

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 188 of 2019

STATE

V

1. ERONI SADRUGU

2. VETAIA NABAU

Counsel : Mr. R. R. Chand for the State.
: Ms. J. Singh and Ms. V. Diroiroy for both the
Accused.

Date of Submissions : 07 July, 2020

Date of Sentence : 14 July, 2020

SENTENCE

1. The accused persons are charged for one count of Aggravated Burglary and one count of Theft as per the following information filed by the Director of Public Prosecutions dated 27th January, 2020.

FIRST COUNT

Statement of Offence

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

Particulars of Offence

ERONI SADRUGU and VETAIA NABAU on the 5th day of October, 2019 at Lautoka in the Western Division, entered into the dwelling house of **KASANITA SUMO** as trespassers, with intent to commit theft from the said property.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

ERONI SADRUGU and VETAIA NABAU on the 5th day of October, 2019 at Lautoka, in the Western Division, dishonestly appropriated 1 x 15 inch Maxton flat screen TV, 1 x ASUZ tablet, 1 x Sodo music box all to the total value of \$540.00 the property of **KASANITA SUMO** with intent to permanently deprive the said **KASANITA SUMO**.

2. On 17th February, 2020 both the accused persons in the presence of their counsel pleaded guilty to the above two counts.
3. Thereafter on 16th June, 2020 both the accused persons admitted the summary of facts read out. The brief summary of facts is as follows:

On 5th October, 2019 at about 6pm the victim locked her house at Tavakubu Village and went to visit her relatives. At about 10pm on the same day both the accused in the company of each other broke into the house of the victim by forcefully breaking the wooden window and stealing the following items:

- a) 1 x 15 inch Maxton flat screen TV;
- b) 1 x ASUZ Tablet; and
- c) 1 x Black sodo music box.

The total value of the above properties was \$540.00.

4. Upon returning home the victim found the wooden window of her house had been forced open and the house ransacked. Upon checking the victim noticed her household items as mentioned above were missing.
5. The matter was reported to the police upon investigation both the accused were arrested when caution interviewed the accused persons admitted committing the offences they were charged and produced in court.
6. After considering the summary of facts read by the State Counsel which was admitted by both the accused and upon reading their caution interviews, this court is satisfied that they have entered an unequivocal plea of guilty on their own freewill. This court is also satisfied that both the accused have fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted by both the accused persons satisfies all the elements of both the offences. Both the accused persons admitted committing the offences in the company of each other.
7. In view of the above, this court finds both the accused persons guilty as charged and they are convicted accordingly.
8. The two offences with which both the accused persons have been convicted are founded on the same facts hence it is only proper that an aggregate sentence be imposed.
9. Section 17 of the Sentencing and Penalties Act states:

“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.”

10. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the two offences.

11. The learned counsel for the first accused presented the following personal details, and mitigation on behalf of the first accused as follows:
 - (a) He is a first and young offender;
 - (b) 21 years of age at the time of the offending;
 - (c) Pleaded guilty at the earliest opportunity;
 - (d) Cooperated with the police;
 - (e) He is single;
 - (f) A casual worker;
 - (g) Committed this offence due to peer pressure;
 - (h) Seeks forgiveness, leniency and mercy of the court;
 - (i) Full recovery of stolen items;
 - (j) Is Remorseful;
 - (k) Promises not to reoffend.

12. The learned counsel for the second accused presented the following personal details, and mitigation on behalf of the second accused as follows:
 - (a) He is a first and young offender was 21 years of age at the time;
 - (b) Resides with his parents and siblings;
 - (c) Eldest of the siblings;
 - (d) Committed the offence due to peer pressure;
 - (e) Seeks a second chance in life;
 - (f) Pleaded guilty at the first available opportunity;

- (g) Full recovery of stolen items;
- (h) Cooperated with the police;
- (i) Promises not to reoffend;
- (j) Is Remorseful;
- (k) Seeks forgiveness, mercy and leniency from the court.

TARIFF

13. The maximum penalty of the offence of aggravated burglary is 17 years imprisonment.
14. The accepted tariff for this offence is a sentence between 18 months to 3 years imprisonment (see *Leqavuni v. State, Criminal Appeal No. AAU 106 of 2014 (26 February, 2016)*).
15. For the offence of theft the maximum penalty is 10 years imprisonment.
16. The tariff for the offence of theft is settled. In *Mikaele Ratusili v. State, Criminal Appeal no. HAA 011 of 2012 (1 August, 2012)* Madigan J. set out the tariff for theft as follows:
 - “(i) For the first offence of simple theft the sentencing range should be between 2 and 9 months.*
 - (ii) any subsequent offence should attract a penalty of at least 9 months.*
 - (iii) Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.*
 - (iv) regard should be had to the nature of the relationship between offender and victim.*
 - (v) planned thefts will attract greater sentences than opportunistic thefts.”*

AGGRAVATING FEATURES

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

a) Night time Invasion

The accused persons entered the victim's house late at night which has become so prevalent nowadays that innocent members of the society are suffering due to the selfish actions of some.

b) Planning

There is some degree of planning by both the accused persons who had seen the victim's house vacant. They entered the house only after they were sure that there was no one inside by breaking the wooden window.

18. Considering the objective seriousness of the offending, I select 18 months imprisonment (lower range of the tariff) as the aggregate sentence for both the offences. For the aggravating factors I increase the sentence by 3 years. The interim sentence of imprisonment now stands at 4 ½ years imprisonment. For the early guilty plea, mitigation, and the remand period the interim sentence is reduced by 2 years.
19. The final aggregate sentence for the two offences is 2 ½ years imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment.
20. In *State vs. Alipate Sorovanalagi and others, Revisional Case No. HAR 006 of 2012 (31 May 2012)*, Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraphs 22 and 23:

"[22] I accept that the Magistrates' Court has discretion to suspend a sentence if the final term imposed is 2 years or less. But that discretion must be exercised judiciously, after identifying special reason to suspend the sentence. The special reason can vary depending on the facts of each case.

[23] In **DPP v Jolame Pita** (1974) 20 FLR 5, Grant Actg CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg CJ laid down guidelines for imposing suspended sentence at p.7:

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

21. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment term or a suspended sentence.
22. The accused persons are first offenders of comparatively good character, isolated offences committed, both are in their early twenties, pleaded guilty at the earliest opportunity, are remorseful, cooperated with police leading to full recovery of stolen items and they take responsibility of their actions.

I consider these special reasons as rendering immediate imprisonment inappropriate.

23. Both the accused persons are young, with a bright future ahead of them, an imprisonment term will not augur well for their future, they have been in remand for about 8 months which is in itself an adequate and appropriate punishment, an experience that will act as a motivation to keep away from conflict with the law. This court has taken into account rehabilitation over and above retribution.
24. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that the sentence is just in all the circumstances of the case.
25. In summary both the accused are sentenced to 2 ½ years imprisonment respectively as an aggregate sentence for both the offences which is suspended for 3 years. The effect of suspended sentence is explained to both the accused.
26. 30 days to appeal to be Court of Appeal.




Sunil Sharma
Judge

At Lautoka

14 July, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for both the Accused.