

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO.: HAC 60 OF 2020

BETWEEN : STATE

AND : 1. SAKIUSA TAKIRUA
2. QALO VONOVATU

Counsel : Ms A Vavadakua for the State
Ms R Raj and Ms M Tuiloma for the Accused

Dates of Hearing : 18 November 2020

Date of Sentence : 19 November 2020

SENTENCE

[1] Both offenders have pleaded guilty to a charge of aggravated robbery contrary to section 311 (1) (a) of the Crimes Act. The statutory aggravating circumstance is that they committed the robbery in company.

[2] The facts tendered by the prosecution in support of the charge are as follows:

On the 25th of August 2020, at around 9pm, the Accused persons with another, forcefully entered into the house of a couple, the complainants in this case, Kamlesh Chand, school teacher, and Kajal Karishma Devi, in Seaqaqa. The couple also had another adult make cousin residing with them, Shalvin Chand also a school teacher.

The Accused persons with another approached the back door of the complainant's house and struck the house with a hard object. They then forcefully entered the house. The Accused persons with another had broken into the house knowing that the couple had a lot of cash with them and intending to steal money from couple.

Once the Accused persons entered the house, they began threatening the occupants of the house. The Accused persons then attacked the occupants of the house namely the two males, Kamlesh who was at the sitting room -

he was struck on the chin 3 times, while Shalvin was being beaten on the stomach with an iron rod. Both Kamlesh and Shalvin suffered injuries from the beatings.

The Accused persons were wearing masks. They demanded for money as they continued to assault the occupants of the house, namely the 2 men – Kamlesh and Shalvin. The occupants of the house then told them to take the money inside the van, which was \$400. After taking that money, the Accused persons were all still not satisfied.

Then the Accused persons also entered the bedroom of Mrs Kajal Karishma Devi and demanded more money from her. After she gave them some money, they still demanded more and threatened to rape her daughter if she did not give them more. At that point, Shalvin was brought back into the room by the Accused persons, injured. The threats to Mrs Kajal by the Accused persons continued and she was ordered to lift her dress.

The couple's daughter was sitting awake on her bed when the Accused persons threatened to rape her if they were not given more money. The whole family was in complete shock and extreme fear.

Thus, the couple then brought out another brown envelope containing \$7000.00 cash. The Accused persons kept all the adults in one room, closed the door and left them there, after stealing the \$7000.00. A total of about \$10,000.00 was stolen that day however, \$8360.75 was recovered.

The Police were later contacted and investigations conducted. The Accused persons were both arrested and there was recoveries made. The Accused persons made their free and voluntary admissions to the Police about their involvement in the robbery.

The admissions and the specific roles they played are as per their record of interviews and the injuries sustained from the above attacks are as documented in the Fiji Police Force Medical Examinations form, that are attached.

[3] According to the medical reports of the victims, they sustained the following injuries from the assault:

Kamlesh Kumar

Head – Hematoma 4 × 4 cm on scalp

Left Eye – swollen

Left Face – puncture wound actively bleeding, swollen and collection of blood

Hospitalized due to the seriousness of the injuries.

Kajal Karishma Devi

Face – swollen

Upper lip - bruises

Shalvin Chand

Left eyebrow – 1 × 1 cm laceration

Abdomen and chest – blunt trauma and tenderness

- [4] The maximum penalty prescribed for aggravated robbery is 20 years imprisonment. In *Wise v State* [2015] FJSC 7; CAV0004.2015 (24 April 2015) the Supreme Court said at [25]-[27]:

[25] We believe that offences of this nature should fall within the range of 8-16 years imprisonment. Each case will depend on its own peculiar facts. But this is not simply a case of robbery, but one of aggravated robbery. The circumstances charged are either that the robbery was committed in company with one or more other persons, sometimes in a gang, or where the robbers carry out their crime when they have a weapon with them.

[26] Sentences will be enhanced where additional aggravating factors are also present. Examples would be:

- (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.

[27] It is our duty to make clear these type of offences will be severely disapproved by the courts and be met with appropriately heavy terms of imprisonment. It is a fundamental requirement of a harmonious civilized and secure society that its inhabitants can sleep safely in their beds without fear of armed and violent intruders.

[5] In the present case, apart from the statutory aggravation, there are additional aggravating factors. The robbery was committed during a home invasion. The offenders threatened a couple, their daughter and a male occupant with physical violence. They wore masks to conceal their identities. They frightened the occupants by striking their house with a hard object before gaining entry. They carried an iron rod with them. They struck two male occupants with the iron rod multiple times. The occupants sustained physical injuries. One occupant was hospitalized due to the injuries from the attack. The couple's daughter was threatened with rape. The adult female occupant was forced to lift her dress and was humiliated. The robbery was pre-planned and then executed.

[6] The court's duty is to denounce the violent intrusion of the victims' home in the present case and impose a sentence that has the effect of deterrence, both on the offenders and others.

[7] One offender is in his late twenties, while the other is in his early twenties. Both have relevant previous convictions. They are not entitled for any credit for their character. The mitigating factors are that the offenders have entered early guilty plea and have saved the court's time and resources. They made full confessions to police. As a result of their cooperation, a significant amount of the stolen money was recovered and restored to the owner. For these factors I give them a total discount of 3 years. A

further reduction is made to the sentence to reflect that the offenders have spent 2 ½ months in custody on remand.

- [8] Both offenders are convicted and sentenced to 12 years' imprisonment with a non-parole period of 10 years.



Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for State

Office of the Director of Legal Aid Commission for Accused