

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 017 OF 2010

STATE

VS

- 1. JESE MUCUNABITU**
- 2. AVINESH BHAN**
- 3. MIKAELE NALAVASA**

Mr. M. Korovou for the State
All Accused in Person

Date of Hearing: 8 April 2010
Date of Sentence: 15 April 2010

SENTENCE

- [1] The three accused pleaded guilty before me on the 8th April 2010 to one offence of aggravated burglary contrary to section 313(1) of the Crimes Decree and one offence of theft contrary to section 391(1) of the Crime Decree 2009. On admitting the summary of facts they were then convicted.

Facts

- [2] On the 8th March 2010 at about 3.00am, all three accused met and decided to break into the house of Aman Singh (the complainant). By removing louvre blades, they managed to put a hand through to open the main door. The first and second accused entered while the third accused kept watch outside. Whilst inside the first and second accused took a computer, a mobile phone, an ipod and a lady's wallet containing \$50 all to the total value of \$1450. The three all shared the proceeds and hiding the laptop and ipod in bushes went to drink kava. The second and third accused were arrested the following day on their way to sell the laptop. All three made admissions on being interviewed under caution.

The Law

- [3] The offence of aggravated burglary is newly created in this jurisdiction by the Crimes Decree of 2009. It carries a maximum penalty of 17 years (whereas burglary simpliciter has a maximum of 13 years). The aggravation charged is that the burglary was committed by more than one person.

- [4] Under the old Penal Code, the maximum penalty was life imprisonment, but the accepted tariff was between 18 months to 3 years imprisonment (**Tomasi Turuturuvesi v State** - HAA 86/2002). The facts supplied by the State do not state if the dwelling house was occupied at the time or not, so the presumption must be that the house was unoccupied and no person was alarmed.

For each of the accused I take a starting point of 30 months imprisonment for the burglary.

- [5] Theft is also a new offence but is akin to the offence of larceny under the old Penal Code. The theft of items during a burglary used to be part and parcel of the same offence of housebreaking and larceny, but it is now obviously the intention of the legislature to separate these two elements, and make theft an additional separate offence. The maximum penalty for theft under section 291(1) of the Crimes Decree is imprisonment for 10 years.

The Sentences

- [6] From the starting point of 30 months, there are no aggravating features apart from the aggravation already inherent in the offence.

The first and third accused are both first offenders and young (20 years and 19 years respectively). All three of the accused pleaded guilty to the two charges at the very first opportunity. The second accused has two previous convictions for robbery with violence and one of housebreaking, entering and larceny. These convictions afford him no credit.

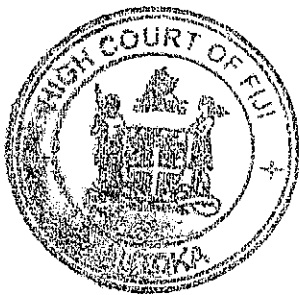
[7] The second accused shows remorse and has co-operated from the outset. He cares for his elderly mother who is a diabetic. For these mitigating features I reduce his sentence by 6 months to a point of 24 months. For his early plea of guilty I deduct a full third meaning that for the aggravated burglary I sentence him to a term of 16 months imprisonment.

[8] For the theft alone, I pass a sentence of imprisonment of 18 months, reduced for his plea of guilty to 12 months which is to be served concurrently.

[9] Avikash Bhan will serve a total sentence of 16 months imprisonment.

[10] The first and third accuseds' sentences are reduced by a full third for the early plea of guilty: meaning they will serve 20 months for the burglary and 12 months for the theft. These terms will be served concurrently. They are young men with no previous convictions. They are truly remorseful and must be given an opportunity to prove that remorse by embarking on a period of good behaviour. The sentences are suspended for three years which means that if they commit any offence within the next three years they will then serve this term of 20 months in addition to the penalty for any new offence.

[11] They have 28 days to appeal.



A handwritten signature in dark ink, appearing to read "Paul K. Madigan".

Paul K. Madigan
Judge

At Lautoka

15 April 2010