

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 117 OF 2020

STATE

-v-

- 1. INOKE QILAI DOKANAVOSA**
- 2. TIMOCI RASOVA MATAITINI**

Counsel: Mr U. Lal with A. Singh, Ms S Prakash for Prosecution
Ms N. Mishra and Ms Sharma for 1st Offender,
Ms A. Bilivalu for 2nd Offender.

Date of Sentencing Hearing: 27 September 2023

Date of Sentence 18 October 2023

SENTENCE

1. After a contested trial, Mr Inoke Qilai Dokanavosa (1st Offender) and Mr Timoci Mataitini Rasova (2nd Offender) were convicted of two counts of Aggravated Robbery, one count each of Aggravated Burglary and Theft. In addition to that the 1st Offender was convicted of one count of Rape and the 2nd offender was convicted of one count of Murder. The information filed by the Director of Public Prosecution reads as follows:

COUNT 1

Statement of Offence (a)

MURDER: Contrary to Section 237 of the Crimes Act 2009

Particulars of Offence (b)

TIMOCI RASOVA on the 22nd day of March 2020, at Sigatoka in the Western Division, murdered **LEKHRAM CHANDRA**.

COUNT 2

Statement of Offence (a) **AGGRAVATED ROBBERY:** Contrary to Section 311(1) (a) of the Crimes Act 2009.

Particulars of Offence (b)

INOKE DOKANAVOSA & TIMOCI RASOVA on the 22nd day of March 2020, at Sigatoka in the Western Division, in the company of each other stole 1 black Nokia brand button mobile phone, 1 Maxton brand DVD Deck, 5 x USD \$1.00 currency, 1 clear eyeglass in brown case, 1 brown eyeglass in black case and 1 black side bag from **LEKHRAM CHANDRA** and immediately before committing theft used force on the said **LEKHRAM CHANDRA**.

COUNT 3

Statement of Offence (a)

RAPE: Contrary to Section 207 (1) & (2) (a) of the Crimes Act 2009.

Particulars of Offence (b)

INOKE DOKANAVOSA on the 22nd day of March 2020, at Sigatoka in the Western Division, had carnal knowledge of **KRISHI LATA** without her consent.

COUNT 4

Statement of Offence (a)

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

Particulars of Offence (b)

INOKE DOKANAVOSA & TIMOCI RASOVA on the 22nd day of March 2020, at Sigatoka in the Western Division, in the company of each other stole FJD 440.00, 1 Alcatel brand button mobile phone, 1 Nokia brand button mobile phone, 1 Ladies Wristwatch, 1 Zebronics brand DVD player and 1 rechargeable

lamp, the properties belonging to KRISHI LATA and immediately before committing theft used force on the said KRISHI LATA.

COUNT 5

Statement of Offence (a)

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

Particulars of Offence (b)

INOKE DOKANAVOSA & TIMOCI RASOVA on the 22nd day of March 2020, at Sigatoka in the Western Division, in the company of each other entered the dwelling house of **MUNENDRA GOUNDAR** with intent to commit theft.

COUNT 6

Statement of Offence (a)

THEFT: Contrary to Section 291 of the Crimes Act 2009.

Particulars of Offence (b)

INOKE DOKANAVOSA & TIMOCI RASOVA on the 22nd day of March 2020, at Sigatoka in the Western Division, in the company of each other dishonestly appropriated (stole) a wallet containing assorted bank cards driving license, FJD 80.00 cash, \$150.00 New Zealand currency, \$150.00 Australian currency and a Samsung Brand J2 mobile phone, the property of **MUNENDRA GOUNDAR** with the intention of permanently depriving **MUNENDRA GOUNDAR** of the said properties.

2. When the trial was concluded, the 1st Offender Inoke Dokanavosa chose to abscond, and a bench warrant was issued to arrest him. The bench warrant could not be executed. The State filed a report and an affidavit from the investigating officer that the 1st Offender could not be located. Having been satisfied that the 1st Offender is deliberately absconding, I proceed to sentence the 1st Offender in absentia.
3. The counsel were given an opportunity to mitigate. Only Timoci Rasova filed a mitigation submission.
4. The facts of the case in a nutshell are that the deceased and the 1st complainant Krishi Lata lived together at Cuvu Top in Sigatoka in a *de-facto* relationship. On the night of 22

March 2020, at around 9.30 p.m., whilst they were getting ready to sleep in their separate bedrooms, the two offenders broke into their house. The 2nd Offender started punching the 77-year-old deceased on his head and face and dragged him into his room where he was tied to his bed. The old man finally succumbed to his injuries as a result of the assault.

5. The 1st Offender went straight into the bedroom of Krishi Lata and raped her. Both offenders ransacked the house and took their belongings. After that, they made their way to the neighbouring house occupied by the 2nd complainant Munendra Goundar and stole his belongings as well.
6. In selecting a sentence that is best suited to the offenders, the Court must have regard to the proportionality principle enshrined in the Constitution and the Sentencing and Penalties Act 2009 (SPA), the maximum penalty prescribed for each offence, the current sentencing practice and the applicable guidelines issued by the courts. Having due regard to the seriousness of the offence and harm caused to the victims, the final sentence should be determined after making due adjustments for the aggravating and the mitigating circumstances.
7. According to Section 17 of the Sentencing and Penalties Act 2009, if an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court has the discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence for each offender,
8. Sexual offences and property-related offences such as Aggravated Robbery and Burglary are on the rise in Fiji. The courts have emphasised that the increasing prevalence of these offences in our community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive condign punishment to mark society's outrage and denunciation against such offences.
9. Murder is the most serious offence in the Crimes Act. The sentence prescribed is mandatory life imprisonment. Although life imprisonment is mandatory, the sentencer has judicial discretion to set a minimum period to be served before a pardon may be considered. The discretion to set a minimum period has to be exercised judiciously,

having regard to the gravity and culpability of the offending, loss /harm caused, and the aggravating and mitigating circumstances.

10. Offence of Rape is the most serious sexual offence. The maximum sentence for Rape is life imprisonment. The sentencing tariff for adult rape ranges from 7 years to 15 years' imprisonment. The starting point prescribed for an adult rape case generally is seven years' imprisonment. However, there are cases where the proper sentence may be substantially higher or substantially lower than that starting point, depending on the particular circumstances of the case [Kasim v State [1994] FJCA 25; Aau0021j.93s (27 May 1994) (State v Marawa [2004] FJHC 338)].
11. The maximum sentence for Aggravated Robbery is 20 years' imprisonment. It is now settled that offenders of Aggravated Robbery must be sentenced in accordance with the sentencing regime and the tariff set out in Eparama Tawake v State CAV 0025.2019 (28th April 2022). According to the tariff as determined by Tawake the starting point would have to be determined taking into consideration the level of culpability especially the harm both psychological and physical suffered by the victims.
12. This Robbery obviously is a premeditated night-time invasion committed with frightening circumstances. The level of violence used is extremely high. One old and highly vulnerable person was tortured and punched to death by the 2nd offender and an old lady was raped by the 1st offender during the robbery. Although the value of property stolen was not that high, the level of physical harm and mental agony caused to the victims are enormous. A starting point of 9 years imprisonment and a sentencing range of 6 – 12 years imprisonment are reserved by the said Tawake Guidelines for the offences committed of this magnitude.
13. The offence of Aggravated Burglary carries a maximum sentence of 17 years imprisonment. The sentencing tariff and the sentencing guidelines for Aggravated Burglary were settled by the Court of Appeal in State v Kumar & Vakatawa [2022] FJCA (24 November 2022). The maximum sentence for Theft is 10 years' imprisonment. The tariff ranges from 4 months to 3 years imprisonment (Waqā v State [2015] FJHC 72 (5 October 2015)).

14. The amount of money and property stolen from the 2nd complainant's house is not that high. No physical harm was caused either to property or person during the burglary. No violence or weapon was used. It was an opportunistic break-in. In view of that, low level of culpability which carries a starting point of 3 years imprisonment with a sentencing range of 01 -05 years' imprisonment is suited for the offences of this nature according to Kumar & Vakatawa Guidelines.

Sentence for 1st Offender- Inoke Qilai Dokanavosa

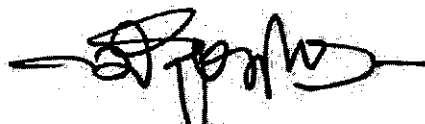
15. Dokanavasa stands convicted of one count of Rape, two counts of Aggravated Robbery, and two counts each of Aggravated Burglary and Theft. The evidence indicates that he is the mastermind of the whole operation. By deviating from the common agreement to rob the deceased's house, he went a step further and raped an innocent old lady to satisfy his lustful demands. The Victim Impact Statement filed in Court shows how traumatic the offence had been to her and the mental and emotional suffering caused due to the demise of her partner.
16. Dokanavasa's deliberate failure to appear in Court after the trial denied this Court of the opportunity to consider his submissions for mitigation. However, the substantial recovery of the stolen items somewhat mitigated the offence of Theft.
17. Based on the facts of the most serious offences (Rape and Aggravated Robbery), I start the sentencing process with a starting point of 9 years' imprisonment. I add 5 years for the aggravating factors discussed above and reduce one year for mitigation to arrive at an aggregate sentence of 13 years imprisonment for all the offences with a non-parole period of 11 years.

Sentence for the 2nd Offender -Timoci Rasova

18. Rasova stands convicted of one count of Murder, two counts of Aggravated Robbery, and two counts each of Aggravated Burglary and Theft. The evidence indicates that he was influenced by the 1st Offender to commit the robbery and the burglary. By deviating from the common agreement to rob the deceased's house, he repeatedly punched an old and vulnerable person to death.

19. There is no evidence that the murder was pre-planned. According to pathologist's evidence, the death was caused as a result of repeated punching on the head and the face of the deceased. There is no evidence that a weapon had been used to commit the Murder. However, no attempt was used to resuscitate the life of the deceased even when he realized that the deceased had stopped breathing. Rasova is young and only 20 years old at the time of the offending. He has no previous convictions. He appears to have succumbed to peer pressure of the 1st Offender.
20. Having taken into consideration the culpability, the loss of life, the aggravating and mitigating factors discussed above, I decide that this is a fit case to fix a minimum term before a pardon may be considered. In the result, Rasova is sentenced to life imprisonment with a minimum term of twelve (12) years to be served before a pardon may be considered. The 2nd Offender is eligible to apply to the Mercy Commission for a pardon when he has completed twelve (12) years in the Correction Centre.
21. Summary
1. Inoke Qilai Dokanavosa is sentenced to 13 years' imprisonment to be effective from the date of his arrest with a non-parole period of 11 years.
 2. Timoci Mataitini Rasova is sentenced to life imprisonment with a minimum term of 12 years to be served before a pardon may be considered.
22. 30 days to appeal to the Court of Appeal if the offenders so desire.




Aruna Anuthge
Judge

18 October 2023
At Lautoka

Solicitors:
Office of the Director of Public Prosecution for Prosecution
Legal Aid Commission for Defence