

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

**Crim. Case No: HAC 57 of 2023**

**STATE**

vs.

**JOSEVA TUIDAMA & 2 OTHERS**

**Counsel:** Ms. P. Mishra for the State  
Ms. R. Nabainivalu for 1<sup>st</sup> Accused

**Date of Sentence Hearing:** 10<sup>th</sup> November 2023

**Date of Sentence:** 8<sup>th</sup> May 2024

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**SENTENCE**

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1. **Joseva Tuidama** (1<sup>st</sup> Accused) and two others are indicted with the offence of *Aggravated Robbery* laid out as follows under Count 1 of the amended consolidated Information dated 13 September 2023 by the Director of Public Prosecutions:

**COUNT ONE**

*Statement of Offence*

**AGGRAVATED ROBBERY:** contrary to section 311(1)(a) of the Crimes Act 2009.

*Particulars of Offence*

**JOSEVA TUIDAMA, JASHNEEL PILLAY, MOSESE VUNIWAI** and another on the 22<sup>nd</sup> day of January, 2023 at Samabula in the Southern Division, in the company of each other, stole 1 x Samsung A01 mobile phone red in colour with pink hard phone cover, 1 x Samsung A03 mobile phone black in colour with black leather phone cover, 2 x black bags branded “HAULONG”, 1 x Christmas hat with 1 x Christmas ball ornament, 1 x Christmas glass, assorted jewelries, 1 x Samsung JS mobile phone brownish in colour with no sim, 1 x Samsung charger head white in colour with cable, 2 x “Under Armor” branded caps, the properties of **MARGARET SARASWATI SINGH** and **EMOSI VITILEVU** and at the time of committing theft used force on the said **MARGARET SARASWATI SINGH**.

2. On 22 January 2023 slightly after 1.00am, the Accused Joseva Tuidama and accomplices broke into the dwelling house of Margaret Saraswati Singh (PW1) situated at 36 Tubou Street, Samabula, robbed and ran away with the following properties:
- a) 1 x red Samsung A01 mobile phone with pink hardcover valued at \$200;
  - b) 1 x black Samsung A03 phone with black leather cover valued at \$300;
  - c) 2 x black bags branded “HAOLONG” valued at \$22;
  - d) 1 x red and white Christmas hat with 1 x artificial Christmas glass valued at \$5;
  - e) 1 x Christmas ball ornament valued at \$5;
  - f) Assorted jewelries valued at \$100;
  - g) 1 x brownish Samsung JS phone with no sim valued at \$430; and
  - h) 1 x white Samsung charger head valued at \$5,

all to the total value of approximately \$1,067.

During the robbery the lights were off, PW1 yelled out to her sister-in-law for help but a robber had covered her mouth with his hand, held her shoulders on the bed and a cane knife

on her neck. While being robbed PW1 felt very scared and told the robbers to take whatever they want but refrain from hurting her and her son who was asleep. When the robbers left the room, PW1 then switched on the light and saw that the room was ransacked and a cane knife with brown handle was left on top of a laundry basket next to her bed, which cane knife belongs to PW1 and always kept in the kitchen and used by the robbers during the robbery. When assessing the room PW1 discovered that the aforesaid items were stolen, and later reported the aggravated robbery to the Samabula Police Station.

In his caution interview statement Joseva Tuidama (1<sup>st</sup> Accused) admitted as follows:

- 1) On 21 January 2023 at about 6.00pm he was at home with Aisake a.k.a Ais and two others planning to rob a house early in the morning between 1-2am and steal items from there. [Q&A: 40-45]
- 2) He and three accomplices left Wailea Settlement, Vatuwaqa at about 12.30am on 22 January 2023 in a silver Toyota Prius taxi, registration number LT.3436 driven by his brother namely Nemani Masau Matea (PW3). [Q&A: 47-42]
- 3) In the said taxi, he sat in the front passenger seat while the three accomplices sat at the back seat. He then directed his brother to take them to Samabula and followed the route along Kula Street, Kaka Street, Belo Street, Ratu Mara Road, Matuku Street, Moala Street, Namuka Street, Komo Street, Nayau Street, Lakeba Street and Tubou Street. Once they reached Tubou Street he then asked his brother to stop the taxi at Tuvana Place. [Q&A: 41-44]
- 4) He surveyed around the dwelling house of Margaret Saraswati Singh (PW1) situated at 36 Tubou Street, Samabula and saw that the lights were on, and an accomplice acted as a watchman on the driveway. [Q&A: 49-54]
- 5) He tried to open the sitting room door while the other two accomplices attempted to open two other doors at the back of the house. The other two accomplices managed to open the door to the bedroom and they entered into the house. Upon entering the house he then searched and ransacked the house and stole a brown Samsung phone kept on the table in the room. [Q&A: 59-63]

- 6) After the robbery he then exited the house with the two accomplices and ran to the main road followed by the accomplice acting as watchman. He then used an accomplice's mobile phone to call his brother Nemani Matea to pick them up, and after 45 minutes Nemani Masau Matea (PW3) arrived and they all boarded his taxi whereby he sat in the front passenger seat while the other three accomplices sat at the back. [Q&A: 65-74]
- 7) When the taxi reached Lakeba Street his brother (PW3) stopped the taxi to allow the police to look into the taxi and at the same time he became worried and afraid causing him to exit the taxi, run across the road and jumped down the cliff with another accomplice. The recovered stolen items were shown to Joseva Tuidama (1<sup>st</sup> Accused) and he confirmed the same items as being stolen from PW1's house. [Q&A: 100-106]
- 8) He voluntarily took part in the reconstruction of the crime scene.

The following stolen items were recovered by the police:

- a) 1 x red Samsung A01 mobile phone with pink hardcover valued at \$200;
- b) 1 x black Samsung A03 phone with black leather cover valued at \$300;
- c) 2 x black bags branded "HAOLONG" valued at \$22;
- d) 1 x red and white Christmas hat with 1 x artificial Christmas glass valued at \$5;
- e) 1 x Christmas ball ornament valued at \$5;
- f) Assorted jewelries valued at \$100;
- g) 1 x brownish Samsung JS phone with no sim valued at \$430; and
- h) 1 x white Samsung charger head valued at \$5.

These stolen items were later shown to PW1 by the police and she positively identified them as hers. The police also showed two 'Under Armor' caps to Security Officer Emosi Vitilevu who resides at 36 Tubou Street, Samabula and he positively identified the said item as his.

Joseva Tuidama (1<sup>st</sup> Accused) was arrested by the police on 25 January 2023 with the assistance of his brother Nemani Masau Matea (PW3), and voluntarily admitted the *Aggravated Robbery* in his caution interview statement.

3. On 14 September 2023 Joseva Tuidama (1<sup>st</sup> Accused) being represented by Mr. Ravu of the Legal Aid Commission pleaded guilty to the aforesaid count voluntarily and unequivocally.
4. On 4 October 2023 Prosecutor Ms. Mishra read out the *Summary of facts* which was then duly admitted by the Accused Joseva Tuidama and confirmed by his Legal Aid counsel Ms. Nabainivalu including the one prior conviction of *Aggravated Robbery* (i.e. 30/05/2018) noted in the *Antecedent Report* submitted by the Prosecution.
5. This Court then formally convicted Joseva Tuidama and adjourned the matter for plea in mitigation and sentencing hearing.
6. Plea in mitigation was submitted by Legal Aid counsel Ms. Nabainivalu along with her sentencing submission. Prosecutor Ms. Mishra also delivered her sentencing submission.
7. This is the Court's finding on sentence.

### **Count 1 - Aggravated Robbery**

8. Section 311(1)(a) of the Crimes Act 2009 state that '*[a] person commits an indictable offence if he or she commits a robbery in company with one or more other persons; ... Penalty – Imprisonment for 20 years.*
9. The maximum penalty for the offence of *Aggravated Robbery* is an imprisonment term of 20 years.

10. As for the sentencing tariff for the offence of *Aggravated Robbery*, this Court adopts the guideline enunciated by the Fiji Supreme Court in State v Tawake [2022] FJSC 22; CAV0025.2019 (28 April 2022), per Keith, J at paras. [24] – [29]:

*[24] The English guideline covers three different types of robbery: “home invasions”, professionally planned commercial robberies, and street and less sophisticated commercial robberies. Our focus in this case is on the last type. Even then, though, the English framework would require some refinement in Fiji, because in England there is a single offence of robbery, whereas Fiji has two offences of robbery: robbery contrary to section 310 of the Crimes Act and aggravated robbery contrary to section 311 of the Crimes Act. Moreover, as we have seen, the offence of aggravated robbery takes two forms: where the offender “was in company with one or more other persons” at the time of the robbery, and where the offender “has an offensive weapon with him or her” at the time of the robbery. Such guideline as we give has to reflect these differences.*

