IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 02 OF 2025

STATE

V

RUPENI LOMANI AND APAKUKI BERA NANOVA

Counsel	:	Ms. S. Swastika for the State. Mr. F. Singh for the First Accused. Ms. L. Taukei for the Second Accused.
Date of Submissions	:	11 March, 2025
Date of Sentence	:	13 March, 2025

SENTENCE

1. Both the accused persons are charged with the following information filed by the Director of Public Prosecutions dated 5th February, 2025:

COUNT ONE

Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311(1) (b) of the Crimes Act 2009.

Particulars of Offence

RUPENI LOMANI and APAKUKI BERA NANOVA WITH ANOTHER on the 11th day of December, 2024 at Buabua, Lautoka, in the Western Division, robbed JASMA WATI of 1 x Black Handbag, 1 x Gold Chain, 1 x Pendant, 3 x Gold Coin Pendant, 1 x Nokia Mobile Phone, Assorted Cards, 1 x Small Pendant, 2 x Earrings and $500.00 cash, being the property of JASMA WATI and at the time of the robbery had an offensive weapon.

COUNT TWO

Statement of Offence

SERIOUS ASSAULT: Contrary to section 277 (b) of the Crimes Act 2009.

Particulars of Offence

RUPENI LOMANI, on the 11th day of December, 2024 at Buabua, Lautoka, in the Western Division, resisted arrest by POLICE CONSTABLE 8011 PHILIP in the due execution of his duty.

COUNT THREE

Statement of Offence

SERIOUS ASSAULT: Contrary to section 277 (b) of the Crimes Act 2009.

Particulars of Offence

APAKUKI BERA NANOVA, on the 11th day of December, 2024 at Buabua, Lautoka, in the Western Division, resisted arrest by POLICE CONSTABLE 5356 TEVITA RIKA in the due execution of his duty.

2. On 17th February, 2025, both the accused persons pleaded guilty to the above counts in the presence of their counsel. Thereafter on 6th March, 2025 both the accused persons in the presence of their counsel understood and admitted the summary of facts read.

3. The summary of facts is as follows:

a) On 11th of December, 2024, at about 1 pm the victim Jasma Wati (72 years) and her son-in-law Mahend Deo were at home at Buabua, Lautoka. Both the accused persons entered their compound and they asked for water to drink.

b) The accused persons entered the verandah and kept pestering the occupants of the house about a lorry driver Josh. All of a sudden, one of the accused persons ran inside the house and threatened the victim with a metal tube.

c) The victim put her hands up and begged this accused not to hit her. The accused then took her 1 x Nokia mobile phone worth $200.00 and a hand bag worth $30.00 containing the following items:

1x gold chain worth $200, 1 x pendant worth $400, 3 x gold coin pendant worth $3,000.00, assorted cards, 1 x small pendant worth $100, 2 x earring worth $200 and $500 cash. The total amount of items stolen was $4,630.00.

d) After grabbing the stolen items, both the accused persons ran away. The victim's son-in-law and a few others chased them. While chasing, one of the accused persons threw the phone on the road.

e) While the accused persons were escaping, one of the villagers took pictures of the accused persons.

f) After the matter was reported, the investigation team proceeded to arrest the accused persons. PC 8038 Philip approached the first accused, Rupeni Lomani, at Waiyavi Car Park. The first accused resisted arrest and tried to escape.

g) At the same time, DC 5356 Tevita Rika was trying to arrest the second accused, Apakuki Bera Nanova, when he resisted arrest. Both the accused were handcuffed and taken to the Lautoka Police Station. They were caution interviewed, wherein they admitted committing the alleged offences. Both were charged and produced in court.

4. After considering the summary of facts read by the state counsel, which was admitted by both the accused persons, and upon reading their respective caution interviews, this court was satisfied that both the accused persons had entered an unequivocal plea of guilty of their own freewill.

5. This court was also satisfied that both the accused persons had fully understood the nature of the charges and the consequences of pleading guilty. Furthermore, the summary of facts satisfied all the elements of the offences of aggravated robbery and serious assault.

6. In view of the above, this court on 6th March, 2025, found both the accused persons guilty as charged, and they were convicted accordingly. The state counsel filed her sentencing submissions, and both the defence counsel filed their mitigation submissions, for which this court is grateful.

7. The counsel for the accused presented the following mitigation:

RUPENI LOMANI (Accused one)

a) The accused is 18 years old;
b) First Offender;
c) Unemployed;
d) Minimum recovery.

