

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CASE NO: HAC. 67 of 2020

BETWEEN :

STATE

AND :

KINIJOJI CAGILABA

Counsel

Ms. P. K. Lata for the State

:

Ms. V. Narara for the Accused

Hearing on :

28th of October 2020

Sentence :

10th of November 2020

SENTENCE

1. Mr. Kinijoji Cagilaba, you have freely and voluntarily pleaded guilty to the count of aggravated burglary at the very first opportunity. I am satisfied and convinced that you have pleaded so, unequivocally and having understood the consequences of such a plea.

2. You were charged as follows;

COUNT

Statement of Offence

Aggravated Burglary: contrary to section 313(1) (a) of the Crimes Act 2009.

Particulars of Offence

Kinijoji Cagilaba, with another on the 04th day of January, 2020 at Sigatoka, in the Western Division, in the company of each other entered into the house of Arvin Prasad, as a trespasser, with intent to commit theft.

3. The summary of facts filed and read over by the state and unequivocally admitted by you states that;

1. *The Complainant is Vinay Kumar (hereafter PW1) 56 years, Foreman of ATS, Votualevu, Nadi.*
2. *Accused is Kinijoji Cagilaba (hereafter Accused) 19 years, Unemployed of Olosara, Sigatoka.*
3. *On the 4th of January 2020 at about 0510 hrs PW1 was sleeping in his living room while his wife namely Vitha Dass (hereafter PW2) was sleeping in their bedroom. PW1's visitors from Australia namely Neelam Singh (hereafter PW3) and Janendra (hereafter PW4) were occupying another room.*
4. *PW3 saw an itaukei man wearing white t-shirt and a cargo ¾ pants coming towards her in the bedroom and she shouted out for help. PW3 could smell liquor from him while he ran out of the room. PW3 woke PW4 up and PW4 followed the itaukei man but he escaped from the front door. PW4 saw that the itaukei man was strong built, medium height, wearing a white t-shirt and ¾ pants. PW3 then saw another figure in another bedroom and she informed PW4. PW4 went to check and saw another itaukei man wearing a black t-shirt and silky pants in the house. However, he ran away from the house.*

5. *When PW2 heard the commotion in the house, she came out of her room and saw one itaukei boy heavily smelt of liquor run out from the house with clothes covering his head. PW1 also heard the commotion and woke up. He saw the main door open and an itaukei boy ran out with white vest and his dark black t-shirt covering his head. They tried to follow them but they escaped. They all checked the house but nothing was stolen.*

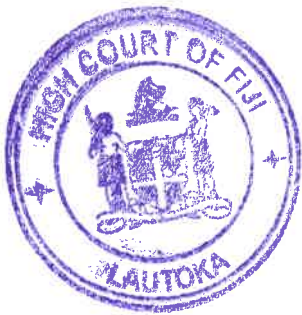
 6. *The matter was reported to Police and enquiry was conducted. Accused was arrested and interviewed under caution by DC 3980 Peni Vunisa in the presence of DC Rupeni Naga (Witnessing Officer). Accused admitted that as they reached the house then his accomplice asked him to look from the window towards the kitchen so nobody can come inside the house [Q&A 80]. Only the lights of the kitchen was on and the TV [Q&A 82]. His accomplice had cut the netting of a window and removed a louver blade and went inside [Q&A 81 & 83]. The Accused was wearing a black t-shirt with a basketball in front and a silky pants [Q&A 85]. The Accused went inside the house through the main door and was standing while his accomplice was searching for items inside the house [Q&A 87-89]. The accomplice went inside a room and one lady caught him and they both tried to escape from the place [Q&A 90]. They ran out from the house to the main road [Q&A 91-100]. A copy of the Record of Interview is attached at Tab 1 (Typed & Hand Written).*


 7. *The Accused pleaded guilty to one count of aggravated burglary contrary to Section 313 (1) (a) of the Crimes Act 2009 on the 24th of August 2020.*
4. I find the alleged count proved by the said summary of facts, as you have unequivocally admitted the above Summary of Facts. Accordingly, I convict you of the offence of Aggravated Burglary.

 5. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.

6. A person who enters a building with one or more other persons as a trespasser, with the intention to steal commits an aggravated burglary punishable by 17 years' of imprisonment under section 313(1)(a) of the Crimes Act.
7. The accepted tariff for Aggravated Burglary is 6 to 14 years imprisonment. Though there is some uncertainty in respect of the recommended tariff, as I have reasoned out in **State v Chand** - Sentence [2018] FJHC 830; HAC44.2018 (6 September 2018), I prefer to follow His Lordship Hon. Justice Perera in **State v Naulu** - [2018] FJHC 548 (25 June 2018), as the said gives effect to the intention of the legislature, best.
8. The aggravating factors present in common are that this was a pre-planned invasion and the fact that there is much prevalence of this type of offences in the society. This type of offences has increased due to the leniency they are dealt with and the society now demands an unsympathetic and/or stern judicial approach on these types of offences in order to curtail them.
9. The mitigating factors submitted are that you are a very young offender and also is remorseful. In addition you seek an opportunity to rehabilitate yourself. You have no previous convictions or any other pending cases. You are a first time offender.
10. I would select 6 years as the starting point of your aggregate sentence. I would enhance 1 year due to aggravating factors mentioned above and deduct 30 months for the mitigating factors inclusive of the shown remorse and the co-operation with police. Now your sentence is an imprisonment term of 4 1/2 years.
11. You have pleaded guilty at the first available opportunity and I will award the maximum possible discount of 1/3 for that. Therefore your final sentence is 3 years of imprisonment. I will fix non parole period at 2 years, as for section 18 of the Sentencing and Penalties Act.

12. You were arrested on the 11th of March 2020 and had been in remand till you were granted bail on the 02nd of June 2020. That is about 2 months and 3 weeks. I will deduct that period from your final sentences of which the remainder, you'd have to serve will be 2 years 9 months and a week, with a non-parole period of 1 year 9 months and a week.
13. Taking into consideration the section 26 of the Sentencing and Penalties Act and the fact that you are a first time offender, I think it is appropriate to suspend the 33 months and a week of your imprisonment for a period of 4 years. The consequences of a suspended term will be explained to you by the Court Clerks.
14. You have 30 days to appeal to the Court of Appeal if you so desire.




Chamath S. Morais
JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Lautoka.

Solicitors for the Accused : Legal Aid Commission, Lautoka.