*[25] For my part, I think that this framework, suitably adapted to meet the needs of Fiji, should be adopted. There is no need to identify different levels of culpability because the level of culpability is reflected in the nature of the offence, and if the offence is one of aggravated robbery, which of the forms of aggravated robbery the offence took. When it comes to the level of harm suffered by the victim, there should be three different levels. The harm should be characterized as high in those cases where serious physical or psychological harm (or both) has been suffered by the victim. The harm should be characterized as low in those cases where no or only minimal physical or psychological harm was suffered by the victim. The harm should be characterized as medium in those cases in which, in the judge’s opinion, the harm falls between high and low.*

*[26] Once the court has identified the level of harm suffered by the victim, 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 pleaded guilty or not guilty and irrespective of previous convictions:*

	ROBBERY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED ROBBERY (OFFENDER EITHER WITH ANOTHER <u>OR</u> WITH A WEAPON)	AGGRAVATED ROBBERY (OFFENDER WITH ANOTHER <u>AND</u> WITH A WEAPON)
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<b>HIGH</b>	Starting point: 5 years imprisonment Sentencing range: 3-7 years imprisonment	Starting point: 7 years imprisonment Sentencing range: 5-9 years imprisonment	Starting point: 9 years imprisonment Sentencing range: 6-12 years imprisonment
<b>MEDIUM</b>	Starting point: 3 years imprisonment Sentencing range: 1-5 years imprisonment	Starting point: 5 years imprisonment Sentencing range: 3-7 years imprisonment	Starting point: 7 years imprisonment Sentencing range: 5-9 years imprisonment
<b>LOW</b>	Starting point: 18 months imprisonment Sentencing range: 6 months – 3 years imprisonment	Starting point: 3 years imprisonment Sentencing range: 1-5 years imprisonment	Starting point: 5 years imprisonment Sentencing range: 3-7 years imprisonment

[27] Having identified the initial starting point for sentence, the court must then decide where within the sentencing range the sentence should be, adjusting the starting point upwards for aggravating factors and downward for mitigating ones. What follows is not an exhaustive list of aggravating factors, but these may be common ones:

- Significant planning
- Prolonged nature of the robbery
- Offence committed in darkness
- Particularly high value of the goods or sums targeted
- Victim is chosen because of their vulnerability (for example, age, infirmity or disability), or the victim is perceived to be vulnerable
- Offender taking a leading role in the offence where it is committed with others
- Deadly nature of the weapon used where the offender has a weapon
- Restraint, detention or additional degradation of the victim, which is greater than is necessary to succeed in the robbery
- Any steps taken by the offender to prevent the victim from reporting the robbery or assisting in any prosecution

[28] Again, what follows is not an exhaustive list of mitigating factors, but these may be common ones:

- No or only minimal force was used
- The offence was committed on the spur of the moment with little or no planning
- The offender 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
- No relevant previous conviction

- *Genuine remorse evidenced, for example, by voluntary reparation to the victim*
- *Youth or lack of maturity which affects the offender's culpability*
- *Any other relevant personal considerations (for example, the offender is the sole or primary carer of dependent relatives, or has a learning disability or a mental disorder which reduces their culpability)*

*[29] Having decided on the appropriate sentence in this way, the Court should then reduce the sentence, by such amount as appropriate – first for a plea of guilty and then for the time the offender spent in custody on remand awaiting trial and sentence. If judges take these steps in the order I have identified, it is to be hoped that sentences will be more likely to fit the crime, and that undesirable disparities in sentences will be avoided.*

11. Relying on the sentencing guideline in State v Tawake [2022] FJSC 22; CAV0025.2019 (28 April 2022), I find that in Joseva Tuidama's case it falls in the medium category of aggravated robbery (offender either with another and with a weapon) with the corresponding sentencing range of 5 – 9 years imprisonment and starting point of 7 years.
12. With the starting point 7 years I add 3 years for the aggravating factors due to the fact that the Accused Joseva Tuidama invaded the dwelling home of Margaret Saraswati Singh (PW1) situated at 36 Tubou Street, Samabula with others and used a cane knife to subdue and threaten Margaret Saraswati Singh (PW1) while robbing her of her hard-earned personal properties while her son was asleep. A home is a place of solace and security and 'home invasion' like this instant undermines that and puts the occupants of the home at risk of not only losing their properties but their lives. The Accused Joseva Tuidama in invading Margaret Saraswati Singh's (PW1) home and using a cane knife to subdue and rob her also subjected her to an immense degree of emotional and psychological trauma that may require appropriate treatment, counselling or otherwise, to enable her to cope and hopefully heal. The malevolent conduct of the Accused Joseva Tuidama and accomplices including the considerable number of stolen items despite their recovery, clearly shows the total disregard of the sanctity of one's home, and utility and value of one's personal properties including the lives and security of the occupants of the home being unlawfully invaded. The Accused Joseva Tuidama and accomplices had pre-planned this *Aggravated Robbery* which is an aggravating factor.



