

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 47 of 2020

[CRIMINAL JURISDICTION]

STATE

V

ASAEI NAQA

Counsel : Mr. E. Samisoni for the State
Mr. Nabainivalu for the Accused

Date of Sentence : 30 July 2020

[The name of the juvenile offender is suppressed. Accordingly, the juvenile will be referred to as "SK". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said juvenile.]

SENTENCE

1. Asaeli Naqa, you have pleaded guilty to the charges produced below and were convicted as charged accordingly;

FIRST COUNT

Statement of Offence

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

Particulars of Offence

ASAEI NAQA and SK in the company of each other, on the 20th day of January, 2020 at Suva in the Central Division, entered into the property of **AMIT NARAYAN**, as trespassers with intent to commit theft.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

ASAEI NAQA and SK in the company of each other, on the 20th day of January, 2020 at Suva in the Central Division, dishonestly appropriated 1x black Qaqa brand carry bag, 1x black Adidas cap, 1x Alcatel button mobile-phone and 1x black "U" handled umbrella, the properties of **AMIT NARAYAN** with the intention of permanently depriving **AMIT NARAYAN** of the said properties.

2. You have admitted the following summary of facts;
- 1) *The complainant is a driver at Automated Building Solutions and resides at 16 Lady Narayan Drive I Tamavua. On the 20th of January 2020, at around 7.30am, the complainant had securely locked his house and left for work.*
 - 2) *At around 2.30pm, on the same day, the complainant drove back home from work to have his lunch. As the complainant unlocked the front door of his house, he saw the kitchen door was wide open. The complainant suspected that his house may have been burgled. Immediately, the complainant began searching his house. As the complainant entered his room, he saw the window grill was forcefully pulled, bent out and two louver blades were removed.*
 - 3) *The complainant then searched his room and noticed the following items were missing:
1x black Qaqa brand carry bag valued at \$40.00, 1x black Adidas cap valued at \$40.00, 1x Alcatel button mobile-phone (IMEI number 359161085123468) valued at \$49.00 and 1x black "U" handled umbrella valued at \$12.00.*
 - 4) *The complainant then went outside and asked some construction workers who were working beside his house if they had seen anything or anyone. PW2 who was a construction worker working beside the complainants house informed the complainant that he saw a slim, tall, i-Taukei boy who was probably in his young teenage years, climbing a coconut tree inside the complainant's compound. PW2*

- described this boy to have been wearing a blue round-neck t-shirt. When the complainant heard this, he stated that this description had matched a boy that he knew as "S" who is A2 in this case. The complainant stated that he had lived in Tamaoia-i-wai for two years and knew the people in that area.*
- 5) The complainant then decided to report the matter at the Samabula police station. As he drove past MH Superfresh supermarket, he saw A2 who wore the same clothing description as PW2 had informed him, selling coconuts with other youths.*
 - 6) The complainant then reported the matter to the Samabula police station after which he was accompanied by PW5 and other police officers to MH Superfresh where the coconut boys were selling coconuts. Upon being questioned by the police officers. A2 admitted that he and his friend A1 had together stolen from the complainant's house. A2 then willingly went to a nearby stall and handed over the stolen items to the police officers. A2 was then arrested. PW5 then went towards the other coconut sellers and effected arrest of A1. Both A1 and A2 were fully informed of the reasons for their arrest and their rights were given to them at the time of the arrest. Both A1 and A2 were then escorted to Samabula police station with the recovered stolen items.*
 - 7) At the police station, the complainant was shown a black Qaqa branded carry bag, a black Adidas cap and an Alcatel button mobile-phone, which the complainant identified to be his items which were stolen from his house.*
 - 8) On the 21st of January 2020, the complainant was called to police station again whereby he positively identified his "U" handle shaped umbrella. The umbrella was recovered by police during the scene reconstruction of A1. The said umbrella was hidden in a bush behind the complainant's house.*
 - 9) PW3 who is the cousin of A2 and also sells coconuts along MH Superfresh, stated that on the said date of the offence, around 3 pm, A2 and A1 joined him in selling coconuts. PW3 described A2 to have been wearing a blue round-neck t-shirt and ¾ pants whilst A1 was wearing a dark coloured grey t-shirt, black ¾ pants and a black carry bag.*
 - 10) A2 then informed PW3 that he (A2) and A1 had broken into "Amit's house" and stolen the bag which A2 were wearing along-with a mobile-phone and an Adidas cap. PW3 saw A2 was hiding the black Adidas cap inside the pockets of his pants. PW3 stated that he then saw some police officers arrive and begin questioning them regarding A2. PW3 stated that the stolen bag was kept at his grandmother's stall outside MH Superfresh.*
 - 11) PW4 who is a market vendor outside MH Superfresh stated that on the day of the offence, she was at her stall when she saw a black Qaqa branded bag on the floor. She saw A2 take the bag but she did not know that it was stolen.*
 - 12) A1 in his record of interview made full admissions. A1 stated that on the day of the offence, he was at home when A2 called out to him and requested A1 to go climb*

