

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 395 OF 2019S**

**STATE**

**vs**

**1. SENITIKI ROKOSUKA (Juvenile)**

**2. SAMUELA SEI**

**Counsels : Ms. B. Kantharia for State**

**Accused No. 1 in Person**

**Accused No. 2 in Person**

**Hearings : 25 June and 25 November, 2020.**

**Sentence : 4 March, 2021.**

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**SENTENCE**

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1. On 24 February, 2020, the accuseds' right to be represented by legal counsel was put to them. They said, they understood the same, and waived their right to counsel. They said, they would represent themselves.
2. On 25 June 2020, the following information was put to them:

***"First Count***

***Statement of Offence***

**BURGLARY: Contrary to Section 312 (1) (a) of the Crimes Act 2009.**

*Particulars of Offence*

**SENITIKI ROKOSUKA between the 30<sup>th</sup> day of September 2019 to the 1<sup>st</sup> day of October 2019 at Visama in the Eastern Division, entered into the dwelling house of VARANISESE NASILASILA, as a trespasser with the intention to commit theft.**

*Second Count*

*Statement of Offence*

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

*Particulars of Offence*

**SENITIKI ROKOSUKA between the 30<sup>th</sup> day of September 2019 to the 1<sup>st</sup> day of October 2019 at Visama in the Eastern Division, dishonestly appropriated 1 x Philip 32 inch flat screen TV, the property of VARANISESE NASILASILA, with the intention of permanently depriving the said VARANISESE NASILASILA of the said property.**

*Third Count*

*Statement of Offence*

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

*Particulars of Offence*

**SAMUELA SEI AND SENITIKI ROKOSUKA between the 16<sup>th</sup> day of September 2019 to the 28<sup>th</sup> of September 2019 at Visama in the Eastern Division, entered into the dwelling house of ILISAPECI BAI, as trespassers with the intention to commit theft.**

*Fourth Count*

*Statement of Offence*

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

*Particulars of Offence*

**SAMUELA SEI AND SENITIKI ROKOSUKA between the 16<sup>th</sup> day of September 2019 to the 28<sup>th</sup> of September 2019 at Visama in the Eastern Division,**

*dishonestly appropriated 1 x Brush cutter, 1 x Masi, 1 x Deep freezer, 3 x Mats, 1 x Double freezer (grey), 1 x Washing machine, 1 x blue storage box utensils, 3 x large cooking pots, assorted food items, the property of ILISAPECI BAI, with the intention of permanently depriving the said ILISAPECI BAI of the said properties.”*

3. The above charges were read and explained to them. They said, they understood the same. Accused no. 1 pleaded guilty to count no. 1, 2, 3 and 4, while Accused no. 2 pleaded guilty to count no. 3 and 4. The matter then went through various adjournments to enable the prosecution to prepare their summary of facts and advise the court on whether or not, the complainants’ stolen properties were recovered.
4. On 25 November 2020, the prosecutor presented their summary of facts in court. They were as follows:

*“1. On the 25<sup>th</sup> day of June 2020, the juvenile and the accused person in this matter pleaded guilty to the consolidated Information dated 1<sup>st</sup> April, 2020.*

*2. The summary of facts for the first and second counts of the consolidated Information is as follows:*

*Facts for the case of HAC 394 of 2019 which is illustrated in the first and second counts of the consolidated information.*

*3. The complainant-Varanisese Nasilasila (hereinafter known as “PW1”) is 27 years old of Visama, Tailevu, unemployed.*

*4. The juvenile – Senitiki Rokosuka (hereinafter known as “j1”) is 16 years old (6/9/2003) of Visama, Tailevu, unemployed.*

*Relationship the complainant and the juvenile both reside in the same village at Visama, Tailevu however there is no relationship between them.*

## **FACTS**

5. *Between the 30<sup>th</sup> day of September to the 1<sup>st</sup> of October, 2019 at Visama Village, Tailevu, J1 unlawfully entered into the dwelling house of PW1.*
6. *J1 entered into the dwelling house of PW1 through the kitchen window at around midnight and stole a Philips 32 inch flat T.V. from there.*
7. *J1 took the TV and gave it to one Samu who sold the TV to one Nilesch Chand for \$200.00 and split the \$200.00 in half and gave \$100.00 to J1.*
8. *During the time of the alleged incident, PW1 was not at her house as she has gone to Lautoka and there was no one at her house.*
9. *Returning from Lautoka, PW1 proceeded to put down the curtains and close the louvers when she realized that the louvers that used to be close were open.*
10. *Upon realizing that the louvers were open, PW1 looked around and immediately noticed that her Philip 32 inch TV was missing.*
11. *PW1 then called her sister-in-law to enquire about the missing television who informed PW1 that she had no knowledge of the same.*
12. *Matter was then reported to police who upon investigation arrested J1.*

## **Caution Interview of J1 – Senitiki Rokosuka**

13. *J1 was interviewed under caution at the Nausori Police Station by DC 5734 Jimi Ratulevu in the presence of his mother and he admitted to committing the alleged offence.*
14. *J1 was then charged for the offence on 3/12/2019 by A/D/CPL 3991 Kelly at the Nausori Police Station.*
15. *J1 admitted in his record of interview that he committed the offence alone without any assistance and told the police how he entered the house of PW1. Refer to Q & A 34 & 35 of the ROI of J1.*

16. J1 further stated that he took the TV to one Samu who sold the TV for \$200.00 and they split the money and kept \$100.00 each. Refer to Q & A 40 of the ROI of J1.
17. He stated that Samu whom he gave the TV was aware that the TV was stolen as he was the one who had asked him to steal the same. Refer to Q & A 40 of the ROI of J1.
18. Samuel Sei was interviewed under caution by the police however he denied the allegations made against him and stated that he had no idea that the television was stolen as J1 had only informed him that the TV was from PW1's house.

**Recovery**

19. The police later discovered the 32 inch flat screen TV from one Nilesh Chand.

**Facts for HAC 395 of 2019 which is illustrated in the third and fourth counts as stipulated in the consolidated Information is as follows:**

20. The complainant – Ilisapeci Bai (PW2) is 27 years old of Visama, Tailevu, Police Officer.
21. The accused – Samuela Sei (hereinafter known as "A1") is 20 years old (23/09/1999) of Visama, Tailevu, Taxi Driver.
22. The juvenile – Senitiki Rokosuka (hereinafter known as "J1") is 16 years old (6/9/2003) of Visama, Tailevu, unemployed.

**Relationship:** the complainant, accused and the juvenile all reside in the same village at Visama, Tailevu however there is no relationship at all.

**FACTS:**

23. Between 16<sup>th</sup> and 28<sup>th</sup> of September, 2019 at Visama, Tailevu, both A1 and J1, in the company of each other entered into the dwelling house of PW2 by removing four louver blades from the window.
24. A1 entered the house of PW2 whilst J1 stood guard outside. Entry into the house was gained by removing 3 louver blades of the sitting room. A1 took the following items from the dwelling house of the complainant and passed it outside the window to J1. The following items were removed from the house:-

- (i) 1 x Brush cutter;*
- (ii) 1 x Masi;*
- (iii) 1 x Deep Freezer;*
- (iv) 3 x mats;*
- (v) 1 x double freezer (grey);*
- (vi) 1 x washing machine;*
- (vii) 1 x blue storage box utensils;*
- (viii) 3 x large cooking pots;*
- (ix) Assorted food items.*

*25. PW2 was not at home when the alleged incident happened and upon finding the house being ransacked and items missing; the matter was reported to the police.*

*26. A1 and J1 were both arrested and interviewed under caution in which they both fully admitted to committing the alleged offences in the company of each other.*

*27. The crime scene reconstruction was conducted and both A1 and J1 showed the police how they entered the house and stole the items.*

#### *Recovery*

*28. Police investigation was conducted wherein the ozzy brush cutter was recovered from the possession of one Nilesh Chand Maharaj, 34 year old businessman of Wainibokasi and later same was identified by the complainant at the police station as the same belonging to her.*

*29. A1 admitted that he sold the same to Nilesh Chand Maharaj.*

*30. Upon further investigation conducted in regards to the other stolen items; the deep freezer and washing machine were also listed as being recovered by the police and identified by the complainant as the same belonging to her.*

*31. A1 was interviewed under caution by DC 4510 Esava at the Nausori Police Station and he admitted to breaking into PW2's property and stealing items from there together with J1. Refer to Q & A 25 to 27 of the ROI of A1.*

*32. A1 further stated how he entered the house by removing the louver blades and removing the items from the house and later selling deep freezer and brush cutter to one Nilesh Chand for \$300.00. Refer to Q & A 28 to 38 of the ROI of A1.*

**33. A1 also during scene reconstruction showed the police the house they broke into and the house of the person – Nilesh Chand whom they sold the deep freezer and brush cutter.**

**34. J1 was interviewed under caution by CPL 3834 – Josefa at Nausori Crime Office in the presence of his mother and he admitted to committing the offence in the company of A1 who is his cousin and who masterminded the breaking into the house of PW2. Refer to Q & A 28 to 33 of the ROI of J1.**

**35. J1 stated how A1 entered into the house by removing the louver blades and he stood outside as a guard and assisted him in carrying the items stolen. He also described how items were removed and how everything was transported and sold to one Nilesh. Refer to Q & A 35 to 45 of ROI of J1.**

**36. J1 further confirmed during the scene reconstruction to the police how he and A1 had entered the house of PW2 and stole the items and transported same to Nilesh.**

**37. Annexed herewith are the copies of the record of Interview of A1 and J1 marked “a” and “B” respectively.” [not included]**

5. The court then checked with both accuseds on whether or not they admitted the summary of facts presented by the prosecution. Accused no. 1 said, he admitted the above summary of facts, including the particulars of the offences on all counts. He said, no one forced him to do the above. As for Accused no. 2, he took the same stand. He said, he admitted the above summary of facts, including the particulars of offence in counts no. 3 and 4. He said no one forced him to do the above. As a result of the above, Accused no. 1 was found guilty as charged on count no. 1, 2, 3 and 4. Accused no. 2, being as adult, was found guilty as charged on count no. 3 and 4, and convicted accordingly.

