

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 209 - 2019

STATE

-v-

RATU DAKUITOGA & SEMI RATULELE

Before : RM Fotofili L.
For The Prosecution : Inspector Lenaitasi S. [Police Prosecution]
For The Defendants : Both In Person, Both Waived Their Right To Counsel
Date of Sentence : 25th February 2020

SENTENCE

1. **RATU DAKUITOGA** and **SEMI RATULELE**, both of you have pleaded guilty to the following charge :

First Count
Statement of Offence

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

Particulars of Offence

RATU DAKUITOGA and **SEMI RATULELE** on the 10th day of September 2019 and 11th day of September, 2019 at Vatutavui Village in the Western Division, dishonestly appropriated a 15 HP Yamaha Outboard Engine valued at \$4,700, the property of **LAWRENCE NAVNEET ACHAL**, with the intention of permanently depriving the said **LAWRENCE NAVNEET ACHAL** of this property.

Second Count
Statement of Offence

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

Particulars of Offence

RATU DAKUITOGA and **SEMI RATULELE** on the 10th day of September 2019 and 11th day of September, 2019 at Vatutavui Village in the Western Division, dishonestly appropriated a 24 litre Outboard Engine Fuel Tank with hose valued at \$580 the property of **ELONI DIKE**, with the intention of permanently depriving the said **ELONI DIKE** of this 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 both counts in the charge.
4. You two are brothers. The 1st defendant Ratu Dakuitoga is the older brother. Both of you went in a rental car. While the 2nd defendant Semi Ratulele stood by as a lookout, the 1st defendant Ratu Dakuitoga removed and took the engine from a boat. The 1st defendant also removed and took the engine fuel tank from another boat. Both the defendants then loaded the items into the rental vehicle. The 1st defendant then dropped his younger brother at Lausa and the 1st defendant took the items to Suva.
5. The matter was reported and during the course of police investigations, both of you two were arrested.
6. When interviewed under caution by police, the 1st defendant Ratu Dakuitoga admitted drinking liquor earlier. He then parked his vehicle and followed a railway line. The 1st defendant admitted that he went with another person named Semi. The 1st defendant took out an engine which was attached to a boat. He and Semi then loaded the engine onto their vehicle. The 1st defendant also took a fuel tank from another boat and this too was loaded into their vehicle. The 1st defendant did not know who owned the items.
7. When interviewed under caution by police, the 2nd defendant Semi Ratulele admitted that Ratu Dakuitoga is his older brother. They were drinking liquor earlier. They then went in a rental vehicle to the sea to get a boat engine. They planned it since his brother wanted the engine. The vehicle was parked and they followed the tramline. The 2nd defendant knew the area as they grew up there. It was low tide. His brother brought the engine while the 2nd defendant took the fuel tank. The items were loaded into their vehicle. The 2nd defendant knows who the engine belongs to but he does not know who owns the fuel tank. The 2nd defendant admits stealing the items. The 2nd defendant said that he stole the items to help his brother. His brother dropped him at home and his brother then went to Suva.

8. The items have been recovered I have already ordered for the return of the items to the owners pursuant to section 155 (1) (c) of the **Criminal Procedure Act 2009** . That order for the return of the items was done on the 13th of September 2019 without objection from any of the defendants.
9. Both the defendants are first offenders.
10. The 1st defendant Ratu Dakuitoga is 24 years old. His wife is about to give birth or 7 months pregnant. He is separated from his wife. He seeks a non-custodial sentence. He says that his family is going through a difficult time. He has debts to pay. He says that he is not well educated and he was facing financial difficulty at the time. He admits that he encouraged his brother to commit the offence. He promises not to re-offend and seeks forgiveness. He apologises for what he has done. He is ready to accept his sentence.
11. The 2nd defendant Semi Ratulele is 21 years old. He seeks forgiveness. He did not know that it will turn out this way. He seeks a second chance. He looks up to his brother. He is attending a local university studying Information Technology and mathematics and he provides his receipt and registration form to substantiate that.
12. Both the defendants were granted bail when they first appeared before me on the 13th of September 2019. The 2nd defendant has been on bail ever since.
13. Bail for the 1st the defendant was cancelled on the 2nd of December 2019 after he was produced for another theft charge CF 247 – 19 which was for a similar allegation. He has pleaded guilty in that case. That case was committed when he was on bail in this case.
14. The 1st defendant has been in remand ever since I cancelled his bail and remanded him in custody.
15. I will not consider any time the 1st defendant has spent in remand as time served. He had to be remanded in custody considering the evidence against him and that he ostensibly had reoffended while on bail.

