

**IN THE MAGISTRATES' COURT OF FIJI AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: EJR 01 - 2017

HAC 01 - 2017

CF 281 - 2016

STATE

-v-

LUKE KETEWAI

For The Prosecution : Inspector Lenaitasi and WPC Chand [Police Prosecution]

For The Defendant : Ms Baleilevuka [Trial Counsel] and Mr Dinati [Duty Solicitor
during sentence]

Trial Date : 11th day of September 2018

Date of Judgment : 25th day of September 2018

Date of Sentence : 10th day of December 2018

SENTENCE

BACKGROUND

1. 1. **LUKE KETEWAI**, having pleaded not guilty and after your trial, I have found you guilty of the following [amended charge]:

Statement of Offence

ROBBERY: Contrary to section 310 (1) (b) (i) of the Crimes Decree Act of 2009.

Particulars of Offence

LUKE KETEWAI, on the 11th day of December, 2016, at Vatukoula, in the Western Division, stole \$27 cash (Fijian currency) being the property of **NILESH KUMAR**, and at the time of stealing the said items **LUKE KETEWAI** used force on **NILESH KUMAR** with intent to commit theft.

1. 2. The prosecution alleged that during the same transaction, you also stole the mobile phone of the victim valued at \$80.
1. 3. I have redacted that you stole the mobile phone from the particulars of the charge outlined above because I was not sure that you stole it.
1. 4. I am sure though that you stole the \$27 cash and in the process, you used force on the victim. I have found you guilty on this point.

1. 5. The victim was operating as a commercial transport vehicle without a license and had picked you and an acquaintance of yours around town and drove both of you towards Vatukoula. Both you and your acquaintance were drunk. It was the festive period and you hosted a Christmas party for staff. Both of you sat at the rear passenger seat. On the way, you tightened the seat belt of the victim and grabbed his shirt. The vehicle came to a halt. You took \$27 from the front shirt pocket of the victim. Some people were nearby and came to help. You ran from the scene.
1. 6. Your first appeared for the case on the 13th of December 2016 and was remanded in custody. You were granted bail on the 20th of December 2016.
1. 7. From the record, I calculate that you have spent 1 week in remand because of the case. In your written mitigation, you accept this to be the case.
1. 8. You have no previous conviction.
1. 9. Your counsel did not appear when your case was fixed for mitigation.
1. 10. You advised me that you had terminated the services of your lawyer after the trial didn't go your way.
1. 11. A notice was issued to your lawyer to appear as leave by the court had not been granted by the court for your counsel to withdraw.
1. 12. Your counsel did appear later. The court was informed that you had given instructions to another practitioner to assist in your mitigation. Leave was granted to your trial counsel to withdraw and this was on the 30th of November 2018.
1. 13. Mr Dinati, another practitioner appeared as friend of the court to assist you from there and he submitted or made oral mitigation on your behalf.
1. 14. In your mitigation, you have offered both oral and written submission.
1. 15. You say that you are remorseful but your written and oral mitigation is inconsistent with this claim. You still argue that you did not commit the offence. You blame your trial counsel. You repeat that you had withdrawn money on that day of \$150 and there was no need for you to rob the victim.
1. 16. Helpfully, you submit that you have businesses to run and your family and staff depend on you.
1. 17. You have learnt a lot from the case.
1. 18. You have compensated the victim and you are willing to pay any other costs.
1. 19. You have quit drinking because of the incident and you promise not to reoffend.

LAW

1. 20. The maximum sentence that is imposable by law for the offence of robbery is up to 15 years imprisonment.

TARIFF

1. 21. The tariff for robbery is as follows:

- i. i. Aggravated robbery: 10 – 16 years imprisonment
- i. ii. Robbery but with minimal violence: 8 – 14 years imprisonment
- i. iii. Robbery with no violence: 2 – 7 years imprisonment

[**Sakiusa Rarawa v. State** Criminal Appeal No. HAA 05 of 2015 (30th April 2015) :
Raisokula v State [2018] FJHC 148; HAA24.2017 (2 March 2018)].

1. 22. Ostensibly, your case deserves the tariff 8 – 14 years imprisonment.
1. 23. The violence in this case is a little more than the grabbing of a purse from an unsuspecting woman on the street or grabbing a lit cigarette from someone's mouth.
1. 24. Your violence too is not grave compared to cases where repeated punches are thrown or the use of weapon is involved.
1. 25. Your case in my opinion might fall in a category between 3 and ½ years imprisonment to 11 years imprisonment.

STARTING POINT

1. 26. Considering the circumstance of your case, I select a starting point of 4 years imprisonment.

AGGRAVATING FEATURE

1. 27. The seatbelt was used as a means to intimidate and restrain the victim. You grabbed him from behind.
1. 28. These was inside a moving vehicle and if things escalated, someone could have been seriously injured, even die.
1. 29. You were drunk at the time.
1. 30. I don't factor in that the victim was driving his vehicle as public service provider. He was doing it illegally for profit.
1. 31. Your sentence is increased to 4 years and 8 months imprisonment.

MITIGATION

1. 32. You have paid some compensation to the victim for the loss of his properties. This I accept was to have the matter closed and not because you are remorseful.
1. 33. I don't accept that you are remorseful and as I have explained already, you still argue that you didn't do it.
1. 34. You have a good history though and that will be to your favour.
1. 35. I accept too that this offence is out of character for you.
1. 36. The atmosphere at the time and the excessive alcohol you drank was a substantial contributing factor leading up to you acting in the way you did.
1. 37. You run businesses and you support your family.
1. 38. I am sure that the time this charge has been looming has been taxing on you.
1. 39. I reduce your sentence to 3 years 6 months imprisonment.

DISCRETION

1. 40. I can order a non-parole period pursuant to section 18 (1) (2) and (4) of the **Sentencing and Penalties Act 2009**.

1. 41. I also take into account the factors outlined in section 4 of the **Sentencing and Penalties Act 2009** when deciding whether or not to order a non-parole period.

1. 42. Your sentence will be aimed at denouncing this type of offence and to punish you adequately.

FINAL SENTENCE

1. 43. You are sentenced to 3 years and 6 months imprisonment.

1. 44. You were in remand for 1 week and I will consider this as time served.

1. 45. Your remaining sentence is 3 years 5 months and 3 weeks.

1. 46. I decline to fix any non-parole period.

1. 47. You will serve your imprisonment term immediately.

1. 48. 28 days to appeal.

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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 10th day of December, 2018.