

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 226 OF 2019

STATE

-v-

- 1. AUTIKO NATINI LIUNABA**
- 2. ANANAIASA LESIKINAIYALA MILA**

Counsel: Ms. U. Tamanikaiyaroi and Mr. R. Kumar for Prosecution
1st Accused unrepresented
Ms. A. Singh for Defence

Date of Sentencing Hearing: 30 August 2019
Date of Sentence : 23 September 2019

SENTENCE

1. Mr. Autiko Naitini Liunaba and Mr. Ananaiasa Lesikinaiyala Mila, both of you were jointly charged with one count of Aggravated Robbery on following information.

Statement of Offence

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

Particulars of Offense

Autiko Naitini Liunaba and **Ananaiasa Lesikinaiyala Mila** on 02 June 2019, at Nabua in the Central Division, in the company of each other, stole a black Puma brand bag containing assorted clothes and a laptop bag containing a HP brand laptop from Shyamal Sumit Kumar and immediately before stealing from Shyamal Sumit Kumar, they used force on him.

2. Previously, you were charged separately in cases HAC 223 of 2019 and HAC 226 of 2019 and you had pleaded guilty at the first available opportunity. When an amended and consolidated Information was filed, both of you have pleaded guilty to the above charge on your own free will.

3. I am satisfied that each one of you understood the Charge and the Summary of Facts. I am also satisfied that your guilty pleas are informed and unequivocal.

4. You have agreed the Summary of Facts read in court by the Prosecution. In passing the sentence, I have taken into account the following Summary of Facts agreed by you:
 - I. The 1st Accused in this matter is Autiko Natini Liunaba (DOB 21/07/91), a 28 year old farmer of Navuso Agricultural School.

 - II. The 2nd Accused in this matter is Ananaiasa Lesikinaiyala Mila (DOB 17/02/95), a 24 year old mechanic boy of Muslim League, Nabua.

 - III. The victim in this matter is Shyamal Sumit Kumar, a 28 year old male of Ratu Mara Road, Nabua, Suva.

 - IV. On 02 June 2019 at about 1815 hours, Shyamal Sumit Kumar was walking along Ratu Mara Road, Nabua towards his flat while he was carrying a Puma branded bag containing assorted clothes and a laptop bag containing his HP branded laptop.

 - V. As he was about to go up the driveway to his flat, Shyamal Sumit Kumar was attacked from behind by two I-Taukei boys. The said two I-Taukei boys were the 1st accused, Autiko Natini Liunaba and his cousin, the 2nd accused, Ananaiasa Lesikinaiyala Mila. Autiko Natini Liunaba has grabbed Shyamal Sumit Kumar from behind while Ananaiasa Lesikinaiyala Mila had tried to grab Shyamal Sumit Kumar's bag.

 - VI. Shyamal Sumit Kumar resisted the said attackers where he pushed them but he was punched from behind. After this, Autiko Natini Liunaba and Ananaiasa Lesikinaiyala-

la Mila pulled Shyamal Sumit Kumar's bag from him, causing Shyamal Sumit Kumar to fall down on the ground.

- VII. When Shyamal Sumit Kumar had fallen down on the ground, Autiko Natini Liunaba had grabbed his Puma bag while Ananaiasa Lesikinaiyala Mila had grabbed his laptop bag and both had then run away. However this incident had been seen by Maria Wati who knew Autiko Natini Liunaba and Ananaiasa Lesikinaiyala Mila where she had identified them as being the boys who had grabbed Shyamal Sumit Kumar's bags.
- VIII. The first bag belonging to Shyamal Sumit Kumar (Puma Bag) contained a pair of orange and blue company uniform, blue collar t-shirt worth FJ\$30.00, long sleeve green FIFA hoody with a soccer ball logo worth FJ\$49.95, a maroon round neck t-shirt worth FJ\$30.00, a pair of Bata flip flops worth Fj\$6.00, 01 Chiadin hair gel worth FJ\$2.50, 02 pairs of three quarter pants (01 coloured green/grey and another coloured blue) FJ\$60.00, pink and a black Bula shirt worth FJ\$28.00. The second bag was a HP laptop bag containing a HP laptop worth FJ\$2300.00, black Samsung charger worth FJ\$10.00 together with Shyamal Sumit Kumar's FNU certificates and 02 work references from Tropic Forest and Iqbal Plumbing.
- IX. The matter was reported to the Police and Shyamal Sumit Kumar was medically examined at the Valelevu Health Centre on 02 June 2019 at 2000hours. The specific medical findings showed that as a result of being robbed, Shyamal Sumit Kumar sustained tenderness over his right ear, left side of his chest and bruising on his back (*attached: medical report of Shyamal Sumit Kumar dated 02/06/19*).
- X. Autiko Natini Liunaba was arrested and interviewed under caution on 15 June 2019 at Nabua Police Station. Under caution, Autiko Natini Liunaba voluntarily admitted that on 02/06/19 he had met Lesi (or the 2nd accused) who is his paternal cousin (Q&A 31-33). He admitted that together they went to Shop and Save, bought 04 cans of Joske's Brew and 04 cans of Woodstock and drank together at a mango tree at MH Nabua and finished drinking at 6pm (Q&A 34-39). He admitted that then they went to the main Ratu Mara Road and started drinking again and suddenly Lesi crossed the road and called to him where Lesi was following one Indian boy, going towards Muslim League (Q&A 40-43). Autiko Natini Liunaba didn't know the Indian boy and they followed him until he went to a driveway where he went and grabbed the Indian boy from behind (Q&A 44-51). He held the Indian Boy and Lesi

