

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No.: HAC 69 of 2024

STATE

V

SALESI DRITI JUNIOR and PENI BABALE

**Counsel: Mr. E. Kotoilakeba for the State
Both Accused in person**

Date of Hearing: 5 November 2024

Date of Sentence: 29 November 2024

SENTENCE

1. Mr Driti, you have pleaded guilty to charges of burglary and theft committed at Savusavu Market on 8 June 2024.
2. Mr Babale, you have pleaded guilty to a charge of being an accessory after the fact, the particulars being that, on 8 June 2024, at Savusavu Market, you assisted Salesi Driti Junior who had, to your knowledge, committed an offence, in order to enable him to escape punishment.
3. You have both agreed the following Summary of Facts prepared by the prosecution:

“1. On the 8th of June, 2024 around 3 am in the morning, the two accused persons were drinking at the Savusavu bus stand after finishing from the Tavern Nightclub. Accused 2 (Mr Babale) fell asleep at the bus stand whilst Accused 1 (Mr Driti) proceeded to walk along the foreshore towards the

market where he noticed that the security guard for the market was missing and nowhere to be seen. Upon seeing this, Accused 1 then decided to steal some items from the market.

- 2. Accused 1 climbed over the fence and stole some bundles of dalo, taufales (brooms) and sacks of moca. The following items were stolen:
 - . Bundles of dalo: 5*
 - . Brooms: 23*
 - . Sacks of tabua (green leafy vegetable): 2*
 - . Total value: \$281.00**
- 3. After Accused 1 stole the above items he left it by the fence and went to retrieve Accused 2 who was still sleeping at the bus stand. Once he woke up Accused 2, he told him to help take the stolen items. Accused 2 agreed and helped take the stolen items across the road from the market and they caught a taxi and proceeded to Nukuloa to catch the bus to Labasa. The two accused persons had planned to sell the stolen items at the Labasa market later that day.*
 - 4. A few hours later that day, around 7 am, one Jay Dutt, 53 years old market vendor of Matalaqere (PW7) opened the Savusavu market for the market vendors. The market vendors, PW1 to PW6 noticed that some of their items were stolen and they informed PW7....*
 - 5. At Nukuloa, after 7:00am that morning one Akariva Rogocake (PW8) who was also at the market earlier that morning drove past the two accused persons who were standing by the road with the stolen items and witnessed them loading the same into the bus bound for Labasa. PW8 took pictures of the said items which were then shown to the vendors who confirmed that the said items were theirs.*

6. *The matter was reported to the Savusavu Police Station and both accused persons were arrested on the same day. Both accused persons were then interviewed under caution where they made full admissions and they were charged accordingly.*

7. *Full recovery was made in this matter.”*

4. Mr Driti, I am satisfied that the Summary of Facts which you have agreed supports that you are guilty as charged. I accept your voluntary and unequivocal pleas and I find you guilty and convict you accordingly.
5. Mr Babale, you will remember that at your sentencing hearing I raised a legal issue with the prosecutor because it appeared to me that the Summary of Facts did not establish the elements of the offence with which you were charged.
6. I gave the prosecution 14 days to file written submissions to assist me on this issue. Disappointingly, they have failed to do so.
7. Having considered the matter further, I am not satisfied that your conduct on 8 June 2024 made you an accessory after the fact to Mr Driti's offending. I acknowledge your commendable wish to take responsibility for your disgraceful behaviour that night. I sense that you are ashamed of what you did and are truly remorseful, but I am unable to accept your plea of guilty and I acquit you accordingly.
8. Mr Driti, having found you guilty as charged, I must now impose an appropriate sentence.
9. The maximum sentence for burglary is 13 years' imprisonment and the maximum sentence for theft is 10 years' imprisonment.

10. The sentencing guideline for burglary sets out a sentencing range of between 3 months' and 8 years' imprisonment depending on the level of harm caused by your offending.
11. I agree with the prosecution submission that your offending falls within the low level of harm category, with a starting point of imprisonment for 1 year, and a sentencing range of 6 months' to 3 years' imprisonment.
12. In order to decide on a just and proportionate sentence, I must consider all the relevant circumstances of your offending. Because you chose not to be legally represented in this case, and have not made any written or oral submissions on your own behalf, I have considered what the prosecution has very fairly said about you, and I have also read the record of your police interview to give me a better understanding of your personal background and why you committed these offences.
13. Your offending was made more serious by the fact that you were really drunk and you stole from 6 market vendors. The seriousness of your offending is reduced because you acted on impulse and had not planned to steal. It is also to your credit that you have no previous convictions and you made a full confession to the police. Importantly, you pleaded guilty at the first opportunity, which has saved the court's time and resources.
14. I have observed you in court on two separate occasions. You appeared before me on 7 October 2024 to enter your plea and to seek bail. When I advised you that it would be better for you to have the benefit of legal advice before entering your plea, you told me that you were ready. This indicates to me that you recognised that you had done wrong and wanted to accept responsibility at the earliest opportunity. In other words, I believe that you are truly remorseful.
15. When you appeared before me on 5 November 2024 for your sentencing hearing, you did not seek to make any excuses for your shameful behaviour and simply sought forgiveness.

16. I have also taken into account that you were in custody from the date of your arrest until I granted you bail on 7 October 2024, a period of 4 months.
17. Balancing all these factors, I impose an aggregate sentence of 4 months' imprisonment. As you have already served 4 months in custody, you have served your sentence and are free to go home.



A handwritten signature in black ink, consisting of the letters "HD" followed by a long, horizontal, slightly wavy line that ends in a small upward tick.

Hon. Mr. Justice Burney

At Labasa
29 October, 2024

Solicitors
Office of the Director of Public Prosecutions for the State
Both Accused in person