

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 26 OF 2019

STATE

-v-

- 1. VASEVA SAUMAKI**
- 2. ELENOA ROKOTINAI**
- 3. TARIVINI SENIREWA**

Counsel: **Ms. S. Shameem for Prosecution**
Mr. T. Kean for Accused

Date of Sentencing Hearing : 14 May 2019

Date of Sentence : 14 May 2019

SENTENCE

- 1. Vaseva Saumaki, Elenoa Rokotinai, Tarivini Senirewa, you were jointly charged with Aggravated Robbery on following information.**

Statement of Offence

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

Particulars of Offence

VASEVA SAUMAKI, ELENOA ROKOTINAI, TARIVINI SENIREWA on the 17th day of January at Nabua in the Central Division, stole an Alcatel Mobile Phone valued at \$ 50, FNPF Card, E ticketing Card and cash amounting to \$ 150, all to a total value of \$ 200, being the properties of MUKESH CHAND and immediately before stealing used force on MUKESH CHAND.

2. In the presence of your counsel, you have pleaded guilty to the charge on your own free will. You agreed the Summary of Facts read by the Prosecution in court. I am satisfied that each of you understood the charge and the Summary of Facts. I am also satisfied that your guilty plea is informed and unequivocal. The Summary of Facts satisfies the elements of Aggravated Robbery. You are convicted as charged.
3. In sentencing you, I have taken into account the following Summary of Facts agreed by you;

The Complainant is Mukesh Chand, 49 years old, Self Employed of Nanuku Settlement, Vatuwaqa. The 1st Accused is Vaseva Saumaki, 20 years old, Domestic Duties of Nanuku Settlement, Vatuwaqa. The 2nd Accused is Elenoa Rokotina, 19 years old, Student of Wailea Settlement, Vatuwaqa. The 3rd Accused is Tarivini Senirewa, 24 years old, Unemployed of Wailea Settlement, Vatuwaqa.

On the 17th January, 2019 at about 1.30am, the Complainant was returning to his home from his friend's home in Nadera. He got off the bus at the Nabua bus Stop near Shop & Save Supermarket and started walking towards Nanuku Settlement in Vatuwaqa.

As he approached the Bus Stop near MGM School, he was robbed by the 3 Accused persons.

The 1st Accused grabbed a coin bag containing \$150.00 cash, the Complainant's FNPF Card and his E-ticketing Card from the Complainant. The 2nd Accused grabbed the Complainant's Black Alcatel Mobile Phone Valued at \$50.00. The 3rd Accused stood a few metres away from them and after the 1st and 2nd Accused had grabbed his belongings of the Complainant, the 3 Accused persons then ran away together.

The Complainant reported the matter to Nabua Police Station. The Complainant had recognized the 1st Accused person as she resided in the same community as him. The 1st Accused was arrested, interviewed under caution and subsequently charged for Aggravated Robbery contrary to section 311(1)(a) of the Crimes Act.

The 1st Accused fully admitted to the offence in her caution interview; a copy of the 1st Accused's Record of Interview is annexed and marked as "A". In her caution interview, the 1st Accused states that the 3 Accused persons robbed the Complainant. She further named the 2nd and 3rd Accused persons involved. The 1st Accused also admitted that she had taken the coin bag containing \$150.00 cash whereas it the 2nd Accused who had grabbed the Black Alcatel Mobile Phone from the Complainant. She also admits that after the 3 Accused persons ran away from robbing the Complainant, they shared the \$150.00 cash money stolen.

Based on the lead, the police obtained a search warrant dated 17th January 2019 to search the premises of the 2nd Accused for the stolen Black Alcatel Mobile Phone; a copy of the Information to Obtain Search Warrant and Search Warrant is annexed and marked as "B". Upon searching the premises of the 2nd Accused, the Black Alcatel Mobile Phone valued at \$50.00 belonging to the Complainant was recovered; a copy of the Search List dated 17th January, 2019 is annexed and marked as "C".

The 2nd Accused person was also interviewed under caution on 17th January, 2019 and subsequently charged for Aggravated Robbery contrary to section

313(1)(a) of the Crimes Act 2009. The 2nd Accused also fully admitted to the offence in her caution interview; a copy of the Accused's Record of Interview is annexed and marked as "D". in her caution interview, the 2nd Accused states that the 3 Accused persons robbed the Complainant. She further named the 1st and 3rd Accused person involved. The 2nd Accused also admitted that she had grabbed the Black Alcatel Mobile Phone form the Complainant and that the 1st Accused had taken the coin bag containing \$150.00 cash. She also admits that after the 3 Accused persons ran away from robbing the Complainant, they shared the \$150.00 cash money stolen.

