

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 18 OF 2019

STATE

V

RUSIATE TAUBALE

Counsel: Ms. M. Konrote for State
Ms. L. David for Defence

Date of Judgment: 1 November 2019

Date of Sentence: 8 November 2019

SENTENCE

1. Rusiate Taubale, you were convicted after trial of one count of Aggravated Robbery. The information is as follows:

Statement of Offence

AGGRAVATED ROBBERY: contrary to section 311(1) (a) of the Crimes Act 2009.

Particulars of Offence

RUSIATE TAUBALE on the 25th of December, 2018 in Raiwaqa in the Central Division, in the company of others, robbed NALIN NAVNEET SINGH of 1xblack Samsung J5 mobile phone and \$70 in cash, the properties of the said NALIN NAVNEET SINGH.

2. The facts of the case are that at around midnight on the Eve of Christmas in 2018, you with others approached the complainant who was standing on the road. You asked him for a roll (cigarette). When the complainant told that he did not have any, you punched his face. When the complainant fell down, others took out complainant's mobile phone and around \$ 70 in cash from his pocket. As a result of the punch, complainant's face was badly swollen. He had a black eye and bled from his nose. You were drunk at the time of offence.

You pleaded not guilty to the above charge and at the ensuing trial, you were found guilty by this Court as charged and convicted accordingly.

3. The maximum sentence prescribed for Aggravated Robbery is 20 years' imprisonment. The tariff for Aggravated Robbery as per the decision of the Supreme Court in *Wise v State* [2015] FJSC 7; CAV0004.2015 (24 April 2015) is 8 to 16 years' imprisonment. In *Wise* (supra) Gates CJ (as he then was) enunciated the following factors that would enhance the sentence:

- (i) offence committed during a home invasion.
- (ii) in the middle of the night when victims might be at home asleep.
- (iii) carried out with premeditation, or some planning.
- (iv) committed with frightening circumstances, such as the smashing of windows, damage to the house or property, or the robbers being masked.
- (v) the weapons in their possession were used and inflicted injuries to the occupants or anyone else in their way.
- (vi) injuries were caused which required hospital treatment, stitching and the like, or which come close to being serious as here where the knife entered the skin very close to the eye.
- (vii) the victims frightened were elderly or vulnerable persons such as small children.

4. Except for the facial swelling and nostril bleeding caused to the complainant, which required hospital treatment, other aggravating factors described in *Wise* (supra) are not relevant to the present case and clearly distinguishable from that case. Depending on the nature and circumstances of the robbery, the courts in Fiji in a series of cases [*State v Vatunicoko* [2018] FJHC 885; HAC210.2018 (21 September 2018) *State v Koi* [2016] FJCA127; AAU79.214 (24 August 2019) *State v Ketewai* [2019] FJHC 468; HAC210.2018 (21 May

2019)] have deviated from the said tariff in order to arrive at a sentence that is proportionate to the offence.

5. In *Tawake v State* [2019] FJCA 182; AAU0013.2017 (3 October 2019) the Court of Appeal posed the following question: [33]

“ The question that would arise is considering the circumstances of the case and the seriousness of the offence is it possible to move away from the tariff set in Wallace Wise (Supra) for aggravated robbery which was for a home invasion situation and adopt the tariff suggested in Raqauqau (Supra) and adopted in Vatunicoko (Supra) of 18 months to 5 years”.

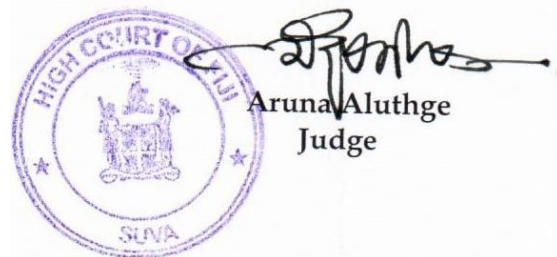
And at [35] the Court answered the question it raised and held:

“The adoption of the tariff in Wise (Supra) does not seem to be appropriate to the present case as it does not come within the nature of a home invasion category of aggravated robbery and is a situation which would come within the type of street mugging cases. Considering the objective seriousness of the offending and the degree of culpability, the harm and loss caused to the complainant it would be appropriate to follow the sentencing pattern suggested for instances of street mugging.

6. In *Tawake (supra)*, the court had considered a similar factual background to the present case with the exception of armed invasion. When the complainant was going home at about 4 .30 p.m., the Appellant with another person had called him and asked for money. When the complainant had said that he did not have any money, the Appellant had hit him with a knife and the other person had assaulted him with an iron rod. The complainant had known the Appellant as he was his neighbour. After assaulting the complainant the Appellant had taken \$20 from him and run away. The complainant had been sent for a medical examination. Having considered these circumstances, the Court of Appeal reduced the sentence to 3 years and 2 months.
7. In assessing the objective seriousness of your offending in the present case, I looked at the maximum sentence prescribed for offence, the degree of culpability and the harm and loss

caused to the complainant. Having considered the objective seriousness of the offending, I start your sentence with a starting point of 4 years.

8. The complainant was attacked at night time. He was punched causing him injuries and a black eye. He received treatments from the hospital. You were drunk at the time of the offence. These factors aggravated your offending. I increase your sentence by 2 years.
9. In mitigation, your counsel has informed the court that you are 25 year old self-employed earning an income of \$50 a day. You support two siblings when your parents are away in Tonga. You are a first offender and have no bad criminal record for the past 25 years. You have been in remand for nearly 4 months. I separately discount your remand period and the total deduction is 2 years. Now your sentence is an imprisonment period of 4 years.
10. The courts have a duty to denounce and deter this kind of anti-social behaviour using violence on innocent people during night time. These kinds of offences will undoubtedly cause panic and will eventually affect the general public. The primary purpose of the punishment for the offence involving the use of violence is deterrence, both special and general. I have also considered your potential for rehabilitation as a young and first offender.
11. In light of the recent Supreme Court decision in *Timo v State* [2019] FJSC 22; CAV0022.2018 (30 August 2019), I considered the submission of your counsel that you are a young first offender having a greater chance of rehabilitation. You committed this offence after consuming alcohol with your friends. There is no evidence of preplanning. Taking all these factors into account, I would not impose a non-parole period.
12. I sentence you to 4 years' imprisonment.



At Suva

8 November 2019

Counsel: Office of the Director of Public Prosecution for Prosecution
 Office of the Legal Aid Commission for Accused