

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 30 of 2024

STATE

V

M.S and K.R.B [Juveniles]

Counsel : Ms. S. Swastika for the State.
: Ms. D. Prasad for the First Juvenile.
: Ms. L. Taukei for the Second Juvenile.

Date of Submissions : 22 April, 2024
Date of Punishment : 25 April, 2024

PUNISHMENT

(The names of the Juveniles are suppressed they will be referred to as "M.S" and "K.R.B" respectively)

1. The juveniles are charged by virtue of the following amended information filed by the Director of Public Prosecutions dated 8th March, 2024:

FIRST COUNT

Statement of offence

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

Particulars of Offence

M.S and K.R.B between the 9th of May, 2021 and the 10th of May, 2021 at Lautoka, in the Western Division, entered into VALUE PHONE SHOP, as trespassers with the intention to commit theft.

SECOND COUNT

Statement of offence

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

Particulars of Offence

M.S and K.R.B, between the 9th of May, 2021 and the 10th of May, 2021 at Lautoka, in the Western Division, dishonestly appropriated 1x Samsung registration tablet, 1x Skyworth tablet, 5x Samsung cables, 3x headphones (KDB06), 6x Kenxinda phone, 1x Kenxinda K89, 3x Kenxinda W2 smart watch, 3x Smarti phones, 2x Samsung earphone, Assorted USB, Assorted cables, Assorted batteries, Assorted power bank, Assorted phone cases and tempered glass, 2x Chromecast, 2x car charger, assorted memory cards, the property of VALUE PHONE with intent to permanently deprive the said VALUE PHONE of the said properties.

THIRD COUNT

Statement of offence

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

Particulars of Offence

M.S and K.R.B, between the 9th of May, 2021 and the 10th of May, 2021 at Lautoka, in the Western Division, entered into LAUTOKA FARM CHEMICAL SHOP, as trespassers with the intention to commit theft.

FOURTH COUNT

Statement of offence

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

Particulars of Offence

M.S and K.R.B, between the 9th of May, 2021 and the 10th of May, 2021 at Lautoka, in the Western Division, dishonestly appropriated \$600.00 cash, 50 piece of gross lighters, 30x \$1 inkk recharge cards, 20x \$2 inkk recharge cards, 10x \$3 inkk recharge cards, 20x \$7 inkk recharge cards, 12x \$8 inkk recharge cards, 10x \$10 inkk recharge cards, 30x \$2 vodafone recharge cards, 30x \$3 vodafone recharge cards, 10x \$7 vodafone recharge cards, 13x \$8 vodafone recharge cards, 2x \$15 vodafone recharge cards, 3x \$11 vodafone recharge cards, 4x \$25 vodafone recharge cards, 15x lemon contact glue tin, the properties of LAUTOKA FARM CHEMICAL SHOP with intent to permanently deprive the said LAUTOKA FARM CHEMICAL SHOP of the said properties.

FIFTH COUNT

Statement of offence

DAMAGING PROPERTY: Contrary to 369 of the Crimes Act 2009.

Particulars of Offence

M.S and K.R.B, between the 9th of May, 2021 and the 10th of May, 2021 at Lautoka, in the Western Division, willfully and unlawfully damaged 4 x CCTV cameras, 2x PC monitors, 1x printer, 1x thermal printer and Shop Furniture, the property of VALUE PHONE SHOP.

2. On 26th March, 2024 the juveniles in the presence of their counsel pleaded guilty to all five counts. Thereafter on 9th April, 2024 the juveniles admitted the summary of facts read.
3. The summary of facts was as follows:

- a. On 8th of May, 2021 the first complainant Rehan Begum (supervisor of Valuefone) at around 5pm finished work and after securely locking the shop doors left for her home.
- b. On 10th of May 2021, when Rehan returned to work at around 6.35am she saw that the main door of the shop was open and the door lock and the shutters were damaged and broken. She also noted that the following items were damaged:
- 4x CCTV cameras valued at \$500.00;
 - 2x PC monitor valued at \$2000.00;
 - 1x printer valued at \$300.00;
 - 1 thermal printer valued at \$349.00;
 - Shop furniture valued at \$5000.00.
- c. Rehan immediately reported the matter to police and undertook an inventory and noted that the following items were stolen:
- 1x Samsung registration tablet valued at \$399.00;
 - 1x Skyworth tablet worth \$558.00;
 - 5x Samsung cables valued at \$222.70;
 - 3x headphones (KDB06) valued at \$414.00;
 - 6x Kenxinda phone valued at \$414.00;
 - 1x Kenxinda K89 valued at \$49.00;
 - 3x Kenxinda W2 smart watch valued at \$279.00;
 - 3x Smarti phones valued at \$135.00;
 - 2x Samsung earphone valued at \$89.08;
 - Assorted USB valued at \$1600.00;
 - Assorted cables valued at \$800.00;
 - Assorted batteries valued at \$300.00;
 - Assorted power bank valued at \$1850.00;
 - Assorted phone cases and tempered glass valued at \$2,000.00;
 - 2x Chromecast valued at \$198.00;
 - 2x car charger valued at \$70.00;
 - Assorted memory cards valued at \$1847.00.

