

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**APPELLATE JURISDICTION**

**CRIMINAL CASE NO. HAA 20 OF 2022**

**JONE EREMASI**

**.vs.**

**STATE**

**Counsels:**    *Ms Latu L.*    -    *for Prosecution*  
                  *In Person*    -    *for Accused*

***Date of Judgment:*    26.01.2023**

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**JUDGMENT**

1. In this matter, the Appellant had been charged in the Labasa Magistrate's Court on two counts, as below:

**FIRST COUNT**

*Statement of offence*

**THEFT** contrary to Section 291 of the Crimes Act 2009.

*Particulars of Offence*

**JONE EREMASI** on the 10<sup>th</sup> day of July 2022 at Labasa in the Northern Davison dishonestly appropriated 2 cooking pots valued at \$250.00 each with the total value of \$500.00 the property of Eparama Rauraumala with the intention to permanently deprive the said Eparama Rauraumala.

**SECOND COUNT**

*Statement of offence*

**SERIOUS ASSAULT** contrary to Section 277 (b) of the Crimes Act 2009.

*Particulars of Offence*

**JONE EREMASI** on the 25<sup>th</sup> day of July 2022 at Labasa in the Northern Davison resisted arrest from Police Constable 6088 Viliame Waqatabu to prevent the lawful apprehension<sup>7</sup> of himself whilst in due execution of his duty.

2. Thereafter, when the plea was taken on 25/07/2022, the Appellant has pleaded guilty to both the counts on his own free will and the Learned Magistrate had convicted the Appellant.
3. Subsequently, on 02<sup>nd</sup> August 2022, the Appellant had been sentenced by the Learned Magistrate, as follows:
  - Count 1: 6 months and 23 days imprisonment;
  - Count 2: 6 months imprisonment
4. Being aggrieved by this sentence, the Appellant has challenged the sentence in this Court on the below grounds:
5. Grounds of Appeal and contention of the Appellant:
  - a. Court has failed to give due discount in the sentence on the recovery of all the items stolen by the Appellant.
  - b. Court has failed to grant the 1/3 discount of the sentence on his early guilty plea.
6. Submission of the State:
  - a. With regard to the first ground of Appeal, it is the position of the State that the Learned Magistrate had mentioned and considered the recovery of items stolen in paragraph 12 of her sentencing order.
  - b. As per the second ground of appeal the State submits that in paragraph 14 of the ruling of the Learned Magistrate the early guilty plea has been considered and a reduction of the sentence of 1 month had been granted. In relation to granting of 1/3 reduction the state highlights the observation of Justice Gounder in the case of *Matautoga v State*<sup>1</sup>, as below:

*“In considering the weight of the guilty plea, sentencing courts are encouraged to give a separate consideration and quantification to the guilty plea (as a matter of practice and not principle), and assess the effect of the plea on the sentence by taking in account all the relevant matters such as remorse, witness vulnerability and utilitarian value.*

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<sup>1</sup> [2015] FJCA70.

*The timing of the plea of course, will play an important role when making that assessment.”*

### **Analysis and Determination of Court**

7. With regard to the first ground of appeal, while recognising that the Learned Magistrate had taken notice of this fact as brought to the attention of this Court by the Prosecution, there is no specific mention in the Court record whether these items had been handed over back to the victim by the accused as an act of remorse or whether they have been discovered due to the diligent work of the investigating officers. Therefore, this Court is not in a position to grant a further reduction of the sentence than the reduction already granted by the Learned Magistrate. Further, regardless of the discovery of items, the Appellant had committed an offence by stealing these items which warrants a punishment as pronounced by the Learned Magistrate. Therefore further consideration is not necessary on this ground.

8. As per the second ground of appeal of granting a 1/3 reduction of the initial selected sentence, in the case of **Rainima –v- The State**<sup>2</sup> Madigan JA observed, as below:

*“Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the “high water mark” of discount is one third for a plea willingly made at the earliest opportunity. This court now adopts that principle to be valid and to be applied in all future proceeding at first instance.”*

9. However, in the subsequent case of **Aitcheson v State**<sup>3</sup>, the Supreme Court of Fiji held, as below:

*“The principle in Rainima must be considered with more flexibility as Mataunitoga indicates. The overall gravity of the offence, and the need for the hardening of hearts for prevalence, may shorten the discount to be given. A careful appraisal of all factors as Goundar J has cautioned is the correct approach. The one third discount approach may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably”*

10. In this matter, as an aggravating factor, the Learned Magistrate had taken into consideration in reducing the sentence for the early guilty plea the fact that the Appellant in this matter had subjected a police officer at risk when he resisted arrest, as charged in the second count, and opted to jump into a flowing river. Therefore, in imposing the sentence the Learned Magistrate had done a careful appraisal of all factors before coming to the final conclusion as directed by the Supreme Court in the case of **Aitcheson v State**.<sup>4</sup> Therefore, this Court finds that the contention of the Appellant in relation to the second ground is without merit.

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<sup>2</sup> [2015] FJCA 17; AAU 22 of 2012 (27 February 2015)

<sup>3</sup> [2018] FJSC 29; CAV0012.2018 (2 November 2018)

<sup>4</sup> Ibid

11. On the above reasoning, this petition of appeal filed by the Appellant is dismissed.

12. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in blue ink, appearing to read "Thushara Kumarage".

Hon. Justice Dr. Thushara Kumarage

**At Suva**  
**26 January 2023**