

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 147 OF 2022**

**BETWEEN** : STATE

**AND** : TEVITA WAVOLI ROKOVESA MATAKI  
WAISALE BIAUKULA

**Counsel** : Mr S Shiraz for the State  
Ms T Kean for both Accused

**Date of Hearing** : 27 June 2022

**Date of Sentence** : 5 July 2022

**SENTENCE**

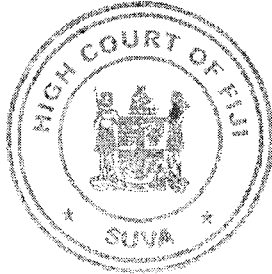
- [1] Both accused have entered guilty pleas to a charge of aggravated robbery contrary to section 311 (1) (a) of the Crimes Act.
- [2] The facts are as follows. The victim is an adult male. He is a school teacher. On 15 April 2022 at around 7 pm he went to Tamavua to visit a relative. He got off at a bus stop and waited at the bus stop for another relative to arrive. The two accused attacked him while he was at the bus stop.
- [3] The first accused held the victim from behind while the second accused punched him on the right side of the face. The victim fell on the ground. Both accused then snatched the victim's mobile phone and fled the scene. The victim sustained physical injuries (laceration, abrasion and swelling) to his face and back of his neck.

- [4] Both accused were drunk at the time of the offending. When they were arrested they admitted the offence and the stolen mobile phone was recovered.
- [5] The first accused is 23 years old. He is in a de-facto relationship and has a 7 month old daughter. He says he earns a living by farming.
- [6] The second accused is 19 years old. He lives with his aunt after his father passed away and his mother remarried. He enrolled himself in a short course in electrical engineering at Fiji National University. His pastor has provided a written character reference saying that the accused is a reliable young man who actively participates in church activities.
- [7] Both accused are first time offenders.
- [8] The statutory aggravation is that the offence was committed in company. Both accused are equally culpable. The maximum penalty of 20 years imprisonment for aggravated robbery indicates that the offence is to be treated seriously. The nature of the robbery is 'street mugging'.
- [9] I adopt the guidelines in *State v Tawake* [2022] FJSC 22; CAV0025.2019 (28 April 2022) set by the Supreme Court for sentencing 'street mugging' offences. *Tawake* Guidelines require the sentencing court to pitch a starting point based on the level of harm suffered by the victim instead of the offender's culpability. The harm can be physical, psychological or both. The higher the level of harm suffered by the victim, the higher the starting point and the sentencing range. After a starting point is pitched based on the level of harm suffered by the victim, the sentence is then adjusted to reflect the mitigating and aggravating factors before arriving at a final sentence within a recommended range.
- [10] In the present case, the parties agree and I endorse that the level of harm suffered by the victim falls within the medium range. The victim sustained physical injuries but the injuries were not serious. The prosecution has not tendered any evidence

of psychological harm. The recommended starting point for medium level of harm suffered by the victim in a case of street mugging committed in company is 5 years imprisonment and the range is 3-7 years imprisonment.

- [11] The aggravating factors are that the offence was committed in darkness and the offenders were intoxicated.
- [12] The mitigating factors are that both accused are young and without any previous convictions. The second accused is a youth. Both cooperated with the police by admitting the offence and assisting in the recovery of the phone. Both entered early guilty pleas and expressed remorse. Early guilty pleas have saved significant court's time and resources.
- [13] For both accused I pick 5 years as my starting point. I add 1 year to reflect the aggravating factors and deduct 3 years for all the mitigating factors and 4 days in remand.
- [14] Both accused are sentenced to 3 years imprisonment. I now consider whether I should suspend the sentence. Although the offence of street mugging is prevalent and any sentence imposed must deter the offender and others in order to protect the community, it is not necessary that those objectives of sentence can only be achieved with prison sentence.
- [15] The offence in the present case did not involve any significant planning, prolonged attack on the victim, or use of a deadly weapon. The stolen mobile phone had been recovered. Both offenders have taken responsibility for their crime and are genuinely remorseful.
- [16] In these circumstances, I suspend the sentence for 5 years. [Suspension explained]

[17] Recovered mobile phone is restored to the owner.



A handwritten signature in black ink, appearing to be "D. Goundar", written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

**Solicitors:**

Office of the Director of Public Prosecutions for the State  
Legal Aid Commission for both Accused