

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

**Crim. Case No: HAC 196 of 2021**

**STATE**

vs.

- 1. JONA ROKOSUKA [DEALT WITH]**
- 2. MARCELLIN CHAMPAGNAT ATUNAISA LALABALAVU**
- 3. MANASA ROKOTUIVEIKAU**

**Counsel:** Ms. M. Naidu for the State  
3<sup>rd</sup> Accused In Person

**Date of Hearing:** 27<sup>th</sup> to 31<sup>st</sup> March 2023

**Date of Closing Submission:** 11<sup>th</sup> April 2023

**Date of Judgment:** 19<sup>th</sup> April 2023

**Date of Sentencing & Mitigation:** 21<sup>st</sup> April 2023

**Date of Sentence:** 27<sup>th</sup> April 2023

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**SENTENCE**

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**Introduction**

1. The Director of Public Prosecutions charged three accused for the following offences as per the Information dated 17<sup>th</sup> March 2022:

## COUNT ONE

### *Statement of Offence*

**AGGRAVATED ROBBERY:** contrary to Section 311 (1) (a) of the Crimes Act, 2009.

### *Particulars of Offence*

**JONA ROKOSUKA, MARCELLIN CHAMPAGNAT ATUNAI SA LALABALAVU & MANASA ROKOTUIVEIKAU** on the 11<sup>th</sup> day of September, 2021 at Nasinu, in the Central Division, in the company of each other stole 1 x hand bag containing 1 x purse, \$290.00 cash, 1 x Samsung Galaxy J2 Core Mobile Phone, 2 x Sim Cards, 1 x Perfume, 1 x FNPF Cards, 1 x Driver's License Card, 4 x FIRCA Cards, 3 x Westpac ATM Cards, 2 x COVID-19 Vaccination Cards, 2 x Voter's Identification Cards, 3 x Vodafone e-Transport Bus Cards, 1 x BSP Hospital Card and 4 x Government Issued Medical Cards from **POONAM SARITA** and immediately before stealing from **POONAM SARITA** used force on her.

## COUNT TWO

### *Statement of Offence*

**RESISTING ARREST:** contrary to Section 277 (b) of the Crimes Act, 2009.

### *Particulars of Offence*

**JONA ROKOSUKA**, on the 15<sup>th</sup> day of September, 2021 at Nasinu, in the Central Division, resisted the arrest from **DETECTIVE CONSTABLE 5404 RUSIATE** in the due execution of his duty.

2. The 1<sup>st</sup> accused pleaded guilty at the outset and he was convicted and sentenced. Then upon entering of pleas of not guilty the matter was taken up for trial against the 2<sup>nd</sup> and 3<sup>rd</sup>

Accused. Upon trial the 2<sup>nd</sup> Accused was acquitted and you the 3<sup>rd</sup> Accused Mr. Manasa Rokotuiveikau was convicted on 19<sup>th</sup> April 2023 in respect of count 1.

3. Upon hearing and receiving written submissions, you Mr. Manasa Rokotuiveikau the 3<sup>rd</sup> Accused is present today to consider your sentence.

#### Brief Facts

4. The three Accused named were alleged to have committed this robbery jointly. If I may recap the incident, on the 11<sup>th</sup> September, 2021 Ms. Poonam Sarita was stepping out of the Pharmacy around 7pm when you Mr. Manasa approached her and attempted to grab her handbag, then as she resisted and held on to her bag you punched her and put her on the ground when two others joined you and jumped on her when she was on the ground. You forcibly grab her bag and run to the rear of the shopping complex to which place the complainant came and pleaded with you to take the money and return her belongings when you escaped.
5. The evidence clearly proved that you played the lead role and was instrumental in taking Ms. Poonam's handbag away. The items stolen were never recovered. Ms. Poonam whilst giving evidence exhibited a great degree of emotion and explained the extreme mental trauma she was suffering even at the time she testified.

#### Sentencing Regime

6. The offence of aggravated robbery is punishable with a sentence of 20 years imprisonment that is what the legislature has prescribed. As for sentencing tariff and guidelines the Supreme Court has determined the tariff and sentencing guidelines for 'street mugging' type robberies in **State v Tawake** [2022] FJSC 22; CAV0025.2019 (28 April 2022). The State in the written submissions has submitted that this court follow and be guided by the said tariff.

7. The said decision in *State v Tawake* (supra) was determined on the 28<sup>th</sup> April, 2022. However, the offence for which Mr. Manasa is to be sentenced was committed on the 11<sup>th</sup> September, 2021. Therefore, the said tariff had been determined after the date of offence. Thus, it is prudent to advert my mind to the issue of retrospectivity of this guideline judgment. This issue was considered by the Court of Appeal in **Davendra Narayan Chand v The State** [AAU 0033 of 2015 (03 October 2019)] where His Lordship Justice Prematilaka has expressed the following view at paragraphs 72 and 73 as follows;

*“[72] **R v H (J)** [2012] 1 WLR 1416 provided useful guidance in sentencing and an authority to state that the sentencing judge should apply the legislative provisions, and have regard to any relevant guidelines, applicable as at the date of sentencing, while bearing in mind that the sentence is limited to the maximum sentence available at the time that the offence was committed. The Court of Appeal remarked that,*

*‘In the result therefore in historic cases, provided sentences fall within or do not exceed the maximum sentence which could lawfully have been imposed at the date when the offence was committed, neither the retrospectivity principle nor article 7 of the Convention are contravened.’*

*[73] Therefore, the correct legal position is that the offender must be sentenced in accordance with the sentencing regime applicable at the date of sentence. The court must therefore have regard to the statutory purposes of sentencing, and to current sentencing practice which includes the tariff set for a particular offence. The sentence that could be passed is limited to the maximum sentence available at the time of the commission of the offence, unless the maximum had been reduced, when the lower maximum would be applicable.”* (emphasis added).

