

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 197 of 2018

BETWEEN: STATE PROSECUTION

AND: 1. TOMU NAWAI
2. DEMESI FOATA
ACCUSED PERSON

Counsel: Ms. M. Konrote for State
Ms. L. David for Accused 1
Ms. N. Mishra for Accused 2

Sentence: 25th June 2018

SENTENCE

1. Mr. Demesi Foata and Mr. Tomu Nawai, you are being charged with one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act, which carries a maximum sentence of twenty (20) years imprisonment. The particulars of the offence are that:

Statement of Offence

AGGRAVATED ROBBERY: Contrary to Section 311 (1) (a) of the Crimes Act 2009.

Particulars of Offence

DEMESI FOATA and TOMU NAWAI in company of each other on the 10th day of May, 2018, at Suva, in the Central Division, robbed **EDWARD NAREND KRISHNA** of one White Alcatel Mobile phone valued at \$399.00 and \$30.00 cash the property of **EDWARD NAREND KRISHNA**.

2. Both of you pleaded guilty for this offence on the 21st of June 2018. Satisfied by the fact that you have fully comprehended the legal effect of your pleas and your pleas were voluntary and free from influence, I convicted both of you for this offence.
3. According to the summary of fact, which both of you admitted in open court, that both of you have robbed the complainant while he was walking towards Mead Road, after parking his taxi in front of the Namadi Police Community Post in the night of 10th of May 2018. The Complainant is a taxi driver. He had parked his taxi in front of the Community Post, as it was safe. He had then walked towards Mead road, along Vunakece Road. Both of you came behind the complainant, while he was walking down. One of you then walked past the complainant and punched him on his right cheek. When the complainant fell down due to the said punch, both of you dragged him behind the lamp post and stole his mobile phone and cash of \$30.00.
4. Aggravated Robbery is a serious offence, which carries a sentence of 20 years imprisonment. The sentencing tariff is 8 to 16 years imprisonment. (Wallace Wise v State [2015] FJSC 7; CAV0004.2015 (24 April 2015)).
5. This is a crime of violently attacking a person in the night, and stealing from him. Offences of this nature are prevalent in the society. The increasing crime rate of this nature has turned the society into a vulnerable and insecure place, where an ordinary citizen cannot freely walk along a street.
6. Having considered the seriousness of this offence, the purposes of this sentence are to deter offenders or other persons from committing offences of the same or similar nature; and to protect the community.
7. Crimes of this nature could have the effect of endangering innocent public and their freedom of life. You both have found an opportunity where the complainant was alone and had no prospect of escape or seek help, to carry out this crime. You have used a substantial amount of violence in order to execute this crime. Hence, I find the level of culpability is substantially high in this crime.

8. The impact of this offence on the complainant must be a horrified and frustrating experience. Specially, he was suddenly punched and stole his belongings while he was walking on a public road. This horrifying experience definitely remains with him for the rest of his life. Therefore, I find the level of harm is substantially high in this offending.
9. Both of you are young first offenders. Therefore, you are entitled for a substantive discount for your previous good character.
10. You pleaded guilty for this offence at the first available opportunity. You have admitted in your respective caution interviews that you have committed this offence, and maintained the same position by pleading guilty at the first available opportunity, which demonstrate your remorse and repent in committing this crime. Hence, you are entitled for a substantive discount for your early plea of guilty and remorse.
11. Considering the seriousness of the crime, the level of culpability and harm, I select twelve (12) years. For your unblemished character and young age, I reduce one (1) year. I further reduce three (3) years for your early plea of guilty, making the final sentence of eight (8) years of imprisonment period.
12. Having considered the seriousness of this crime, the purpose of this sentence, your age and opportunities for rehabilitation, I find four (4) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of four (4) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

13. Accordingly, Mr. Demesi Foata, I sentence you for a **period of eight (8) years imprisonment** for the offence of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act. Further, I order that you are not eligible for any parole for a period of **four (4) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

14. Mr. Tomu Nawai, I sentence you for a **period of eight (8) years imprisonment** for the offence of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act. Further, I order that you are not eligible for any parole for a period of **four (4) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of The Sentence

15. Both of you have been in remand custody for this case for a period of one (1) month and ten (10) days as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of two(2) months as a period of imprisonment that have already been served by you.
16. Accordingly, the actual sentencing period is **seven (7) years and ten (10) months** imprisonment with non-parole period of **three (3) years and ten (10) months**.
17. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva

25th June 2018

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for Accused 1.
Office of the Legal Aid Commission for Accused 2.