

IN THE SUPREME COURT OF FIJI

Criminal Appeal No. 24 of 1958

TAMAN

Appellant

v.

REGINA

Respondent

Appeal against sentence: Magistrate taking into account considerations not mentioned in the course of the trial. Appellant was convicted of selling one bottle of home brew beer for 2s. One previous conviction for a liquor offence alleged but denied and not proved. Sentence of four months' imprisonment reduced.

Held.—(1) Where the prosecution allege a previous conviction which is denied by the accused the record should show either that it has been proved, or ignored when sentence passed.

(2) The Court should not take into account when passing sentence allegations that an offence was "said to be increasing in the district" which had not been referred to during the course of the trial.

(3) After an accused is convicted, and before sentence is passed, he should be allowed a final opportunity of addressing the Court on the subject of sentence, or mitigation thereof.

K. C. Ramrakha for appellant.

J. F. W. Judge, Crown Counsel, for the Crown.

HAMMETT, J. [16th May, 1958]—

The appellant was convicted of the offence of selling one bottle of home brew beer for 2s. to a fellow workman contrary to section 48 of the Liquor Ordinance, Cap. 209, and sentenced to four months' imprisonment. He now appeals against sentence.

After the conviction it was stated that the accused had one previous conviction for a liquor offence which he denied. The conviction should therefore either have been proved or ignored by the trial Magistrate. It was not proved and there is nothing on the record to show that it was ignored by the Magistrate when he passed sentence. The appellant had no previous convictions of a like character.

In passing sentence the Magistrate recorded that the practice of selling home brew beer was "said to be increasing in the district". This was not said in the course of this case and the appellant had no idea until it was too late for him to express any view on this, that this was a matter which would be considered when sentence was passed on him.

There is nothing on the record to show that the accused was given any opportunity before sentence and after conviction of speaking in mitigation. This is a practice which although not laid down by any Ordinance should be followed, especially where the Court is of the mind to take into account when passing sentence, considerations which have not, up to then been mentioned at the trial.

The maximum penalty for the offence was six months' imprisonment and a fine £50. In these circumstances I shall allow this appeal against sentence. I set aside the sentence of four months' imprisonment and in lieu thereof pass a sentence of a fine of £10 and in default two months' imprisonment and in addition the appellant must enter into a bond within 14 days in the sum of £25 with one surety in £25 to be of good behaviour and to keep the peace for a period of 12 months—in default two months' imprisonment to run consecutively with that imposed in default of payment of the fine, under the Penal Code section 35.