6. Both accuseds were first offenders. Accused No. 1 was 16 years old at the time of the offence. He reached class 8 level of education at Visama District School. He was unemployed and stayed home. He said, he stayed with his father. He said, his

father was at work and he committed the crime. He said, he sold the complainant's masi, mats and pots. He asked for a fine.

7. As for Accused no. 2, he was 21 years old. He is single. He said, he is a part-time taxi driver. He reached form 6 level education at Ratu Sukuna Memorial School. He said, he pleaded guilty, was a first offender and had been remanded in custody for more than a year. He said, he sold the complainant's masi, mat and pots. He said, he is staying with his mother. He asked for a fine.
8. "Aggravated burglary" is an indictable offence, and viewed seriously by the Parliament of Fiji. It carried a maximum penalty of 17 years imprisonment (section 313 (1) (a) of Crimes Act 2009). The tariff for the offence is a sentence between 6 to 14 years imprisonment: see State v Shavneel Prasad, Criminal Case No. HAC 254 of 2016, High Court, Suva. Of course, the final sentence will depend on the aggravating and mitigating factors.
9. "Burglary", contrary to section 312 (1) of the Crimes Act 2009 carried a maximum penalty of 13 years imprisonment.
10. "Theft", contrary to section 291 (1) of the Crimes Act 2009 carried a maximum penalty of 10 years imprisonment.
11. The aggravating factors in this case were:
  - (i) **Utter Disrespect to People's Residence and Properties in a Village Setting.** The complainants and the accuseds reside in the same village in Tailevu. Villagers work so hard to build a residence and equip the same with household appliances to make their lives better. In a village setting, other villagers often respect others' residence and properties. Customary rules



often require each villager to look after another. However, you two, when the complainants were away, decided to offend against them. You Accused no. 1, participated in the breaking into of both complainants' house and stealing their properties therefrom. Accused no. 2, you broke into complainant no. 2's house and stole items therefrom. You both must be punished for offending against the complainants.

- (ii) You two have caused untold miseries and sadness to the complainants' families.

12. The mitigating factors were as follows:

- (i) As for Accused No. 1, you were 16 years old and a first offender. Accused no. 2, you were 21 years old and a first offender.
- (ii) Both of you two pleaded guilty to the offences approximately 6 months after first call in the High Court, and as a result, saved some court time.
- (iii) As for Accused no. 2, you had been remanded in custody since 5 December 2019, that is, 1 year 2 months 28 days ago.
- (iv) Only the complainants' brush cutter, deep freezer and washing machine were recovered.

13. In sentencing you two, I will start with the most serious offence, "aggravated burglary" (count no. 3). I start with a sentence of 6 years. I add 1 year for the aggravating factors, making a total of 7 years imprisonment. For being first offenders, I deduct 3 years, leaving a balance of 4 years imprisonment. For pleading guilty, I deduct 1 year leaving a balance of 3 years imprisonment. I deduct 1 year 3 months from Accused no. 2's sentence, as time already served, for being remanded in custody for 1 year 2 months 28 days, leaving a balance of 1 year 9 months imprisonment. For Accused no. 1, since he was a juvenile at the material time, I also

deduct 1 year 3 months, leaving a balance of 1 year 9 months for him. I deduct another 3 months, to take account of the properties recovered, leaving a balance of 1 year 6 months, for both accuseds. I find Accused no. 1 to be an unruly and/or depraved character, given the facts of the case. On count no. 3 ("aggravated burglary"), I sentence both accuseds to 1 year 6 months imprisonment.

14. On the "burglary" charge (count no. 1), I sentence Accused no. 1 to 1 year imprisonment.
15. On count no. 2 (theft), I sentence Accused no. 1 to 1 year imprisonment.
16. On count no. 4 (theft), I sentence each Accused to 1 year imprisonment.
17. The summary of your sentences are as follows:

(i)	Count no. 1: Burglary:	Accused no. 1- 1 year imprisonment
(ii)	Count no. 2: Theft:	Accused no. 1- 1 year imprisonment
(iii)	Count no. 3: Aggravated Burglary:	Accused no. 1- 1 ½ year imprisonment
		Accused no. 2- 1 ½ year imprisonment
(iv)	Count no. 4: Theft:	Accused no. 1- 1 year imprisonment
		Accused no. 2- 1 year imprisonment
18. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, making a final sentence for each accused to be 1 year 6 months imprisonment. For Accused No. 1, the 1 year 6 months imprisonment is suspended for 12 months from today. For Accused no. 2, the 1 year 6 months prison sentence, is effective forthwith.
19. In summary, Accused no. 1 and Accused no. 2, for offending against the two complainants on 16 and 30 September 2019, I sentence you Accused no. 1 to 1 ½ years' imprisonment, suspended for 12 months, and Accused no. 2 to 1 ½ years'

imprisonment, effective forthwith. Meaning of suspended sentence explained to Accused No. 1.

20. You two have 30 days to appeal to the 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 : In Person.**