

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 101 of 2022**

**STATE**

vs.

- 1. RATU MAIKA BOLOBOLO**
- 2. INOKE RAIWALUI KIRIKIRIKULA**

**Counsel:** Ms. N. Ali for the State  
Mr. T. Varinava and Mr. S. Rau for 1<sup>st</sup> Accused  
Mr. K. Skiba for the 2<sup>nd</sup> Accused

**Submissions on sentencing** : 28<sup>th</sup> June 2022  
**Date of Sentence** : 30<sup>th</sup> June 2022

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**SENTENCE**

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**Introduction**

1. As per the information filed by the Director of Public Prosecutions dated 19<sup>th</sup> April, 2022, both of you Mr. Ratu Maika Bolobolo and Mr. Inoke Raiwalui Kirikirikula were charged jointly for committing the offence of Aggravated Robbery contrary to Section 311 (1) (a) of the Crimes Act, 2009 by steeling 1x black Samsung J7 Mobile Phone, 1x Nokia Mobile Phone, 9 x assorted Ladies Sarees (Clothes) and \$35.00 cash from Suruj Mati and immediately before

stealing from Suruj Mati, used force on her on the on the 15<sup>th</sup> day of March, 2022 at Naisnu, in the Central Division, whilst being in the company of each other.

2. Both of you the 1<sup>st</sup> and the 2<sup>nd</sup> Accused being aware and well advised of the legal effects, did plead guilty to the above count in the presence of your respective Counsel. This Court was satisfied that you fully comprehended the legal effects and that your pleas were voluntary and free from influence. You did so plead guilty at the first available opportunity. When the State presented the facts, you admitted committing the said act of robbery in the company of each other, but you disputed using force by tying the wrists with duct tape.
3. A **Newton hearing** was held to determine the disputed fact regarding the use of force during the two incidents of Robbery by tying the wrists with duct tape. The victim was called to give evidence but you elected to remain silent. Upon the Newton hearing this court by its ruling dated 28<sup>th</sup> June 2022 held that the fact of the wrists being tied with duct tape was proved on the required criminal standard to the satisfaction of Court.

#### Facts

4. Upon the reading of the summary of facts on the 28<sup>th</sup> of June 2022, both of you admitted the following summary of facts save and except the fact of tying both the hands of the complainant Suruj Mati tightly with a duct tape appearing at paragraph 7 thereof;
  - i. *That the Complainant in this matter is Suruj Mati, 65 years old, retired Teacher of Lot 11 Kings Road, Nasinu, and the 1<sup>st</sup> Acused is Ratu Maika Bolobolo is 22 years old, Construction worker of Tunoloa road, Caubati and you the 2<sup>nd</sup> Accused is Inoke Raiwalui Kirikirikula, 18 years old, Unemployed of Lot 24 Vesida Place, Nasinu. There is no relationship between the complainant and the accused persons in this matter. On the 15<sup>th</sup> day of March, 2022, at Nasinu, the accused persons Ratu Maika Bolobolo and Inoke Raiwalui Kirikirikula, in the company of each other, stole 1x black Samsung J7 Mobile Phone, 1x Nokia Mobile Phone, 9 x assorted Ladies Sarees (Clothes) and \$35.00 cash from complaint Suruj Mati and immediately before stealing from the complainant, used force on her.*

- ii. *On the above mentioned date at about 1.40pm, Complainant was at her house with her grand-daughter namely Mahira Dutt, 5 year old, female. The complainant went outside her house to bring dry clothes from the laundry line when she was called by one Apenisa.*
- iii. *Apenisa called the complainant on the pretext that he has Dalo (Root crop) however there was no Dalo in his farm.*
- iv. *Whilst the Complainant was outside her house speaking to her neighbor Apenisa both the accused persons entered into the complainant's house through the front house door without the complainant's consent.*
- v. *The Complainant finished her conversation with Apenisa and returned to her house. Upon entering her house through the back kitchen door the complainant realized that she cannot hear her granddaughter's voice therefore she called out her name however there was no response.*
- vi. *The Complainant then rushed to her granddaughter's room where she heard her granddaughter's cries. As the complainant reached her granddaughter's room she saw an I-Taukei male (accused person) standing inside the room. At this point in time the second accused approached the complainant from behind and grabbed the complainant's mouth from behind preventing her from shouting.*
- vii. *Both the accused persons then tied the complainant's mouth up to neck area with duct tape, tied both her hands tightly with a duct tape and thereafter took the complainant in one of the rooms and made the complainant sit on the floor.*
- viii. *The accused persons then tied the complainant's 5 year old granddaughter's mouth with the duct tape and took her to a room where her granddaughter was seated and made her sit on the floor with the complainant.*
- ix. *One of the accused person demanded money from the complainant whereby the complainant then showed him her handbag. The accused then opened the handbag and took out the wallet which contained \$35.00 cash. Whereas, the other accused proceeded to other parts of the house and continued to search the house.*
- x. *Both the accused ransacked the complainant's house and dishonestly appropriated the following items:*
  - *1x Samsung J7 Mobile Phone valued at \$600.00,*
  - *1 x Nokia (Button) Mobile Phone valued at \$59.00,*
  - *9 x assorted ladies Sarees (dresses) valued at \$1,500.00.*
- xi. *The total value of the complainant's stolen items is \$2,149.00.*
- xii. *After stealing the above mentioned items both the accused persons fled from the complainant's house.*
- xiii. *According to the Complainant she sustained swellings on her hands and mouth. However, the Complainant did not went to medical examination as she was traumatized and had fear that the accused person may come back to her house and do something to her.*

- xiv. *The complainant managed to pull out the tape from her mouth and hands, and thereafter opened the tape from her granddaughter's mouth.*
- xv. *The matter was reported to Police and Investigations were carried out.*
- xvi. *The first accused Ratu Maika Bolobolo sold the Samsung J7 Mobile Phone to one Rupeni Vakalalabure, Labourer of Tunuloa Road, Caubati, for \$80.00. Whereas, the second accused Inoke Raiwalui Kirikirikula sold the Nokia Mobile Phone to one Ashok Kumar, of Lot 9 Mama's place for \$10.00.*
- xvii. *Both the Mobile Phones and assorted Ladies Sarees were recovered. (Attached here and marked "A" is the search list and "B" is Photographic Booklet).*
- xviii. *The accused persons were arrested on the 21<sup>st</sup> March, 2022, and were interviewed under caution whereby both fully admitted committing the alleged offence.*
- xix. *Both the accused persons were charged with one count of Aggravated Robbery; contrary to section 311 (1) (a) of the Crimes Act 2009.*
- xx. *You Ratu Maika Bolobolo admitted in question number 45 to 61 of the cautioned interview, that on the 15<sup>th</sup> March, 2022, at about 1.40pm, that you and Inoke jumped into an Indian Lady's house and robbed her, tying her and taking her into a room and admits stealing mobile phones and Sarees. Further, you admit selling the phone to one Rupeni Vakalalabure for \$80.00.*
- xxi. *You Inoke Raiwalui Kirikirikula, dmitted in question number 35 to 60 of the cautioned interview, that on the 15<sup>th</sup> March, 2022, you met your friend Maika and went to one Indian lady's house along the Kings road, and entered the house through the front house door. You also admit you saw a small Indian girl inside the house and that tied her mouth and took her to one of the rooms inside the house so that she doesn't runs away and they saw the complainant coming from the kitchen, they approached her, and tied the complainant's mouth and put her in a room. You admit taking the mobile phones, a bag and clothes. The said Nokia mobile phone was on the tale inside the sitting room and Maika brought other items from the other room that Maika took the touch screen phone.*
- xxii. *That both of you have no previous convictions.*

### Sentencing regime

5. In selecting a starting point of your sentence for the 1<sup>st</sup> Count of Aggravated Robbery, this Courts is required to have regard to the objective seriousness of the offence. The maximum penalty prescribed for aggravated robbery is 20 years imprisonment thus it is considered a serious offence. As for the tariff determined in *Wallace Wise v State [2015] FJSC 7 CAV0004.2015* (24<sup>th</sup> April 2015) is a range between 8 to 16 years imprisonment depending on force used or threatened.

6. In State v Josaia Vatunicoko [2018] FJHC 885; HAC210.2018(21 September 2018) the tariff determined for various forms of Aggravated Robberies was summarized as follows;
  - a. Street mugging – as per schedule; Supreme Court in the case of State v Eparama Tawake [CAV 0025.2019 (28<sup>th</sup> April 2022)]
  - b. Home invasion – 8 years to 16 years imprisonment; [Wallace Wise v State [2015] FJSC 7 CAV0004.2015 (24<sup>th</sup> April 2015) ]
  - c. A spate of robberies – 10 years to 16 years imprisonment [Nawalu v State [2013] FJSC 11; CAV00012.12. (24<sup>th</sup> August 2013)
  
7. If I may consider the culpability and the harm factors of your offending, both of you during broad daylight around 1.30 p.m., went into the Complainant’s house and manhandled her tied her mouth and wrists with duct tape. As a result of your violent manhandling she sustained a blow to the back of her left shoulder causing tenderness and pain which lasted for some time. Apart from the complainant both of you did put gum tape around the mouth of the 5 year old grandchild (a girl) of the complainant. This is a serious offence against property of the complainant as well as the society. These offences appear to be prevalent and the number of young offenders brought before the courts for committing such offences is alarming and significant. You with others no doubt have put her and her granddaughter into fear of immediate and serious harm which certainly has caused anxiety and trauma to the Complainant who was 65 years. This certainly have been a horrific experience for the victim to be so manhandled and subjected to force and restraint in her own home in this manner and the emotional trauma caused will not be forgotten in a hurry.
  
8. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact Report, complainant has said that the offence has made her feel scared all the time as she always pictures what transpired that day. That she was hurt with her body and her feelings as she did not imagine that this would have happened to her. When she is alone remembers this and feels it will happen again. Her relationship and interaction with others has since changed. She has limited her movements and refrain from attending functions as the thought always is there that the same may happen out there and she is traumatised and suffer from fear. It is clear from the victim impact statement that your offending has had a very significant and long-

lasting psychological impact on the elderly and vulnerable complainant which must be considered in sentencing.

9. Mr. Rau, for you the 1<sup>st</sup> Accused submitted in mitigation that the 1<sup>st</sup> Accused was 22 years as at the date of offence and that it was due to peer pressure and lack of good judgement he committed this offence. Mr. Skiba for the 2<sup>nd</sup> Accused submitted that the 2<sup>nd</sup> Accused was 20 years. I find that as at the date of the offending the 2<sup>nd</sup> accused Inoke Raiwalui Kirikirikula was in fact 18 years and 11 months knocking at 19 and he has been attending the Nabua Technical College was a 1<sup>st</sup> year student (Q.27 of the cautioned statement). Both of you are young first time offenders as evident from your Nil Previous Conviction reports.
  
10. Whilst you were 22 and 18 years respectively, though young in age, your participation was your own decisions. This being so, there is nothing in the record or submissions to suggest that either one of you was persuaded by peer pressure to commit this offence. You have thus have jointly committed the crime and each of you are equally culpable for the offence of 'Aggravated Robbery' and no question of apportionment arises in the circumstances of this case. In these circumstances I was unable to find any rational basis to consider peer pressure or the age to apportion the culpability between you. Both of you are charged on the basis of 'joint enterprise' based on the legal principle of '*common intention to prosecute an unlawful purpose in conjunction with one another*' as embodied in Section 46 of the Crimes Act of 2009 in view of which '*each one is deemed to have committed the offence.*'
  
11. You have been walking together and seeing the front door of the complainant's house opened have entered the house with impunity. This appears to be an opportunistic home invasion with some form of premeditation and plan put in to action probably on the spur of the moment. However, you have played your individual roles together after forming the common intention of prosecuting the unlawful purpose of robbing from this vulnerable victim.

## Sentence

12. Upon considering the gravity and the objective seriousness of the offence of Aggravated Robbery, to my mind it is reasonable and pick 9 years' imprisonment as the starting point of the sentences of both of your sentences for this offence. However, the final sentence will depend on the mitigating and aggravating factors which I will now proceed to consider.

## Aggravating factors

13. I will start with considering the aggravating factors. I observe the following aggravating circumstances of your offending:
- a. The complainant was 65 years and the little girl was 5 years and both are vulnerable persons, and you have taken advantage of their vulnerability,
  - b. carried out with some premeditation, or some planning on the spur of the moment.
  - c. Injuries and psychosocial harm caused to the victim,
  - d. the items stolen were substantial though recovered later.
  - e. This was a home invasion in broad daylight you were bold,
  - f. The mouth and hands of the Complainant and the mouth of the 5 year old were tied with tape.
14. I am inclined to add 2 years to the starting point for the above-mentioned aggravating factors bringing the interim sentence of 11 years imprisonment.

## Mitigating factors

15. Now I will consider the mitigating factors. I observe the following mitigating circumstances of your offending in respect of both of you;
- a. pleaded guilty early and at the outset;
  - b. seek forgiveness,
  - c. co-operated with the police,

- d. the stolen items except \$ 35 cash, were recovered due to your co-operation,
  - e. 22 years and 18 years and 11 months of age respectively at the time of the offending and are a young first-time offenders,
  - f. Neither have any previous convictions nor similar pending cases.
16. Your counsel also submitted that you the 1<sup>st</sup> Accused have a 4-month-old child and was construction worker earning \$ 200 a week and you the 2<sup>nd</sup> Accused was a student at Nabua Technical College unmarried and lived with your parents and due to lapse of judgment you may have joined this offending. Further, both of you are willing and promise to reform and not re-offend. You have accepted responsibility of your actions and did save the Court's time by pleading guilty at the earliest opportunity.
17. For all these grounds in mitigation, you should receive a considerable discount in the sentence. In this regard, I will consider a reduction of 3 years and 6 months for the early guilty pleas which is a 1/3<sup>rd</sup> reduction and another 3 year for the previous good character and youth and another 6 months for the other mitigating factors which brings both of your sentences down to four (4) years' imprisonment.
18. I must confess that my heart decrees that you the 1<sup>st</sup> Accused being young and the 2<sup>nd</sup> Accused being a very young and both first time offenders be given a second chance, but alas, the law and the principles of sentencing decrees otherwise which I am must follow. Hence, I have endeavoured to impose upon you the minimum sentence that is possible within the parameters of the said sentencing regime.

#### Non-parole period

19. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand, this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation.



20. Considering the above, I impose 2 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and also meet the expectations of the community which is just in the circumstances of this case

#### Head Sentence

21. Accordingly, I sentence both you the 1<sup>st</sup> Accused and the 2<sup>nd</sup> Accused for a period of 4 years' imprisonment for the offence of Aggravated Robbery as charged in the information. However, you are not entitled to parole for 2 years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

#### Actual Period of the Sentences

22. I also observe from the Court record and the submissions that the 1<sup>st</sup> accused has been in remand since 21<sup>st</sup> March 2022 up to date for 3 months and 9 days. In the exercise of my discretion and in accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced by 04 months upon it being considered as a period of imprisonment already served. In view of the above, the final sentence will be 3 years and 8 months' imprisonment.
23. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed compels me to consider the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
24. Accordingly, the actual total period of the sentences imposed for both of you Mr. Ratu Maika Bolobolo and Mr. Inoke Raiwalui Kirikirikula separately are three (03) years and eight (08) months' imprisonment with a non-parole period of one (01) year and eight (08) months.

25. You have 30 days to appeal to the Court of Appeal if you so desire.



**At Suva**

30<sup>th</sup> June 2022

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for both the Accused