

IN THE MAGISTRATES' COURT OF FIJI
AT SUVA
EXTENDED CRIMINAL JURISDICTION

High Court Criminal Case No. 426 of 2016
Magistrates' Court Criminal Case No. 1966 (B) of 2016

STATE

v.

MACIU CAMA

For the State: Inspector of Police Jiten Singh

For the Defendant: Ms. K. Marama, *of counsel*, of the Legal Aid Commission

SENTENCE

1. You were found guilty and convicted after trial of having committed **ATTEMPTED AGGRAVATED ROBBERY** contrary to section 44 and 311 (1) (a) of the **CRIMES ACT 2009** in that you “with another, on the 18th day of November, 2016 at Suva in the Central Division assaulted one **MUDHUR SINGH** before attempting to steal from him 1 x Samsung mobile phone valued at \$650.00, the property of the said **MUDHUR SINGH**.”
2. The evidence revealed that on 18th November 2016, you in company with another person *and* acting in concert with that person had attempted to commit theft from **MUDHUR SINGH** and immediately before the attempt, the person you had acted in concert with had assaulted **MUDHUR SINGH** with the intent to steal from him.
3. **MUDHUR SINGH** had been walking alone along Victoria Parade that night. He had been on his phone. You and your counterpart walked up to him, your counterpart punched him in the face and then tried to snatch his phone from him. You had immediately peeled back around **MUDHUR SINGH** and dug into his back pockets. **MUDHUR SINGH** held on tight to his phone and so your counterpart was unable to steal it. Unsuccessful, you all walked away.

Maximum Penalty & Tariff

4. You were charged and convicted of *attempted aggravated robbery*. Pursuant to section 44 (1) of the **Crimes Act 2009**, “a person who attempts to commit an offence is guilty of attempting to commit that offence and is punishable as if that offence had been committed.”
5. The maximum penalty for **Aggravated Robbery** is imprisonment for 20 years.
6. In *Wallace Wise v. The State* [2015] FJSC 7; CAV 04 of 2015 (24 April 2015), the Supreme Court of Fiji held at [25]:

“[25] *The matter does not end there. We believe that offences of this nature should fall within the range of 8 – 16 years imprisonment. Each case will depend on its own peculiar facts. But this is not simply a case of robbery, but one of aggravated robbery. The circumstances charged are either that the robbery was committed in company with one or more other persons, sometimes in a gang, or where the robbers carry out their crime when they have a weapon with them.*”
7. In context, the Supreme Court was dealing with a single home invasion. At paragraph 3, the Supreme Court was careful to distinguish that incident from a spate of robberies. It is clear then that the tariff in *Wise*, supra applied to single incidents of *aggravated home invasions* only.
8. In *Raqaquau v. State* [2008] FJCA 34; AAU0100.2007 (4 August 2008), the Court of Appeal adopted a tariff of 18 months to 5 years for aggravated street muggings under the now repealed **Penal Code**. In adopting this tariff for that category of offence, the Court of Appeal expressly approved the tariff identified in *R. v Lobban, Sawyers and James* [2002] EWCA Crim 127. The tariff of 18 months to 5 years was derived from 3 sentences handed down in respect of street muggings committed by a group of offenders.
9. In *State v. Josai Warodo Vatunicoko* [2018] 885; HAC210.2018 (21 September 2018), Goundar. J set out the various tariffs that applied in respect of different instances of aggravated robbery and the authorities that established the identified range:

“In assessing the objective seriousness of your offending, I am mindful that aggravated robbery in the company of others is punishable by 20 years’ imprisonment. The tariff depends on the nature and circumstances of the robbery. The tariff is as follows:

*Street mugging: 18 months to 5 years imprisonment (**Raquauqau v. State** [2008] FJCA 34; AAU0100.2007 (4 August 2008).*

*Home invasion: 8 – 16 years imprisonment (**Wise v. State** [2015] FJSC 7; CAV0004.2015 (24 April 2015).*

*A spate of robberies: 10 – 16 years imprisonment (**Nawalu v. State** [2013] FJSC 11; CAV0012.12 (28 August 2013).”*