AGGREGATE SENTENCE

16. The two counts were committed in the course of the same transaction or founded on the same facts.
17. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on both of you for both the counts.

18. Since the first count is the most serious of the counts in terms of the value of the item stolen, I will use that as the foundation when passing both your aggregate sentence.

MAXIMUM SENTENCE

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

SENTENCING RANGE or SENTENCING TARIFF

20. 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

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

AGGRAVATING FEATURES

22. I am certain that the 1st defendant was leading the enterprise or was the principal offender
23. This was planned.
24. It was committed by the two of you.
25. The owners were vulnerable as it is difficult and costly to secure sea vessels, such as by having a boat house or hiring a watchmen or security. In this jurisdiction, it is common place for boat owners to leave their vessel and equipment beached or tied up or in their boat in or near the sea or water. This leaves their property easily susceptible to trespass and plunder.
26. The value of the item stolen, particularly for the first count is significant.
27. For the 1st defendant Ratu Dakuitoga, I increase his sentence to 16 months imprisonment.
28. For the 2nd defendant Semi Ratulele, I increase his sentence to 12 months imprisonment.

MITIGATION

29. The 1st defendant's family circumstance is not that compelling. It is self-defeating to submit that the family needs to be cared for and then takes the conscious step to commit a crime risking imprisonment which in turn, exposes his family to more difficulty. The 1st defendant cannot claim family circumstance as mitigation if he has a primary role in aggravating his own and his family's circumstance.
30. I also cannot accept as mitigation, the 1st defendant's submission that he was in financial difficulty at the time. The police interview reveals that he was driving around a rental drinking with friends or relatives. A carton of rum and cola was purchased. Then the plan was hatched to steal the engine. The primary motivation here I find is laziness and taking short cuts to enrich himself.
31. The 2nd defendant has not offered any compelling family circumstance too.
32. However, both of you have cooperated with police which I have no doubt, resulted in the items being recovered.

33. I accept that both of you are remorseful.
34. Both of you are first offenders.
35. The 2nd defendant is attending university.
36. I accept that he was influenced by his older brother to commit the offence.
37. I reduce the 1st defendant Ratu Dakuitoga's sentence to 12 months imprisonment.
38. I reduce the 2nd defendant Semi Ratulele's sentence to 6 months imprisonment.

GUILTY PLEA

39. Both of you have pleaded guilty early.
40. The 1st defendant Jale Tagi's sentence is reduced to 9 months imprisonment.
41. The 2nd defendant Semi Ratulele's sentence is reduced to 4 months imprisonment.

FINAL SENTENCE

42. Both your sentence is aimed at deterrence and is to punish you adequately.
43. As I have explained, I will not consider any time spent in remand by the 1st defendant as time served and so no further reduction will be made to his sentence.

1st Defendant Ratu Dakuitoga

44. The 1st defendant Ratu Dakuitoga, you are sentenced to 9 months imprisonment.
45. I refuse to suspend your sentence either in part or in whole.
46. I am aware of the sentences imposed on you on the 3rd of February 2020 by my brother Magistrate at the Ba court in CF 490 – 19 [theft of an outboard motor engine] and CF 491 – 19 [assault causing actual bodily harm]. The offences in both cases were committed in November 2019. Your imprisonment term in both cases were ordered to be served consecutively to each other which requires you to serve a total of 12 months and 24 days imprisonment.

47. I am mindful of the one transaction rule and the totality principle and I order that you serve your 9 months imprisonment in this case, consecutive to the sentence imposed on you in your Ba cases.
48. That means that you are to serve a total of 21 months and 24 days imprisonment.

2nd Defendant Semi Ratulele

49. The 2nd defendant Semi Ratulele is sentenced to 4 months imprisonment.
50. Your imprisonment term will be suspended in part.
51. You will serve 1 month imprisonment immediately.
52. The remaining 3 months imprisonment is suspended for the next 2 years.
53. Do not commit any other offence punishable with imprisonment in the next 2 years or you risk this 3 months imprisonment held in suspense or reserve, being activated.
54. 28 days to appeal to the High Court if there is any dissatisfaction with the sentence.




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Lisiate T.V. Fotofili

Resident Magistrate

Dated at TAVUA this 25th day of February, 2020