

IN THE FIJI COURT OF APPEAL
CRIMINAL APPEAL NO. 70 OF 1987

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Between:

BALJIT SINGH

Appellant

- and -

THE STATE

Respondent

The Appellant In Person
Ms. A. Prasad for the Respondent

Date of Hearing: 5 July 1988

Date of Judgment: 25 August 1988

JUDGMENT OF THE COURT

The Appellant's appeal is against a sentence of 5 years' imprisonment imposed on him by Dyke, J. on 13 July 1987 for larceny contrary to section 262(2) of the Penal Code, Cap. 17. The total value of items stolen was \$2,230 which included a Datsun car valued at \$1,800 and a camera at \$80. The Appellant had pleaded not guilty but he was convicted by the trial judge after all 3 assessors gave their opinion that the accused was guilty.

At the material time the Appellant was living temporarily with his elder brother Vijay Kumar at Nadi. One day whilst driving his brother's car, a white Datsun 1200, No. AA 784, he damaged it in an accident. He promised his brother to have it repaired. In the meantime one Om Prakash Singh's car also a Datsun 1200 No. AE 486 was stolen from Lautoka. It was coloured mustard or yellow. In the car were a minolta camera, a lady's handbag with some cash and jewellery and these too went missing with the car. Later police found a burnt Datsun car at Barara Flats and it was identified as Vijay Kumar's car. Om Prakash Singh's stolen car repainted white was recovered from Vijay Kumar's house. It had Vijay Kumar's car No. AA 784 on it. Certain engine parts were also changed. The missing minolta camera was also recovered from Vijay Kumar's house from a punching bag belonging to the Appellant. The Appellant was charged with larceny of the car and other items whilst Vijay Kumar was charged with receiving stolen property namely Om Prakash Singh's Datsun car valued at \$1,800. Vijay Kumar pleaded guilty and was given a two-year suspended prison sentence. He had no previous convictions. He then gave evidence against the Appellant and it was largely on his testimony that the Appellant was convicted.

The car and camera have been recovered.

The Appellant's contention is that the sentence of 5 years imprisonment is harsh and excessive. He submitted that recently Courts in Fiji have been imposing prison sentences below 5 years for offences like rape and other crimes involving violence. He said that the range of sentences for such offences was between 2 years and 4 years. He also told this Court that he got married after his last release from prison and he now has a small child.

Ms. A. Prasad who appeared on behalf of the Director of Public Prosecutions emphasised that the Appellant has a bad record. She also drew attention to the fact that by reason of his previous convictions for felonies the maximum punishment to which the Appellant

was liable under sub-section (2) of section 262 of the Penal Code was 10 years. We note that under sub-section (1) of section 262 stealing for which no special punishment is provided under the Penal Code or any other Act is simple larceny and a felony punishable with imprisonment for 5 years. But for his previous conviction for a felony the maximum imprisonment which could have been imposed on the Appellant was 5 years. Ms. Prasad however agreed that under normal circumstances the Appellant would have received an imprisonment sentence within the range of 2 years and 3½ years. She however stressed that the value of the items stolen exceeded \$2,000.

Whilst the appropriate sentence to be imposed within the range provided by law is a matter for the discretion of the sentencing judge, there is need for some uniformity of approach. Furthermore, where it appears that an accused person had been sentenced on his record rather than for the particular offence for which he had been convicted an Appellate Court would be justified in interfering. In R. v. Queen [1982] Crim. L. R. 56 the English Court of Appeal observed that a Defendant was not to be punished for offences he had committed in the past and for which he had already been punished. It said that the proper way to look at the matter is to decide a sentence which is appropriate for the offence for which the Defendant is before the Court and then consider whether the Court can extend some leniency to the offender having regard amongst other things to his record of previous convictions.

Whilst we appreciate that special or exceptional circumstances relating either to the case or to the offender or both may at times call for a sentence below or above the normal range, we respectfully adopt as a general approach the guideline suggested by the English Court of Appeal. The guideline restates a fundamental principle of sentencing which should be kept in mind.

With respect to the learned trial judge we consider he was overly influenced by the Appellant's past record in assessing

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punishment. In passing sentence he made the following comments:-

"Accused has appalling record, 28 previous convictions. Little to be said in his favour. Has tried to lay all blames on his own brother.

5 years imprisonment."

There is no doubt that as a persistent offender the Appellant clearly forfeited any claim to leniency. His list of previous convictions shows that amongst the offences he committed between 1973 and 1986 were damaging property, robbery with violence, burglary, actual bodily harm, cattle stealing and housebreaking. Furthermore, this was not a case of an ordinary theft. It involved bold criminal scheming. A deterrent sentence was therefore also called for. Nevertheless, we consider a sentence of 5 years imprisonment is excessive in all the circumstances of this case.

This appeal is allowed. The sentence of 5 years imposed in the Court below is reduced to 3½ years imprisonment.

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President, Fiji Court of Appeal

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Justice of Appeal

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Justice of Appeal