

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 285 of 2019

[CRIMINAL JURISDICTION]

STATE

V

- 1. VINEET VISHAL PRASAD**
- 2. YASHNEEL ROHIT PRASAD**
- 3. ASHITOSH KRISHAN PILLAY**
- 4. SAMU SENIOLO**

Counsel : Ms. S. Swastika for the State
Ms. M. Chand for the Accused

Date of Sentence : 06 March 2020

SENTENCE

1. Vineet Vishal Prasad, Yashneel Rohit Prasad, Ashitosh Krishan Pillay and Samu Seniololo you have pleaded guilty to the charges produced below and were convicted as charged accordingly;

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: contrary to section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

VINEET VISHAL PRASAD, YASHNEEL ROHIT PRASAD, ASHITOSH KRISHAN PILLAY and SAMU SENIOLO between the 14th day of July, 2019 to the 26th day of July 2019 at Koronivia Road, Nausori in the Eastern Division, entered into the dwelling house of **DHIRENDRA PRASAD**, as trespassers with the intention to commit

theft.

SECOND COUNT

Statement of Offence

THEFT: contrary to section 291 (1) of the Crimes Act 2009.

Particulars of Offence

VINEET VISHAL PRASAD, YASHNEEL ROHIT PRASAD, ASHITOSH KRISHAN PILLAY and SAMU SENIOLO between the 14th day of July, 2019 to the 26th day of July 2019 at Koronivia Road, Nausori in the Eastern Division, dishonestly appropriated 1 x 55 inch Haier Brand Television and 1 x Singer brand sewing machine, the properties of **DHIRENDRA PRASAD** with the intention of permanently depriving **DHIRENDRA PRASAD** of the said properties.

2. You have admitted the following summary of facts;

The accused persons in this matter are:

- 1) **ASHITOSH KRISHAN PILLAY**, 22 years old of Ram Dass Road, Koronivia, Nausori, Panel Beater.
- 2) **VINEET VISHAL PRASAD**, 22 years old of Koronivia Nausor, Labourer.
- 3) **YASHNEEL ROHIT PRASAD**, 19 years old of Koronivia, Nausori, Farmer.
- 4) **SAMU SENIOLO**, 19 years old of Koronivia, Nausori, Carpenter.

*It was alleged that the four accused persons between the 14th day of July 2019 to the 26th day of July 2019 at Lot 8 Koronivia Road, Nausori, had broken into the house of **DHIRENDRA PRASAD**, 34 year old lab technician of Lot 8 Koronivia road and stole 1 x 55 inch Haier brand TV and 1 x Singer brand sewing machine.*

OFFENCE

Between the 14th day of July 2019 to the 26th day of July 2019 the four accused persons broke into the house of the complainant and stole 1 Haier 55 inch TV and 1 singer sewing machine.

*On this date around 9 pm, the first accused **VINEET VISHAL PRASAD** called the other three accused persons to meet at Ram Pati Service Station in Koronivia. All four accused persons thereafter met at the Ram Pati Service Station and planned to break into the house of the complainant.*

*The second accused knew **DHIRENDRA PRASAD** the complainant as he worked for the complainant's father. The second accused also knew that the complainant's house at the time of the alleged break in would be vacant.*

The accused persons thereafter proceeded to walk from Ram Pati Service Station to the house of the complainant towards Koronivia road.

*Upon reaching the complainant's house, **Vineet (1st Accused) and Yashneel (2nd Accused)** took out two louver blades from the window of the house. **Yashneel** then entered the house through the window and to open the main door.*

Ashitosh (3rd Accused) together with Vineet and Samu (4th Accused) then entered into the house through the main door.

Ashitosh, Vineet and Samu thereafter saw 1 x 55 inch Haier brand TV and carried it out of the complainant's house while Yashneel took 1 x Singer brand sewing machine from one of the bedrooms.

The accused persons thereafter hid both the items in a bush near the complainant's house. After, doing so, they fitted the lower blades into the window frame and closed the door of the house and left.

On the next day, at around 10 am the accused persons took the items from the place where it was hidden and loaded it in a Toyota Axio car and proceeded towards Waidamudamu settlement to sell the stolen items. The Singer brand sewing machine was sold to one Mahendra Kumar for \$70.00 and the 55 inch Haier brand TV was sold to one Vijay Reddy for \$350.00.

The monies received after selling the stolen items were shared between the four accused persons.

On the 28th day of July 2019 the complainant came home at around 2 pm and discovered that 1 x 55 inch Haier brand TV and 1 x Singer brand sewing machine was missing.

The matter was then reported to the Nausori Police Station. Upon investigation 1 x 55 inch Haier brand TV was recovered from one Vijay Reddy and 1 x Singer brand sewing machine was recovered from Mahendra Kumar.

The stolen items were then identified by the complainant on the 30th July 2019 at the Nausori Police Station.

CAUTION INTERVIEW AND THE CHARGE

The accused persons were then interviewed under Caution on the 29th day of July 2019.

The first accused has made admissions in his Caution Interview at question and answer 23 – 39.

The second accused has made admissions in his Caution Interview at question and answer 27 – 81.

The third accused has made admissions in his Caution Interview at question and answer 29 – 70.

The fourth accused has made admissions in his Caution Interview at question and answer 17 – 45.

3. In the case of **State v Chand** [2018] FJHC 830; HAC44.2018 (6 September 2018), Morais J observed thus;

12. Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in **Brewster** 1998 1 Cr App R 220 observed at 225:

“Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are

insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organization, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism."

4. The tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years. [Vide *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018)]
5. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
6. The offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment against you for the two offences you have committed.

7. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”) reads thus;

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

8. Vineet Vishal Prasad, you are 23 years old. You were employed as a panel beater. You are single and you live with your mother.
9. Yashneel Rohit Prasad, you are 19 years old. You were employed as a joiner. You are single and you live with your father, two brothers and the grandmother.
10. Ashitosh Krishan Pillay, you are 22 years old. You were employed as a construction worker. You are single and you live with your sister.
11. Samu Seniolo, you are 20 years old at the time of offending. You were employed as a labourer. You are single and you live with your parents and your sister.
12. According to the summary of facts there was preplanning. This will be considered as an aggravating factor common to all of you. Yashneel, you knew the complainant as you had worked for his father and you had the knowledge that the house you burgled will be vacant at the time you committed the offence. This will be considered as an additional aggravating factor relevant to you.
13. In addition to the fact that you have entered an early guilty plea, I would consider the following as your mitigating factors;
- a) I will consider all four of you as young first offenders;
 - b) You are remorseful;
 - c) The stolen items were recovered; and
 - d) You have cooperated with the police.

14. I would select 06 years as the starting point of your aggregate sentence. I would add 01 year in view of the aforementioned common aggravating factor and I would deduct 03 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 04 years.
15. In view of your early guilty plea, I would grant each one of you, a discount of one-third. Accordingly, the final sentence is an imprisonment term of 02 years and 08 months.
16. I would fix your non-parole period at 18 months in terms of the provisions of section 18(1) of the Sentencing and Penalties Act. I have considered the circumstances of the offending and your personal circumstances in determining the non-parole period.
17. Each of you have spent about 03 months and 24 days in custody. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act.
18. In the result, each of you are sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 18 months. Given the period you have spent in custody, the time remaining to be served is as follows;

Head sentence - 02 years; 04 months; and 06 days
Non-parole period -14 months and 06 days
19. In order to promote your rehabilitation, and especially taking into account the fact that there has been full restitution, I have decided to suspend the remaining period of the sentence imposed on each one of you, for a period of 03 years.
20. The court clerk will explain you the effects of a suspended sentence.

21. Considering all the circumstances including the fact that the four of you had enjoyed the proceeds of your crime I consider it necessary to impose a fine, in addition to the sentence imposed on each of you.

22. Vineet, Ashithosh and Samu, I hereby impose a fine of \$200 against each one of you. Yashneel, in your case, given the fact that I have identified breach of trust as an additional aggravating factor, the fine imposed on you will be \$400. Each one of you should pay your respective fine within 02 months from today. That is, on or before 06/05/20. The failure to pay this fine by the said date would result in you having to serve a period of 10 days for each penalty unit or part of a penalty unit then remaining unpaid in terms of section 37 of the Sentencing and Penalties Act 2009.

23. In the result;

Vineet Vishal Prasad - Sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 18 months.
Time remaining to be served is 02 years, 04 months and 06 days.
This remaining term is suspended for 03 years.
Fined \$200. To be paid at the High Court Registry on or before 06/05/20.

Yashneel Rohit Prasad - Sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 18 months.
Time remaining to be served is 02 years, 04 months and 06 days.
This remaining term is suspended for 03 years.
Fined \$400. To be paid at the High Court Registry on or before 06/05/20.

Ashitosh Krishan Pillay - Sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 18 months.
Time remaining to be served is 02 years, 04 months and 06 days.
This remaining term is suspended for 03 years.
Fined \$200. To be paid at the High Court Registry on or before 06/05/20.

Samu Seniolo -

Sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 18 months.

Time remaining to be served is 02 years, 04 months and 06 days.

This remaining term is suspended for 03 years.

Fined \$200. To be paid at the High Court Registry on or before 06/05/20.

24. Accordingly, you will be released today. You are thoroughly warned and are hereby advised to hereafter abide by the laws of this country and to lead a good life.

25. Thirty (30) days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera
JUDGE

Solicitors;

**Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused**