

IN THE HIGH COURT OF FIJI

AT LABASA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 28 of 2018 &

HAC 84 of 2018

STATE

V

JOVILISI NAQIOLEVU

SEKOVE ASAMA

**Counsel** : Ms. Amelia Vavadakua with Mr. Inia Rakaria for the State  
Mr. Jalesi Korotini for both Accused

**Sentence Hearing** : 28 June 2019

**Date of Sentence** : 12 July 2019

### SENTENCE

[1] As per the Amended Consolidated Information, Jovilisi Naqiolevu and Sekove Asama, you were charged with the following offence:

#### *Statement of Offence*

**AGGRAVATED ROBBERY**: Contrary to Sections 311 (1) (a) of the Crimes Act 2009.

#### *Particulars of Offence*

**JOVILISI NAQIOLEVU and SEKOVE ASAMA** on the 17<sup>th</sup> day of March 2018, at Savusavu, robbed **RAJNEEL PRASAD** of cash amounting to FJ\$110.00 and a taxi registration LT1453 worth FJ\$10,000.00, the property of **JAMES MARIMUTTU**.

- [2] The Director of Public Prosecutions (DPP) had originally filed Consolidated Information against the two of you on 22 June 2018. The Amended Consolidated Information was filed by the DPP on 27 June 2019.
- [3] When the matter came up before me on 28 June 2019, you were both ready to take your pleas. You pleaded guilty to the one count in the Amended Consolidated Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charge against you and the consequences of your pleas.
- [4] Thereafter, on the same day, the State filed the Summary of Facts. The Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty pleas to be unequivocal. I found that the facts support all elements of the count of Aggravated Robbery in the Amended Consolidated Information, and found the charge proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own pleas and I convicted you of the count as charged.
- [5] I now proceed to pass sentence on both of you.
- [6] The Summary of Facts filed by the State was as follows:

**"1. BACKGROUND**

- 1.1 *The complainant in this matter is Rajneel Prasad, 25 years, Taxi Driver.*
- 1.2 *The accused are Jovilisi Naqiolevu (Accused 1) and Sekove Asama (Accused 2).*

**2. INCIDENT**

- 2.1 *On the 17<sup>th</sup> of March, 2018, at about 22.30 hours at Savusavu, both the accused hired the Taxi Registration No. LT1453 driven by Rajneel Prasad to go to Naqere to buy some beer from one Vijay Shopping Centre.*
- 2.2 *After Accused 1 bought two bottles of beer and Accused 2 gave the complainant \$40 cash to drop them at Vatudamu.*
- 2.3 *When they reached Salt Lake junction road, Accused 2 told the complainant to take the Salt Lake feeder road to pick his clothes from the farm.*

- 2.4 *Whilst driving through the said feeder road, Accused 2 who was sitting in the front passenger seat told the complainant to stop the vehicle as he wanted to relieve himself.*
- 2.5 *Both Accused got off the vehicle.*
- 2.6 *After a few minutes they both got back in the vehicle however this time Accused 1 now sat in the front seat whilst Accused 2 sat in the back seat.*
- 2.7 *Before the complainant moved the taxi, both the accused robbed the complainant of \$110 and a taxi registration LT1453.*
- 2.8 *The complainant jumped out from the window and ran away.*
- 2.9 *Accused 1 and in the company of Accused 2, drove the taxi towards Tacilevu.*
- 2.10 *The Taxi was later abandoned at Kasavu.*
- 2.11 *The matter was reported to Savusavu Police.*
- 2.12 *Both accused made admissions in their Caution Interview. Accused 1 made admissions in Q & A: 40, 43, 47-55; Accused 2 made admissions in Q & A 82, 83, 87, 89, 90, and 92.*
- 2.13 *On 19<sup>th</sup> day of March 2018, Accused 1 was arrested and charged with aggravated robbery. Accused 2 was arrested and charged with Aggravated Robbery on 21/3/2018.*

### **3. PREVIOUS CONVICTION**

- 3.1 *Mr Jovilisi Naqiolevu 1A is a first offender and Mr Sekove Asama 2A has two previous convictions”.*

- [7] Jovilisi and Sekove you have both admitted to the above Summary of Facts and taken full responsibility for your actions.
- [8] Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.
- [9] In terms of Section 311 (1) of the Crimes Act No. 44 of 2009 (Crimes Act), “A person commits an indictable offence (of Aggravated Robbery) if he or she-
  - (a) Commits a robbery in company with one or more other persons; or

(b) .....

