

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

HAC NO. 155 OF 2016

BETWEEN : STATE

**AND : ISIMELI TIKO
MAIKELI NAQARASE**

**Counsel : Ms. S. Kiran for the State
Ms S. Nasedra for the two accused persons,**

Date of Ruling : 1st of November 2016

RULING

Background

1. The first and the second accused are being charged with one count of Attempted Aggravated Robbery, contrary to Section 44 and 311 (1) (b) of the Crimes Decree. The particulars of the offence are that;

“Maikeli Naqarase, Isimeli Tiko and another on the 6th day of January 2016 at Lautoka in the Western Division, attempted to rob Mukesh Kumar of his money box containing \$150 cash and at the time of such robbery had an offensive weapon namely a spear gun”

2. The second accused was seventeen years old at the time of this alleged offence took place. Hence, I consider him as a juvenile offender.
3. The first accused and the juvenile offender were initially charged for one count of Aggravated Robbery and produced before the Magistrate court of Lautoka on

the 25th of January 2016. The learned Magistrate then transferred the matter to High Court pursuant to Section 191 of the Criminal Procedure Decree as the offence was an indictable offence. They were then produced before the High Court on the 5th of February 2016, where the court remit the matter back to the Magistrate court of Lautoka and extended the jurisdiction of the learned Magistrate to hear the matter pursuant to Section 4 (2) of the Criminal Procedure Code.

4. The accused and the juvenile offender pleaded guilty for the offence of Aggravated Robbery on the 14th of March 2016. The matter was then adjourned till 4th of April 2016 for the summery of facts. On the 18th of April of 2016, the summery of facts were read over to the accused and to the juvenile offender and they admitted the same. The learned Magistrate accordingly convicted the accused and the juvenile offender for the offence of Aggravated Robbery. On the 8th of August 2016, the learned Magistrate found that the tariff for the offence of Aggravated Robbery is 10 to 15 years of imprisonment period and it exceeds the sentencing jurisdiction of the Magistrates court. Having found such, the learned Magistrate transferred the matter to High Court for sentencing pursuant to Section 190 of the Criminal Procedure Decree.
5. The matter was then mentioned in the High Court on the 25th of August 2016, where the learned counsel for the prosecution and the defence requested the court to remit this matter back to the Magistrate court on the ground that the Magistrates court has jurisdiction to sentence the accused and the juvenile offender. I accordingly directed the prosecution and the defence to file written submissions on the issue of acceptable tariff limit for the offence of Aggravated Robbery, which they filed as per the directions.

6. Meanwhile, the prosecution amended the information to Attempted Aggravated Robbery, contrary to Sections 44 and 311 (1) (b) of the Crimes Decree, which carries the same punishment as of the Aggravated Robbery.

The Law and Analysis

7. Section 190 of the Criminal Procedure Decree states that;

i) Where –

a) a person over the age of 18 years is convicted by a magistrate for an offence; and

b) the magistrate is of the opinion (whether by reason of the nature of the offence, the circumstances surrounding its commission or the previous history of the accused person) that the circumstances of the case are such that greater punishment should be imposed in respect of the offence than the magistrate has power to impose –

the magistrate may, by order, transfer the person to the High Court for sentencing.

ii) If the person is transferred under sub-section (1) to the High Court, a copy of the order for transfer and of the charge in respect of which the person was convicted shall be sent to the Chief Registrar of the High Court.

iii) The High Court shall enquire into the circumstances of the case and may deal with the person in any manner in which the person could be dealt with if the person had been convicted by the High Court.

iv) A person transferred to the High Court under this section has the same right of appeal to the Court of Appeal as if the person had been convicted and sentenced by the High Court.

v) The High Court, after hearing submissions by the prosecutor, may remit the person transferred for sentence in custody or on bail to the Magistrates Court which originally transferred the person to the High Court and the person shall then be dealt with by the Magistrates Court, and the person has the same right of appeal as if no transfer to the High Court had occurred.

8. If the circumstances of the case requires a greater punishment, the Magistrate can transfer the matter to the High Court for sentencing. In doing so, the Magistrate is required to consider the nature of the offence, the circumstances of the commission of the offence or the previous history of the accused. However, the Magistrate cannot transfer the matter for sentencing if the accused is not over the age of eighteen years old pursuant to Section 190 (1) (a) of the Criminal Procedure Decree.
9. The learned Magistrate has transferred this matter for sentencing on the ground that the tariff for the offence of Aggravated Robbery exceeds the sentencing jurisdiction of the magistrates' court.
10. Justice Aluthge in **State v Low [2016] FJHC 739; HAC151.2016 (19 August 2016)** has discussed the procedure of extending the jurisdiction of the High Court to the Magistrate court under Section 4 (2) of the Criminal Procedure Code, where his lordship held that;

“Before a case involving an Indictable Offence is remitted to the magistracy under Section 4(2) of the Criminal Procedure Decree, Judge of the High Court is supposed to address his or her judicial mind to the gravity and the factual circumstances surrounding the commission of the offence and be satisfied that it is a fit and proper case to be dealt with by a lower court.

