

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 267 of 2013

[CRIMINAL JURISDICTION]

STATE

V

PENI MATAIRAVULA

Counsel : Ms. S. Serukai for State
Mr. L. Qetaki for Accused

Sentenced on : 18 May 2018

SENTENCE

1. Peni Matairavula, you were convicted of the offence of aggravated robbery contrary to section 311 (1) of the Crimes Act 2009 by the magistrate court that tried you on extended jurisdiction and based on an application made by the prosecution the Learned Magistrate has transferred your case to this court for the purpose of sentencing. You stand convicted of the following charge;

FIRST COUNT

Statement of Offence

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

Particulars of Offence

SOSICENI TIKOMAIREWA, JOPE KOVEI AND PENI MATAIRAVULA on the 1st day of May, 2013 at Mokani, Bau Road, Nausori in the Central Division, robbed an Alcatel mobile phone value at \$200.00, Taxi Meter valued at \$300.00 and \$40.00 cash all to the total value of \$540.00 from **MAHESH CHAND**.

2. The other two accused who were jointly charged with you had pleaded guilty in the magistrate court but before a different magistrate and each accused had been sentenced on 12/12/13 to an imprisonment term of 4 years. It is pertinent to note that the Learned Magistrate had ordered 18 months of that sentence to be served forthwith and the balance period to be suspended for a period of 03 years. It is unclear as to how the Learned Magistrate assumed jurisdiction to suspend a sentence of 4 years when section 26(2) of the Sentencing and Penalties Act provides that the magistrate court may only make an order suspending a sentence if the period of imprisonment imposed does not exceed 02 years.
3. According to the evidence led before the Learned Magistrate you with two others instructed the second prosecution witness ("PW2") who was the driver of the taxi the three of you were travelling to drive to a relatively isolated area and one of you held a 'beer glass' underneath his throat. Then the one sitting in the front passenger seat took the said witness' mobile phone and his money. Thereafter, PW2 managed to run away from the three of you. This offence was committed in the night. PW2 had said in his evidence that he feared for his life given the manner and the circumstances under which he was threatened by the three of you. The taxi meter had been later recovered from one of the aforementioned accused who had pleaded guilty.
4. The evidence in this case does not disclose how much money was stolen and the value of the phone that was stolen. The first prosecution witness ("PW1") who was the owner of the aforementioned taxi PW2 drove had testified that the meter that was stolen cost him \$300. Even though the value of the property stolen does not form part of an element of the offence, it is relevant for the purpose of sentencing. This is something most prosecutors often overlook when they lead evidence in cases involving theft offences.
5. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years imprisonment. The tariff for this offence is an imprisonment term between 8 to 16 years. [*Wallace Wise v The State*, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015)]

6. Explaining the aggravating circumstances of the offence of robbery with violence under the now repealed Penal Code Goundar J said in the case of *State V Rokonabete* [2008] FJHC 226 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 the victims are vulnerable, such as elderly people and persons providing public transport, then that will be an aggravating factor."

7. Your counsel had submitted that this court should consider the sentences imposed on your co-accused when I determine your sentence. In my view, the final sentences imposed on each co-accused are lenient and do not conform to the current law. However, I also note that they were first offenders when they were sentenced and you are not.
8. According to your previous convictions report, you had been sentenced to an imprisonment term of 07 years on 10/02/06 for the offence of robbery with violence. The aforementioned report indicates that thereafter you were convicted of several offences (i.e. escaping from lawful custody, damaging property, throwing object and resisting arrest) and your final conviction was on 15/05/08 again for the offence of robbery with violence where you have been sentenced to 5 1/2 years imprisonment. This sentence had been made concurrent to the sentences you were serving. In the bail ruling of the Learned Magistrate dated 29/05/13 it is noted that you have committed the offence relevant to this case just seven months after you were released from prison.
9. It is pertinent to note that you had been convicted on 05/02/02 and sentenced to 5 years imprisonment for the offence of robbery with violence prior to your conviction on 10/02/06 for the same offence of robbery with violence. It is clear that you were released from the prison before you completed the full 5 year sentence imposed against you on 05/02/02 and that you have again committed

the offence of robbery with violence for which you were convicted on 10/02/06 soon after you were so released. Then again you have been sentenced to 5 1/2 years imprisonment for the offence of robbery with violence on 15/05/08. Given the case numbers, it is noted that you were charged for the offence you were convicted on 10/02/06 and the offence you were convicted on 15/05/08 in the same year that is year 2006.