APAKUKI BERA NANOVA (Accused two)

a) The accused is a first offender;
b) Was 19 years of age at the time;
c) Was employed as Casual Labourer earning $40.00 per day;
d) Takes responsibility for his actions;
e) Pleaded guilty at the earliest opportunity;
f) Sincerely remorseful for his actions;
g) Seeks forgiveness from the court and the complainant;
h) Regrets what he has done;
i) Promises not to reoffend;
j) Minimum recovery.

TARIFF

8. The maximum penalty for the offence of aggravated robbery is 20 years imprisonment. The accepted tariff for this offence is from 8 years to 16

years imprisonment *(Wallace Wise-v-The State, CAV0004 of 2015 (24 April, 2015)* since this is a home invasion case by the accused persons.

9. I take cognizance of the Supreme Court decision in *The State vs. Eparama Tawake CAV 0025 of 2019 (28 April, 2022)* which has provided guidance in regards to the appropriate sentence based on:

a) The degree of the offender's culpability; and
b) The level of harm suffered by the victim.

10. I am mindful that this case has a different set of facts compared to the case of *Tawake* (supra), and for this reason, I am unable to strictly follow the tariff in *Tawake's* case. The facts in *Tawake's* case were of street mugging whereas this case involves home invasion, for which the tariff in *Wise* case (supra) applies.

11. The maximum penalty for serious assault under section 277 (b) of the Crimes Act is 5 years imprisonment the accepted tariff is 6 to 9 months imprisonment.

AGGRAVATING FACTORS

12. The following aggravating factors are obvious:

(a) Planning

There is some degree of planning involved the accused persons were keeping one of the witness occupied in a conversation allowing the first accused to run into the house.

(b) Victim was unsuspecting and vulnerable

The victim was unsuspecting and vulnerable when all of a sudden one of the accused persons entered her room with a metal tube. The accused persons were bold and undeterred in what they did.

(c) Prevalence of the offence

This type of offending has become very prevalent nowadays offenders are preying on innocent people for easy money and items. The accused persons did not have any regard for the privacy and property rights of the victim.

DETERMINATION

13. 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."

14. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence for both the accused persons.

15. After assessing the objective seriousness of the offences committed I take 8 years imprisonment (lower end of the scale) as the starting point of the aggregate sentence. The sentence is increased by 1 year for the aggravating factors. Both the accused persons are first offenders hence they receive a discount for good character and other mitigating factors.

The sentence is reduced by 1 year. The interim aggregate sentence is 8 years imprisonment.

16. Both the accused persons pleaded guilty at the first available opportunity after the filing and service of the information and disclosures. In *Gordon Aitcheson vs. The State, criminal petition no. CAV 0012 of 2018 (2 November, 2018)* the Supreme Court offered the following guidance at paragraphs 14 and 15 in regards to the weight of a guilty plea as follows:

*[14]. In **Rainima -v- The State** [2015] FJCA 17; AAU 22 of 2012 (27 February 2015) Madigan JA observed:*

"Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the "high water mark" of discount is one third for a plea willingly made at the earliest opportunity. This court now adopts that principle to be valid and to be applied in all future proceeding at first instance."

*In **Mataunitoga –v- The State** [2015] FJCA 70; AAU125 of 2013 (28th May 2015) Goundar JA adopted a similar but more flexible approach to this issue:*

"In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effect of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment."

*[15]. The principle in **Rainima** must be considered with more flexibility as **Mataunitoga** indicates. The overall gravity of the offence, and the need for the hardening of hearts for prevalence, may shorten the discount to be given. A careful appraisal of all factors as Goundar J has cautioned is the correct approach. The one third discount approach may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.*

17. This court accepts that genuine remorse leading to a guilty plea is a substantive mitigating factor in favour of an accused, however, the guilty plea must be entered in the true spirit of remorse since genuine remorse can reduce the harshness in the final sentence *(see Manoj Khera v The State, CAV 0003 of 2016 (1 April, 2016).*

18. This court accepts that both the accused persons have shown genuine remorse when they pleaded guilty.

19. Genuine remorse is about genuinely feeling sorry for what a person has done. Accepting guilt because of strong evidence and proof of the offender's deeds and then pleading guilty does not indicate genuine remorse *per se,* see *Gordon Aitcheson's* case (supra). In this regard, the sentencing court has a responsibility to assess the guilty plea along with other pertinent factors such as the timing of the plea, the strength of the prosecution case, etc. Here, there is no doubt the timing of the guilty plea was early and that the prosecution had a strong case against the accused.

20. Nevertheless, by pleading guilty the accused persons saved the court's time and expenses and also prevented the victim from reliving her experience in court. Bearing this in mind, the accused persons ought to receive some reduction for their guilty plea bearing in mind that the offences committed are serious. The sentence is further reduced by 6

months. The aggregate sentence is now 7 years and 6 months imprisonment.

21. I also note from the court file that both the accused persons were remanded for 2 months and 28 days. In accordance with section 24 of the Sentencing and Penalties Act, and in exercise of my discretion, the sentence is reduced by 3 months as a period of imprisonment already served. The accused counsel is asking for a partial suspended sentence, unfortunately, home invasion is a very serious crime. The high tariff for such an offence warrants a custodial sentence. This court cannot turn a blind eye to such an offence. People should enjoy peace and harmony within the confines of their homes, hence this is the reason why a high tariff has been set for such an offence. The final aggregate sentence is 7 years and 3 months imprisonment.

22. Having considered section 4(1) of the Sentencing and Penalties Act and the serious nature of the offences committed compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.

23. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community. On the other hand, this court cannot ignore the fact that the accused persons, whilst being punished should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason.

24. In this regard, I have taken into consideration the principle stated by the Court of Appeal in *Paula Tora v The State AAU0063.2011 (27 February 2015)* at paragraph 2 Calanchini P (as he was) said:

[2] The purpose of fixing the non-parole term is to fix the minimum term that the Appellant is required to serve before being eligible for any early release. Although there is no indication in section 18 of the Sentencing and Penalties Decree 2009 as to what matters should be considered when fixing the non-parole period, it is my view that the purposes of sentencing set out in section 4(1) should be considered with particular reference to re-habilitation on the one hand and deterrence on the other. As a result the non-parole term should not be so close to the head sentence as to deny or discourage the possibility of re-habilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent. It must also be recalled that the current practice of the Corrections Department, in the absence of a parole board, is to calculate the one third remission that a prisoner may be entitled to under section 27 (2) of the Corrections Service Act 2006 on the balance of the head sentence after the non-parole term has been served.

25. The Supreme Court in accepting the above principle in *Akuila Navuda v The State [2023] FJSC 45; CAV0013.2022 (26 October 2023)*] stated the following:

Neither the legislature nor the courts have said otherwise since then despite the scrutiny to which the non-parole period has been subjected. The principle that the gap between the non-parole period and the head sentence must be a meaningful one is obviously right. Otherwise there will be little incentive for prisoners to behave themselves in prison, and the advantages of incentivising good behaviour in prison by the granting of remission will be

lost. The difference of only one year in this case was insufficient. I would increase the difference to two years. I would therefore reduce the non-parole period in this case to 12 years.

26. Considering the above, I impose 6 years as a non-parole period to be served before the accused persons are eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused persons and also meet the expectations of the community which is just in the circumstances of this case.

27. The final aggregate sentence and the non-parole period are below the tariff because both the accused persons cooperated with the police, entered an early guilty plea, their actions were out of character, and the victim was not hurt although there was a metal tube in the possession of one of the accused persons. The accused persons are also young offenders, 18 and 19 years of age respectively.

28. In my considered view the above factors favour both the accused persons and they ought to be given another chance in life to rehabilitate themselves and to avoid a crushing effect on them.

29. Mr. Lomani and Mr. Nanova you cannot be forgiven for what you have done there is no short cut in life, you must earn a living with your hard work. What you did was a daring day time robbery after much planning. Greed for money has taken you away from your family. You should be prepared to face the consequences of your deeds.

30. This court will be failing in its duty if a custodial sentence is not imposed. No amount of regret or repentance will save you from a custodial sentence.

You should have thought about the consequences of your actions before embarking on such unlawful activities.

31. In summary I impose an aggregate sentence of 7 years and 3 months imprisonment for one count of aggravated robbery and one count of serious assault respectively with a non-parole period of 6 years to be served before both the accused persons are eligible for parole.

32. 30 days to appeal to the Court of Appeal.

Sunil Sharma
Judge

HIGH COURT OF FIJI
LAUTOKA

At Lautoka

13 March, 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for both the Accused.