- d. Total value of items stolen from Valuefone was in the sum of \$10,810.78.
- e. The second complainant Randheer Singh (owner of Farm Chemical Shop) on 10th of May, 2021 at about 8: 30 am received a phone call that his shop had been broken into. Randheer went to his shop and upon arrival he noticed that the padlock and glass door of the shop had been broken. An inventory was done and the following items were stolen:
- Cash of \$600.00;
 - 50 piece of gross lighters valued at \$162.00;
 - 30x \$1 inkk recharge cards;
 - 20x \$2 inkk recharge cards;
 - 10x \$3 inkk recharge cards;
 - 20x \$7 inkk recharge cards;
 - 12x \$8 inkk recharge cards;
 - 10x \$10 inkk recharge cards;
 - 30x \$2 vodafone recharge cards;
 - 30x \$3 vodafone recharge cards;
 - 10x \$7 vodafone recharge cards;
 - 13x \$8 vodafone recharge cards;
 - 2x \$15 vodafone recharge cards;
 - 3x \$11 vodafone recharge cards;
 - 4x \$25 vodafone recharge cards;
 - 15x lemon contact glue tin valued at \$59.25.
- f. The total value of stolen items was in the sum of \$1,744.25.
- g. After the matter was reported, a police team was conducting an inquiry at Naikabula, Lautoka when they saw the 2nd juvenile walking on the road with a group of youths. The juvenile was found in possession of \$50.00 cash and two gas lighters. The items were

seized and the 2nd juvenile was arrested. The 1st juvenile was later arrested.

h. The total value of the items stolen was \$12,555.03. The following items were recovered from the juveniles:

- 2 smart watches;
- 1 green gaslighter;
- 1 x \$7 recharge card;
- 1 x \$8 recharge card;
- 1 x bluetooth speaker ;
- 1 x aux cable;
- 1 x black lighter;
- 1 x skyworth tablet;
- 3 x cables;
- 1 x lemon brand tin glue.

4. Both juveniles were arrested, caution interviewed and charged. In their respective caution interviews both juveniles admitted committing the offences charged.
5. After considering the summary of facts read by the state counsel which was admitted by both juveniles and upon reading their caution interviews this court is satisfied that both juveniles have entered an unequivocal plea of guilty on their freewill.
6. This court is also satisfied that the juveniles have fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offences committed. The juveniles admitted committing the offences in the company of each other.

7. In view of the above, this court finds both juveniles guilty as charged. The state counsel filed punishment submissions and the defence counsel filed mitigating submissions for which this court is grateful.
8. The learned counsel for the juveniles presented the following mitigation and personal details:

Juvenile M.S

- a) The juvenile was 17 years of age at the time;
- b) Used to sell coconuts and earn \$100 per week;
- c) Some recovery of stolen items;
- d) First and young offender in conflict with the law;
- e) Co-operated with the police;
- f) Pleaded guilty at the earliest opportunity;
- g) Remorseful and apologizes for his actions;
- h) Seeks forgiveness of the court;
- i) Promises not to reoffend.

Juvenile K.R.B

- a) The juvenile was 16 years of age at the time;
- b) First and young offender in conflict with the law;
- c) Resides with his father;
- d) Co-operated with the police;
- e) Some recovery of stolen items;
- f) Pleaded guilty at the earliest opportunity;
- g) Remorseful and apologizes for his actions;
- h) Regrets what he has done;
- i) Promises not to reoffend.

TARIFF

9. The maximum penalty of the offence of aggravated burglary is 17 years imprisonment. The Court of Appeal in *Avishkar Rohinesh Kumar and Another vs. The State* [2022] FJCA 164; AAU 117 of 2019 (24 November, 2022) has established a new tariff for the offence of aggravated burglary by dividing the harm caused or intended in three categories from paragraphs 74 and 77 of its judgment as follows:

[74] In terms of section 125(1) of the Coroners and Justice Act 2009 (UK) every court must, in sentencing an offender, follow any sentencing guideline and must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so. However, in Fiji section 4(2)(b) states that a sentencing court must have regard to inter alia any applicable guideline judgment. Therefore, the sentencing judges in Fiji are not compelled by law to follow sentencing guidelines but is obliged to have regard to them. Therefore, the sentencing judges in Fiji enjoy greater freedom and wider discretion in sentencing offenders after having regard to the guidelines.

