

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

{*Nasinu Magistrate's Court Crim. Case No.: 531 of 2006*}

**CRIMINAL APPEAL NO.: HAA 22 OF 2008**

BETWEEN:

LEONE ROKOMARAIVALU

*Appellant*

A N D:

THE STATE

*Respondent*

Ms N. Tikoisuva for Respondent  
In Person - the Appellant

Date of Hearing: 25<sup>th</sup> April 2008

Date of Judgment: 20<sup>th</sup> May 2008

## JUDGMENT

The Appellant was charged with burglary and larceny in a dwelling house. The date of the offences was the 22<sup>nd</sup> of May 2006. Both offences arose out of the same incident.

The Appellant initially denied both charges. The trial commenced on the 13<sup>th</sup> of October and the Appellant changed his plea after the close of the prosecution case. The facts were that there was a break in at the house of Yasin Ali in Narere on the 22<sup>nd</sup> of May 2006. When the complainant woke up he found louver blades missing from his kitchen window. The burglar left footprint marks

on the kitchen sink. The police investigated. The Appellant admitted breaking in and stealing a wallet containing \$17.00 cash.

The Appellant admitted the facts and was convicted. He had a number of previous convictions. His record included a previous conviction for larceny (2212/04) on the 1<sup>st</sup> of March 2005, one for housebreaking, entering and larceny of the same date (22/3/04) and one for larceny on the 3<sup>rd</sup> of November 2005 (969/05).

For Case No.: 2212/04 he was given a 2-year term suspended for 2 years.

In mitigation the Appellant expressed remorse, said he was drunk and said he had a wife with one child.

Sentence was delivered on the 15<sup>th</sup> of November 2006.. The learned Magistrate correctly stated the tariff as being between 1 and 4 years. After taking into account all aggravating and mitigating circumstances he sentenced the Appellant to two years imprisonment on Count 1 and two years on Count 2 to be served concurrently. He then said that in March 2005 the Appellant had been convicted on an offence of larceny and sentenced to two years imprisonment suspended for two years. The operational period ended on 1<sup>st</sup> March 2007. He then asked the Appellant to show cause why the suspended sentence should not be activated.

The Appellant took the oath and said that if the suspended sentence was activated, he would be serving a term which was unfairly long. The learned Magistrate then activated six months of the suspended term to be served consecutive to the two year imposed for the substantive offences. In effect he is serving a sentence of two years and six months imprisonment.

The Appellant's only complaint is against the part – activation of his suspended sentence. He says that the suspended sentence was quashed in

2005 and that was nothing to activate. The State concedes this. State counsel said that the suspended sentence was quashed on appeal by the High Court.

In Criminal Appeal HAA 036 of 2005S, the Appellant appealed against a sentence of three years imprisonment imposed for one count of housebreaking, entering and larceny. I allowed his appeal against sentence and reduced the sentence to six months imprisonment. However I am unable to locate any appeal from Criminal Case 2212/04 in which the suspended sentence was imposed. The three year term imposed in Criminal Appeal 036/2005S did not include the activation of the suspended sentence in 2212/04. The Appellant claimed in his submissions to the court, that it did so include such activation, but that was not reflected in the learned Magistrate's sentencing remarks. The two year term suspended for two years therefore remained in operation until March 2007.

The Appellant on the 22<sup>nd</sup> of May 2006 offended during the operational period of his suspended sentence. Therefore the learned Magistrate did not err when he activated part of it.

This appeal is therefore dismissed.



  
[Nazhat Shameem]  
JUDGE

At Suva  
20<sup>th</sup> May 2008