10. Your previous conviction report therefore bears testimony that you have formed a habit of committing the offence of robbery.
11. Whereas you are sentenced for the offence of aggravated robbery in this case which is an offence of the nature described under section 10(c) of the Sentencing and Penalties Act; and having regard to your previous convictions for the offence of robbery committed inside Fiji, I am satisfied that you constitute a threat to the community. Therefore, by virtue of the provisions of section 11 of the Sentencing and Penalties Act, I hereby determine that you, Peni Matairavula is a habitual offender for the purposes of Part III of the said Act.
12. Accordingly, in determining the length of your sentence in this case, I shall regard the protection of the community from you as the principal purpose for which the sentence is imposed in terms of section 12 of the Sentencing and Penalties Act and I am mindful that in order to achieve that purpose I can impose a sentence longer than which is proportionate to the gravity of the offence by virtue of section 12(b) of the said Act.
13. The aforementioned provisions of section 12(b) of the Sentencing and Penalties Act justifies selecting of a higher starting point and accordingly, I would select 10 years imprisonment as the starting point of your sentence.
14. I would take into account the nature and the extent of the force used on PW2 and the fact that PW2 was providing public transport at the time of offence as aggravating factors in this case to add 03 years to your sentence.

15. You were not a first offender when you committed the above offence. I do not find any mitigating factors in this case that would warrant a reduction of your sentence.
16. Accordingly, I sentence you to an imprisonment term of 13 years. I order that you are not eligible to be released on parole until you serve 11 years of your sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
17. As I have stated, you were granted bail by the magistrate court in relation to this case on 29/05/13. According to the magistrate court record you have been remanded before the next date which was 26/06/13 by another court for a different matter. There is no indication in the aforementioned court record that bail granted to you in this case on 29/05/13 was subsequently revoked at any stage. According to the record you had been in remand for other matters until 02/02/18. The prosecution submits that in case No. HAC 364 of 2015 which you were in remand since 04/11/15, a *nolle prosequi* was entered on 02/02/18 and on that date you were remanded in view of the pending sentence in this case.
18. Your counsel was given the opportunity to demonstrate to this court the time you spent in custody in view of this case. Your counsel pointed out that the Learned High Court Judge when this case was called before the High Court on 26/07/13 while vesting the magistrate court with extended jurisdiction to hear this case had remanded you and had ordered that any bail application should be dealt with in the magistrate court. It is your counsel's argument that bail granted by the Learned Magistrate on 29/05/13 was revoked by the aforementioned order made by the Learned High Court Judge.
19. Your counsel submitted that this court should consider that you were in custody for this matter from 26/07/13 to date, in addition to the period between 06/05/13 and 29/05/13 given the aforementioned argument and also considering the fact that you have been either acquitted or the proceedings discontinued in the other matters you were in remand during the period in

question. When you appeared before the High Court on 26/07/13 you were on bail in view of this case and you were in remand for a different case. Therefore, it is highly likely that the reason you were remanded by the High Court on 26/07/13 is because you were produced from the remand centre. However, there is an ambiguity in relation to this issue and I cannot disregard the argument raised by your counsel. All in all, I hold that you were in remand for this matter from the period between 06/05/13 and 29/05/13 (23 days) and from 26/07/13 to date (4 years, 9 months and 22 days).

20. Accordingly, I hold that the period that should be regarded as served in view of the provisions of section 24 of the Sentencing and Penalties Act is 04 years and 11 months.
21. In the result, you are sentenced to 13 years imprisonment with a non-parole period of 11 years. Considering the time spent in custody, the time remaining to be served is as follows;
 - Head Sentence - 08 years and 01 month
 - Non-parole period - 06 years and 01 month
22. Thirty (30) days to appeal to the Court of Appeal.



Vinsent S. Perera
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused