

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 191 OF 2022S

STATE

VS

1. TEVITA BADRAUDRAU

2. ILAITIA SAVAI

**Counsels : Ms. N. Ali for State.
Ms. L. David for Accused No. 1
Ms. L. David for Accused No. 2**

Hearings : 23 September, 6 and 28 October 2022.

Sentence : 1 December, 2023.

SENTENCE

1. On 23 September 2022, in the presence of your counsel, the following information was read over and explained to you two:

“Count One

Statement of Offence

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

Particulars of Offence

TEVITA BADRAUDRAU and ILAITIA SAVAI with others on the 4th day of June, 2022 at Nasinu in the Central Division, in the company of each other, entered into PILLAY’S CANTEEN the

property of **KOKILA DEVI** as trespassers, with intent to commit theft.

Count Two

Statement of Offence

THEFT: Contrary to section 291 (1) of the Crimes Act 2009.

Particulars of Offence

TEVITA BADRAUDRAU and **ILAITIA SAVAI** with **others** on the 4th day of June, 2022 at Nasinu in the Central Division, in the company of each other, dishonestly appropriated (stole) 5 x packets of BH 10 ice burst cigarette, 10 x packets of BH 20 cigarette, 8 x packets of BH 10 cigarette, 5 x cans of Nivea body spray (250 ml), 5 x cans of I-Man body spray (150 ml), 2 x cans of Bux body spray (150 ml), 35 x gas lighters, assorted Digicel recharge cards, assorted Vodafone recharge cards, assorted Inkk recharge cards, TFL recharge cards, Money Safe, \$6,100.00 FJD cash, and \$200.00 NZD cash, the property of **KOKILA DEVI** with the intention of permanently depriving **KOKILA DEVI** of the said property.”

2. It appeared that you two understood the information, and both of you two pleaded guilty to the two counts in the information. Through your counsel, she said you two pleaded guilty voluntarily and that no one forced you two to plead guilty. She said, you two pleaded guilty to the two counts out of your own free will.

3. The prosecution then presented the summary of facts to the court. The complainant was a 43 year old female resident of Stage 1, Cunningham, Nasinu. She operated a canteen business from her own house. Both accuseds were also residents of Stage 1, Cunningham, Nasinu. Accused No. 1 was 20 years old, and was employed as an electrician at the time. He reached Form 6 level education at Marist Brothers High School in 2018. Accused No. 2 was 19 years old at the time, and was unemployed. He reached Form 3 level education at Ratu Sukuna Memorial School in 2019.

4. On 4 June 2022, between 3.30 am and 4.50 am, the complainant was sleeping in her house with her family. She lived in a double storey house and operated “Pillay’s Canteen”, which is located at the bottom flat of her house. According to police, both accuseds and some friends met on a road next to the canteen and decided to break into the same. Both accuseds and their friends obtained a bolt cutter and broke into the canteen. They ransacked the canteen, and as a group, stole the items mentioned in count no. 2. Both accuseds and their friends later fled the crime scene.
5. On the morning of 4 June 2022, the complainant discovered her canteen broken into and her properties stolen. She reported the matter to police. An investigation was carried out. Both accuseds were later arrested and caution interviewed. Both accuseds admitted the offences to police.
6. Through their counsel, both accuseds admitted the above summary of facts, including the particulars of offences in count no. 1 and 2 of the information. As a result of the above, the court finds both accuseds guilty as charged on both counts in the information, and they were convicted accordingly on both counts.
7. “Aggravated burglary” is an indictable offence, and viewed seriously by the Parliament of Fiji. It carried a maximum sentence of 17 years imprisonment (see section 313 (1) (a) of the Crimes Act 2009). The tariff is now a sentence between 6 to 14 years imprisonment: **State v Shavneel Prasad**, Criminal Case No. 254 of 2016S, High Court, Suva and **State v John Vonu & Others**, Criminal Case No. HAC 148 of 2017S, High Court, Suva. Of course, the final sentence will depend on the aggravating and mitigating factors.
8. The maximum penalty for “theft”, contrary to section 291 (1) of the Crimes Act 2009, is a sentence of 10 years imprisonment.

9. I can't find any aggravating factors in you two's case. The elements of "aggravated burglary" and "theft" are satisfied on the facts of the case and cannot be taken into account as aggravating factors.
10. The mitigating factors are as follows:
- (i) Although you two pleaded guilty to the offences 3 months after first call in the High Court, you two nevertheless saved the court's time and resources by not going to a full trial;
 - (ii) You two are both first offenders;
 - (iii) You two had been remanded in custody since 7 June 2022, and that is approximately 1 year 5 months 23 days ago.
 - (iv) Some of the properties stolen were recovered by police.
 - (v) During the police investigation, you co-operated with police by admitting the offences when caution interviewed, and showing them where some of the stolen properties were.
 - (vi) As for Accused No. 1, you repaid \$700 cash to the complainant as part compensation.
11. For both of you, on count no. 1 (aggravated burglary), I start with a sentence of 6 years imprisonment. As there is no aggravating factors, I add nothing to it. For pleading guilty, I deduct 1 year, leaving a balance of 5 years imprisonment. For time already served while remanded in custody, I deduct 1 ½ years, leaving a balance of 3 ½ years imprisonment. For being first offenders, I deduct 1 year, leaving a balance of 2 ½ years. For mitigation factors 10 (iv), 10 (v) and 10 (vi), I deduct one year, leaving a balance of 18 months imprisonment. On count no. 1, I sentence each of you to 18 months imprisonment.
12. For both of you, on count no. 2 (theft), I sentence each of you to 18 months imprisonment each.

13. The summary of your sentences are as follows:
- (i) Count No. 1 - Aggravated Burglary - Accused No. 1 – 18 months imprisonment
- Accused No. 2 – 18 months imprisonment
 - (ii) Count No. 2 – Theft – Accused No. 1 – 18 months imprisonment
– Accused No. 2 – 18 months imprisonment
14. Because of the totality principle of sentencing, the sentence in both counts are made concurrent to each other, making a final total sentence of 18 months imprisonment.
15. Mr. Tevita Badraudrau (Accused No. 1) and Mr. Ilaitia Savai (Accused No. 2), because of the offences (Aggravated Burglary and theft) you each committed against the complainant, Ms. Kokila Devi, on 4 June 2022 at Nasinu in the Central Division, I sentence each of you to 18 months imprisonment, effective forthwith.
16. You each have 30 days to appeal to the Court of Appeal.



Salesi Temo
Acting Chief Justice

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accuseds : **Legal Aid Commission, Nasinu.**