8. Thus, it is now settled and apparent that offenders must be sentenced in accordance with the sentencing regime and tariff applicable as at the date of sentencing. Accordingly the new tariff as formulated and set out in **Eparama Tawake v State** CAV 0025.2019 (28<sup>th</sup> April 2022) will apply retrospectively to all matters and cases that will come up for sentencing henceforth regardless of the date of the offending.
9. The Accused Mr. Manasa was convicted on the 19<sup>th</sup> April, 2023 and the sentence is to pronounce today the 27<sup>th</sup> April, 2023. Therefore, the sentencing guideline and tariff as prevalent as the date of sentencing is applicable.

10. According to the tariff as determine by Tawake the starting point would have to be determined taking into consideration the level of culpability especially the harm both psychological and physical suffered by the victim. Ms. Poonam has clearly suffered and is still simmering under great mental trauma even up to date. She was almost in tears and extremely emotional when she narrated the incident. She said that she suffers from loss of sleep, unable to sleep normally and she is not able to live a normal life. Though not grievous she had suffered contusions and minor aberration which was corroborated by medical evidence. She had been punched and knocked down to the floor and the assailant have jumped and stamped on her. In these circumstances I would consider the harm aspect to be high. There have been two others with the Accused who jointly participated in this robbery. Accordingly, the applicable tariff will be a seven year starting point with the range of 5 to 9 years imprisonment.
11. Accordingly, I pick 7 years at the starting point of your sentence. As for aggravating factors I observe that there was some pre-meditation and pre-planning. The victim Ms. Poonam was vulnerable when confronted by three male assailant in these circumstances. You Mr. Manasa have taken her bag with all her bank, identification, health cards and documents along with \$290 cash and two mobile phones which were never recovered. You showed no remorse in any degree.
12. As for mitigating factors apart from your personal circumstances of being a relatively young person I see no other appreciable circumstance of mitigation. You have three previous convictions between 28<sup>th</sup> March, 2019 and 7<sup>th</sup> December 2020 in respect of aggravated burglary, theft and aggravated robbery. Therefore I am unable to consider you and grant you the benefit of being a person of previous good character. Apart from these previous conviction I observe that you are now serving a sentence in respect of the conviction for aggravated robbery and sentence imposed on 25<sup>th</sup> December 2022 in case number HAC 007 of 2022. Since this conviction was after you have committed the present offence it would not be considered as being a previous conviction. However, it would be relevant to determine the period of remand to be set of against the sentence.

### The Sentence

13. Considering the objective seriousness and the tariff the starting point of your sentence will be 7 years imprisonment. I add 2 years for the aggravating circumstances. There is little in mitigation, however I would deduct a period of 6 months considering your age and youth as for mitigating circumstances. Your sentence is now 8 years and 6 months imprisonment. I sentence you to a total period of eight (8) years and six (6) months imprisonment for the offence of aggravated robbery for which you stand convicted.

### Non-Parole period

14. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that a six (6) year non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for six (6) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
15. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed compels me to state that the purpose of this sentence is to punish you in a manner that is just in all the circumstances, and in a manner which is just in all the circumstances of the case.

### Head Sentence

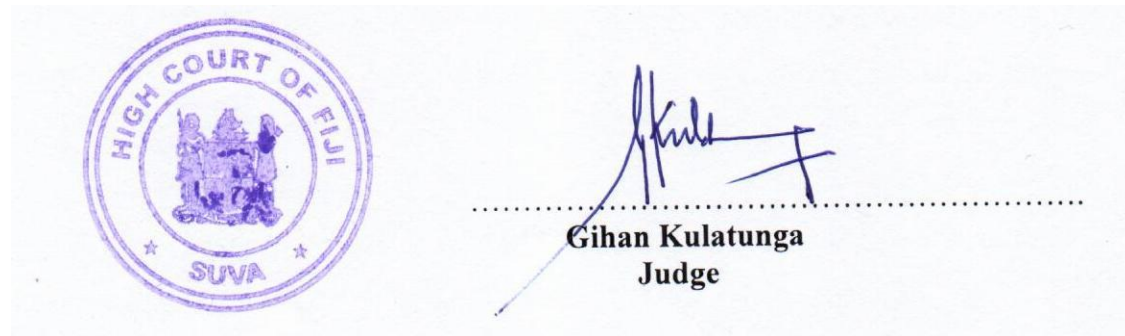
16. Accordingly, I sentence you to a period of eight (8) years and six (6) months imprisonment for the offence of aggravated robbery as charged and convicted. However, you are not entitled for parole for six (6) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### Actual Period of the Sentence

17. You were arrested for this offence on 1<sup>st</sup> January, 2022 and not granted bail. However, you were convicted in HAC 7 of 2022 and sentenced on the 25<sup>th</sup> November 2022 and there onwards you were serving the sentence imposed in that case. Accordingly your period of

remand would be 10 months and 26 days which I would consider to be 11 months. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 11 months be considered as imprisonment that you have already served. Your actual period of sentence is thus 7 years and 7 months and the actual non-parole period would be 5 years and 1 month.

18. Accordingly, the actual sentence is a period of is seven (07) years and seven (7) months imprisonment with a non-parole period of five (05) years and one (01) month.
19. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



**At Suva**

27<sup>th</sup> April 2023

**Solicitors**

Office of the Director of Public Prosecutions for the State.  
3<sup>rd</sup> Accused In Person