[75] As the first step, the court should determine harm caused or intended by reference to the level of harm in the offending to decide whether it falls into High, Medium or Low category. The factors indicating higher and lower culpability along with aggravating and mitigating factors could be used in the matter of deciding the sentencing range. This would allow sentencers wider discretion and greater freedom to arrive at an appropriate sentence that fits the offending and the offender.

Determining the offence category

The court should determine the offence category among 01-03 using inter alia the factors given in the table below:

- **Category 1** - Greater harm (High)

- **Category 2** - Between greater harm **and** lesser harm (Medium)
- **Category 3** - Lesser harm (Low)

Factors indicating greater harm
Theft of/ damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)
Soiling, ransacking or vandalism of property
Restraint, detention or gratuitous degradation of the victim, which is greater than is necessary to succeed in the burglary. Occupier or victim at home or on the premises (or returns home) while offender present
Significant physical or psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary.
Violence used or threatened against victim, particularly the deadly nature of the weapon
Context of general public disorder
Factors indicating lesser harm
Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal). No physical or psychological injury or other significant trauma to the victim
Limited damage or disturbance to property. No violence used or threatened and a weapon is not produced

[76] Once the level of harm has been identified, the court should use the corresponding starting point in the following table to reach a sentence within the appropriate sentencing range. The starting point will apply to all offenders whether they plead guilty or not guilty and irrespective of previous convictions. A case of particular gravity, reflected by multiple features of harm, could merit upward adjustment from the starting point before further adjustment for level of culpability and aggravating or mitigating features.

LEVEL OF HARM (CATEGORY)	BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED BURGLARY (OFFENDER <u>EITHER</u> WITH ANOTHER <u>OR</u> WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER <u>AND</u> WITH A WEAPON)
HIGH	Starting Point: 05 years Sentencing	Starting Point: 07 years	Starting Point: 09 years

	<i>Range: 03–08 years</i>	<i>Sentencing Range: 05–10 years</i>	<i>Sentencing Range: 08–12 years</i>
<i>MEDIUM</i>	<i>Starting Point: 03 years Sentencing Range: 01–05 years</i>	<i>Starting Point: 05 years Sentencing Range: 03–08 years</i>	<i>Starting Point: 07 years Sentencing Range: 05–10 years</i>
<i>LOW</i>	<i>Starting Point: 01 year Sentencing Range: 06 months – 03 years</i>	<i>Starting Point: 03 years Sentencing Range: 01–05 years</i>	<i>Starting Point: 05 years Sentencing Range: 03–08 years</i>

[77] The following table contains a **non-exhaustive** list of higher and lower culpability factors relating to the offending. Any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors indicating higher culpability
<i>Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation) or victim compelled to leave their home (in particular victims of domestic violence).</i>
<i>Child or the elderly, the sick or disabled at home (or return home) when offence committed</i>
<i>A significant degree of planning, or organization or execution. Offence committed at night.</i>
<i>Prolonged nature of the burglary. Repeated incursions. Offender taking a leading role.</i>
<i>Equipped for burglary (for example, implements carried and/or use of vehicle)</i>
<i>Member of a group or gang</i>
Factors indicating lower culpability
<i>Offence committed on impulse, with limited intrusion into property or little or no planning</i>
<i>Offender exploited by others or committed or participated in the offence reluctantly as a result of coercion or intimidation (not amounting to duress) or as a result of peer pressure</i>

Mental disorder or learning disability, where linked to the commission of the offence

[78] The following table contains a **non-exhaustive** list of aggravating and mitigating factors relating to the offender. Any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
Statutory aggravating factors:	Genuine remorse displayed, for example the offender has made voluntary reparation to the victim
Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction	Subordinate role in a group or gang No previous convictions or no relevant/recent convictions.
Offence committed whilst on bail or parole.	Cooperation with the police or assistance to the prosecution
Other aggravating factors include:	Good character and/or exemplary conduct
Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution	Determination, and/or demonstration of steps taken to address addiction or offending behavior
Established evidence of community impact	Serious medical conditions requiring urgent, intensive or long-term treatment
Commission of offence whilst under the influence of alcohol or drugs	Age and/or lack of maturity where it affects the culpability and responsibility of the offender
Failure to comply with current court orders	Lapse of time since the offence where this is not the fault of the offender
Offence committed whilst on licence	Mental disorder or learning disability, where not linked to the commission of the offence

Offences Taken Into Consideration (TICs)

Any other relevant personal considerations such as the offender being sole or primary care giver for dependent relatives or has a learning disability or mental disorder which reduces the culpability

10. For the offence of theft the maximum penalty is 10 years imprisonment. The tariff for the offence of theft is settled. In *Mikaele Ratusili v. State, Criminal Appeal no. HAA 011 of 2012 (1 August, 2012)* Madigan J. set out the tariff for theft as follows:

- “(i) For the first offence of simple theft the sentencing range should be between 2 and 9 months.*
- (ii) any subsequent offence should attract a penalty of at least 9 months.*
- (iii) Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.*
- (iv) regard should be had to the nature of the relationship between offender and victim.*
- (v) planned thefts will attract greater sentences than opportunistic thefts.”*

11. For the offence of damaging property the maximum penalty is 2 years imprisonment if no other punishment is provided under any other provision of section 369 of the Crimes Act.

AGGRAVATING FACTORS

12. The following aggravating factors are obvious:

a) Property Invasion

The juveniles did not have any regard for the property rights of the owner. They were bold and undeterred in what they did in the company of each other.

b) Prevalence of the offending

There has been an increase in such offending that business enterprises in the central business division are targeted.

c) Planning

There is a degree of planning by both the juveniles they knew what each had to do at the time of the offending.

13. Furthermore, both juveniles fall under special categorization than adults when it comes to punishment under section 30(3) of the Juveniles Act as young persons which prescribes the maximum punishment for young persons at 2 years imprisonment.

SOCIAL WELFARE REPORT

14. Since both juveniles have attained 18 years there was no order made for a social welfare report to be prepared.

DETERMINATION

15. Section 17 of the Sentencing and Penalties Act states:

“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 may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

16. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate punishment for the five counts.

17. Considering the level of harm caused to the victim particularly the substantial value of the items stolen and there being some damages to the properties where the burglary took place the level of harm caused to the complainant will fall under medium category of harm.
18. After taking into account the objective seriousness of the offences committed I select 3 years imprisonment (lower range of the tariff) as the aggregate punishment for both counts. The punishment is increased for the aggravating factors, but reduced for mitigation and early guilty plea. The juveniles have been in remand for three and seven days hence further reduction is given.
19. The final aggregate punishment for both counts is 1 year and 10 months imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final punishment since it does not exceed 3 years imprisonment.
20. In *State vs. Alipate Sorovanalagi and others, Revisional Case No. HAR 006 of 2012 (31 May 2012)*, Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

"[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered

suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

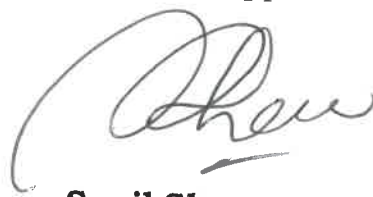
21. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment term or a suspended punishment.
22. The juveniles are young persons as per the Juveniles Act (16 and 17 years of age at the time of the offending), of good character, isolated offences were committed by them, have pleaded guilty at the earliest opportunity, are remorseful, cooperated with police and they take full responsibility of their actions. These special reasons render an immediate imprisonment term inappropriate.
23. I am sure the juveniles with parental guidance, supervision and support have a bright future ahead of them hence an imprisonment term will not augur well for him. In view of the above, this court has taken into account rehabilitation over and above deterrence. Section 30 (3) of the Juveniles Act also imposes a limit on the punishment of young persons for a maximum of two years imprisonment.
24. Having considered section 4 (1) of the Sentencing and Penalties Act this

court is of the view that this punishment is just in all the circumstances of this case.

25. In summary both the juveniles are given a punishment of 1 year and 10 months imprisonment as an aggregate punishment for the five counts which is suspended for 3 years. The effect of the suspended sentence is explained to the juveniles.
26. It is noted that both the juveniles are now adults and the allegations are dated to 2021 hence no pre punishment reports were ordered the punishment will only focus on the actual punishment without any ancillary orders to be imposed.

ORDERS

- a. Both juveniles are given a punishment of 1 year and 10 months imprisonment respectively as an aggregate punishment for the five counts mentioned in the information which is suspended for 3 years with immediate effect;
- b. 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge



At Lautoka

25 April, 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for both Juveniles.