The offence of 'Robbery' is defined at Section 310 (1) of the Crimes Act as follows:

*"A person commits an indictable offence (which is triable summarily) if he or she commits theft and —*

*(a) immediately before committing theft, he or she—*

*(i) uses force on another person; or*

*(ii) threatens to use force then and there on another person —*

*with intent to commit theft or to escape from the scene; or*

*(b) at the time of committing theft, or immediately after committing theft, he or she—*

*(i) uses force on another person; or*

*(ii) threatens to use force then and there on another person—*

*with intent to commit theft or to escape from the scene".*

[10] The offence of Aggravated Robbery in terms of Section 311 (1) of the Crimes Act carries a maximum penalty of 20 years imprisonment.

[11] The tariff for the offence of Aggravated Robbery is between 8 and 16 years imprisonment. This tariff has been endorsed by the Supreme Court in **Wallace Wise v. State** [2015] FJSC 7; CAV 04 of 2015 (24 April 2015); where it was held:

*".....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."*

[12] However, in **State v. Vatunicoko** [2018] FJHC 885; HAC210.2018 (21 September 2018); His Lordship Justice Goundar held as follows:

*"In assessing the objective seriousness of your offending, I am mindful that aggravated robbery in the company of others is punishable by 20 years' imprisonment. The tariff depends on the nature and circumstances of the robbery. The tariff is as follows:*

*Street mugging: 18 months to 5 years' imprisonment (Raquauqau 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)."*

[13] In **State v. Waisiki Ragici & Others** [2012] FJHC 1082; HAC366, 367, 368.2011 (15 May 2012); His Lordship Justice Goundar said:

*"[10] The maximum penalty for aggravated robbery is 20 years imprisonment.*

*[11] In State v Susu [2010] FJHC 226, a young and a first time offender who pleaded guilty to robbing a taxi driver was sentenced to 3 years imprisonment.*

*[12] In State v Tamani [2011] FJHC 725, this Court stated that the sentences for robbery of taxi drivers range from 4 to 10 years imprisonment depending on force used or threatened, after citing Joji Seseu v State [2003] HAM043S/03S and Peniasi Lee v State [1993] AAU 3/92 (apf HAC 16/91).*

*[13] In State v Kotobalavu & Ors Cr Case No HAC43/1(Ltk), three young offenders were sentenced to 6 years imprisonment, after they pleaded guilty to aggravated robbery. Madigan J, after citing Tagicaki & Another HAA 019.2010 (Lautoka), Vilikesa HAA 64/04 and Manoa HAC 061.2010, said at p6:*

*"Violent robberies of transport providers (be they taxi, bus or van drivers) are not crimes that should result in non-custodial sentences, despite the youth or good prospects of the perpetrators...."*

*[14] Similar pronouncement was made in Vilikesa (supra) by Gates J (as he then was):*

*"violent and armed robberies of taxi drivers are all too frequent. The taxi industry serves this country well. It provides a cheap vital link in short and medium haul transport .... The risk of personal harm they take every day by simply going about their business can only be ameliorated by harsh deterrent sentences that might instil in prospective muggers the knowledge that if they hurt or harm a taxi driver, they will receive a lengthy term of imprisonment."*

[14] In **State v. Esala Rabalolo** [2019] FJHC 278; HAC429.2018 (29 March 2019); His Lordship Justice Aluthge, citing **State v Tamani** (supra) adopted the tariff of 4 to 10 years imprisonment for the robbery of a taxi driver.

[15] However, in this case the two accused have been charged with Aggravated Robbery, where the maximum penalty prescribed by law is 20 years imprisonment, whereas for the offence of Robbery the maximum penalty is 15 years imprisonment.

[16] In this case not only the taxi driver was robbed of his belongings, the very taxi he was driving has also been robbed by the two accused. Therefore, in my opinion, the appropriate tariff in the instant case, should be between 8 and 16 years' imprisonment (as decided in *Wallace Wise v. State* (*supra*)).

