

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 013 of 2017

BETWEEN: **STATE**

PROSECUTION

AND: **Waisea Motonivalu**

ACCUSED PERSON

Counsel: Ms. S. Serukai for State
 Ms. L. David for Accused

Sentence: 22nd May 2017

S E N T E N C E

1. Mr. Waisea Motonivalu, you are being charged with one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Decree, which carries a maximum sentence of twenty (20) years of imprisonment period. The particulars of the offences are that:

“Waisea Motonivalu and others on the 1st day of January 2017, at Lokia, Rewa, in Central Division, in the company of each other robbed Jai Prasad of a 15 Horsepower Yamaha Outboard Engine valued at \$5,950.”

2. You pleaded guilty for this offence on the 24th of March 2017 on your own free will and accord. Having satisfied that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I now convict you for this offence as charged in the information.
3. It was revealed in the summary of facts, which you admitted in open court that you were drinking home-brew with other accomplices on the 31st December 2016 at Turaki Settlement in Lokia. At about midnight, when the home brew finished, you and your

accomplices planned to steal the outboard engine owned by the victim and sell it in order to buy more alcohol, so that you can continue the drinking party.

4. You went to the victim's house and knocked the door. When he opened the door, you asked him for a cigarette, while others were hiding. When the victim said that he has no cigarette, you forcefully entered into the house and started to punch him in order to keep him quiet. The victim managed to escape and run out of the house. You got hold of him and dragged him to the bushes. While you were in the bushes with the victim, other accomplices went to his house to get the engine. You also later joined them in order to take the engine out.
5. This is a case of breaking into the dwelling house in the night, while the occupants were inside. The offences of these nature are prevalent in the society. Hon Chief Justice Gates in **Wise v State (2015) FJSC7; CAV0004.2015 (24 April 2015)** discussed the seriousness of such offences and its impact on the society where His Lordship found that:

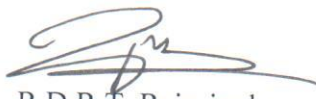
“It is our duty to make clear these types of offences will be severely disapproved by the courts and be met with appropriately heavy terms of imprisonment. It is a fundamental requirement of a harmonious civilized and secure society that its inhabitants can sleep safely in their beds without fear of armed and violent intruders”.
6. In view of the above observation made by Hon Chief Justice Gates in **Wise (supra)**, the purpose of this sentence is founded on the principle of deterrence and the protection of community. I am mindful of the principle of rehabilitation; however, the seriousness of the offence outweighs the principle of rehabilitation.
7. The tariff for the aggravated robbery is 8 to 16 years of imprisonment period. **Wise v State (2015) FJSC7; CAV0004.2015 (24 April 2015), Bonaseva v State (2015) FJSC12; CAV0022.2014 (20 August 2015), State v Nadavulevu - Sentence [2015] FJHC 651; HAC046.2015S (10 September 2015).**

8. I now draw my attention to determine the level of culpability and the harm caused by this offending. You have used high level of force on the deceased in order to incapacitate him. You punched him and then dragged him to the bushes. Having considered the seriousness of this offending and, the level of harm and culpability, I select thirteen (13) years as the starting point.
9. You and your accomplices planned this crime in order to buy more alcohol to celebrate the dawn of the New Year. According to the said plan, you first went and entered into the house of the victim, while others were hiding outside. Hence, I find this is a properly planned crime. The victim was alone at home. You and other accomplices carried out this crime when he was not in a position to protect himself. He was in a vulnerable and defenseless position. I find these factors as aggravating circumstances of this offence.
10. You are a first offender and 33 years old. You are married. I consider these grounds as mitigating grounds.
11. You pleaded guilty at the first available opportunity. Accordingly, you are entitled for a substantial discount for your early plea of guilt.
12. Having considered the above discussed aggravating factors, I increase three (3) years and reach to interim imprisonment period of sixteen (16) years. I reduce five (5) years for your early plea of guilt and further one (1) year for other mitigating factors, reaching the final sentence as ten (10) years imprisonment period.
13. Having considered the purpose of the sentencing, your age, and the opportunities for rehabilitation, it is my opinion that nine (9) years of non-parole period would adequately serve the purpose of this sentencing.
14. You have been in remand custody for this case since 4th of January 2017 as you were not granted bail by the court. Accordingly, I reduce further five (5) months for the time that you have spent in remand custody. Your actual sentencing period for this offence is now

nine (9) years and Seven (7) months of imprisonment period with eight (8) years and seven (7) months of non-parole period.

15. In conclusion, I sentence you for a period of nine (9) years and seven (7) months of imprisonment for the offence of Aggravate Robbery, contrary to Section 311 (1) (a) of the Crimes Act. I further order that you are not eligible for parole for a period of eight (8) years and seven (7) months.
16. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
22nd May 2017

Solicitors
Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused