

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 266 of 2018

[CRIMINAL JURISDICTION]

STATE

V

TEVITA SENICEVA

Counsel : Ms. S. Lodhia for State
Ms. S. Hazelman for Accused

Hearing on : 21st September 2018

Sentence on : 25th September 2018

SENTENCE

1. Tevita Seniceva, you stand convicted of the offence of aggravated robbery contrary to section 311 (1) of the Crimes Act 2009 upon your plea of guilty. The charge reads thus;

Statement of Offence

Aggravated Robbery: *contrary to section 311(1)(a) of the Crimes Act 2009.*

Particulars of Offence

TEVITA SENICEVA *and another on the 6th day of June 2018 at Princess Road, Suva, in the Central Division, in the company of each other robbed Sharmila Kumari of 1 x handbag valued at \$70, 1 x wallet valued at \$35, 1 x gold chain valued at \$500, 1 x gold ring valued at \$250, a pair of gold earrings valued at \$120, 1 x eye glasses valued*

at \$300, 1 x Samsung brand J2 mobile phone valued at \$349, assorted cards and a bunch of keys; all to the total value of \$1,624 the properties of Sharmila Kumari.

2. You have admitted the following facts;

1. *The complainant (PW1) in this matter is Sharmila Kumari, 46 years old, self-employed, resides at Lot 14 Naqumu Road, Tacirua.*
2. *PW2 is Ema Tinai, 32 years old, unemployed, resides at Tacirua village.*
3. *The accused is Tevita Seniceva, 18 years old, unemployed, resides at Khalsa Road, Tacirua.*
4. *The accused is charged and has voluntarily pleaded guilty to one count of aggravated robbery contrary to section 311(1)(a) of the Crimes Act 2009.*
5. *On 6th June 2018, at about 7.45pm, the complainant was at Tacirua bus stop when someone pulled her handbag. The complainant pulled her handbag back but the person managed to take the bag. The complainant could not see his face because it was too dark. The complainant tried to pull back her handbag but the person managed to run away. The complainant shouted for help and ran after him.*
6. *The handbag was valued at \$70 and it had a wallet valued at \$35, 1 x gold chain valued at \$500, 1 x gold ring valued at \$250, a pair of gold earrings valued at \$120, 1 x eye glasses valued at \$300, 1 x Samsung brand 12 mobile phone valued at \$349, assorted cards and a bunch of keys.*
7. *None of the items were recovered.*
8. *PW2 was home watching movies at the time of the robbery when she heard the complainant calling out for help on the Princess Road. Her house is just a few metres away from the main road. She opened the door of her house and saw two boys running towards her house with a bag. She recognized one of them.*
9. *The complainant then approached PW2 and informed her that she was robbed by the two boys.*
10. *Matter was reported to Valelevu police station and investigations led to the accused being arrested.*

11. *The accused was interviewed under caution on 20th June 2018. In his interview, the accused states that on 6th June 2018 at about 6pm, he went to buy recharge cards from one canteen along Princess Road. After he bought the recharge card, he was walking home when he met his accomplice standing on the road side. His accomplice then saw an Indian lady carrying a handbag and they planned to grab it. The accomplice then grabbed the handbag and passed it to him. Both of them then ran away.*
12. *In relation to the stolen items, he states that he does not know what was inside the handbag as his accomplice was the one who searched it. A copy of the caution interview is attached herewith as annexure 1.*

3. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years imprisonment. The tariff for this offence is an imprisonment term between 8 to 16 years. [*Wallace Wise v The State*, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015)]

4. Section 4(1) of the Sentencing and Penalties Act outlines the following as the purposes of which a sentence should be imposed;
 - (a) to punish offenders to an extent and in a manner which is just in all the circumstances;
 - (b) to protect the community from offenders;
 - (c) to deter offenders or other persons from committing offences of the same or similar nature;
 - (d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;
 - (e) to signify that the court and the community denounce the commission of such offences; or
 - (f) any combination of these purposes.

