

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 198 of 2018

[CRIMINAL JURISDICTION]

STATE

V

- 1. SISA BIUSAVU**
- 2. RATU PENI RAVISA**
- 3. MIKA TUBANAVAU**

Counsel : Ms. S. Sharma for State
Ms. L. David for Accused

Hearing on : 17 August 2018

Sentenced on : 06 September 2018

SENTENCE

1. Sisa Biusavu, Ratu Peni Ravisa and Mika Tubanavau, you have pleaded guilty to the two offences produced below. After considering the summary of facts which you have admitted and the admissions made in your respective cautioned interview statements, this court was satisfied that the pleas of guilty each of you have entered was unequivocal. You were accordingly convicted as charged for the following offences;

COUNT ONE

Statement of Offence

Aggravated Burglary: contrary to section 313 (1)(a) of the Crimes Act of 2009.

Particulars of Offence

SISA BIUSAVU, RATU PENI RAVISA and MIKA TUBANAVAU on the 6th day of May 2018 at Navua in the Central Division entered into Rukua village Co-operative Stores as trespassers, with intent to commit theft therein.

COUNT TWO

Statement of Offence

Theft: contrary to section 291(1) of the Crimes Act of 2009.

Particulars of Offence

SISA BIUSAVU, RATU PENI RAVISA and MIKA TUBANAVAU on the 6th day of May 2018 at Navua in the Central Division, dishonestly appropriated cash of \$1,550.75 the property of Rukua Village Co-operative Stores, with the intention of permanently depriving the said Rukua Village Co-operative Stores of the said property.

2. The summary of facts you have admitted are as follows;

SUMMARY OF FACTS

1. *The complainant is Mereseini Labalaba, 36 years old, shop keeper at Rukua village.*
2. *The accused are:*
 - 1) *Sisa Biusavu, 21 years old (DOB: 06/05/1996), farmer of Rukua village*
 - 2) *Ratu Peni Ravisa, 19 years old (DOB: 03/06/1998), farmer of Rukua village*
 - 3) *Mika Tubanavau, 18 years old (DOB: 26/04/2000), farmer of Rukua village.*
3. *The complainant is married to Peceli Labalaba and she has been managing the Rukua Co-operative Shop for the past 3 months after it was approved by the Committee.*
4. *The shop is a concrete building with only 2 doors. One of the doors is closed and the other door is open for people to come in and out.*
5. *On 7th May 2018 at about 6am, the complainant went to open the shop for the villagers to do their shopping.*
6. *The complainant opened the padlock with a key and went inside the shop. Whilst in the shop she noticed that the toilet paper pack and carton of bathing soap had fallen down. She put them back and went to check the money in the tin and found all the money inside.*
7. *She counted the money and went to put it in a plastic container. When she checked*

- the plastic container, it was empty and she felt suspicious that something was wrong.*
8. *There are 3 plastic containers and 2 of them contain cash and the other one contains coins. Both containers that contain cash were empty. One of the containers had \$819.00 – from the interest from 17/04/18 to 30/04/2018. The other container had \$731.75 – the total money collected from Friday to Saturday.*
 9. *Only the notes were stolen and the coins - \$21.90 was not taken. Thus a total of \$1,550.75 was stolen.*
 10. *The complainant checked with her husband – Peceli Labalaba and Adivani Boseiwaqa about the missing money. Later the complainant noticed that the lower bolt where the padlock used to hang was damaged.*
 11. *One of the village elders, Maika asked the 2 accused about the incident and they admitted to committing the offence and returned the money.*

Caution Interview

12. *The 3 accused were caution interviewed on 10th of May 2018.*
13. *Accused 1 made admissions from Q&A 33 to 55 in his Record of Interview.*
14. *Accused 2 made admissions from Q&A 33 to 47 in his Record of Interview.*
15. *Accused 3 made admissions from Q&A 31 to 63 in his Record of Interview.*
16. *The 3 accused made admissions stating that they met at the seawall and planned to steal from the Co-operative Shop. It was decided that accused 3 will enter the shop whereas accused 1 and accused 2 would guard both corners of the shop. The 3 accused followed the plan. Accused 3 used pliers to open the shop; he went inside to where the money was kept and stole the money from there. After taking the money, accused 3 went outside and locked the door. The 3 accused then shared the stolen money.*
17. *The 3 accused confirm having shares from the money obtained from the burglary. Accused 3 had \$780.00, accused 1 had \$200.00 and accused 2 had \$177.00.*

Recovery:

18. *After the aggravated burglary and theft a total of \$1,157.00 was recovered. The complainant kept the money after it was recovered from the 3 accused.*

Appearance in Court:

19. *Both the accused appeared in the Navua Magistrates Court on 11th of May 2018 and they first appeared in the Suva High Court on 25th of May 2018.*

3. As I have explained in the case of *State v Naulu* [2018] FJHC 548 (25 June 2018), based on the tariff endorsed by the Supreme Court for the offence of aggravated robbery in the case of *Wise v State* [2015] FJSC 7, the tariff for the offence of

aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years.

4. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
5. The two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment against each one of you for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”) reads thus;

“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.”

6. Sisa Biusavu you are 21 years old; Ratu Peni Ravisa you are 20 years old; and Mika Tubanavau you are 18 years old. The fact that the three of you burgled the co-operative shop in the village and the fact that there was premeditation will be considered as common aggravating factors.
7. It was submitted that the total amount that was stolen was returned to the complainant before the matter was reported to the police. It was further submitted that each one of you are remorseful and you are young first offenders. The three of you pleaded not guilty to the offence the first instance the pleas were taken which

was on 05/07/18. Subsequently, on 26/07/18 the pleas were taken again on your request where each one of you pleaded guilty to the two offences above. I would consider these factors as common mitigating factors. Considering the circumstances of this case, I would consider that each one of you have pleaded guilty on the earliest opportunity for the purpose of deciding the discount to be given in view of the guilty plea.

8. Given that the aggravating factors and the mitigating factors identified in this case in relation to each one of you are identical, I would arrive at the sentence to be imposed on each of you as follows;
 - a) I would select 06 years as the starting point of the aggregate sentence. In view of the above aggravating factors I would add 02 years to the sentence. I would deduct 04 years in view of the above mitigating factors. Now the sentence is an imprisonment term of 04 years. In view of the early guilty plea, a discount of one-third will be given. Accordingly, the final aggregate sentence is an imprisonment term of 02 years and 08 months. Non-parole period in view of the provisions of section 18 of the Sentencing and Penalties Act would fixed at 20 months.
 - b) For the purpose of promoting rehabilitation considering the age of each accused and the decision to accept the responsibility for the offences committed, I would partially suspend the sentence in terms of section 26(1) of the Sentencing and Penalties Act. I order that the first 04 months of the sentence should be served forthwith and the remaining period of 02 years and 04 months is suspended for 03 years.
 - c) Each accused has been in custody in view of this matter since 10/05/18. The time spent in custody shall be regarded as a period of imprisonment already

served in terms of section 24 of the Sentencing and Penalties Act. I hold that the period to be regarded as served should be 04 months.

d) Accordingly, each accused is sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 20 months. The sentence is partially suspended where each accused shall serve 04 months of the sentence forthwith and the remaining period of 02 years and 04 months is suspended for 03 years. Therefore, the non-parole period would be relevant only in the event an accused is required to serve the full term.

e) In view of the fact that I have regarded the 04 months each accused had spent in custody as time already served, each accused had already served the period of imprisonment that was required to be served before the sentence is partially suspended. In the circumstances, each accused will be released forthwith.

9. The final sentences are as follows;

First accused - Imprisonment term of 02 years and 08 months with a non-parole period of 20 months. You shall serve 04 months of your sentence forthwith and the remaining period of 02 years and 04 months is suspended for 03 years. In view of the period spent in custody you are deemed to have served the term before the suspension of your sentence and therefore you shall be released forthwith.

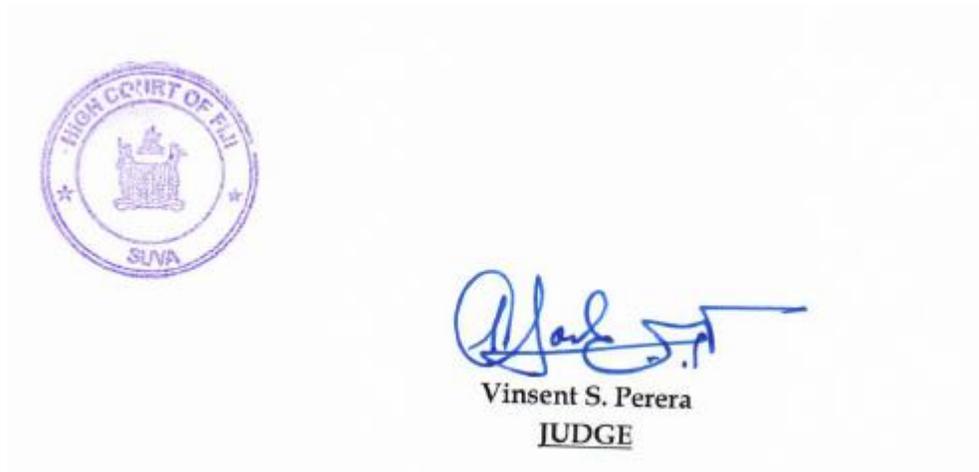
Second accused - Imprisonment term of 02 years and 08 months with a non-parole period of 20 months. You shall serve 04 months of your sentence forthwith and the remaining period of 02 years and 04 months is

suspended for 03 years. In view of the period spent in custody you are deemed to have served the term before the suspension of your sentence and therefore you shall be released forthwith.

Third accused - Imprisonment term of 02 years and 08 months with a non-parole period of 20 months. You shall serve 04 months of your sentence forthwith and the remaining period of 02 years and 04 months is suspended for 03 years. In view of the period spent in custody you are deemed to have served the term before the suspension of your sentence and therefore you shall be released forthwith.

10. The court clerk will explain to you the effects of a suspended sentence.

11. Thirty (30) days to appeal to the court of appeal.



Solicitors;
Office of the Director of Public Prosecutions for State.
Legal Aid Commission for all Accused.