

**IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION**

Criminal Case No: 211 - 2019

**STATE**

-v-

**JALE TAGI**

**JITENDRA PRASAD**

**Before** : RM Fotofili L.  
**For The Prosecution** : Inspector Lenaitasi S. [ Police Prosecution ]  
**For the 1<sup>st</sup> Defendant** : In Person  
**For The 2<sup>nd</sup> Defendant** : Ms Tavaiqia L. [ Legal Aid Commission ]  
**Date of Sentence** : 17<sup>th</sup> December 2019

**SENTENCE**

1. **JALE TAGI** and **JITENDRA PRASAD**, both of you have pleaded guilty to the following charge :

*Statement of Offence*

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

*Particulars of Offence*

**JALE TAGI** and **JITENDRA PRASAD** on the 22<sup>nd</sup> day of August 2019 at Balata No. 2, Tavua in the Western Division dishonestly appropriated (stole) two Nanny goats valued at \$400 the property of **RAM LAKHAN** with the intention of permanently depriving the said **RAM LAKHAN** of his property.

2. Both your plea and admission in court and the evidence tendered, supports your guilty pleas. I am satisfied that both of you understand the consequence of your plea.
3. I find both of you guilty and convict both of you of the charge.
4. Both of you are related and are brother in laws. The goats were tied next to the road. The goats were on grazing land. Both of you were travelling in a rental vehicle when you two saw the goats. Without informing and without the consent of the owner, both of you loaded the goats into the vehicle and took them with you.
5. The theft was not isolated and police received several complaints in this jurisdiction or division about theft of farm animals. During the course of police investigation, both of you were arrested and interviewed under caution.
6. Jale Tagi, in your interview with police, you voluntarily admitted that you were travelling in a rental vehicle with another. You and the other person both untied a goat each which were by the roadside. You loaded the goats into the boot of the vehicle. You went in the vehicle to Viria, Nausori to sell the goats. The goats were sold for \$100 each. You have used the money.
7. Jitendra Prasad, in your interview with police, you voluntarily admitted that you with another loaded 2 goats into a rental vehicle you had arranged. You sold the goats at Viria.
8. The 2 goats were recovered and were in police custody.
9. I have already ordered for the return of the 2 goats to the owner Ram Lakhan pursuant to section 155 ( 1 ) ( c ) of the **Criminal Procedure Act 2009** and that was done on the 13<sup>th</sup> of September 2019.
10. Although the goats will be returned to Ram Lakhan, this does not prevent any bonafide 3<sup>rd</sup> party buyer from pursuing any civil action against the defendants.
11. The 1<sup>st</sup> defendant Jale Tagi is not a first offender. Notably he has 2 previous convictions for theft in 2012, 2 previous convictions for burglary in 2012, 1 conviction for theft or larceny in 2011 and another for burglary in that same year and another larceny conviction in 2009.
12. I do not consider any of these previous convictions as spent and I will not treat the 1<sup>st</sup> defendant as a first offender.
13. The 2<sup>nd</sup> defendant Jitendra Prasad is a first offender.

14. The defendants have been in remand since they appeared before me for the first time on the 13<sup>th</sup> of September 2019.
15. I calculate that they would have spent 3 months and 4 days in remand so far.
16. I denied them bail as I was satisfied that the prosecution had a strong case against the defendants and that there was a series of similar offending not only in Tavua but in Ba and in Rakiraki which the defendants will have to be processed for.
17. I will not consider any time spent in remand by the defendants as time served. They had to be remanded.
18. The 1<sup>st</sup> defendant Jale Tagi is 32 years old. He is married with 2 children both of whom are under 11 years old. He is the sole breadwinner. He apologizes for what he has done and he explains that he needed money.
19. The 2<sup>nd</sup> defendant Jitendra Prasad is 43 years old. He has 2 children both of whom are under 11 years old. He says that he is a single parent. He is remorseful and promises not to reoffend. His time in remand has allowed him to reflect a lot on what he has done. He aims to be a better role model. He was financially desperate at the time of committing the offence.

#### **MAXIMUM SENTENCE**

20. The maximum punishment for theft is up to 10 years imprisonment.

#### **SENTENCING RANGE or SENTENCING TARIFF**

21. The sentencing tariff for theft is as follows [ **Ratusili v State** [2012] FJHC 1249; HAA011.2012 ( 1 August 2012 ) ] :
  - (i) for a 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.

### **STARTING POINT**

22. Based on the objective seriousness of the offence, I select a starting point of 6 months imprisonment for both of you.

### **AGGRAVATING FEATURES**

23. I am unsure who was leading this enterprise. The evidence suggests that both of the defendants were equally culpable. None of the defendants will have their sentence increased for being the principal offender.
24. The goats were sold.
25. In agricultural communities such as Tavua, farmers, their farms, farm equipment and farm animals are particularly vulnerable to sabotage and theft. Farms are usually unfenced and farm animals are usually in the open and not in farm houses, barns or stables. The goats in this case were of no exception.
26. I increase both your sentence to 12 months imprisonment.

### **MITIGATION**

27. Both of you have cooperated with police which I have no doubt, this resulted in the recovery of the 2 goats.
28. I accept that both of you are remorseful.
29. You both have family to support.
30. The 2<sup>nd</sup> defendant is a first offender.
31. I reduce the 1<sup>st</sup> defendant Jale Tagi's sentence to 8 months imprisonment.
32. I reduce the 2<sup>nd</sup> defendant Jitendra Prasad's sentence to 7 months imprisonment.

### **GUILTY PLEA**

33. Both of you have pleaded guilty early.
34. The 1<sup>st</sup> defendant Jale Tagi's sentence is reduced to 5 months imprisonment.
35. The 2<sup>nd</sup> defendant Jitendra Prasad's sentence is reduced to 4 months imprisonment.

### **FINAL SENTENCE**

36. Both your sentence is aimed at deterrence and is to punish you adequately.
37. As I have explained, I will not consider any time spent in remand as time served and so no further reduction will be made to your sentences.

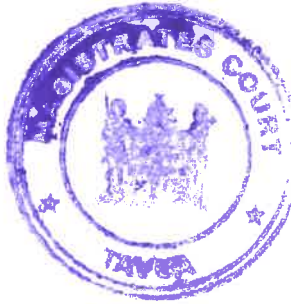
#### **1<sup>st</sup> Defendant Jale Tagi**

38. The 1<sup>st</sup> defendant Jale Tagi is sentenced to 5 months imprisonment.
39. I refuse to suspend your sentence either in part or in whole.
40. You will serve your sentence immediately.
41. I am aware of your sentence imposed on you today for a similar theft case Tavua CF 210 – 19.
42. I am mindful of the one transaction rule and totality principle.
43. Your 5 months imprisonment will be served concurrently to your sentence in that other file.

#### **2<sup>nd</sup> Defendant Jitendra Prasad**

44. The 2<sup>nd</sup> defendant Jitendra Prasad is sentenced to 4 months imprisonment.
45. I also refuse to suspend this sentence despite this being your first offence. The circumstance of the case certainly calls for an immediate custodial or deterrent sentence.

46. I am aware of your sentence imposed on you today for a similar theft case Tavua CF 210 – 19.
47. I am mindful of the one transaction rule and totality principle.
48. Your 4 months imprisonment will be served concurrently to your sentence in that other file.
49. 28 days to appeal to the High Court if there is any dissatisfaction with the sentence.



.....  
Lisiate T.V. Fotofili

**Resident Magistrate**

Dated at TAVUA this 17<sup>th</sup> day of December, 2019