

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 502 of 2017

Criminal Case No. 503 of 2017

STATE

v

AVISHAL AVIKESH PRASAD

Counsels : **WSGT Mere** for the Prosecution

: **Ms Singh. M** for the Accused

Sentence : **29 March 2018**

SENTENCE

1. *Avishal Avikesh Prasad*, the Accused, today is for sentencing for the following cases and offences :-
 - a. *CF 502/17* - *Burglary*
 - *Theft*
 - b. *CF 503/17* - *Burglary*
 - *Theft*
2. For both the case files, the Accused elected for the Magistrate Court on the offence of burglary as it is an electable offence.

3. On 21 November 2017, the Accused pleaded guilty to all the above offences in the presence of his counsel. I find the Accused plea to be unequivocal.
4. The brief facts for CF 502/17 are:-

"On 2nd day of October 2017, at 18.30 hours, the accused Avishal Avikesh Prasad forcefully opened the front door of the Seaqaqa Health Centre, entered into the Health Centre and at the medical ward, the accused stole 2 cable valued \$30.00, 1 stethoscope valued \$250.00, 2 glucometer valued \$12.00, 1 pack gluco-strip valued \$90.00, 1 pair dressing pack valued \$10.00, 1 plaster valued \$5.00, 1 pair triangular bandage valued \$2.00, and 1 bag valued \$30.00, all to the total value of \$542.00 the property of Ashneel Ritesh Prasad the Senior Medical Officer of Seaqaqa Health Centre.
5. The brief facts for CF 503/17 are:-

"On 2nd October 2017, the Accused went to Satish Chand (the victim) house at Vunivutu, Seaqaqa and forcefully open the louvers and the front door and entered the house. The Accused stole a Bank of Baroda pass book valued \$1000.00 the property of the victim. The victim reported the matter where investigation was carried out, the Accused was arrested and admitted to the allegation.
6. The offences in both the case files were committed on the same day on 2 October 2017 at Seaqaqa. Stolen items in both the cases and were fully recovered. The Accused admitted to the summary of facts for both the cases on 21 November 2017, and convicted as charged for all the offences. For CF 502/17, the mitigation was filed by the Defence Counsel on 8 January 2018. In CF 503/17, the Accused submitted oral mitigation on 13 March 2018.
7. The maximum penalty for *Burglary* is 13 years imprisonment. The tariff is from 12 months to 3 years imprisonment as set in **Mosese Uluicicia v State**, Criminal Appeal No. HAA 028 of 2014. The maximum penalty for *Theft* is 10 years imprisonment. The tariff is 2 to 9 months for simple theft and 9 months and more for repeated offenders as set in **Vakarauvanua v The State** [2004] FJHC 116.

8. The aggravating factors are;-

- i. Offended against two properties at Seaqaqa on the same day.
- ii. One of the property is Seaqaqa Health Centre a government facility.
- iii. No respect on the government facility which was built for the benefit of the Seaqaqa communities.
- iv. Create fear and insecurity to property owners.
- v. Have no regard to the peaceful use and enjoyment of property by their owners.

9. The compelling mitigating factors are;-

- i. Young offender of 21 years old.
- ii. Full recovery.
- iii. Ask for the court leniency and a non custodial sentence.

10. In your sentence, I will start with the offence of *Burglary*. My starting point for *Burglary* is 2 years. I add 1 year for the aggravating factors and that increase your sentence to 3 years. I reduce 8 months for your mitigation and that reduce your sentence to 2 years and 4 months imprisonment.

11. You entered an early guilty plea for both the cases. In the case of *Vilimone v State* [2008] FJHC 12, the High Court recognised that one third of the sentence should be reduced for an early guilty plea. Your one third entitlement is 9 months. I reduce 9 months from your sentence and that reduce your sentence to 1 year and 7 months imprisonment.

12. I noted that you are in remanded for 2 months and 1 week for both the cases. In *Bavoro v State* [2013] FJHC 1, the court recognised that appropriate reduction in the sentence to reflect the remand period could be made under section 24 of the *Sentencing and Penalties Decree No. 42 of 2009*. Accordingly, I reduce 2 months and 1 week from your sentence and it reduce your sentence for *Burglary* to 1 year, 4 months, and 3 weeks imprisonment.

13. The offences in each case were committed under one transaction. According to the one transaction rule, I impose 12 months as your sentence for the count of *Theft* as you are a repeated offender.
14. Home and property invasion is a concern nationwide. To ensure the protection from unwarranted invasion and to ensure the peaceful and comfortable use and enjoyment of property, deterrent sentence both specific and general need to be issued to denounce such conduct. Considering *section 4* of the *Sentence and Penalties Act*, this sentence is grounded on the principle of deterrent. Accordingly, this is not an appropriate case for suspended sentence.

15. Avishal Avikesh Prasad, I now sentence you as follows:-

a. CF 502/17- Count 1 – Burglary - 1 year, 4 months, and 3 weeks imprisonment.

Count 2 - Theft - 12 months imprisonments.

b. CF 503/17- Count 1 – Burglary - 1 year, 4 months, and 3 weeks imprisonment.

Count 2 - Theft - 12 months imprisonments.

c. Sentence for all the counts to be served concurrently with immediate effects

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE