

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 237 of 2018
[CRIMINAL JURISDICTION]

STATE

V

- 1) RITESH MANI**
- 2) DHANI RAM**

Counsel : Mr. Z. Zunaid for State
Mr. R. Goundar for both Accused

Hearing on : 17 August 2018

Sentenced on : 24 September 2018

SENTENCE

1. Ritesh Mani and Dhani Ram, each of you have pleaded guilty to the two offences produced below. After considering the summary of facts you have admitted and your cautioned interview statements, this court was satisfied that the pleas you have entered were unequivocal. You were accordingly convicted as charged for the following offences;

FIRST COUNT

Statement of Offence

Aggravated Burglary: contrary to section 313 (1)(a) of the Crimes Act of 2009.

Particulars of Offence

RITESH MANI & DHANI RAM in the company of each other, on the 4th day of June 2018 at Suva in the Central Division, entered into the property of Fiji Rugby Union, as a trespasser with intent to commit theft.

SECOND COUNT

Statement of Offence

Theft: contrary to section 291(1) of the Crimes Act of 2009.

Particulars of Offence

RITESH MANI & DHANI RAM in the company of each other, on the 4th day of June 2018 at Suva in the Central Division, dishonestly appropriated 1xISC Fiji Airways white polo t-shirt, 1xISC Vodafone white t-shirt, 1xBLK Status V black Jacket, 1xBLK Tek V Polo Ladies black t-shirt, 2xISC Fiji Airways black jackets, 1xISC Fiji Airways black sweater, 2xISC Fiji Rugby pants, 1xBLK Tek V Polo Ladies black t-shirt, 1xBLK black Tek V t-shirt, 1xISC Fiji Rugby black and grey bag, all to the total value of \$818.35, the property of Fiji Rugby Union with the intention of permanently depriving Fiji Rugby Union of the said properties.

2. The summary of facts both of you have admitted are as follows;

Complainant:

1. *The complainant in this matter is one, Alipate Ratulevu (PW1), 37 years old, IT Officer at the Fiji Rugby Union, of Lot 3 Kinoya Road.*
2. *Prosecution Witness 2 (PW2): Arresting Officer for A1
PW2 in this matter is one, DC 3090 Akuila, 37 years old, police officer, of Valelevu.*
3. *Prosecution Witness 3 (PW3): Arresting Officer for A2
PW3 in this matter is one, PC 5078 Lekima, 30 years old, police officer, of Nasova Barrack.*
4. *Prosecution Witness 4 (PW4):
PW4 in this matter is one Mereoni Rasovu, 25 years old, accounts clerk at the Fiji Rugby Union, of Dilkusha Road.*

Accused Persons:

5. *The First accused in the matter is one Ritesh Mani (A1), 36 years old, electrician, of Lot 77 Pilling Road, Nasinu.*
6. *The Second accused in the matter is one, Dhani Ram (A2) 40 years old, tile layer, of Qarase Road, Nadera.*

Count 1:

7. *Both the accused persons were working for Ram's Maintenance Company which was sub-contracted by Fiji Rugby Union to carry out maintenance works within its premises. It is within this time of employment, the accused persons allegedly committed the act.*
8. *On 4 June 2018 at around 8.10pm whilst PW1 was in his office at the Fiji Rugby Union (FRU) he saw movement on the CCTV footage which was installed in the storeroom.*

- PW1 recognized and positively identified A1 who at the time was crawling on the floor. PW1 stated he then saw A1 stand up and look through the window.
9. PW1 then quickly called the CEO of FRU and informed him of the same. PW1 then called the owner for Rams Maintenance, one "Shorty" to question whether his workers were working late that particular day. The owner said that his workers had left at 4.30pm on that day. PW1 then called one "Sai" for assistance but Sai was in Raiwaqa at the time. PW1 then asked one "Pau" to go and call the police. During this time, Sai arrived and both Sai and PW1 entered the Development Office of the FRU building. After searching all the offices within the FRU building, Sai got a hold of A1. A1 had informed PW1 and Sai that he was with A2.
 10. PW1 stated that he saw one grey and black Fiji Rugby bag with the number 37 filled with some FRU items. In addition, PW1 saw another blue FCB Barcelona bag also filled with FRU items.
 11. PW1 stated that when A1 and A2 were taken downstairs, the police arrived and arrested them. PW1 described A1 to be wearing a red-like Bula shirt and brown long pants.
 12. PW2 confirms arriving at FRU office and seeing two Indian men being held by FRU staff. PW2 then confirms arresting A1 who wore a red Bula shirt, brown long pants and no shoes.
 13. After handing A1 over to PC Shirdarth, PW2 then went back to the crime scene and saw a blue bag filled with FRU items along with a green FRU bag. PW2 noted that these items were usually kept in the Bulk Room which is always locked. PW2 further noted that the door where the items were kept was forcefully opened. Both the accused person's in their Record of Interview admit to have used a hammer and screw-driver to forcefully open the door.
 14. PW3 arrested A2 also at the scene of the offence. A2 at the material time was wearing a black and brown long pants.
- Count 2:**
15. On 5 June 2018 PW4 who is the accounts clerk for FRU gave a list of the stolen items and its respective value to the police as follows:
 - (a) 1xISC Fiji Airways white polo t-shirt valued at \$57.50
 - (b) 1xISC Vodafone white t-shirt valued at \$57.50
 - (c) 1xBLK Status V black Jacket valued at \$126.38
 - (d) 1xBLK Tek V Polo Ladies black t-shirt valued at \$63.99
 - (e) 2xISC Fiji Airways black jackets valued at \$140.00
 - (f) 1xISC Fiji Airways black sweater valued at \$70.00
 - (g) 2xISC Fiji Rugby pants valued at \$120.00
 - (h) 1xBLK Tek V Polo Ladies black t-shirt valued at \$63.99
 - (i) 1xBLK black Tek V t-shirt valued at \$63.99
 - (j) 1xISC Fiji Rugby black and grey bag valued at \$55.00
 All to the total value of \$818.35 (Eight Hundred Eighteen Dollars and Thirty Five cents).
 16. Both the First and Second accused made full admissions to stealing the items in their Record of Interview.
 17. The stolen items were fully recovered at the scene of the crime.