[17] In determining the starting point within a tariff, the Court of Appeal, in *Laisiasa Koroivuki v State* [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range."*

[18] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, including the maximum sentence prescribed for the offence, the nature and gravity of the offence and the degree of culpability, Jovilisi and Sekove, I commence your sentences at 8 years' imprisonment for the offence of Aggravated Burglary.

[19] The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) You paid scant regard to the safety and security of the complainant, who was engaged in his employment as a transport provider.
- (iii) You committed this offence in the late hours of the night.

[20] Jovilisi, in mitigation, you have submitted as follows:

- (i) That you are a first offender and that you have no previous convictions to date. The State too confirms that there are no previous convictions recorded against you.
- (ii) You have fully cooperated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.

- (iii) You have sought forgiveness from this court and have assured that you will not re-offend. You have submitted that you are truly remorseful of your actions.
- (iv) You state that the act was not pre-planned and was merely opportunistic. You state that at the time of offending you were heavily intoxicated with alcohol.
- (v) That you have entered a guilty plea.

[21] Sekove, in mitigation, you have submitted as follows:

- (i) You have fully cooperated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (ii) You have sought forgiveness from this court and have assured that you will not re-offend. You have submitted that you are truly remorseful of your actions.
- (iii) You state that the act was not pre-planned and was merely opportunistic. You state that at the time of offending you were heavily intoxicated with alcohol.
- (iv) That you have entered a guilty plea.

[22] Jovilisi, you are 26 years of age. You are said to be married with 2 children aged 4 and 18 months respectively. You are residing in Tacilevu Village in Savusavu. It is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.

[23] Sekove, you are 21 years of age. You are said to be married with and having a one year old child. You are residing in Labasa. It is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.

[24] Considering the aforementioned aggravating factors, Jovilisi and Sekove, I increase your sentences by a further 2 years. Now your sentences for the offence would be 10 years imprisonment.

[25] Jovilisi, I accept that you are a person of previous good character and that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine. Accordingly, considering these mitigating factors, I deduct 3 years from your sentence. Now your sentence would be 7 year's imprisonment.

[26] Jovilisi, I accept that you entered a guilty plea in this case. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a

further discount of 2 year's imprisonment. Now your final sentence would be 5 years' imprisonment.

- [27] Sekove, it is stated that you have two active previous convictions for damaging of property and from escaping from lawful custody. Therefore, I cannot consider you to be a person of previous good character. However, I accept that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine. Accordingly, considering these mitigating factors, I deduct 2 years from your sentence. Now your sentence would be 8 year's imprisonment.
- [28] Sekove, I accept that you entered a guilty plea in this case. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a further discount of 2 year's imprisonment. Now your final sentence would be 6 years' imprisonment.
- [29] Accordingly, Jovilisi I sentence you to a term of 5 years imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you serve 3 years of that sentence.
- [30] Sekove, I sentence you to a term of 6 years imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you serve 4 years of that sentence.
- [31] Section 24 of the Sentencing and Penalties Act reads thus:
- "If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*
- [32] Jovilisi, you have been in custody for this offence since the date of your arrest, which was on 19 March 2018, which is approximately 16 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that the period of 16 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.
- [33] Sekove, you have been in custody for this offence since 23 March 2018, which is also approximately 16 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that the period of 16 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.



[34] In the result, Jovilisi, you are sentenced to a term of imprisonment of 5 years' imprisonment with a non-parole period of 3 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 3 years and 8 months.

Non-parole period - 1 year and 8 months.

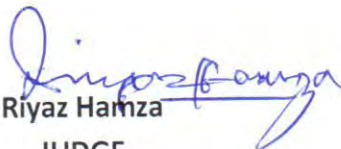
[35] In the result, Sekove, you are sentenced to a term of imprisonment of 6 years' imprisonment with a non-parole period of 4 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 4 years and 8 months.

Non-parole period - 2 year and 8 months.

[36] You have 30 days to appeal to the Court of Appeal if you so wish.



  
Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT SUVA

Dated this 12<sup>th</sup> Day of July 2019

Solicitors for the State : Office of the Director of Public Prosecutions, Labasa.  
Solicitors for the Accused : Office of the Legal Aid Commission, Labasa.