The 3rd Accused person was also interviewed under caution on 18th January 2019 and subsequently charged for Aggravated Robbery contrary to section 313(1)(a) of the Crimes Act 2009. The 3rd Accused also fully admitted to the offence in her caution interview; a copy of the Accused's Record of Interview is annexed and marked as "E".

The 1st and 2nd Accused are first time offenders whereas the 3rd Accused has a previous conviction, a copy of the 3rd Accused's List of Previous Convictions is annexed and marked as "F".

The Complainant's Alcatel Black Mobile Phone, FNPF card and E-ticketing Card was recovered. The cash stolen amounting to \$150.00 was however not recovered.

On 20th March, 2019, the 3 Accused persons entered an unequivocal plea of guilty in the presence of their Counsel.

4. The maximum sentence prescribed for Aggravated Robbery is 20 years' imprisonment. The tariff depends on the nature and circumstances of the robbery. The tariffs are as follows:

Street mugging: 18 months to 5 years' imprisonment (*Raqauqau v State* [2008] FJCA 34; AAU0100.2007 (4 August 2008).

Home invasion: 8–16 years' imprisonment (*Wise v State* [2015] FJSC 7;
CAV0004.2015 (24 April 2015).

A spate of robberies: 10 -16 years' imprisonment (*Nawalu v State*[2013] FJSC 11;
CAV0012.12 (28 August 2013)

Robbery of a taxi driver : 4-10 years (*State v Tamani* [2011] FJHC 725;

5. I would consider your offending as a street mugging which attracts a sentence ranging from 18 months to 5 years' imprisonment. In assessing the objective seriousness of your offending, I looked at the maximum sentence prescribed for the offence, the degree of culpability and the harm caused to the complainant. There is a common basis in selecting the starting point for each one of you as the culpability level is the same. You have committed an opportunistic robbery without using any weapons or violence. There are no injuries to the victim. Having considered the objective seriousness of the offending, I start your sentence with a starting point of 3 years, in the middle range of the tariff.
6. The complainant was robbed at night time. You have used force on an elderly person who was vulnerable at night. These factors aggravated your offending. I increase your sentence by 2 years.
7. All of you have pleaded guilty to the charge at the first available opportunity. You have been remorseful of your actions. You have saved time and resources of this court by tendering an early guilty plea. You are young in your twenties. You seek another chance to rehabilitate yourselves and forgiveness of this court. You cooperated with police investigations. All stolen items except the cash were recovered. I have considered these strong mitigating factors in coming to your final sentence.

Sentence for Vaseva Saumaki, Elenoa Rokotinai (1st and 2nd Accused)

8. **Vaseva Saumaki, Elenoa Rokotinai** both of you are 20 years of age and single. You are first offenders. The Summary of Facts reveals that you were influenced by the 3rd accused to commit this robbery. You have strong mitigating factors mentioned above. You have been in remand for nearly 4 months. Your remand period will be separately discounted. For strong mitigating factors and the remand period, I give each one of you a discount of 3 years to arrive at a sentence of 2 years' imprisonment.

9. Having considered your youth, clean record and your willingness to rehabilitate, I partially suspend your sentence. Accordingly, you are to serve only 6 months in prison effective from today. The rest of the sentence is suspended for a period of 2 years.

Sentence for Tarivini Senirewa (3rd Accused)

10. **Tarivini Senirewa**, your case is different. You are 24 years of age and comparatively a mature person. You influenced the other young girls to commit this robbery by watching from a distance. When you committed this offence a suspended sentence was still pending in your record for a similar offending. It seems that you have not learnt a lesson from the past experience and have not shown a strong willingness to rehabilitate. Still you have strong mitigating factors described above. You also have spent nearly 4 months in remand. Your remand period will be separately discounted.



11. For mitigating factors and the remand period, I discount your sentence by 2 years and 6 months to arrive at a sentence of 2 years and 6 months imprisonment. Having considered your youth and rehabilitation potential, I partially suspend your sentence. Accordingly you are to serve only one year in prison ef-

fective from today while the rest of your sentence is suspended for a period of 2 years.

12. The purposes of this punishment are for both deterrence and rehabilitation.

Summary

13. **Sentence for 1st and 2nd accused** - 2 years' imprisonment, one and half years of which is suspended for a period of 2 years. Accordingly, **1st and 2nd accused persons are to serve only 6 months in prison effective from today. The rest of the sentence is suspended for a period of 2 years.**
14. **Sentence for 3rd accused** - 2 years and 6 months' imprisonment, one and half of which is suspended for a period of 2 years. Accordingly, **you are to serve only one year in prison effective from today. The rest of the sentence is suspended for a period of 2 years.**
15. You have 30 days to appeal to the Court of Appeal.

Aruna Aluthge
Judge

AT Suva

On 14th May, 2019

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