- coconut trees so that they can sell coconuts (Q&A42). A1 stated that A2 calls him "uncle" as they are related maternally (Q&A43). A1 then accompanied A2 to climb coconut trees beside the complainants house (Q&A45-46). A1 admitted that they did not ask consent from the complainant to enter his compound (Q&A50). A1 stated that he went home to get a sack for the coconuts and when he returned he saw A2 had bent the bedroom window grills of the complainants house (Q&A 53-54). A1 stated that A2 told him to remove two louver blades from the window and he will enter inside. A1 then removed two louver blades whilst A2 climbed inside the complainant's house. A1 stood outside keep watching and acted as a look-out whilst A2 burgled the complainant's house (Q&A 55-60). A1 admitted that A2 then returned through a door with a black bag, black cap, a small phone and a black umbrella (Q&A 61). A1 admitted that they then walked up to MH Superfresh to sell coconuts whereby they had hidden the stolen items at a market stall near MH Superfresh (Q&A 68-69). A1 admitted that the market stall where they had hidden the stolen items belonged to a relative of A2 (Q&A 70-71).
- 13) A2 was caution interviewed by police in the presence of a social welfare officer. A2 made full admissions in his record of interview. A2 admitted that on the day of the offence, he had planned with A1 to collect some coconuts (Q&A 47). A2 admitted that he saw a big wooden house with no fence along Lady Narayan Drive and decided to climb the coconut tree which was behind the house (Q&A 50). A2 admitted that A1 had returned to the village to get some sacks to pack coconuts (Q&A 51). A2 admitted that he house and compound was empty and he also saw a black phone on the drawer inside a room (Q&A 52-53). This is when A1 arrived and A2 asked A1 to assist him in which A1 pulled out two louver blades from the window whilst A2 jumped inside the room and picked up a black phone, a black cap, a black bag and a black "U" shaped umbrella. A2 then exited the house through the main door, packed the coconuts, hired a taxi and took the coconuts and the stolen items to MH Superfresh with A1 (Q&A 53-58). A2 admitted that he then took the stolen items to one of his grandmother's stall near MH Superfresh and kept it there (Q&A 59). These stolen items were then later seized by the police (Q&A 77).
- 14) There were full recoveries in this case. The accused and the juvenile in the company of each other entered into the property of the complainant with the intention to commit theft and thereafter committed theft of the items as outlined in the information with the intention to permanently deprive the complainant of his said properties.
- 15) Annexed hereto in the Record of Interview for A1 marked as "**Annexure A**".
- 16) Annexed hereto in the Record of Interview for A2 marked as "**Annexure B**".

3. In the case of **State v Chand** [2018] FJHC 830; HAC44.2018 (6 September 2018), Morais J observed thus;

12. Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in **Brewster** 1998 1 Cr App R 220 observed at 225:

“Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organization, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism.”

4. The sentencing 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. [See **State v Prasad** [2017] FJHC 761; HAC254.2016 (12 October 2017) and **State v Naulu** [2018] FJHC 548 (25 June 2018)]

5. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. The sentencing tariff is 4 months to 3 years imprisonment. [See *Waqa v State* [2015] FJHC 729; HAA017.2015 (5 October 2015)]
6. In view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence for the two offences you have committed.
7. You are 20 years old. It is submitted that you have been working as a casual labourer.
8. The summary of facts does not disclose any aggravating factors.
9. In addition to the fact that you have entered an early guilty plea, I would consider the following as your mitigating factors;
 - a) You are a young first offender;
 - b) You are remorseful;
 - c) The stolen items were recovered; and
 - d) You have cooperated with the police.
10. I would select 06 years as the starting point of your aggregate sentence. I would deduct 03 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 03 years.
11. In view of your early guilty plea, I would grant you a discount of one-third. Accordingly, the final sentence is an imprisonment term of 02 years.
12. I would not fix a non-parole period in view of the discretion provided in terms of section 18(3) of the Sentencing and Penalties Act.

13. You have spent 05 months and 16 days in custody in view of this case. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act.
14. In the result, you are sentenced to an imprisonment term of 02 years. Given the period you have spent in custody, the time remaining to be served is 18 months and 14 days.
15. Considering that you have served nearly 06 months of your sentence, the fact that there is full recovery of the stolen items and taking into account the fact that you are a young first offender, I have decided to suspend the remaining period of the sentence imposed on you for a period of 03 years.
16. The court clerk will explain you the effects of a suspended sentence.
17. Accordingly, you will be released today. You are thoroughly warned and advised to hereafter abide by the laws of the country and to lead a good life.
18. Thirty (30) days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors;

**Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the 1st Accused and the Juvenile**