

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. HAC 120 of 2018

STATE

v

SEVANAIA RATULELE MATAIRAVULA

Mr A. Singh for the State
Miss J. Singh (L.A.C.) for the accused.

Date of Hearing : 2 October and 6, 8, 9 November 2018
Date of Sentence : 13 November 2018

SENTENCE

- 1.] The accused has been charged with aggravated burglary along with two others in that they did on the night of 24 to 25 June 2018 break into the premises of Fiji Meats in Lautoka with intent to commit theft and secondly he is charged that he did steal meat to the value of \$933.04, which was the property of Fiji Meats.
- 2.] In this Court on the 2nd October he entered an unequivocal plea to the charge and on 6 November he agreed a set of relevant facts and he was convicted on both counts.

- 3.] The facts of the case, admitted by the accused are:
- 4.] A responsible officer of Fiji Meats on the Waterfront Road in Lautoka reported on the 25th June 2018, that the premises had been broken into the previous night and meats to the value of \$933 had been stolen. He had secured the doors after closing time on the 24th June.
- 5.] At around 1am on the 25th June, the accused with others had hired a private car from a local service station and they made their way to Fiji meats (“the premises”). In front of the premises, the accused picked up a stone and smashed the glass in the customer entrance door. He received injuries to his arm in the process. They entered the premises and stole the meat goods. They then fled the scene. That same night they visited all the BBQ stalls in the City trying to sell the stolen meat.
- 6.] The Police were able to view the premises’ security camera footage and the men were all identified from that footage. The accused was arrested and taken in for questioning. He made admissions to the offences under caution and took part voluntarily in a reconstruction of the offence.
- 7.] Nothing was recovered.

8.] Mitigation

Counsel for the accused advanced the following in mitigation:

- He is 32 years old residing in Tomuka
- He has a defacto partner and an 8 month old son
- Prior to arrest he worked as a security guard at Lautoka Hospital earning \$120 per week.

- He has a clear record and no other matters pending in the Courts.
 - He co-operated with the authorities by admitting the offences and giving details of the offending.
- 9.] He tells the Court that he made a foolish mistake and he only took part because of peer pressure. He is very remorseful and asks that his early plea of guilty be taken into consideration. He adds that he is concerned for the welfare of his partner and young child.

10.] The Sentencing Framework.

This offence is aggravated because it was effected in the company of others. The maximum penalty for aggravated burglary is 17 years imprisonment, while the maximum penalty for theft is 10 years imprisonment.

- 11.] The present tariff for aggravated burglary is a term of imprisonment from 18 months to 3 years (as noted by the Court of Appeal in **Leqavuni** AAU 0106.2014 (26 February 2016).
- 12.] Recently Perera J. observed in **Metui Naula & anor** HAC 136 of 2018 (25 June 2018) that the tariff in his view is out of proportion to the tariff for aggravated robbery and should be increased to a term of between 6 to 12 years. He then proceeded to sentence the accused in that case to a partially suspended sentence, thereby totally distorting the tariff that he purported to have just altered.
- 13.] Whilst this Court would agree that the present tariff of 18 months to 3 years is arguably inadequate, until such time as a

higher Court addresses that issue then the accepted tariff should apply rather than a radically enhanced tariff.

14.] The Sentence

As Perera J. did in the Naula case (supra) this Court would impose an aggregate sentence for the two offences, pursuant to the provisions of section 17 of the Sentencing and Penalties Act 2009.

15.] I take a starting point at the top of the range of 3 years imprisonment. In identifying the following aggravating features:

- A night time invasion
- Commercial premises, selling foodstuffs to the general public
- Damage to property (smashed door glass)
- A certain degree of premeditation

The Court would add 12 months to the sentence bringing it to an interim total of 4 years.

16.] The accused has a good amount of mitigation available to him including the features referred to above. However his family circumstances can not play any part in his sentence. Consequences to one's family life should be considered by an offender before he embarks on a criminal enterprise.

17.] For the mitigating features including a clear record, I deduct A period of 12 months and for his early plea of guilty and for the very short time he has sent in remand prior to sentence, I deduct a further 12 months.

18.] The sentence this Court is imposing on the accused is an immediate term of imprisonment of 2 years.

19.] He will serve a term of 18 months before being eligible for parole.

20.] Orders:

- The accused will serve a term of imprisonment of 2 years.
- He will serve a minimum of 18 months before being eligible for parole.



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P.K. Madigan

Judge.

High Court Lautoka

13th November, 2018