

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 132 OF 2019S

STATE

Vs

- 1. JONACANI QALOVA**
- 2. LEDUA TIKOTANI**

Counsels : **Mr. Z. Zunaid for State**
Accused No. 1 in Person
Mr. K. Prasad for Accused No. 2

Hearings : **24 and 30 June, 2020.**

Sentence : **10 July, 2020.**

SENTENCE

1. On 12 June 2020, the prosecution filed the following amended information:

"Count 1

Statement of Offence

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

Particulars of Offence

JONACANI QALOVA & LEDUA TIKOTANI with others, in the company of each other, on the 28th day of November 2018 at Suva in the Central Division, entered into the property of AVINESH KAMAL PRASAD, as trespassers with intent to commit theft.

Count 2

Statement of Offence

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

Particulars of Offence

JONACANI QALOVA & LEDUA TIKOTANI with others, in the company of each other, on the 28th day of November 2018 at Suva in the Central Division, dishonestly appropriated, 1x Samsung J5 mobile phone (black in colour), 1x iPhone (gold in colour), 1x black leather wallet containing 1X Visa Card, 2x Bred bank ATM cards, 1x Capital Insurance card, 1x University of the South Pacific ID card, 1x Voter ID card, 1x Jacks loyalty card, 1x drivers license, 1x Fiji National Provident Fund joint card, \$500 cash, 1x brown laptop bag containing charger, 2x external hard-drives, 1x mega earphone, office keys, personal vehicle key, house key, assorted stationaries and 1x black camera the properties of AVINESH KAMAL PRASAD with the intention of permanently depriving AVINESH KAMAL PRASAD of the said properties.”

2. Accused No. 1 had waived his right to counsel since 26 November 2019, while Accused No. 2 had been represented by legal aid counsel since 3 June 2019. On 24 June 2020, Accused No. 2's counsel asked the court for the information to be put to Accused No. 2. The information was read and explained to him and he said he understood the same. He pleaded guilty to the two counts in the information.

3. The prosecution read the following summary of facts to the court:

“On the 28th of November 2018 around 1.00 am, the complainant whilst watching television in his lounge had fallen off to sleep. The complainant woke up after he noticed a foul smell consisting of sweat and body odour.

As soon as the complainant woke up, he saw one of the accused's accomplices in his room. The complainant stated that he was able to see the accused's accomplice as the lights were switched on and he then quickly ran outside his house and began yelling for help. The complainant stated that he saw six men in total, four of which entered the house whilst the accused and his other accomplice stood near the common driveway as look-outs. The complainant stated that by the time the police had arrived, the six burglars had gone. The complainant later went into his house and found the items mentioned in count no. 2 stolen by the accused and his friends."

4. The above summary of facts, including the particulars of the offences in count no. 1 and 2 of the information was admitted by Accused No. 2. As a result of the above admission, the court found Accused No. 2 guilty as charged on both counts, and convicted him accordingly on both counts. He admitted five previous convictions, three of which were "house breaking, entering and larceny", "Aggravated Burglary" and "theft". Defence Counsel later submitted his well prepared written plea in mitigation. I later heard the parties' sentence submissions, and adjourned the matter to 10 July 2020 for sentencing.
5. On 30 June 2020, Accused No. 1 asked the court for the information to be put to him again. The information was read and explained to him, and he said he understood the same. He then pleaded guilty to both counts. The prosecution then read the summary of facts to the court. It was basically the same as that outlined in paragraph 3 above. Accused No. 1 admitted the above summary of facts and the particulars of the offences in counts no. 1 and 2 of the information. As a result of the above admission, the court found him guilty as charged on both counts, and convicted him accordingly on both counts.
6. Accused No. 1 admitted one previous conviction of "escaping from lawful custody". He submitted his verbal plea in mitigation. He said he was 21 years old, a subsistence farmer, reached Form 3 level education, pleaded guilty and had been remanded in custody for

approximately 9 months. After hearing the parties' sentence submissions, the case was then adjourned to 10 July 2020 for sentencing.

7. "Aggravated burglary" is an indictable offence, and viewed seriously by the Parliament of Fiji. It carried a maximum sentence of 17 years imprisonment (see section 313 (1) (a) of the Crimes Act 2009). The tariff is now a sentence between 6 to 14 years imprisonment: **State v Shavneel Prasad**, Criminal Case No. 254 of 2016S, High Court, Suva and **State v John Vonu & Others**, Criminal Case No. HAC 148 of 2017S, High Court, Suva. Of course, the final sentence will depend on the aggravating and mitigating factors.
8. The maximum penalty for "theft", contrary to section 291 (1) of the Crimes Act 2009, is a sentence of 10 years imprisonment.
9. I can't find any aggravating factors in you two's case. The elements of "aggravated burglary" and "theft" are satisfied on the facts of the case and cannot be taken into account as aggravating factors.
10. The mitigating factors are as follows:
 - (i) Although you two pleaded guilty to the offence 1 year two months after first call in the High Court, you two nevertheless saved the court's time and resources by not going to a full trial;
 - (ii) As for Accused No. 1, you had been remanded in custody since 1 December 2018, when the matter was first brought before the Nasinu Magistrate Court, that is, 1 year 7 months 9 days ago;
 - (iii) As for Accused No. 2, you had been serving time in prison since December 2018, when this matter first came before the Nasinu Magistrate Court;
 - (iv) The complainant was not physically harmed during your offending.
 - (v) Some of the properties had been recovered.
11. For both of you, on count no. 1 (aggravated burglary), I start with a sentence of 6 years imprisonment. As there is no aggravating factors, I add nothing to it. For the complainant not being physically harmed during the offending, I make a deduction of 2 years imprisonment, leaving a balance of 4 years imprisonment. For Accused No. 1, for time

already served while remanded in custody for 1 year 7 months 9 days, I make a deduction of 1 year 8 months from the 4 years, leaving a balance of 2 years 4 months imprisonment. As for Accused No. 2, you had been serving time for another offence when you first appeared on this case in the Nasinu Magistrate Court on December 2018. Had you pleaded guilty then on this matter, you would have got a concurrent sentence. So I would make the same deduction given to Accused No. 1 above, as a concurrent sentence, leaving a balance of 2 years 4 months imprisonment. For both of you two pleading guilty to the offence and saving the court's time, I make a deduction of 2 years 4 months imprisonment. The net result is that, on count no. 1, both of you two had already served your sentences.

12. On count no. 2 (theft), I sentence both of you two to 12 months imprisonment, to start from the date you two were remanded in this case, that is, the 1st December 2018. You two have thus already served your sentences.

13. You two have 30 days to appeal to Court of Appeal.



Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for Accused No. 1 : **In Person.**
Solicitor for Accused No. 2 : **Legal Aid Commission, Suva.**