

## TEVITA JONE RAMI

v.

## REGINAM

[SUPREME COURT, 1963 (MacDuff C.J.), 26th April]

## Appellate Jurisdiction

Criminal law—sentence—principles to be applied—Penal Code (Cap. 8) s. 300 (a).

Sentence of eighteen months' imprisonment for larceny by a servant reduced to three months where the appellant was eighteen years old and of good previous character, and where there was no abuse of the appellant's position in the nature of a breach of trust and the circumstances were akin to those of simple larceny.

Observations on the principles to be applied in inflicting punishment.

Case referred to:

*The Queen v. Radich* [1954] N.Z.L.R. 86.

*Appeal against sentence.*

Appellant in person.

*Palmer* for the Crown.

MACDUFF C.J. [26th April, 1963]—

The appellant pleaded guilty and was convicted of the offence of—

*“ Statement of Offence*

Larceny by servant: Contrary to section 300 (a) of the Penal Code, Cap. 8.

*Particulars of Offence*

Annamalay, s/o Kanji Mali; Arjun, s/o Muniappa and Tevita Jone Rami on a date unknown between 1st day of January, 1963, and 28th day of February, 1963, at Varoka, Ba in the Western Division being a servant to Abdul Hussein Sahu Khan stole 2 sheets of corrugated roofing irons and 36 feet of 6 x 1" flooring timbers together of the value of £5 the property of Abdul Hussein Sahu Khan."

He was sentenced to eighteen months' imprisonment against the severity of which he now appeals.

Before the learned trial Magistrate the appellant admitted the joint larceny, while before me he admitted that he himself had stolen the 36 feet of timber only, and that he did so for the purpose of making a bed for himself. I was inclined to think that he was telling the truth. On the other hand the manner in which the facts were outlined by the police prosecutor could well have resulted in an ignorant Fijian agreeing with the facts as outlined without necessarily admitting the joint larceny.

The purpose of punishment and the principles which should guide an appellate court in considering a reduction of sentence are expressed in clear terms in the headnote of the report of the *Queen v. Radich* (1954) N.Z.L.R. 86 in these words—

“ One of the main purposes of punishment is to protect the public from the commission of crime by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment. The fact that punishment does not entirely prevent all similar crimes should not obscure the cogent fact that the fear of severe punishment does, and will, prevent the commission of many that would have been committed if it was thought that the offender could escape without punishment, or with only a light punishment. If a Court is weakly merciful, and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences. On the other hand, justice and humanity both require that the previous character and conduct, and probable future life and conduct of the individual offender, and the effect of the sentence on these, should also be given the most careful consideration, although this factor is necessarily subsidiary to the main considerations that determine the appropriate amount of punishment.

The Court of Appeal, in considering an application for reduction of sentence, must be reasonably satisfied that the sentence is manifestly excessive or wrong in principle, or there must be exceptional circumstances calling for its revision. Little help is gained by considering other sentences in respect of the same type of offence, for the whole of the surrounding circumstances and the situation of the offender, and others, have to be taken into account; and these factors vary infinitely.”

In present days the main purpose of the legislature in imposing a penalty for an offence is too often lost sight of. On the other hand, as the learned judge of appeal rightly pointed out, those factors which should mitigate sentence should also be taken into account.

In the present case the appellant was 18 years of age and since nothing was known against him must be taken to have been of previous good character. One would have thought that consideration would have been given, in the first instance, to whether or not this was a case for probation as against imprisonment. In the event of the learned trial Magistrate deciding that it was a case for imprisonment then consideration would require to be given to the alternative of, in the case of a first offender, a short sharp shock as against the effect a longer term in company with hardened criminals would have on the appellant himself.

Then again some regard must be paid to the amount stolen and the circumstances of the theft. It is clear that the greater value of the property stolen and the greater ingenuity of the thief should attract a comparatively greater sentence than a theft of property of small value without premeditation or planning. In the present case the appellant was quite properly charged with “ larceny as a servant contrary to section 300 (a) of the Penal Code ”, an offence which attracts a maximum penalty of fourteen years’ imprisonment. This was not, however, in the usual run of such cases. There was no abuse of his position by a person in a position of trust. The circumstances of this case were more akin to those of simple larceny, the maximum penalty for which is five years’ imprisonment.

Counsel for the Crown concedes that the sentence is manifestly excessive and that the learned trial Magistrate has applied a wrong principle. I would say that, in my view, he has failed to exercise any proper principle except that of punishment.

The appellant has already served nearly two months' imprisonment so it would be unjust, at this stage, to consider the substitution of a term of probation. The sentence is accordingly reduced to one of three months' imprisonment.

*Appeal allowed.*

*Solicitor-General for the Crown.*