

**IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION**

Criminal Case No. HAC 347 of 2022

THE STATE

-v-

- 1. ISEI R. BOLA**
- 2. KALEVATI BATIKABU**

*Counsels: Ms. Ali N. - for State
Ms. Ratidara L - for Accused Persons*

Date of Sentence: 15/02/23.

SENTENCE

- 1. ISEI RATUNACEVA BOLA and KALEVATI BATIKABU** you were jointly charged with one count of Aggravated Burglary and one count of Theft and each of you were separately charged with one count of Theft, as below:

COUNT 1

Statement of Offence

AGGRAVATED BURGLARY: Contrary to **Section 313(1) (a)** of the **Crimes Act 2009**.

Particulars of Offence

ISEI RATUNACEVA BOLA and KALEVATI BATIKABU on the 21st day of September 2022, at Navua, in the Central Division, in the company of each other, entered as trespassers into the dwelling house of **SHIRI RAM** with intent to commit theft therein.

COUNT 2

Statement of Offence

THEFT: Contrary to **Section 291 (1)** of the **Crimes Act 2009**.

Particulars of Offence

ISEI RATUNACEVA BOLA and KALEVATI BATIKABU on the 21st day of September 2022, at Navua, in the Central Division, in the company of each other, dishonestly appropriated (stole), 1*52 inch TCL brand TV, 1* black Philips brand blue

ray DVD player, 1* German Schott Duran Electric Kettle, 1* WD Hard Drive, 1* George Foreman brand Hot Plate, 1* white Black and Decker Rice Coker and 2*Remotes, the property of **SHIRI RAM**, with the intent to permanently depriving **SRI RAM**, of the said property.

COUNT 3

Statement of Offence

THEFT: Contrary to Section 291(1) of the Crimes Act 2009.

Particulars of Offence

KALEVATI BATIKABU on the 21st day of September 2022 at Navua in the Cantal Division dishonestly appropriate (stole) 1 x Black Puma Canvas Shoes, 1 x black Steve Madden Bag, 1 x grey Adidas bag, 2 x men's Board Shorts 1 x ¾ Lee Jeans, 3 x t-shirts, 1 x black HERC vest. 1 x 2 litre coke, 1 x packed Rewa powdered milk, 1 x packed Rewa LIFE MILK, 2 x packets FMF biscuit, 2 x FMF Coconut cookies, 1 x packet tea leaves and 2 x packets tang juice, the property of **HURSTLE YEE**, with the intention of permanently depriving **HURSTLE YEE** of the said property.

COUNT 4

Statement of Offence

THEFT: Contrary to Section 291(1) of the Crimes Act 2009.

Particulars of Offence

ISEI RATUNACEVA BOLA on the 21st day of September 2022 at Navua in the Cantal Division dishonestly appropriate (stole) 1 x black & red Sony headset phone, 1 x Fiji Airways jersey, 1 x black Pacifica Communication jacket and 1 x box men's underwear, the property of **HURSTLE YEE**, with the intention of permanently depriving **HURSTLE YEE** of the said property.

2. Two of you pleaded guilty on your own free will to the above mentioned counts represented by counsel in Court on 16/11/2022. You understood the consequences of the guilty plea for offences you have committed. This Court was satisfied that your guilty pleas were informed and unequivocal and entered freely and voluntarily by the two of you.
3. You agreed to the following summary of facts, when they were read to you in Court on 30/01/2023.

4. **Summary of Facts**

- On the 21st day of September 2022, at about 8.00am in the morning, the accused Isei Ratunaceva Bola and Kalevati Batikabu entered into the dwelling house of Shiri Ram as trespassers with intent to commit theft therein.
- On 21st September 2022, Hurstle Yee securely locked the Shiri Ram's house and left for his job in Lami at about 8.40am. He returned on the same day at about 09.30pm and discovered the house was broken into.

- On the abovementioned date at about 08.00am the 1st and 2nd Accused planned to break into the Shiri Ram's dwelling house at Wainadoi, Navua. After planning both accused walked from Waikasinaura Road to Zip Line road until they reached Shiri Ram's house. Upon reaching at Shiri Ram's house both accused opened the back house door and then entered inside the house. The house was vacant at that time. They then searched the house.
- The 1st Accused Isei Ratunaceva Bola then entered into the bedroom which was occupied by Hurstle Yee where he saw a 1 x black and Red Sony Headset phone, 1 x black Fiji Airways Jersey, 1 x black Pacifica Communication jacket and 1 x box men's underwear. The accused then stole 1 x black and red Sony headset phone valued at \$30.00, 1 x black Fiji Airways jersey valued at \$150.00, 1 x black Pacifica Communication jacket valued at \$60.00 and 1 x box men's underwear valued at \$15.00 the properties of Hurstle Yee with the intention of permanently depriving Hurstle Yee.
- After stealing the abovementioned items Isei Ratunaceva Bola then packed the items inside a sack and walked away with the same.
- The 2nd Accused Kalevati Batikabu searched the Kitchen where he saw kitchen appliances. Kalevati Batikabu then stole 1 x white German Schott Duran Electric Kettle valued at \$95.00, 1 x George Foreman brand Hot Plate valued at \$260.00 and 1 x white Black & Decker Rice Cooker, the properties of Shiri Ram with the intention of permanently depriving Shiri Ram of his properties. The accused then proceeded to the living room.
- Kalevati Batikabu then searched the living room where he stole 1 x 52 inch TCL brand TV valued at \$2,000.00, 1 x black Philips brand blue ray DVD player valued at \$180.00, 1 x WD Hard Drive valued at \$650.00 and 2 x Remotes, the properties of Shiri Ram. The accused then packed these items into the sack and proceeded to bedroom inside the dwelling house.
- Kalevati Batikabu entered into the bedroom which was occupied by Hurstle Yee where he saw clothes and groceries. Kalevati then stole 1 x black Puma canvas shoes valued at \$130.00, 1 x black Steve Maden Bag valued at \$210.00, 1 x grey Adidas bag valued at \$30.00, 2 x men's Board Shorts valued at 40.00, 1 x ¾ Lee Jeans valued at \$10.00, 3 x t-shirts valued at \$5.50, 1 x packed Rewa powdered milk valued at \$6.00, 1 x packed Rewa Life milk valued at \$2.50, 2 x packet FMF biscuit valued at \$4.00, 2 x packets FMF coconut cookies valued at \$4.00, 1 x packet tea leaves valued at \$2.50 and 2 x packets Tang Juice \$1.00, the properties of Hurstle Yee. The accused packed these items into the sack.
 - Both the Accused took the above-named item and walked away with it.
 - The total value of Shiri Ram's stolen properties is \$3,265.00. Whereas the total value of Hurstle Yee's stolen properties is \$1,865.50.
 - The 2 Accused Kalevati Batikabu sold the Puma Canvas shoes for \$40.00 and t-shirts and pants for \$20.00 to some unknown person at Suva Carrier stand.

- The matter was reported to the Police by the Complainants.
 - The following items were recovered during the Police investigation from Isei Ratunaceva's house on 26th September, 2022.
 1. 1 x Sony Head phone set;
 2. 1 x box males' underwear
 3. 1 x BLK black jersey, and
 4. 1 x black Pacifica Communication jacket.
 - The following item were recovered during the Police investigation from Kaleivati Batikabu's house on 26th September, 2022.
 1. 1 x black WD Hard Drive;
 2. 1 x Phillips Blue Ray 3d DVD Player with remote;
 3. 1 x 52 inch TCL flat screen TV;
 4. 1 x White Black and Decker Rice Cooker;
 5. 1 X Schott Duran Electrical Kettle with stand;
 6. 1 x Electrical Hot plate;
 7. 1 x black HRC vest; and
 8. 1 x black remote.
 - An investigation was carried out. Both the accused were arrested on 26th September 2021. Both the Accused were interviewed under caution by Police at Navua Police Station on the 26th September 2022. Both Accused fully admitted to the alleged offence.
5. At the very outset, this Court was convinced that the summary of facts agreed by you satisfy all the elements of each offence you are charged with. Therefore, this Court convicted you for the offences charged with by the information in this matter. On considering the submission made by the prosecution in aggravation and your counsel in mitigation, now this matter is pending for sentencing.
 6. In comprehending with the gravity of the offences you have committed, I am mindful that the maximum punishment for the offence of Aggravated Burglary under **Section 313 (1) (a)** of the **Crimes Act of 2009** is an imprisonment term of 17 years and the maximum punishment for Theft under **Section 291** of the **Crimes Act 2009** is an imprisonment term of 10 years.
 7. The accepted tariff for counts 1, 2, 3 and 4 depend on the nature and circumstances under which Aggravated Burglary and Theft were committed, and the consequences entailing the commission of the offences to the victims and the society at large.
 8. This Court also recognizes that to address the head spinning rapidity of the increase of Burglaries and Robberies in our community, any punishment imposed by Court should have a reprehensible deterrent effect that could also send a profoundly strong signal to the community.
 9. In imposing the appropriate punishment for your admitted guilt, the Prosecution brings to the attention of this Court the updated tariff regime pronounces for Aggravated Burglary

by the Court of Appeal of Fiji in the case of **State v Avishkar Rohinesh Kumar Sirino Aakatawa**¹, where it was stated, as below:

“Once the level of harm has been identified, the court should use the corresponding starting point in the following table to reach a sentence within the appropriate sentencing range. The starting point will apply to all offenders whether they plead guilty and irrespective of previous convictions. A case of particular gravity, reflected by multiple features of harm, could merit upward adjustment from the starting point before further adjustment for level of culpability and aggravating or mitigating features.

