

**IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION**

Crim. Case No: HAC 331 of 2018

STATE

vs.

- 1. ASESELA NAUREURE**
- 2. MAIKA TOVAGONE**

Counsel: Ms. U. Tamanikaiyaroi with Mr. U. Lal for the State
Ms. L. Ratidara for 1st Accused
Ms. S. Hazelman with Mr. K. Skiba for 2nd Accused.

Date of Hearing: 26th, 27th, 28th 29th, 30th October, 2020, 3rd and 4th November 2020

Date of Closing Submission: 05th November 2020

Date of Summing Up: 11th November 2020

Date of Judgment: 20th November 2020

Date of Sentence: 30th November 2020

SENTENCE

1. The court found the two accused, Mr Asesela Naureure and Mr Maika Tovagone, guilty of one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act, which carries a maximum penalty of twenty years imprisonment. The particulars of the offence are that:

Statement of Offence

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

Particulars of Offence

ASESELA NAUREURE and MAIKA TOVAGONE with others on the 20th day of August 2018, at Suva in the Central Division, in the company of each other committed theft of assorted properties namely \$100 cash, 1 x brown leather Wallet and 1 x Oakley bag belonging to **ROY FARRELES** and immediately before committing the theft, used force on **ROY FARRELES** and **PRIYA KUMAR**.

2. It was proved the two accused, together with two other accomplices, had forcefully entered the Rubina Medical Centre at around 1.20 p.m. on the 20th of August 2018 and robbed the items as stipulated in the particulars of the offence therein.
3. This is a case of a violent invasion of the business premises which provides an essential and important service to the public. Hence, I find this is a very serious offence. Wherefore, it is my opinion that such offenders must be dealt with severe and harsh punishment. Therefore, the purpose of this sentence is founded on the principle of deterrence and the protection of the community. I am mindful of the principle of rehabilitation; however, this offence's seriousness outweighs the principle of rehabilitation.
4. Tariff for the offence of Aggravated Robbery, involving violent home invasions is between eight (8) years to sixteen (16) years of imprisonment (vide; **Wise v State ([2015] FJSC 7; CAV0004.2015 (the 24th of April 2015)**). The Rubina Medical Centre is not a dwelling home, but a Medical Centre which provides health and care service to the public. The Fiji Court of Appeal in **Cikaitoga v State [2020] FJCA 99; AAU141.2019 (the 8th of July 2020)** proposed that the same tariff enunciated in **Wise v State (supra)** could apply to the cases involving an invasion of business premises.

5. The victim impact report of Doctor Roy Farrales explains the adverse physical and psychological impact caused on the victim. This horrendous experience will no doubt stay in his mind for a more extended period. The accused had pulled Doctor Roy to the floor and then started to punch on his face, while one of the accomplices put his legs on the chest and abdomen of Doctor Roy. The CCTV footage and the evidence of Priya Kumar established that she was pulled down to the floor and then dragged to the surgical room by the robbers. This evidence established that the robbers had inflicted bodily injuries to the two victims during this heinous crime. Accordingly, I find that the level of harm in this offence is very high.
6. This is a well-planned crime, which had been executed meticulously. The second accused first entered the Medical Centre, pretending that he wanted to fix his gold tooth, then the rest of the robbers stormed into the Centre, without letting the victims any chance of escape or alarm the others. It was established that the accused had planned their escape as well. They had changed their shirts, soon after the incident, in order to escape from the scene without getting noticed. While executing this crime, the robbers have used a substantive amount of force on the victims. This is a place that provides an essential health service to the public. Because of the nature of the service, the Medical Centre is required to keep its entrance easily accessible to the public. The robbers used this advantage to storm into the premises without any difficulties. Even during a state of emergency or civil unrest, the health facilities are opened and not targeted for any form of attacks as it provides such a vital service to the public. Hence, I find that the level of culpability in this crime is also very high.
7. One of the robbers was armed with a cane knife. Doctor Roy was assaulted in the presence of a female employee of the Medical Centre, I find them as aggravating factors.
8. Given the seriousness of the offence, the level of harm and culpability of this offending and the aggravating factors, I find this is an appropriate case to impose a sentence at the highest end of the stipulated tariff.

Ascsela Naurerue

9. The learned Counsel for the Prosecution made an application to declare the first accused as a habitual offender pursuant to Section 11 of the Sentencing and Penalties Act. If the Court finds that the accused constitutes a threat to the community, then it can declare the accused as a habitual offender. To determine whether the accused constitutes a threat to the community, the Court needs to satisfy the accused had committed one of the offences, as stated under Section 10 of the Sentencing and Penalties Act. The Court then needs to consider the previous convictions of the accused in like nature.
10. Suppose the Court declares the accused as a habitual offender, in that case, the Court can then consider the threat constituted by the accused in order to impose a longer sentence than the proportionate gravity of the offence. (*vide Section 12 of the Sentencing and Penalties Act*). Moreover, a sentence imposed on a habitual offender has to be served consecutively to the other remaining sentences, unless otherwise ordered by the court. (*vide Section 13 of the Sentencing and Penalties Act*).
11. The offence of Aggravated Robbery is one of the offences listed under Section 10 of the Sentencing and Penalties Act. The first accused is advisedly recorded with seven previous convictions. Five of them are related to offences against property. He is presently serving a term of 13 years imprisonment for committing an offence of Aggravated Robbery on the 24th of November 2016. The first accused had committed all of these crimes against properties during the period between 2016 to 2018. Considering these facts, I can safely form an opinion that the accused constitutes a threat to the community. Hence, I declare the first accused as a habitual offender.
12. Apart from stating the age and the family backgrounds of the first accused, the Defence has not provided any mitigatory factors.

13. Having considered the seriousness of the offence, the level of harm and culpability, the aggravating factors, and the threat constitutes to the society, I sentence the first accused to sixteen (16) years imprisonment.
14. Having considered the seriousness of this crime, this sentence's purpose, and the age of the accused, I find fourteen (14) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for fourteen (14) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
15. In view of the remaining portion of the sentence that you are presently serving and the totality principle in sentencing, I order this sentence to be commenced and run concurrent to the remaining portion of the sentence you are presently serving. Once you have completed the remaining portion of that sentence, still you have to serve and complete the remaining part of this sentence.

Head Sentence

16. Accordingly, Mr. Asesela Naureure, I sentence you to a period of **sixteen (16) years** imprisonment to the offence of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act. Moreover, you are not entitled to any parole for **fourteen (14) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

17. You have been in remand custody for this case for six (6) months and twenty-five (25) days before the sentence as the Court did not grant you bail. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider seven (7) months as a period of imprisonment that you have already served.

18. Accordingly, the actual sentencing period is **fifteen (15) years and five (5) months** imprisonment with a non-parole period of **thirteen (13) years and five (5) months**.

Maika Tovagone

19. Mr. Maika Tovagone, you are a first offender. However, there is no evidence or information before this Court to consider your general reputation in society and no information about any significant contribution you have made to the community. Therefore, you are only entitled to a meager discount for your previous character.
20. Having considered the seriousness of the offence, the level of harm and culpability, the aggravating factors, and your previous good character, I sentence the second accused to fourteen (14) years imprisonment.
21. Having considered the seriousness of this crime, this sentence's purpose, and your age, I find twelve (12) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for twelve (12) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

22. Accordingly, Mr. Maika Tovagone, I sentence you to a period of **fourteen (14) years** imprisonment to the offence of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act. Moreover, you are not entitled to any parole for **twelve (12) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.


Actual Period of the Sentence

23. You have been in remand custody for this case for two (2) years and twenty-five (25) days before the sentence as the Court did not grant you bail. In pursuant of Section 24 of the

Sentencing and Penalties Act, I consider two (2) year and one (1) month as a period of imprisonment that you have already served.

24. Accordingly, the actual sentencing period is **eleven (11) years and eleven (11) months** imprisonment with a non-parole period of **nine (9) years and eleven (11) months**.
25. Thirty days (30) to appeal to the Fiji Court of Appeal.




.....
Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

30th November 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the 1st Accused.

Office of the Legal Aid Commission for the 2nd Accused.