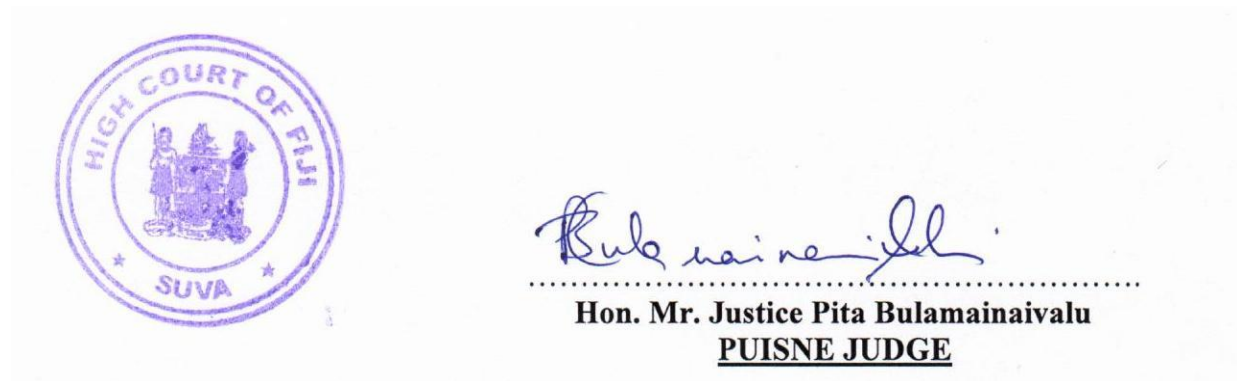
Furthermore, the Accused Joseva Tuidama has a prior conviction of *Aggravated Robbery* dated 30 May 2018 whereby he was sentenced to 5 years and 7 months imprisonment with a non-parole period of 3 years, which shows that the Accused has not heeded the relevant lesson thus requiring appropriate measures in sentencing to be engaged for purposes of holistically realising the sentencing objectives of deterrence, rehabilitation, retribution and punishment.

13. For the mitigating factors I deduct 1 year considering that the Accused Joseva Tuidama is 25 years old and prior to being remanded in custody worked as a delivery boy earning a weekly income of \$180. This includes to a certain degree the recovery of the stolen items.
14. Having considered the aggravating and mitigating factors, I further make the following special deductions:
  - (i) Early guilty plea – 3 years is deducted being the one third deduction for the early guilty plea. This approach is consistent with the Fiji Supreme Court decisions in Qurai v State [2015] FJSC 15; CAV24.2014 (20 AUGUST 2015) per Justice Saleem Marsoof at para. [54] and Aitcheson v The State [2018] FJSC 29; CAV0012.2018 (2 November 2018), paras. 12-15.
  - (ii) Time spent in custody and pursuant to section 24 of the Sentencing and Penalties Act 2009 – Joseva Tuidama was initially remanded in custody on 30 January 2023 and pleaded guilty to the aforesaid charge on 14 September 2023, thus, a deduction of about 7 months and 15 days. See Aitcheson v The State [2018] FJSC 29; CAV0012.2018 (2 November 2018), paras. 7-11.
15. Thus, the head sentence for the offence of *Aggravated Robbery* in this instant is the imprisonment term of 5 years 4 months and 19 days.
16. It is hereby ordered that Joseva Tuidama (1<sup>st</sup> Accused) serve the imprisonment term of 5 years 4 months and 19 days with a non-parole period of 4 years.

17. Thirty (30) days to appeal to the Fiji Court of Appeal.

**Order of the Court**

Joseva Tuidama (1<sup>st</sup> Accused) is to serve the custodial term of 5 years 4 months and 19 days with a non-parole period of 4 years.



**At Suva**

8<sup>th</sup> May, 2024

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for 1<sup>st</sup> Accused