LEVEL OF HARM CATEGORY	BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED BURGLARY (OFFENDER EITHER WITH ANOTHER OR WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER AND WITH A WEAPON)
HIGH	Starting Point: 05 years Sentencing Range: 03 – 08 years	Starting point 07 years Sentencing Range: 08 – 12 years	Starting Point – 09 years Sentencing Range: 08 - 12 years
MEDIUM	Starting Point 03 years Sentencing Range : 01 – 05 years	Starting Point: 05 years. Sentencing Range 03 – 08 years	Starting Point : 07 years Sentencing Range: 05 – 10 years
LOW	Starting Point: 01 year Sentencing Range: 06 months – 03 years	Starting Point: 05 years Sentencing Range: 01 – 05 years	Starting point : 05 years Sentencing Range: 03 – 08 years.

10. In the above pronouncement of the Court of Appeal, Court has further identified the factors indicating the degree of harm, as below:

Factors indicating greater harm
Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)
Soiling, ransacking or vandalism of property
Restraint, detention or gratuitous degradation of the victim, which is greater that is, necessary to succeed in the burglary. Occupier or victim at home or on the premises (or returns home) while offender present.

¹ [2022] FJCA (24th November 2022); AAU 33.18 & AAU 117.19 548 925 June 2018),

Significant physical or psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary
Violence used or threatened against victim, particularly the deadly nature of the weapon
Content of general public disorder
<i>Factors indicating lesser harm</i>
Nothing stolen or only property or very low value to the victim (whether economic, sentimental or personal). No physical or psychological injury or other significant trauma to the victim.
Limited damage or disturbance to property. No violence used or threatened and a weapon is not produced.

11. However, though the Judgement on updated tariff for Aggravated Burglary was pronounced by the Court of Appeal of Fiji on 24th November 2022, in this matter both of you have pleaded guilty to information filed in this Court, which also included Aggravated Burglary on 16th November 2022, i.e. a week before the pronouncement of the new tariff regime for Aggravated Burglary.

12. Therefore, in identifying the appropriate tariff regime to be applied to this matter, I intend to take guidance from the pronouncement made by **His Lordship Justice Kulatunga** when faced with an identical situation in identifying the suitable tariff regime in relation to an offence of Aggravated Robbery in the case of *State v Jona Rokosuka*², where it was stated, as below:

“In the present matter, as the commencement of the sentencing process preceded the date of determination of the new tariff, I am of the view that, the applicable sentencing regime and tariff should be that which prevailed between the date of pleading guilty and the date of pronouncing the sentence. However, if a new tariff was determined during this interim period the accused is entitled to the benefit of the tariff which is more favorable to him/her. Thus, in my view it is just and lawful that retrospective application of sentencing guideline judgments not be extended to Accused persons who have pleaded guilty prior to such guideline decisions were pronounced as their sentencing was pending as at such date.”

13. In this regard, while acknowledging the importance of the guide line judgement delivered by the Court of Appeal in relation to the tariff in Aggravated Burglary, in this matter I intend to follow the earlier tariff for Aggravated Burglary for the exact reasons highlighted by **His Lordship Justice Kulatunga** in the above judgement. To lend a force to this

² [2022] FJHC 216; HAC 196.2021 (6 May 2022)

argument, I intend to make notice of the observation made by the **Court of Appeal of New Zealand** in the case of *Cheung v R* [2021]³, as below:

“Retrospective application of sentencing guidelines is not ordinarily unfair, as guidelines reflect evolving sentencing practice and are not intended to be prescriptive. Judges are expected to sentence by reference to the applicable statutory sentencing purposes, principles and factors. Judges may depart from the guidelines when necessary to fix a just sentence in a given case”

- 14 Therefore, I intend to follow the tariff regime pronounced for Aggravated Burglary in the case of **State v Seninawanawa**⁴, where **Midigan J** stated:

“The accepted tariff for aggravated burglary is a sentence between 18 months and three years, with three years being the standard sentence for burglary of domestic premises.”

15. This tariff has been followed in several decided cases, i.e., **State v. Tavualevu** [2013] FJHC 246; HAC 43.2013 (16 May 2013); **State v. Drose**[2017] FJHC 205; HAC 325.2015 (28 February 2017); **State v. Rasegadi & Another** [2018] FJHC 364; HAC 101.2018 (7 May 2018) and **State v. Mudu** [2020] FJHC 609; HAC 116.2020 (30 JULY 2020).
16. In relation to the offence of Theft, this Court intends to follow the tariffs pronounced by **Midigan J** in the case of **Ratusili v State**⁵, where he stated:

“From the cases then, the following sentencing principles are established:

- (i) for a first offence of simple theft the sentencing range should be between 2 and 9 months.*
- (ii) any subsequent offence should attract a penalty of at least 9 months.*
- (iii) theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.*
- (iv) regard should be had to the nature of the relationship between offender and victim.*
- (v) planned thefts will attract greater sentences than opportunistic thefts.”*

In this matter, in considering the value of the items you had stolen and that it was stolen from a dwelling premises, this cannot be regarded as simple theft.

17. Considering the circumstances of this case, I see that this is an appropriate case where an aggregate sentence could be imposed in terms of **Section 17 of the Sentencing and Penalties Act 2009** in view that you were convicted on each count based on the same facts. Hence, I would impose an aggregate sentence for the two of you for Count 1, 2, 3 and 4. Two of you are similarly situated as far as the culpability level is concerned.

³ 3 NZLR 259

⁴ [2015] FJHC548 (25 June 2018)


⁵ [2012] FJHC 1249; HAA011.2012 (1st August 2012)

18. In assessing the objective seriousness of offending of the two of you in this matter, I considered the maximum sentence prescribed for the offences, the degree of culpability, the manner in which you committed the offences and the harm caused to the complainant, which is the harm cause to the peace of mind of the complainant to continue to reside in this community and the impact it made to the community at large. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. This is a Burglary that happened in a residence of a citizen. I am very mindful that offences of this nature disturbs the tranquility and peace in our community. In this regard, the Courts have a duty to discourage and deter this kind of anti-social behavior that makes living in our society unsafe requiring extra safety measures for the protection of your own property. Having considered all these factors, I would pick a starting point of 36 months imprisonment against each of you.
19. In aggravation, prosecution highlights that you had pre-planned this offence, where you had trespassed into the property of SHIRI RAM, with scant disregard to the property and privacy rights of the owners of the property. In considering this fact, I increase your sentence further by 6 months.
20. In mitigation, your counsel has informed Court that you are first offenders and that you have maintained good characters before the involvement in this offence. However, on this premise, I cannot grant your request to impose a non-custodial sentence in this case. I would like to highlight the sentiments of **Nawana J** in the case of *State v Tilalevu* [\[2010\] FJHC 258](#); HAC081.2010 (20 July 2010), where His Lordship said that;

“I might add that the imposition of suspended terms on first offenders would infect the society with a situation - which I propose to invent as 'First Offender Syndrome' - where people would tempt to commit serious offences, once in life, under the firm belief that they would not get imprisonment in custody as they are first offenders. The resultant position is that the society is pervaded with crimes. Court must unreservedly guard itself against such a phenomenon, which is a near certainty if suspended terms are imposed on first offenders as a rule.”
21. If this Court is to give credence to this “Fist Offender” phenomena, Court will send a wrong signal to the citizenry of this Country, where Court would inform every citizen that they could commit a crime for the first time with minimum repercussions. We should remember that a crime is a crime, regardless whether it is the first crime of the offender or the 10th crime. Our civilizations have detested crimes from the very inception.
22. Further, your counsel has informed the court that you have entered an early guilty plea and that you regret your action on the day in question. You have also been supportive to the police during investigations after your arrest, where several stolen items have been recovered. Further, by pleading guilty to the charge you have saved courts time and resources at a very early stage of the court proceedings.
23. For all these grounds in mitigation, you should receive a discount in the sentence. In this regard, I give you a reduction of one third in your sentence.
24. Still further, your counsel brings to my attention that since arrest both of you have been in custody for 4 months, which period has to be reduced from the final sentence.

25. **ISEI RATUNACEVA BOLA** and **KALEVATI BATIKABU**, consequent to your conviction, I sentence you to 24 **months** imprisonment. Further, in considering your young age and your rehabilitation potential, with the authority given to me by **Section 26** of the **Sentencing and Penalties Act of 2009 (the Act)**, your sentence is partially suspended, where you shall serve 12 months of your sentence forthwith and the remaining period of **12 months** is suspended for **five (05) years**.
26. If you commit any crime punishable by imprisonment during the above operational period of five (5) years and found guilty by the Court, you are liable to be charged and prosecuted for an offence according to **Section 28** of the **Sentencing and Penalties Act of 2009**.
27. You have thirty (30) days to appeal to the Fiji Court of Appeal.




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Hon. Justice Dr. Thushara Kumarage

At Suva
this 15th day of February 2023