

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 190 of 2019

STATE

V

AMITESH RAM

Counsel : Mr. T. Tuenuku for the State.
: Ms. V. Diroiroi for the Accused.

Date of Sentence Hearing : 29 January, 2020
Date of Sentence : 31 January, 2020

SENTENCE

1. The accused is charged for the offence of aggravated robbery contrary to section 311 (1) (a) of the Crimes Act. It is alleged as per the amended charge filed that the accused together with others on the 16th day of May, 2013 at Tavua stole a car radio valued at \$1,200, subwoofer valued at \$500, amplifier valued at \$350, sliding door valued at \$450, 2 side mirror valued at \$80, spoiler valued at \$150, battery valued at \$240, a spanner valued at \$25, bullet twitter valued at \$85, 4 mags with tyres valued at \$1,600, front light valued at \$450, van key valued at \$50, 5 car mats valued at \$30, gold chain valued at \$400, car wiper valued at \$60, Alcatel mobile phone valued at \$139, gold ring valued at \$300, turbo timer valued at \$70, rear light valued at \$100, all to the total value of \$6,499 the property of

Subash Chand and immediately before stealing they used force on the said Subash Chand.

2. On 24th May, 2013 the Magistrate's Court at Tavua had transferred this matter to the High Court, upon consideration by the High Court on 22nd July, 2013 this matter was remitted to the Magistrate's Court to be tried under the extended jurisdiction of the High Court. On 27th and 28th May, 2019 the matter proceeded to hearing in the Magistrate's Court, the prosecution called three witnesses whereas the accused gave evidence for the defence.
3. On 1st October, 2019 the accused was found guilty and convicted for the count of aggravated robbery as charged. On this date in accordance with section 190 of the Criminal Procedure Act the file was sent to this court for sentencing.
4. The brief facts are as follows:
 - a) On 16th May, 2013 in Lautoka at about 9.30pm whilst the victim was waiting for a carrier job the accused and two others boarded the carrier of the victim, the accused told the victim to drive to Ba for the wedding of one of his friend's.
 - b) On the way the accused told the victim to go into a feeder road past the Raviravi Police Post. Here the victim was told to stop the carrier whereby everyone got out. The accused and his friends were making phone calls to ascertain the address where they were going to, at this time the victim told the accused for them to go to the Raviravi Police Post to ask for directions.
 - c) The victim went back to his vehicle followed by the accused. The accused sat in the front passenger seat grabbed the victim by his neck and punched him on his head. The accused told the victim to get out

of the van, at this time another person came and pulled the victim to the back seat where the victim was made to lie on the floor.

- d) The accused searched the victim's pockets and took out everything including the victim's money. The victim's t/shirt was removed and he was blind folded. The van was then driven to an unknown place and parked near the sea where the victim's hands were tied with a seat belt that had been cut off from the vehicle.
- e) The victim heard his van being stripped and it took them about 10 to 15 minutes to do so. After the accused and the others left, the victim managed to free himself and sought help from people who lived nearby.
- f) The matter was reported to the police upon investigation some of the stolen items were recovered by the police the accused was arrested caution interviewed and charged.

5. Both counsel filed sentence and mitigation submissions and also made oral submissions during the sentence hearing for which this court is grateful.

6. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:

- a) He was 29 years of age at the time of the offending;
- b) A first offender;
- c) Married with 2 children, the eldest is 13 months and the youngest is 3 months old;
- d) He is a Farmer who earned \$140 per week;
- e) Sole breadwinner of the family;
- f) Also supports his elderly in laws;
- g) Pleads for the court's mercy;

h) Some items were recovered.

7. Counsel for the accused in her written mitigation stressed the fact that the accused was the “backbone” and support provider for his family and without him his young family will be adversely affected and/or devastated. Counsel further submits that this court should consider a lenient sentence to allow for the rehabilitation of the accused.

TARIFF

8. The maximum penalty for the offence of aggravated robbery is 20 years imprisonment. The accepted tariff for this offence is from 8 years to 16 years imprisonment (*Wallace Wise vs The State*, CAV 0004 of 2015 (24 April, 2015)).
9. The Supreme Court in *Wallace Wise* (supra) at paragraph 26 has succinctly mentioned some helpful examples where sentences will be enhanced as additional aggravating factors:
- (i) *offence committed during a home invasion.*
 - (ii) *in the middle of the night when victims might be at home asleep.*
 - (iii) *carried out with premeditation, or some planning.*
 - (iv) *committed with frightening circumstances, such as the smashing of windows, damage to the house or property, or the robbers being masked.*
 - (v) *the weapons in their possession were used and inflicted injuries to the occupants or anyone else in their way.*
 - (vi) *injuries were caused which required hospital treatment, stitching and the like, or which come close to being serious as here where the knife entered the skin very close to the eye.*

- (vii) *the victims frightened were elderly or vulnerable persons such as small children.*

AGGRAVATING FACTORS

10. The following aggravating factors are obvious in this case:

a) PLANNING AND PRE-MEDITATION

There is a high degree of planning involved it is obvious that the accused was the “master mind” and an active player in this offending he tricked and /or misled the victim into believing that there was money to be earned. The accused deliberately directed the victim to an isolated spot in the middle of the night and had no regard for the safety of the victim. The victim was blind folded and his hands were tied and he was left in the middle of nowhere. It was a well thought-out plan executed on an unsuspecting victim who was doing his usual work as a carrier driver.

b) PUBLIC SERVICE PROVIDER

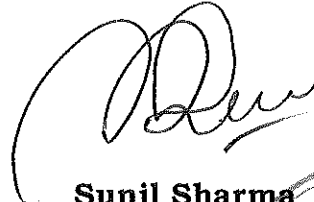
The victim being a carrier driver was providing a service to the general public he was unsuspecting and vulnerable, outnumbered by the accused and his group.


11. After assessing the objective seriousness of the offence committed I take 8 years imprisonment (lower range of the scale) as the starting point of the sentence. For the aggravating factors I add 5 years bringing the interim sentence to 13 years imprisonment. This sentence is reduced by 1 year for mitigation the accused does not receive any discount for good character since he has a previous conviction for theft in 2013. The sentence is now 12 years imprisonment.
12. I note from the court file that the accused has been remanded for 4 months and 16 days, in accordance with section 24 of the Sentencing and Penalties

Act the remand period is deducted as a period of imprisonment already served.

13. The final sentence is 11 years and 7 months and 14 days imprisonment.
14. Mr. Ram you have committed a serious offence on an unsuspecting and vulnerable person who was misled by you into thinking that there was a genuine work for him. Out of your greed to make quick money you with others robbed the victim without any mercy leaving him tied up in the middle of the night at an unknown place.
15. You cannot be forgiven for what you have done and a long term imprisonment is the only answer, this court denounces the behaviour of the accused. Moreover, I am certain that it would have been difficult for the victim to forget his ordeal for a long time. I also reject the defence submission that this court should consider the family ties of the accused and impose a lenient sentence. The accused was an adult of 29 years who should have known better, it is his deeds that he must answer to. In cases like this, family sufferings become unavoidable the accused should have thought of his family before embarking on this path of criminal activity.
16. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which was just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
17. Under section 18 (1) of the Sentencing and Penalties Act, I impose 9 years imprisonment as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and to meet community expectations which is just in the circumstances of this case.

18. In summary I pass a sentence of 11 years 7 months and 14 days imprisonment with a non-parole period of 9 years to be served before the accused is legible for parole.
19. 30 days to appeal to the Court of Appeal.


Sunil Sharma
Judge



At Lautoka

31 January, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.