10. This is an incident of street mugging and so one would expect the tariff established by the Court of Appeal of 18 months – 5 years imprisonment to apply: **Raquauqau v. State**, supra. I am aware, however, that the High Court in **State v. Sokowasa Bulavou** [2019] FJHC 877; HAC28.2018 (10 September 2019) established a new tariff range of 5 – 13 years imprisonment for street or less sophisticated robberies. This was expressly approved by another learned Judge of the High Court in **State v. Ronaivalu and Qoriniasi**, High Court Criminal Case No. HAC 195 of 2019 (unreported, 17 December 2019).
11. I have read each of these authorities with great care. In sentencing you, I operate under extended jurisdiction but I am still a Resident Magistrate bound by the principles of *stare decisis* and subject to the hierarchy of courts.
12. In **Bulavou**, supra the High Court rejected the tariff established in **Raquauqau**, expressly holding that it applied to robberies but not aggravated robberies.
13. The authority in **Raquauqau** applied to *street muggings* in a group or involving a weapon. *Robbery with violence* is the now repealed **Penal Code** equivalent of *aggravated robbery* under the **Crimes Act 2009**. Despite the reduction in maximum penalty from life imprisonment to 20 years imprisonment, courts in Fiji continue the practice of adopting English sentences for *robbery* and *aggravated robbery* under the **Crimes Act 2009** as they once did for *robbery* and *robbery with violence* under the **Penal Code** (now repealed).

14. By necessary implication, tariffs for *robbery with violence* under the now repealed **Penal Code** continue to apply to *aggravated robbery* offences under the **Crimes Act**. However, subsequent sentencing practices for *theft* and *robbery* under the **Crimes Act** have seen the establishment of tariffs between 2 months to 3 years for *theft* and 2 – 8 years for *robbery*.
15. A major concern of the High Court in *Bulavou* was the sense of justifiable grievance a person sentenced for *robbery* may end up feeling when he or she compares his or her end sentence against that handed down for *a street mugging* in aggravated circumstances. It may well be time to press the reset button on tariffs for *aggravated robbery* and simply accept that like *manslaughter*, the tariff for aggravated robbery should range from a suspended sentence to 16 years imprisonment. Like *manslaughter*, there are so many permutations of the crime, so many ways in which it may be committed that a wider range better meets the interests of justice than a narrow band would. Let the sentence fit the crime.
16. I am aware of the decision of the Court of Appeal in *Kumar v. State* [2018] FJCA 148; AAU165.2017 (4 October 2018). By that authority, I am bound by the tariff that applied at the time of the commission of the offending and not the tariff that applied at the time of sentencing. At the time of the commission of this offence, the tariff that applied was 18 months to 5 years. By the principle of *stare decisis*, that is the tariff that I apply here and now.

Aggravating Factors

17. There were no discernable aggravating factors available on the evidence adduced before me.

Mitigating Factors

18. You are 24 years old. You are married with two children who are 2 and 1 in age. You are a process worker with *Flour Mills of Fiji* and you earn \$160.00 a week. You are the sole bread winner for your little family. You are a first offender. Your counsel submitted a letter from your place of employment addressed to the Court confirming that you are employed with them. A copy of your current salary slip was tendered too. Your counsel urges upon the Court the fact that you have made a life for yourself. I am asked to consider rehabilitation the primary purpose of sentencing here and now.

Sentencing

19. In picking your starting point I look very carefully at the circumstances of the offending
20. You waylaid an innocent man on our public streets. You were in a group, which is what makes your crime *aggravated robbery* instead of *robbery simpliciter* but it was just the one punch by your counterpart and at the end of the day, you made off with nothing.
21. I pick a starting point of imprisonment for 2 years.
22. I decrease your sentence by 1 month for your personal circumstances and 9 months for your previous good character. Your sentence is now imprisonment for 1 year and 2 months. In light of your current circumstances, I have no hesitation in finding that you are a good prospect for rehabilitation.
23. Pursuant to section 26 (2) (b) of the **Criminal Procedure Act 2009** I suspend your sentence for a period of 3 years.

Result

24. In the result and for the reasons set out above, I sentence you to imprisonment for a period of 1 year and 2 months but I suspend this for a period of 3 years.
25. You must not commit another crime in the next 3 years. If you do, you may find yourself serving the 1 year and 2 month term I suspended today.
26. **Any party dissatisfied with the judgment or sentence handed down by this Court against Maciu Cama is entitled to appeal to the Court of Appeal within 30 days.**



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Seini K Puamau
RESIDENT MAGISTRATE



Dated at Suva this 17th day of January 2020.