started grabbing the bags from the Indian Boy. He pulled the clothes bag and in this tussle the Indian Boy fell on the ground and Lesi got the laptop bag. They ran towards Muslim League where he heard someone calling his name “Tiko”. From there they ran towards Shalimar Street where he stopped a red taxi and went towards Nabua town (Q&A 52-61). He met Lesi again in Nabua town and they then went to Suva where they got off near Suva Private near St. John’s Ambulance and at 786 Supermarket they took out the certificates and threw it there. They went to Lokia Shopping Centre and bought more drinks. He forgot the clothes bag at the supermarket and only took the laptop (Q&A 62-72). Lesi still had the laptop by next Monday (Q&A 76) but Autiko Natini Liunaba stated that he didn’t receive any money from the sale of the laptop (Q&A 80) (*attached: Record of Interview of Autiko Natini Liunaba dated 15/06/19*).

XI. Ananaiasa Lesikinaiyala Mila was arrested and interviewed under caution on 11 June 2019. Under caution Ananaiasa Lesikinaiyala Mila voluntarily admitted that he is also known as Lesi and on 02/06/19 he had been drinking with Tiko (the 1st accused) and another (Q&A 20-29). He admitted that after drinking he was going home when Tiko called to him who was on the other side of the road so he crossed over and saw Tiko was following a Fijian man (Q&A 31-34). He admitted that Tiko told him to grab the bag which he tried to do but the Fijian man pushed him and Tiko then punched the man on his face and chest where the man fell down when he took the laptop bag and Tiko took the other things (Q&A 35-38). He admitted that he then went to Sukhu Park as Tiko had told him to wait there and he had checked the laptop to be of HP brand (Q&A 39-41). He admitted that he had sold the said laptop at a Chinese shop in Raiwaqa for \$70.00 which was later recovered and shown to him during his interview (Q&A 43-46) (*attached: Record of Interview of Ananaiasa Lesikinaiyala Mila dated 11/06/19*).

XII. Autiko Natini Liunaba and Ananaiasa Lesikinaiyala Mila were jointly charged with one count of aggravated robbery contrary to section 311 (1)(a) of the Crimes Act 2009. Autiko Natini Liunaba has one previous conviction for robbery vide Suva CF 704/14 while Ananaiasa Lesikinaiyala Mila had nil recorded priors. (*attached: Criminal Records Office Previous Conviction lists of Autiko Natini Liunaba dated 17/06/19 and Ananaiasa Lesikinaiyala Mila dated 13/06/19*).

5. The Summary of Facts satisfies all the elements of the offence of Robbery in that whilst stealing the bag, you used force on the complainant either immediately before or at the time of committing the theft with the intent to commit theft. The actions constituted Aggravated Robbery under section 311(1)(a) in that the offence of robbery was committed in the company of each other. Both of you are convicted as charged accordingly.
6. According to Section 311 of the Crimes Act, the maximum penalty for Aggravate Robbery is 20 years' imprisonment.
7. In Wise v State [2015] FJSC 7, the Supreme Court, at paragraph 25, outlined that the sentencing tariff for the offence of Aggravated Robbery is a term of imprisonment ranging from 8 to 16 years. However, in Wise (supra), the Supreme Court was dealing with a night time home invasion in which extensive violence was used. In my view, the tariff prescribed in Wise (supra) should more appropriately be applied in cases involving violent night time home invasions.
8. In this case, you robbed the complainant in a public road during daytime which can appropriately be identified as a lesser category of aggravated robbery referred to as "street mugging".
9. The State has referred the Court to an earlier Court of Appeal decision in Raqauqau –v- The State [2008] FJCA 34; AAU (4 August 2008) which dealt with sentencing in 'street mugging'. Although Raqauqau was charged with robbery with violence under section 293(1)(b) of the Penal Code Cap 17 (now repealed), which carried a maximum penalty of life imprisonment, the circumstances of the offence are similar to the facts of the present case. In that case the complainant, a male aged 18 years old, was walking home on a back road after finishing work. He was approached by Raqauqau and a co-accused. Raqauqau grabbed the complainant from the back and held his hands while the co-accused punched him. They stole \$71.00 in cash from the complainant and fled. Raqauqau pleaded guilty in the Magistrates Court and was sentenced to 5 years' imprisonment. He appealed to the High Court

against conviction and sentence. The appeal against conviction was dismissed but the High Court allowed the sentence appeal and reduced the term of imprisonment from 5 years to 4 years. Raqauqua appealed to the Court of Appeal. The Court of Appeal, [in *Raqauqua v State* [2008] FJCA 34; AAU0100.2007 (4 August 2008)] affirmed the reduction of sentence.

10. Having considered the cases cited above, the Court of Appeal in the recent case of *State v Koi* [2018] FJCA 127; AAU79.2014 (24 August 2018) approved the sentence of 5 years for lesser category of aggravated robbery referred to as “street mugging”. The High Court in number of cases has followed the said tariff of 18 months to 5 years for “street mugging” (*State v Josaia Warodo Vatunicoko* [2018] FJHC885; HAC210.2018; *State v Matagasau* - [2019] FJHC 633; HAC17.2019 (28 June 2019); *Vakatalai v State* [2017] FJHC 228; HAA035.2016 (17 March 2017); *State v Nanovu* - [2019] FJHC 162; HAC379.2018 (7 March 2019); *State v Talemaitoga* -[2018] FJHC 851; HAC265.2018 (14 September 2018); *State v Delai* -[2018] FJHC 416; HAC102.2018 (16 May 2018); *State v Baleiwai* -[2019] FJHC 163; HAC437.2018 (7 March 2019); *State v Nodrakoro* - [2019] FJHC 535; HAC42.2019 (24 May 2019); *State v Vure* -[2019] FJHC 781; HAC09.2019 (9 August 2019); *State v Rokovesu* [2019] FJHC 807; HAC232.2019 (16 August 2019). In light of the above, I would apply the tariff of 18 months to 5 years imprisonment in this case.
11. In assessing the objective seriousness of your offending, I look at the degree of culpability, the harm and loss caused to the complainant. There is a common basis in selecting the starting points for each one of you as the culpability level is the same. You have committed an opportunistic robbery without using any weapons or violence. However the degree of force used had been sufficient enough for the complainant to be fallen on the ground causing him some minor injuries. The property stolen is roughly valued at \$ 2500. Having considered all these factors, I would start your sentence with a starting point of 3 years.
12. There are aggravating features in your offence. ‘Street mugging’ is most prevalent in our society causing panic in innocent people. In *Raqauqua* (supra) the court accepted that the prevalence of such offences was to be regarded as an aggravating feature. You have used force causing the complainant some injuries. These factors aggravate the offending. I increase the sentence by 2 years for each of you to reach 5 years.

13. I would consider the mitigating circumstances separately.

The Sentence for Autiko Natini Liunaba (1st accused)

14. **Autiko**, I have considered the mitigating factors submitted to this court by you. You have cooperated with police investigations. You have pleaded guilty to the charge at the first available opportunity and 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 yourself and forgiveness of this court. However, your admission that you have a previous conviction of similar nature does not allow me to give any discount on account of previous good character. You have been in remand for nearly 3 months. Your remand period is separately discounted. For mitigating factors and the remand period, I discount your sentence by 2 years to arrive at a sentence of 3 years' imprisonment.
15. In the mitigation hearing, you made submissions on the question of whether a non-parole period should be fixed and if so, the period. I have taken into consideration the fact that you have not learnt a lesson from your previous conviction when you committed this offence. In view of the recidivist tendency in you and the seriousness of the offence you have committed, an early release from the remand centre would be detrimental to the interests of the community. I have decided to impose a non-parole period but not too close to the final sentence because you have only one previous conviction. I would fix a non-parole period of 1 year. Accordingly, you will not be eligible for parole until you have served one year in the remand centre.

The Sentence for Ananaiasa Lesikinaiyala Mila (2nd Accused)

16. **Ananaiasa**, you have strong mitigating factors. You are 24 years of age, married with a son. You have cooperated with police investigations and helped to recover the laptop stolen. 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 a first offender. You seek another chance to rehabilitate yourself and you seek forgiveness of this court. You should receive a discount on account of previous good character. You have been in remand for nearly 3 months. Your remand period will be

discounted separately. For mitigating factors and the remand period, I discount your sentence by 3 years to arrive at a sentence of 2 years' imprisonment. Given your age and the clean record, you have a strong potential for rehabilitation. In view of that, I would not fix a non-parole period so as to allow you to reap the complete benefit of remission should you earn one during incarceration.

17. In *Raqauqau* (supra) the Court of Appeal accepted that “irrespective of the offender’s age and previous record, a custodial sentence would be the court’s only option for this type of offence unless there were exceptional circumstances” (at paragraph12). I am mindful that this offence is most prevalent in our society and the deterrence should be the main purpose of the sentence. In light of the above, I am not inclined to suspend the sentences.

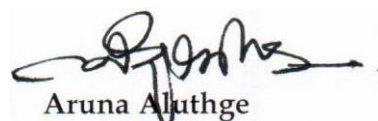
Summary

18. **Autiko Natini Liunaba (1st accused), you are sentenced to 3 years’ imprisonment with a non-parole period of 1 year.**

Ananaiasa Lesikinaiyala Mila (2nd accused), you are sentenced to 2 years’ imprisonment. No non parole period is fixed.

19. You have 30 days to appeal to the Court of Appeal.




Aruna Aluthge
Judge

At Suva

23 September 2019

**Counsel: Office of the Director of Public Prosecution for Prosecution
Office of the Legal Aid Commission for Defence (2nd Accused)**