section 24 (1) of the Sentencing and Penalties Decree I deduct period of 1 year and 2 months from your sentence.
28. Now your sentence is 11 years and 10 months.
29. Considering the tariff and above all, for each charge of Assault causing actual bodily harm I sentence each accused for 1 year imprisonment to run concurrent to the sentences for the Aggravated Robbery charges.
30. Considering the tariff and all above all, for the charge of Theft of a Motor Vehicle I sentence each accused for 6 months imprisonment to run concurrent to the sentences for the Aggravated Robbery charges.
31. Acting under Section 18 (1) of the Sentencing and Penalties Decree, I fix a non-parole period of 10 years and 6 months for each accused. The sentence of the 3rd accused to run concurrent to sentence he is serving for Suva Criminal case No. HAC 215/2011.

Summary

32. The sentence for each accused as follows:
 - 1st accused -11 years 4 months imprisonment with 10 years and 6 months as non-parole period
 - 2nd accused-11 years 4 months imprisonment with 10 years and 6 months as non-parole period
 - 3rd accused-12 years 3 months imprisonment with 10 years and 6 months as non-parole period
 - 4th accused-13 years imprisonment with 10 years and 6 months as non-parole period
 - 5th accused 11 years 10 month imprisonment with 10 years and 6 months as non-parole period
33. 30 days to Appeal to Court of Appeal.




Sudharshana De Silva
JUDGE

**At Lautoka
17 April 2015**

**Solicitors: Office of the Director of Public Prosecution for State
Office of the Legal Aid Commission for all accused**