

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 94 OF 2018

BETWEEN : **STATE**

AND : **1. SERUPEPELI SALACA**
2. LEPANI TULI

Counsel : *Ms. S. Serukai for the State*
Ms. L. David for the Accused

Date of Hearing : *17th September 2018*
Date of Sentence : *02nd October 2018*

SENTENCE (for the 2nd Accused)

1. Mr. Lepani Tuli, you have freely and voluntarily pleaded guilty to the counts of aggravated burglary and theft at the first opportunity. I am satisfied and convinced that you have pleaded so, unequivocally having understood the consequences of such a plea.
2. You were charged as follows;

COUNT ONE

Statement of Offence

AGGRAVATED BURGLARY: Contrary to section 313 (1)(a) of the Crimes Act of 2009.

Particulars of Offence

Serupepeli Salaka and Lepani Tuli between the 20th of January, 2018 and 21st of January, 2018 at Nausori Town in the Central Division, entered into the shop of Sashi Kant, as trespassers with intent to steal.

COUNT TWO

Statement of Offence

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

Particulars of Offence

Serupepeli Salaka and Lepani Tuli between the 20th of January, 2018 and 21st of January, 2018 at Nausori Town in the Central Division, stole \$300.00 cash, 10x Uma (40

yard fabric material)valued at \$500.00, 6 x suitcase valued at \$450.00, 6 x blankets valued at \$299.70, 5 x mosquito net valued at \$159.75, 50 x fabric paint valued at \$797.50, 50 x tapa material valued at \$200.00, 6 x check material valued at \$1980.00 and 10 x paco fabric material valued at \$1980.00, all to the total value of \$6666.95, the property of Sashi Kant.

3. Summary of Facts were submitted by the State and read over and explained to you. Mr. Lepani Tuli, you having understood, admitted them to be true and correct.
4. Summary of facts state that,
Between the 20th of January 2018 and the 21st of January 2018, at about 2.00 am, it was alleged that Lepani Tuli, 20 years old, of Wainibuku, in the company of another, forcefully entered through the main door of **Chotubhai Trading and Hems Fashion** with intent to steal.

Together they have stolen;
\$300.00 cash,
10 x Uma (40 yard fabric material) valued at \$500.00,
6 x suitcases valued at \$450.00,
6 x blankets valued at \$299.70,
5 x mosquito nets valued at \$159.75,
50 x fabric paint valued at \$797.50,
50 x tapa material valued at \$200.00,
6 x check material valued at \$1980.00, and
10 x PACO fabric material valued at \$1980.00,
all to the total value of \$6666.95, the property of Sashi Kant.

After the investigations are concluded,
3 x printed tapa material,
3 x PACO material, and
7 x cotton sulu, were recovered.

Lepani Tuli was arrested on 24th of January 2018. He was then caution interviewed on the same day and had admitted of the alleged act.

5. I find that the admitted facts support all elements of the charges in the Information, and find the charges proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and I convict you for the offences of Aggravated Burglary and Theft as charged.
6. A person who enters a building with one or more other persons as a trespasser, with the intention to steal commits an aggravated burglary punishable by 17 years' imprisonment under section 313(1)(a) of the Crimes Act. Theft is committed if a person dishonestly appropriates property belonging to another with the intention to

permanently depriving him of the property. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act.

7. The accepted tariff for Aggravated Burglary is 6 to 14 years imprisonment. Though there is some uncertainty, in respect of the recommended tariff, as I have reasoned out in **State v Chand** - Sentence [2018] FJHC 830; HAC44.2018 (6 September 2018), I prefer to follow Hon. Justice Perera in **State v Naulu** - [2018] FJHC 548 (25 June 2018), as it gives effect to the intention of the legislature, best.

As for the offence of theft the accepted tariff would range from 2 months to 3 years (**Ratusili v State** [2012] FJHC 1249; HAA 011.2012).

8. The two offences you have committed are founded on the same facts. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("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."

9. There are not many aggravating factors present in your case other than the intrusion occurred at the early hours of the morning, at around 2.00 am. Further, these types of offences have increased due to the leniency they are dealt with and society now demands an unsympathetic and/or stern judicial approach on these types of offences.
10. The mitigating factors are your expression of remorse, cooperating with the police to the maximum and the recovery of few of the stolen items.
11. I would select 6 years as the starting point of your aggregate sentence. I would enhance 1 year due to aggravating factors mentioned above and deduct 2 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 5 years. Considering your early guilty plea through which you have saved this court's time and resources, you will be given a discount of one-third.

Accordingly, your final aggregate sentence is an imprisonment term of 40 months. You all have spent just over 4 months in remand. In lieu of that, I deduct 5 months from your final sentence of which the remainder, you'd have to serve being 35 months. Taking into

account all the circumstances of this case, the non-parole period I would fix in view of the provisions of section 18 of the Sentencing and Penalties Act would be 24 months.

12. Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act.
13. Lepani Tuli, you have no previous convictions or pending cases. Further, you are only 20 years of age. Therefore, in consideration of the submissions made on your behalf, I am of the view it is nothing but fair that you should be given an opportunity to mend your ways and become a good law abiding citizen. In result, your sentence of 35 months of imprisonment is suspended for a period of 5 years.
14. The consequences of a violation of the suspended term of imprisonment will be explained to you by your counsel.
15. Your non-parole period would be relevant only in the event you are to serve the above suspended terms.
16. You have 30 days to appeal to the Court of Appeal if you so desire.


Chamath S. Morais
JUDGE



At Suva
02nd October 2018

Solicitors : *Office of the Director of Public Prosecutions for the State
Legal Aid Commission, Suva for the Accused*