

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 34 OF 2020

STATE

V

A. B [Juvenile]

Counsel : Mr. S. Seruvatu for the State.
: Ms. P. Reddy for the Juvenile.
: Mr. E. Toutou for and on behalf of the Social
Welfare Department, Nadi.

Date of Submissions : 16 April, 2021

Punishment Hearing : 12 October, 2021

Date of Punishment : 12 October, 2021

PUNISHMENT

(The name of the Juvenile is suppressed he will be referred to as "A.B")

1. The juvenile is charged with following information filed by the Director of Public Prosecutions dated 25th November, 2020:

Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311(1) (a) of the Crimes Act 2009.

Particulars of Offence

A.B with others on the 18th day of September, 2017 at Nadi, in the Western Division, robbed Mohammed Irshad Ali of a Samsung J2 mobile phone, 1 x sunglasses, 1 x blue tooth speaker, assorted keys, 1 x wrist watch and cash of FJD425.00 and USD50.00 and immediately before such robbery used personal violence on the said Mohammed Irshad Ali.

2. On 3rd February, 2021, the juvenile pleaded guilty to the above count in the presence of his counsel. Thereafter on 10th March, 2021 the juvenile admitted the summary of facts read to him.
3. The summary of facts was as follows:
 1. *The complainant in this matter is Mohammed Irshad Ali, 32 years old, taxi driver of Meiygania, Nadi at the time of the alleged offence.*
 2. *The juvenile in this matter is Aisea Baisagale, 17 year old, student of Masimasi Sabeto, Nadi at the time of the alleged offence.*
 3. *On the 18th of September, 2017 at 12pm the complainant, was parked at his base when an i-taukei boy hired him and asked him to take him to Nakurakura, Nadi.*
 4. *As the i-Taukei boy sat in the front passengers seat, he asked the complainant to pick up two other friends from opposite Prince Charles Park. The complainant proceeded towards Prince Charles Park and*

once he reached there, another i-Taukei boy and the juvenile ran to the complainant's taxi and sat inside.

5. The first i-Taukei boy then told the complainant to go to Legalega and said for the complainant to go through the Sabeto village road. While travelling down that road, the first i-Taukei boy pulled the hand break and put the gear in neutral. The complainant tried reaching for his knife and throwing it at them but he was not sure whether to hit them or not. The first i-Taukei boy then pulled a screw driver from the box and pointed it at the complainant's chest.

6. The second i-Taukei boy and juvenile then stole the following items:

(a) Cash of	USD \$ 50.00
(b) Cash	FJD \$425.00
(c) Samsung J2 mobile phone	FJD \$500.00
(d) Sunglasses	FJD \$ 80.00
(e) Bluetooth device; and	FJD \$ 80.00
(f) Assorted keys	FJD \$120.00

Approximate value of property stolen: FJD \$1,285.00

7. During the robbery, the complainant was assaulted and according to the medical report, the medical findings were as follows:

- (g) Facial swelling on right cheek with bruising noted;
- (h) Bruising on his lips and lacerations on inner part; and
- (i) Swelling on left temple area with slight bruising.

(Copy of the medical report is attached herewith)

8. *The matter was reported to the Nadi Police Station and investigations were carried out and the juvenile was arrested. Upon being cautioned interviewed whereby he admitted to the allegation of aggravated robbery, particularly at Q. & A. 63 – “I punched him (driver) on his mouth and I pulled the knife from the driver’s hand and put it in my pocket’, Q. & A. 64 – ‘... I held the driver’s both hands while Mesulame was still holding the driver’s neck, Pauliasi searched the coin tray and the council box.*

(Copy of the caution interview is attached is herewith)

9. *The juvenile is charged with one count of aggravated robbery: contrary to section 311 (1) (a) of the Crimes Act 2009.*

4. After considering the summary of facts read by the state counsel which was admitted by the juvenile and upon reading his caution interview this court is satisfied that the juvenile has entered an unequivocal plea of guilty on his freewill.

5. This court is also satisfied that the juvenile has fully understood the nature of the charge and the consequences of pleading guilty. Furthermore, the summary of facts satisfies all the elements of the offence of aggravated robbery the juvenile admitted committing the offence in the company of others.

6. In view of the above, this court finds the juvenile guilty as charged. Both counsel filed punishment and mitigation submissions for which this court is grateful.

7. The counsel for the juvenile presented the following mitigation:

- (a) The juvenile was 17 year of age at the time and is now 22 years of age;
- (b) Student of Fiji National University;
- (c) First time in conflict with the law;
- (d) Doing apprenticeship program in Refrigeration and Air Conditioning;
- (e) Cooperated with the police;
- (f) Pleaded guilty at the earliest opportunity;
- (g) Remorseful, seeks forgiveness, promises not to reoffend;
- (h) Has also done Community work under the supervision of the Village Headman (letter attached with the mitigation).

TARIFF

8. The maximum penalty for the offence of aggravated robbery is 20 years imprisonment. The accepted tariff for this offence is from 8 years to 16 years imprisonment (*Wallace Wise vs. The State, CA of 2015 (24 April, 2015)*).
9. However, this is case of robbing a taxi driver in broad light by the juvenile and his friends. The acceptable tariff for the offence of aggravated robbery against providers of public service such as taxi, bus and van drivers is from 4 years to 10 years imprisonment (*see Usa vs. State, Criminal Appeal AAU 81 of 2016 (15 May, 2020)*)
10. The juvenile falls under special categorization than adults when it comes to punishment under section 30(3) of the Juveniles Act as a young person which prescribes the maximum punishment for young persons at 2 years imprisonment.

AGGRAVATING FACTORS

11. The following aggravating factors are obvious:

(a) Planning

The juvenile was an active member of the plan to rob a taxi driver that day. The victim was left in the middle of nowhere without any money, car keys and mobile phone.

(b) Victim was unsuspecting and vulnerable

The victim was lured into believing that he was hired to undertake a genuine public service work as part of his usual duty as a service provider but this was not to be. The juvenile and his friends were bold and undeterred in what they did by outnumbering the victim.

REASONS FOR COMMITTING THE OFFENCE

12. The counsel for the juvenile in her written mitigation states that the juvenile committed the offences due to peer pressure and wrong decision making.

SOCIAL WELFARE REPORT

13. The Social Welfare Department has prepared a pre-punishment report for the juvenile after conducting a face to face interview with the juvenile and his family members.

14. The case officer recommends the following:

(a) The juvenile be given a second chance in life. He has the support of his parents and family and since the date of allegation he has made tremendous progress in life;

(b) The juvenile be given a non-custodial punishment to allow him to continue to be a good person.

PARENTAL VIEW/SUPPORT

15. The father of the juvenile was present in court, he is very supportive of his son and is doing all he can to ensure that his son makes progress in life. The mother of the juvenile is in Australia, but she continues to financially support her son from there. The father of the juvenile takes responsibility for the actions of his son and he is willing to compensate the victim by paying the sum of \$500.00.
16. The juvenile expressed remorse in court, promises not to be in conflict with the law again and was genuinely apologetic for what he had done. I am sure this experience was an eye opener for him. The juvenile has been in detention for 3 weeks which is appropriate punishment already. An experience which has taught the juvenile to keep away from conflict with the law.

DETERMINATION

17. Considering the objective seriousness of the offence committed I select 4 years imprisonment (lower range of the tariff) as the starting point of the punishment. For the aggravating factors I increase the punishment by 1 year. The interim punishment now stands at 5 years imprisonment. For the early guilty plea, mitigation, police custody and/or detention period the interim punishment is reduced by 3 years.
18. The final punishment is 2 years imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final punishment since it does not exceed 3 years imprisonment.

19. 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 paragraph 23:

"[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."

20. 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 punishment.
21. The juvenile is a young person as per the Juveniles Act, he is of good character, an isolated offence was committed by him, he was 17 years of age at the time of the offending, pleaded guilty at the earliest opportunity, is genuinely remorseful, cooperated with police and he takes full responsibility of his actions. These special reasons render immediate imprisonment term inappropriate.
22. I am sure the juvenile with parental and family guidance, supervision and support has a bright future ahead of him hence an imprisonment term will not augur well for his future. The juvenile has been in police custody and/ or at the Fiji Juvenile and Rehabilitation Centre which is in itself an adequate and appropriate punishment, an experience that will remind him to keep away from conflict with the law. There is no doubt that the juvenile has made steady progress in his life. This court has taken into account rehabilitation over and above deterrence.
23. Having considered section 4(1) of the Sentencing and Penalties Act this court is of the view that a suspended punishment is just in all the circumstances of the case.
24. Let me remind the juvenile that leading a life within the boundaries of criminal activities does not assist it only takes a person deeper and deeper into a world of uncertainty and misery. The society does not condone such activities and this court also denounces such behaviour.
25. This is an opportunity for the juvenile to stop entering the world of uncertainty and lead a happy life with his parents, family members and

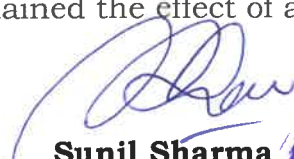
siblings. The only reason why the punishment is below the tariff is because the Juveniles Act imposes a limit on the punishment of young persons.

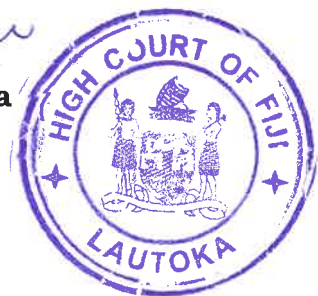
26. In summary the juvenile is given a punishment of 2 years imprisonment which is suspended for 2 years. The following orders are to take effect immediately.

ORDERS

- a) The juvenile is given a punishment of 2 years imprisonment for one count of aggravated robbery which is suspended for 2 years* with immediate effect;
- b) The father of the juvenile is to pay the sum of \$500.00 as compensation to the victim within 21 days from today payable at either the High Court at Lautoka or the Magistrate's Court nearest to him;
- c) 30 days to appeal to the Court of Appeal.

*The juvenile is explained the effect of a suspended punishment.


Sunil Sharma
Judge



At Lautoka

12 October, 2021

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Juvenile.