5. You are before this court at a time where offences against property (under Part 16 of the Crimes Act) are rife and had disturbed the tranquility of our society to a

considerable extent. The offence of aggravated robbery which you have committed is the most serious offence against property under Part 16 of the Crimes Act.

6. I would select 8 years imprisonment as the starting point of your sentence.
7. The vulnerability of the victim is considered as an aggravating factor to enhance the sentence. Your victim was a 46 year old lady. You and your accomplice committed the offence around 7.45pm at a bus stop. Needless to say, the fact that the victim was attacked by the two of you during nighttime would have made her feel more helpless and frightened. I consider it necessary to send a strong message to those who would be inclined to disturb the peace by robbing innocent members of the society who uses public transport during night. Therefore, these factors would be taken into account as aggravating circumstances to increase your sentence by 03 years.
8. I consider the following mitigating factors to deduct 04 years of your sentence;
 - a) You are a young first offender;
 - b) You are remorseful; and
 - c) You cooperated with the police.
9. Now your sentence is an imprisonment term of 07 years. By pleading guilty at the earliest opportunity, you have saved this court's time. In view of your early guilty plea I would grant you a discount of 02 years and 04 months which is equivalent to one-third of your sentence.
10. Accordingly, I sentence you to an imprisonment term of 04 years and 08 months.

11. It is submitted that you are 18 years old. In order to promote rehabilitation given your age and the fact that you are a first offender, I would fix your non-parole period at 02 years.
12. Your counsel has urged that this court should not fix a non-parole period in order for you to enjoy the full benefit of section 27(2) of the Prisons and Corrections Act, given the present practice in the Fiji Prisons and Corrections Service to take into account the non-parole period to calculate the release date under the said section.
13. Section 27(2) of the Prisons and Corrections Act reads thus;

“For the purposes of the initial classification a date of release for each prisoner shall be determined which shall be calculated on the basis of a remission of one-third of the sentence for any term of imprisonment exceeding one month.”
14. The provisions in relation to remission under the Prisons and Corrections Act and the provisions relating to fixing a non-parole period under the Sentencing and Penalties Act cannot be reconciled. A prisoner is released without any condition in view of the provisions of section 27(2) of the Prisons and Corrections Act, but a prisoner can only be released subject to conditions after the expiry of the non-parole period.
15. Moreover, given the provisions of section 27(2) of the Prisons and Corrections Act alluded to above, the date of release should be calculated on the basis of remission of one-third of the sentence. The provisions of the said section are contravened if the date of release is calculated based on the balance period between the head sentence and the non-parole period.

16. On the other hand, my reading of the provisions of section 18(2) of the Sentencing and Penalties Act is that the sentencer should apply the said provisions and decline to fix a non-parole period if the sentencer is of the view that the offender should serve the full sentence given the nature of the offence and the past history and the said provisions does not promote an early release. Section 18(2) of the Sentencing and Penalties Act reads thus,

(2) If a court considers that the nature of the offence, or the past history of the offender, make the fixing of a non-parole period inappropriate, the court may decline to fix a non-parole period under sub-section (1).

17. In my view, the release date in view of section 27(2) of the Prisons and Corrections Act should be calculated based only on the head sentence. If the non-parole period had elapsed by the release date calculated in that manner, it is up to the Fiji Prisons and Corrections Service to release the prisoner on the said release date accordingly. Therefore, the non-parole period fixed in this case should not prevent you from being released after serving two-thirds of your head sentence subject to the other provisions of Prisons and Corrections Act.

18. Section 24 of the Sentencing and the Penalties Act reads thus;

"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

19. I note that you have spent a period of approximately 03 months in custody. The period you were in custody in relation to this case shall be regarded as a period of imprisonment already served by you in view of the provisions of section 24 of the

Sentencing and Penalties Act. I hold that the period that should be regarded as served is 03 months.

20. In the result, you are sentenced to an imprisonment term of 04 years and 08 months with a non-parole period of 02 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 04 years and 05 months

Non-parole period - 01 year and 09 months

21. Thirty (30) days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera

JUDGE

Solicitors;

Office of the Director of Public Prosecutions for State.

Legal Aid Commission for Accused.