18. *Annexed hereto is the Record of Interview for the First accused as 'Annexure A'.*

19. *Annexed hereto is the Record of Interview for the Second accused marked as 'Annexure B'.*

3. As I have explained in the case of *State v Naulu* [2018] FJHC 548 (25 June 2018), based on the tariff endorsed by the Supreme Court for the offence of aggravated robbery in the case of *Wise v State* [2015] FJSC 7, the tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years.
4. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waga v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
5. The two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment against each of you for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") reads thus;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."

6. According to the summary of facts the two of you were conducting maintenance work at Fiji Rugby Union being employees of Ram's Maintenance Company during the material time. Therefore, your actions reflect a serious breach of trust. This aggravating factor is relevant to both of you.

Sentence of the first accused

7. You are 36 years old. You are married and you have four children. In your mitigation, apart from the fact that you have entered an early guilty plea you have submitted that;
 - a) You are a first offender;
 - b) You are remorseful;
 - c) You have cooperated with the police; and
 - d) All items have been recovered.

8. I would select 6 years as the starting point of your aggregate sentence. In view of the above aggravating factor I would add 2 years to your sentence. I would deduct 4 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 4 years. In view of your early guilty plea through which you have saved this court's time and resources, you will be given a discount of one-third. Accordingly, your final aggregate sentence is an imprisonment term of 2 years and 8 months. The non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 1 year and 8 months.

9. For the purpose of promoting rehabilitation, I would partially suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act. I order that you serve the first 08 months of your sentence forthwith and the remaining period of 02 years is suspended for 3 years.

10. It is submitted that you have been in custody in view of this matter since 04/06/18. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act. I hold that the period to be regarded as served should be 03months and 03 weeks.

11. Accordingly, you are sentenced to an imprisonment term of 2 years and 8 months with a non-parole period of 01 year and 8 months. Your sentence is partially suspended where you shall serve 08 months of your sentence forthwith and the remaining period of 02 years is suspended for 03 years. Therefore, your non-parole period would be relevant only in the event you are to serve your full term.
12. In view of the period spent in custody, the time remaining to be served before your sentence is suspended shall be 04 months and 01 week.

Sentence of the second accused

13. You are 40 years old. It is submitted that you have 6 children and that you were supporting your elderly mother. In your mitigation, apart from the fact that you have entered an early guilty plea you have submitted that;
 - a) You are remorseful;
 - b) You have cooperated with the police; and
 - c) All items have been recovered.
14. I would select 6 years as the starting point of your aggregate sentence. In view of the above aggravating factor I would add 2 years to your sentence. I would deduct 3 years and 6 months in view of the above mitigating factors. Now your sentence is an imprisonment term of 4 years and 6 months. In view of your early guilty plea through which you have saved this court's time and resources, you will be given a discount of one-third. Accordingly, your final aggregate sentence is an imprisonment term of 3 years. The non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 2 years.
15. For the purpose of promoting rehabilitation, I would partially suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act. I order that you serve the

first 12 months of your sentence forthwith and the remaining period of 02 years is suspended for 3 years.

16. It is submitted that you have been in custody in view of this matter since 04/06/18. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act. I hold that the period to be regarded as served should be 03 months and 03 weeks.

17. Accordingly, you are sentenced to an imprisonment term of 3 years with a non-parole period of 02 years. Your sentence is partially suspended where you shall serve 12 months of your sentence forthwith and the remaining period of 02 years is suspended for 03 years. Therefore, your non-parole period would be relevant only in the event you are to serve your full term.

18. In view of the period spent in custody, the time remaining to be served before your sentence is suspended shall be 08 months and 01 week.

19. The sentences are as follows;

First accused - Imprisonment term of 02 years and 08 months with a non-parole period of 01 year and 08 months. You shall serve 08 months of your sentence forthwith and the remaining period of 02 years is suspended for 03 years. In view of the period spent in custody, the time remaining to be served before your sentence is suspended shall be 04 months and 01 week.

Second accused - Imprisonment term of 03 years with a non-parole period of 02 years. You shall serve 12 months of your sentence forthwith and the remaining period of 02 years is suspended for 03 years. In

view of the period spent in custody, the time remaining to be served before your sentence is suspended shall be 08 months and 01 week.

20. Thirty (30) days to appeal to the Court of Appeal.



Solicitors;

**Office of the Director of Public Prosecutions for the State.
Ravinesh Goundar Lawyers, Suva for both Accused.**