11. I now draw my attention to the sentencing jurisdiction of the juvenile offender. He was seventeen years old at the time of this alleged offence was committed. If the accused is below the age of eighteen (18) years old, the learned Magistrate is not allowed to transfer the case to High Court for sentencing pursuant to Section 190 (1) (a) of the Criminal Procedure Decree.
12. Section 30 of the Juvenile Act deals with the punishment of juvenile offenders, where it states that;
 - i) *No child shall be ordered to be imprisoned for any offence.*
 - ii) *No young person shall be ordered to be imprisoned for an offence, or to be committed to prison in default of payment of a fine, damages or costs, unless the court certifies that he is of so unruly a character that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained.*
 - iii) *A young person shall not be ordered to be imprisoned for more than two years for any offence.*
13. Accordingly, the court is allowed to imprison a juvenile offender only for a period of two years or less.

14. In view of the Section 190 (1) (a) of the Criminal Procedure Decree and Section 32 of the Juvenile Act, the Magistrate court has the jurisdiction to punish the juvenile offender for the offence of Attempted Aggrieved Robbery.

15. At this point, I respectfully direct the learned Magistrate to draw his attention to Section 20 of the Juvenile Act, where it states that;

"The words "conviction" and "sentence" shall not be used in relation to juveniles and any reference in any written law to a person convicted, a conviction or a sentence shall, in the case of juvenile persons, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding, as the case may be".

16. I now turn on to consider the applicable tariff limit for the offence of Aggravated Robbery. The Supreme Court of Fiji in **Wallace Wise v The State (2015) FJSC7; CAV0004.2015 (24 April 2015)** found that the acceptable tariff limit for single offence of Aggravated Robbery is 8 to 16 years of imprisonment. In **Wise (supra)**, the accused with his accomplice had entered into the house of the victim while he was sleeping with his wife in the night. They assaulted the occupants and injured the victim and then robbed cash of FJD 150 and jewellery worth of FJD 550.

17. The Hon Chief Justice Gates in **Wise (supra)** held that;

"We believe that offences of this nature should fall within the range of 8-16 years imprisonment. Each case will depend on its own peculiar facts. But this is not simply a case of robbery, but one of aggravated robbery. The circumstances charged are either that the robbery was committed in company with one or more other persons, sometimes

in a gang, or where the robbers carry out their crime when they have a weapon with them.

18. The Supreme Court in Qurai v State [2015] FJSC 15; CAV24.2014 (20 August 2015) held that the tariff limit of 10 to 16 years was applied in 2010, where Hon Justice Saleem Marsoof observed that;

"The head sentence of 8 years imprisonment adopted by the High Court Judge in computing the sentence to be imposed on the Petitioner is far below the tariff of 10 to 16 years imprisonment applicable in 2010 for the offence of aggravated robbery which carries a maximum sentence of 20 years imprisonment"

19. Hon Chief Justice Gates in Bonaseva v State [2015] FJSC 12; CAV0022.2014 (20 August 2015) has discussed the applicable tariff limit for the offence of aggravated robbery, where his Lordship found that;

Not only did Goundar J in Manoa [2010] FJHC 409 indicate that the reductions in maximum penalty in the Crimes Decree from life imprisonment to 20 years did not herald a withdrawal of the then tariff [8-14 years], indeed subsequent decisions of this court have increased that tariff: Livai Nawalu v The State Crim. App. No. CAV0012/2012 28th August 2013.

At para [27] of that judgment I had occasion to say:

"So far as the head sentence is concerned, the court finds 13 years to be within the range set by recent authority for serious violent crime such as robbery with violence. Here the outstanding factors triggering a high penalty in the range 10-16 years were the spate of offending, the gravity of the anti-

social behavior with its menace to persons and property, the invasion of home and privacy, the violence proffered, and the need for very strong disapproval of such behavior. With this type of offending, personal mitigation of the kind raised by the Petitioner, that he is married and now has a small child, count for little."

More recently in *Wallace Wise v The State* CAV0004/2015, 24th April 2015 a case with some similarities I said:

The matter does not end there. We believe that offences of this nature should fall within the range of 8-16 years imprisonment. Each case will depend on its own peculiar facts. But this is not simply a case of robbery, but one of aggravated robbery. The circumstances charged are either that the robbery was committed in company with one or more other persons, sometime in a gang, or where the robbers carry out their crime when they have a weapon with them.

20. Justice Temo in *State v Nadavulevu - Sentence* [2015] FJHC 651; HAC046.2015S (10 September 2015) has adopted the above discussed sentencing principles expounded by the Supreme Court, where his lordship held that;

*"Aggravated Robbery" is a serious offence, and it carries a maximum penalty of 20 years imprisonment (section 311 (1) of the Crimes Decree 2009). The tariff for a spate of robberies is a sentence between 10 to 16 years imprisonment: *Nawalu v State*, Criminal Appeal Case No. CAV 0012 of 2012, Supreme Court of Fiji. The tariff for a single case of robbery with violence is 8 to 16 years imprisonment: *Wallace Wise v The State*,*

